IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

Robert M. Feldman,	)	April Term, 2005
	)	
Plaintiff	)	
	)	
v.	)	No. 1925
	)	
Philadelphia Trust Company,	)	COMMERCE PROGRAM
	)	
Defendant	)	
	)	Motion Control No. 061539

ORDER

AND NOW, this 27th day of November, 2006, in consideration of Defendant Philadelphia Trust Company's motion for summary judgment, Plaintiff Robert M. Feldman's response in opposition, and the respective memoranda of law, it is ORDERED that:

1. Defendant Philadelphia Trust Company's motion for summary judgment is DENIED;

BY THE COURT

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MARK I. BERNSTEIN, J.

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OPINION

Defendant, Philadelphia Trust Company ("PTC"), moves for summary judgment against Plaintiff Feldman. PTC argues that the alleged oral promises made to Feldman are unenforceable, vague, forfeited, or in violation of the Banking Code.

BACKGROUND

In 1997, a financial advisor, Michael Crofton, began to investigate the feasibility of establishing an investment bank in Philadelphia. His efforts resulted in the creation of PTC of which Mr. Crofton became and remains President and Chief Executive Officer.[1] Following negotiations that began in 1998, Mr. Robert Feldman, a fund-raiser and consultant, joined PTC in May 1999.[2]

In a suit against PTC filed in April 2005, Feldman avers that Crofton, on behalf of PTC, agreed to compensate Feldman with a yearly salary of $100,000, to be increased in lockstep with Crofton's pay raises. In addition the Complaint alleges that under the

[1] Affidavit of Michael Crofton, ¶ 1, attached as Exhibit 3 to PTC's motion for summary judgment.
[2] Deposition of Robert Feldman at17-41, attached as Exhibit 6 to PTC's motion for summary judgment.

agreement, Feldman should have received options to purchase shares of the company's stock, and quarterly commissions from all the investment management fees generated by Feldman or Crofton. Feldman contends that PTC breached the oral contract by failing to increase Feldman's salary in lockstep with Crofton's, by failing to pay the commissions, and by failing to deliver the options to purchase PTC's shares. Both PTC and Feldman agree that these terms were never reduced to writing.[3] Both parties agree that PTC and Feldman entered into a written at-will employment contract effective August 22, 2003, and that PTC terminated Feldman on December 15, 2003.[4] The parties disagree on whether the written contract constituted a full integration of all the terms and conditions accrued throughout the PTC—Feldman relationship. Finally, PTC contends that Feldman, while still employed by PTC, breached his duty of loyalty by secretly working as a consultant for a competing firm.

DISCUSSION

When considering a motion for summary judgment, the court must examine the record in the light most favorable to the non-moving party, and must resolve against the moving party any doubts regarding the existence of genuine issues of material fact.[5]

1. The Parol Evidence Rule Does Not Bar Evidence Of A Separate Contract.

PTC argues that under the parol evidence rule, the alleged promises made by Crofton to Feldman in 1999 are not admissible to alter, modify or contradict the subsequent written employment contract of September 9, 2003. PTC argues that the written contract integrates entirely any oral statements made throughout the PTC—Feldman relationship, from 1998 to

[3] Deposition of Michael Crofton at 54, attached as Exhibit 1 to PTC's motion for summary judgment. See also Robert Feldman's response in opposition to PTC's motion for summary judgment at ¶ 2.
[4] See id. at ¶ 1. See also Exhibits 35, 37 attached to PTC's motion for summary judgment.
[5] Fine v. De Checchio, 582 Pa. 253, 870 A.2d 850, 857 (2005).

September 9, 2003.

The parol evidence rule does not preclude evidence of a separate contract that is supported by consideration.[6]

Feldman alleges that the written at-will employment contract was a separate arrangement, a "new deal" under which he and PTC began to operate in 2003.[7] This testimony shows that a doubt exists as to whether PTC and Feldman entered into two unrelated employment contracts (the first, oral, effective May 9, 1999, the subsequent, written, executed on September 9, 2003), or whether they entered into a single written agreement that integrated all prior alleged oral statements between the parties. Summary judgment is inappropriate.

2. The Alleged Oral Promises Are Neither Too Vague Nor Uncertain.

PTC argues that the oral promises of stock options and management fees are unenforceable because they are too vague and uncertain to constitute binding obligations.

