

NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

DURHAM COUNTY

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16 CVS
16CV54599

DURHAM COUNTY, C.S.C.

BOBBY J. CHOPLIN,

BY PJM)
Plaintiff,)

**COMPLAINT
(Jury Trial Demanded)**

v.)

INTERNATIONAL BUSINESS MACHINES)
CORPORATION,)

Defendant.)

Plaintiff Bobby J. Choplin (“Mr. Choplin”), by and through the undersigned counsel, brings this complaint against Defendant International Business Machines Corporation (“IBM”), alleging as follows:

INTRODUCTION

1. Mr. Choplin was employed by Defendant International Business Machines Corporation (“Defendant” or “IBM”) as a sales representative beginning in November 2012 through January 2016.

2. IBM intentionally sought to incentivize sales representatives like Mr. Choplin to pursue sales opportunities for IBM by touting their unlimited commissions structure, i.e. IBM repeatedly represented to Mr. Choplin and other sales representatives that their income was limited only by how much of IBM’s products and services they were able to sell.

3. Indeed, at multiple sales meetings, IBM executives represented to Mr. Choplin and others that they “could make \$1,000,000” because commissions would never be capped or limited. The more you sell, the more you’ll make.

4. However, unbeknownst to Mr. Choplin, IBM routinely withholds commission payments already earned when it unilaterally determines it should. IBM does so in total derogation and disregard for the commitments it has made to the hardworking sales representatives at IBM who, in reliance on IBM's promises, seek out and bring in lucrative business opportunities for the company.

5. Plaintiff Bobby Choplin was a victim of IBM's deceptive policy when his commissions in 2015 were reduced to a fraction of what he had earned after he closed a deal for IBM worth over \$6,649,000.

6. Instead of paying what it owed to Mr. Choplin, IBM stole over half of Mr. Choplin's sales commission.

7. Mr. Choplin pursues the claims herein to recover damages he has suffered as a result of IBM's unfair, deceptive, and fraudulent conduct.

JURISDICTION AND VENUE

8. The subject matter jurisdiction over this action and personal jurisdiction over the Defendants is conferred upon and vested in this Court under and by virtue of N.C. Gen. Stat. §§ 1-75.4, 7A-240, and 7A-243.

9. Venue for this action is properly laid in this Court pursuant to and in accordance with N.C. Gen. Stat. §§ 1-76, 1-77, 1-79, 1-80, and 1-82.

PARTIES

10. Plaintiff Bobby J. Choplin is a citizen and resident of Durham County, North Carolina. At all times material hereto, Mr. Choplin was a sales representative for IBM based out of IBM's Durham County, North Carolina offices.

11. Defendant IBM is New York corporation with its headquarters located in Armonk, New York and doing business in Durham County, North Carolina.

FACTS

12. Mr. Choplin started as a sales representative at IBM in November 2012.

13. At the time, he was working as a sales representative at the multinational computer technology company Oracle Corporation.

14. During interviews before he was hired, Bruce Kopkin and other IBM managers told Mr. Choplin that he “could make as much money as he wanted to” depending on the success of his sales territory.

15. IBM offered Mr. Choplin a position as a sales representative in the “Business to Business” department focused on “commerce solutions.” The position included a base salary and an unlimited sales commissions structure.

16. In this role, Mr. Choplin sold IBM’s Business to Business and Commerce products and services to commercial entities throughout North Carolina, earning a commission on each sale he made.

17. Mr. Choplin’s commissions were calculated by applying a formula established before each sales period. The formula involved multiplying the gross sales amount by the applicable percentage, which increased at certain thresholds after the base sales quota was met.

18. IBM referred to these increasing commission percentages as “accelerators.”

19. Accelerators are designed to motivate IBM sales representatives to achieve sales in excess of their quotas in order to earn higher commissions and, ultimately, bring home more money.

20. IBM’s “accelerator” strategy is highly effective.

21. IBM sales representatives, including Mr. Choplin, make extraordinary efforts to maximize their income by exceeding their sales quotas to “accelerate,” i.e. increase, their commission percentage with the specific understanding that their earning potential will never be capped or limited by IBM.

22. The reason Mr. Choplin and others have that specific understanding is because they are repeatedly assured by their IBM managers that commissions are not capped by IBM.

23. Relying on IBM’s assurances, Mr. Choplin actively sought to increase his sales performance and exceed the sales goals set for him by IBM.

2013 Sales Kick-Off Meeting

24. In January of 2013, IBM held its North American Business to Business/Commerce “Sales Kick-Off Meeting” in Atlanta, GA.

25. IBM’s annual Sales Kick-Off meetings are designed to bring all sales representatives and managers together to learn about new products and sales strategies and to generate excitement for the coming year.

26. The 2013 Sales Kick-Off meeting took place over the course of two days and approximately 300-500 sales representatives, including Mr. Choplin, attended.

27. Mark Dorsey, Vice-President of Software Sales, made a presentation to all attendees at the meeting.

28. Mr. Dorsey’s remarks included specific representations that each sales representative’s earning potential was unlimited because IBM does not limit or cap commissions.

29. Among other things, Mr. Dorsey told all sales representative at the meeting: “You all have unlimited potential to earn commissions at IBM.”

30. Mr. Dorsey also said that sales representatives could make “life changing money.”

31. When Mr. Dorsey made these remarks, he had the authority to do so on behalf of IBM.

32. When he heard Mr. Dorsey’s remarks, Mr. Choplin understood that he was speaking on behalf of IBM and believed what he said was true, that commissions would never be capped or limited by IBM.

33. IBM also had another sales representative, Lori Sockowitz, give a presentation at the meeting about the sales representatives’ opportunity to make unlimited commissions.

34. Ms. Sockowitz said she had earned enough commissions through IBM’s unlimited commissions structure to allow her husband to retire and for them to buy a boat.

February 2015 - InterConnect Conference & 2015 Sales Kick-Off Meeting

35. In February of 2015, IBM held its annual Sales Kick-Off meeting in Las Vegas, NV in conjunction with its InterConnect Meeting (a conference for IBM customers).

36. The Sales Kick-Off portion was conducted for two days before the start of the InterConnect Meeting and was attended by approximately 400 sales representatives.

37. Both Janet Butler, Vice President of WorldWide Sales, and Ronnie Rohr, Sales representative, gave presentations where they said “sales representatives have the ability to make as much money as they want to.”

38. Ms. Butler presented Ms. Rohr as evidence of a sales representative who was able to make significant, unlimited commissions.

39. Ms. Rohr stated to all sales representatives at the meeting: “You can make over \$1,000,000 at IBM if you perform. I know because I have done it.”

40. When Ms. Butler and Ms. Rohr made these remarks, they had the authority to do so on behalf of IBM.

41. When he heard Ms. Butler's and Ms. Rohr's remarks, Mr. Choplin understood that they were speaking on behalf of IBM and believed what they said was true, that he could make as much money as his gross sales dictated and his commissions would never be capped or limited by IBM.

42. IBM intended for Mr. Choplin and the other sales representatives to believe their commissions would never be capped or limited.

43. These comments and presentations were designed to motivate Mr. Choplin and other sales representatives to expend extraordinary efforts to close sales for IBM, which they did.

Choplin Closes Major Deal for IBM with BB&T

44. In of July 2015, Mr. Choplin succeeded in closing a sale of IBM products and services to BB&T Bank that totaled over \$6,649,000.

45. The commission he earned on this sale was over \$800,000.

46. From January 2015 through July of 2015, Mr. Choplin worked tirelessly, often putting in 70 to 80 hour work weeks and traveling all over the state, in order to beat out significant competition from other companies to close this sale to BB&T.

47. Mr. Choplin expended extraordinary efforts and sacrificed time with his family because he relied on IBM's representations that his commission earnings would not be capped or limited in any way.

48. Mr. Choplin was the only IBM sales representative who had pursued this sales opportunity. Thus, he was entitled to commissions for the entire sale.

49. However, after Mr. Choplin closed the sale and his commissions for the sales period were calculated, IBM refused to pay Mr. Choplin the commission he earned.

50. IBM maintains a spreadsheet and formula where sales representatives can calculate the commission they will have earned at the end of the sales period.

51. In the past, Mr. Choplin's commission payments from IBM were always consistent with the calculation from IBM's commission spreadsheet.

52. For the first time, for the sales period involving the BB&T deal, IBM didn't honor the formula.

53. IBM employed two different strategies to avoid paying Mr. Choplin the full commission earned: (1) IBM lowered the total amount of the sales credit Mr. Choplin received for the BB&T deal; and, after changing the sale amount, (2) IBM capped the commission payment it was willing to make to Mr. Choplin

54. IBM unilaterally cut Mr. Choplin's revenue credit (i.e. his gross sales amount for that period) with no explanation. IBM changed the sales credit from \$6,649,000 to \$3,879,938.

55. IBM did so despite Mr. Choplin's manager confirming he was due the entire revenue credit of \$6,649,000 for the BB&T deal.