"Under modern contract doctrine, an agreement does not fail for vagueness if the parties intended to form a contract and there is a reasonably certain basis for giving an appropriate remedy."[8]

Feldman says that under the oral employment contract, he would receive compensation, including pay raises in lockstep with Crofton's, stock options for promoting the fledgling company, and fees from captive accounts.[9] Feldman has alleged the existence

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[6] Cohn v. McGurk, 330 Pa. Super. 333, 479 A.2d 578, 582 (1984).
[7] Deposition of Michael Feldman, 215:15-18, attached as Exhibit 4 to Feldman's response in opposition to PTC's motion for summary judgment.
[8] Green v. Oliver Realty, Inc., 363 Pa. Super. 534, 551 (1987).
[9] Deposition of Robert Feldman at 132-33, attached as Exhibit 6 to Defendant PTC's motion for summary judgment.

of an agreement whose terms are neither too vague nor uncertain. Summary judgment is inappropriate.

3. A Genuine Issue Of Material Facts Exists As To Whether The Written At-Will Employment Contract Controls The Alleged Oral Promises.

PTC argues that the written at-will contract executed on September 9, 2003 controls the alleged oral promises of salary increases and other compensations, and that any alleged promises made under an at-will employment contract are illusory. PTC's argument rests on the assumption that the written contract executed on September 9, 2003 controls both its own terms and conditions, and those of the entire PTC—Feldman relationship.

Feldman alleges that the written at-will employment contract was a distinct arrangement, a contract separate from the prior oral agreement. Summary judgment is inappropriate.

4. A Genuine Issue Of Material Fact Exists As To Whether Crofton's Alleged Promises To Feldman Were Ratified By PTC's Board Of Directors.

PTC argues that Crofton had no authority to promise salary increases and other compensations to Feldman because they were allegedly made before Crofton held any office with PTC, and even before PTC existed as a legal entity.

Feldman notes that PTC, after its incorporation, adopted and ratified Crofton's actions as follows:

> **Further Resolved**, that the actions of the President and/or Chairman of the Company in preparing the Company for opening of business, including, but not limited to, opening bank accounts, establishing lines of credit, and entering into contracts with vendors, be and hereby are ratified and approved.[10]

[10] PTC's Certified Resolutions of the Board of Directors, Exhibit 14 to Feldman's response in opposition to summary judgment at 00082.

Summary judgment is inappropriate.

5. A Genuine Issue of Material Facts Exists As To Whether The Alleged Promises Of Stock Options And Commissions Are In Connection With PTC's Organization.

PTC contends that the alleged oral promises granting consideration for Feldman's efforts to raise initial capital is unenforceable under the Banking Code. The pertinent provision reads:

> § 1003. Prohibition of promoters' fees
>
> **(a) Prohibited fees**. An institution shall not pay any fee, compensation or commission for promotion in connection with its organization or apply any money received on account of shares or subscriptions for shares to promoters' fees for obtaining subscription, selling shares or other services in connection with its organization, except legal fees and other usual and ordinary expenses necessary for its organization.[11]

Feldman contends that the options to purchase 10% of PTC's stock over a period of ten years did not constitute compensation for obtaining initial stock investment, but rather represented a mechanism to vest Feldman with 10% ownership in the bank.[12] Feldman states that the quarterly commissions of 10% of all management fees generated from captive investors introduced by Feldman or Crofton represented compensation for his employment.[13] This testimony demonstrates the existence of genuine issues of material fact as to whether all, some, or none of the stock options and commissions constituted compensation "in connection" with PTC's organization.[14] Summary judgment is inappropriate.

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[11] 7 PA. CONS. STAT. § 1003 (1965) (emphasis supplied).
[12] Deposition of Robert Feldman at 117-20, attached as Exhibit 4 to Feldman's response in opposition to PTC's motion for summary judgment.
[13] Affidavit of Robert Feldman at ¶ 5, attached as Exhibit 1 to Feldman's response in opposition to PTC's motion for summary judgment.
[14] At trial, any compensations found to be "in connection" with PTC's organization will be deemed unlawful, as a matter of law, under 7 PA. CONS. STAT. § 1003 (1965).

6. A Genuine Issue of Material Fact Exists as to Whether Feldman Breached His Duty of Loyalty to PTC.

PTC argues that Feldman breached his duty of loyalty to PTC by secretly working for Investment Management Advisory Group ("IMAGE"), a competitor. PTC further argues that this breach forfeited Feldman's alleged right to collect consideration from the oral promises.

Feldman counters that IMAGE is not a competitor of PTC, and that PTC knew about, and acquiesced in, Feldman's work for IMAGE. A genuine issue of material facts exists as to whether Feldman breached his duty of loyalty to PTC.

For the foregoing reasons, PTC's motion for summary judgment is denied. The court will enter a contemporaneous Order consistent with this Opinion.

BY THE COURT

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MARK I. BERNSTEIN, J.