56. Then, also without explanation, IBM further reduced Mr. Choplin's commissions to \$348,847.

57. Mr. Choplin disputed this commission calculation with IBM on both grounds.

58. IBM refused to reconsider its decision to withhold the commissions Mr. Choplin earned on the BB&T deal.

59. Mr. Choplin asked that the situation be escalated to upper management.

60. In a call with IBM executive Sean Flynn, Mr. Flynn informed Mr. Choplin that it adjusted the commission in its own judgment and the decision was final.

61. Mr. Flynn refused to provide Mr. Choplin any detail on how the final payment was calculated.

62. Following that conversation, Mr. Choplin spoke with Haleh Maleki. She told him he had two choices: accept the decision and stay with IBM or quit and fight. Ms. Maleki told him disputing this commission decision would hurt his career and he would be looked upon negatively in the future.

63. Mr. Choplin has since learned that IBM has cheated many other sales representatives out of earned commissions. This is a pattern and practice for IBM. IBM has similarly capped, and even at times attempted to “clawback,” commissions sales representatives earned after unabashedly promoting that they “can earn as much money as they want to at IBM.”

64. Defendant IBM’s conduct displays a pattern and practice of intentionally, or at least negligently, misleading its sales representatives to entice them to work extraordinarily hard for IBM and pursue large, often complex and challenging sales opportunities, when after the deal is closed, IBM intends to cheat its employees out of the commissions they’ve earned.

FIRST CLAIM FOR RELIEF
(Violation of N.C. Wage and Hour Act – Unpaid Wages)

65. Plaintiff realleges and incorporates herein by reference each of the preceding paragraphs as if fully set forth herein.

66. Plaintiff was an employee of Defendant pursuant to the North Carolina Wage and Hour Act, N.C.G.S. § 95-25.1 *et seq.*

67. The commission payments due and owing to Plaintiff constitute “wages” as that term is defined by the North Carolina Wage and Hour Act, N.C.G.S. § 95-25.2(16).

68. Pursuant to N.C.G.S. § 95-25.6, Defendant was required to pay Plaintiff wages accruing to him, including commissions.

69. Plaintiff had performed all duties necessary to consummate the sales at issue, which were ultimately closed in IBM's favor, and all commission payments were earned by Plaintiff.

70. Defendant has failed and refused to pay Plaintiff his sales commissions, which are due as set forth herein.

71. Defendant has no policy or practice that would allow for the forfeiture of any such commissions by Plaintiff.

72. Defendant is liable to Plaintiff in the amount of such unpaid commissions, plus interest at the legal rate from the date each such commission first became due.

73. Pursuant to N.C.G.S. § 95-25.22, in addition to the unpaid commissions, Plaintiff is entitled to recover from Defendant as liquidated damages, an amount equal to the unpaid commissions that are due and owing to Plaintiff, plus the costs and fees of this action, including reasonable attorneys' fees.

74. As a direct and proximate result of IBM's violation of the North Carolina Wage and Hour Act, Mr. Choplin has been damaged in an amount exceeding \$25,000.00, said amount to be proven at trial.

SECOND CLAIM FOR RELIEF
(Unjust Enrichment)

75. Plaintiff realleges and incorporates herein by reference each of the preceding paragraphs as if fully set forth herein.

76. Mr. Choplin has conferred a benefit upon Defendant IBM by selling IBM products and services.

77. However, Mr. Choplin did not receive the commissions to which he was entitled as a result of the benefit he conferred on IBM.

78. The benefit conferred upon Defendant IBM was neither officious nor gratuitous.

79. It would be inequitable for IBM to retain the share of Mr. Choplin's earned commission which it did retain, because he did not receive the full commission he was entitled to.

80. By virtue of the wrongdoing alleged in this Complaint, IBM has been unjustly enriched at the expense of Mr. Choplin, who hereby seeks the disgorgement and restitution of IBM's wrongfully retained share of Mr. Choplin's earned commission, to the extent, and in the amount, deemed appropriate by the court.

81. As a direct and proximate result of IBM's wrongful retention of a share of Mr. Choplin's commission, Mr. Choplin has been damaged in an amount exceeding \$25,000.00, said amount to be proven at trial.

THIRD CLAIM FOR RELIEF
(Fraud)

82. Plaintiff realleges and incorporates herein by reference each of the preceding paragraphs as if fully set forth herein.

83. IBM routinely represents to its sales representatives that IBM sales representatives have unlimited earning potential because IBM does not cap their commissions.

84. IBM, by and through its executives and leadership, represented to Mr. Choplin that his earning potential was unlimited and that his commissions would not be capped or limited in any way.

85. Mr. Choplin relied on these representations when he was pursuing sales opportunities on behalf of IBM.

86. IBM made these statements knowing they were false.

87. IBM knew that sales representatives would rely on these representations in pursuing sales opportunities.

88. Indeed, IBM made these representations with the intent to entice and motivate its sales representatives to pursue the largest sales opportunities possible.

89. However, IBM knew at the time it made these representations that it intended to unilaterally cap or limit the earning potential of sales representatives.

90. Mr. Choplin, however, was unaware of IBM's actual intention to cap or limit his earning potential by limiting his commissions.

91. Had Mr. Choplin known this, he would not have been as motivated to pursue large sales opportunities, such as the BB&T Bank sale.

92. Indeed, he relied on the false representations, specifically targeting the BB&T contract in lieu of other potential sales contracts, and was thereby further injured by the opportunity cost of seeking other, more lucrative employment on lost wages.

93. As a direct result of IBM's fraudulent representations, Mr. Choplin has been damaged in an amount exceeding \$25,000.00, said amount to be proven at trial.

FOURTH CLAIM FOR RELIEF
(Unfair and Deceptive Trade Practices)

94. Plaintiff realleges and incorporates herein by reference each of the preceding paragraphs as if fully set forth herein.

95. N.C. Gen. Stat. § 75-1.1 makes unlawful, "unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in or affecting commerce."

96. By enticing its sales representatives to pursue the largest sales opportunities possible, IBM has affected trade and commerce in the state.

97. IBM engaged in unfair and deceptive trade practices when IBM and its executives misrepresented to Mr. Choplin and other sales representatives that there were no caps on sales commissions in an effort to entice them to pursue the largest sales opportunities possible.

98. IBM also engaged in unfair and deceptive trade practices by repeatedly misrepresenting the existence of sales caps to Mr. Choplin and other sales representatives which proximately denied competitors and consumers the benefits of Mr. Choplin's alternative labors.

99. As a direct and proximate result of these unfair, deceptive, and unconscionable practices, Mr. Choplin has been damaged and is entitled pursuant to N.C. Gen. Stat. § 75-16 to recover treble damages as well as attorneys' fees and costs.

FIFTH CLAIM FOR RELIEF
(Negligent Misrepresentation)

100. Plaintiff realleges and incorporates herein by reference each of the preceding paragraphs as if fully set forth herein.

101. IBM routinely represents to its sales representatives that IBM sales representatives have unlimited earning potential because IBM does not cap their commissions.

102. These representations were made to Mr. Choplin on behalf of IBM by at least, Mark Dorsey, Janet Butler, Ronnie Rohr, Lori Sockowitz, and Bruce Kopkin.

103. IBM had a pecuniary interest in inducing Mr. Choplin to become an IBM sales representative, and in him pursuing the largest sales opportunities possible once he became an IBM sales representative.

104. IBM owed Mr. Choplin a duty with regard to providing Mr. Choplin accurate information regarding his compensation as an IBM sales representative.

105. IBM breached its duty by failing to provide Mr. Choplin accurate information regarding his compensation as an IBM sales representative.

106. Specifically, the information provided by IBM to Mr. Choplin was not accurate because IBM had repeatedly represented that IBM did not cap or otherwise limit sales representatives' commissions, although in reality, IBM did cap or otherwise limit certain sales commissions.

107. Mr. Choplin justifiably relied upon IBM's representations that IBM would not cap or otherwise limit his commissions when he began to work as a sales representative at IBM, and when he was pursuing the BB&T sale.

108. Mr. Choplin's reliance was to his detriment, as IBM capped or otherwise limited his commission on the BB&T sale.

109. As a direct and proximate result of IBM's negligent misrepresentations regarding Mr. Choplin's compensation, Mr. Choplin has been damaged in an amount exceeding \$25,000.00, said amount to be proven at trial.

PUNITIVE DAMAGES

110. Defendant's conduct as set forth herein constitutes willful or wanton disregard for the rights of others, including Plaintiff. Plaintiff, therefore, is entitled to punitive damages from IBM pursuant to N.C.G.S. § 1D-35.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment against Defendant, IBM, as follows:

1. For actual and compensatory damages;
2. For punitive damages;
3. Costs of suit;
4. Pre- and post-judgment interest;

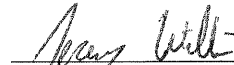
5. Liquidated damages, costs and fees of this action, and reasonable attorneys' fees pursuant to N.C.G.S. § 95-25.22;
6. Reasonable attorneys' fees pursuant to N.C. Gen. Stat. § 75-16; and
7. Such other relief as allowed by law the Court may find appropriate.

JURY DEMAND

Plaintiff demands a trial by jury.

Respectfully submitted, this the 14th day of November, 2016.

By:



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