

CITATION: Rakhit v. Echelon Wealth Partners Inc. 2023 ONSC 3265
COURT FILE NO.: CV-21-660443
MOTION HEARD: 20230502

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Shubo Rakhit, Plaintiff

AND:

Echelon Wealth Partners Inc., Defendant

BEFORE: Associate Justice Jolley

COUNSEL: Nora Refai, counsel for the moving party plaintiff

David Seifer, counsel for the responding party defendant

HEARD: 2 May 2023

REASONS FOR DECISION

- [1] The plaintiff sues for wrongful dismissal damages, including payment of bonuses he pleads are due to him. He alleges that the defendant has arbitrarily and unreasonably calculated his bonus pool allocations for Q3 and Q4, 2020 and Q1, 2021.
- [2] The defendant pleads that bonus payments are discretionary and determined on a case by case basis based on a number of factors. It denies that the plaintiff is owed any further amounts.
- [3] The evidence on the plaintiff's examination for discovery of the defendant was that the co-heads of the defendant's Capital Markets group created a document that was used by the compensation committee to determine bonus pool allocations both among its three business groups (the plaintiff's banking group, and the sales and research groups) and eligible employee bonuses. The document had not been produced and the plaintiff aborted the examination as a result. After the adjourned examination, the defendant did produce this compensation document but redacted it for relevance and commercial sensitivity.
- [4] The plaintiff seeks an order requiring the defendant to deliver a further and better affidavit of documents, to answer questions refused on discovery and to produce the full, unredacted version of the bonus compensation document it has produced.
- [5] As refusals and productions are governed by the pleadings, it is important, particularly in this case and at this stage, to analyze the plaintiff's pleaded claim. The plaintiff makes specific claims and allegations related to his bonus. He seeks:

- (1) damages of \$313,000 for unpaid Q3 and Q4, 2020 bonuses (paragraph 1(a));

These damages are based on two specific calculations: first, for Q3, damages equal to a 3% reduction in the plaintiff's commission percentage on co-leading equity issuances. He received 5% rather than 8% which he pleads would be in line with other managing directors and would have recognized his co-lead role and high-profit accounts. He alleges that the impact of this lower percentage was to reduce his Q3 bonus by approximately \$40,000; second, a 13.23% reduction in his Q4 advisory transactions commissions (from an anticipated 16% historically received on completed advisory transactions under his leadership to 2.77% and a 5.23% reduction on his Q4 total equity issuance revenue (from the historically anticipated 8% to 2.77%), the combined effect of which was to reduce his Q4 bonus by approximately \$283,000 (paragraph 17).

The plaintiff alleges that the defendant's bonus calculations were low relative to his contributions to revenue and to what his peers received, some of whom generated less revenue, and were also unreasonable and should have been based on the historical formulae and commensurate with the importance and relative contribution in each quarter (paragraphs 19, 20 and 24).

- (2) damages of \$322,000 for unpaid Q1 2021 bonus (paragraph 1(b));

The plaintiff pleads that he co-led and was an underwriter on six equity issuances and is entitled to a bonus commission of \$322,000 (paragraph 25).

- (3) damages for commissions relating to the "monetization of broker warrants, shares, equity like securities and all other forms of compensation in connection with all clients that the plaintiff worked with" (paragraph 1(c));

The plaintiff alleges that the defendant unreasonably refused to recalculate his Q3 and Q4 bonus to account for these monetizations in which he pleads he had a leadership role.

- [6] The defendant pleads that bonus allocations are based on factors such as nature and significance of the contributions of the other members of a managing director's team to a transaction, whether the managing director was primarily responsible for completing the work on a transaction or whether junior staff were over-utilized on a transaction. As a result, historical allocations and the allocations received by other managing directors are not valid comparisons for what the plaintiff or other managing directors should reasonably expect to receive from the bonus pool (paragraphs 13 and 14). The plaintiff's bonus allocation accounted for his alleged overreliance on junior staff, his failure to lead or contribute to transactions for which he later claimed a significant role, and his contribution to a toxic work environment (paragraph 15).
- [7] As to Q1 2021, the defendant alleges that the plaintiff did not work on, lead or underwrite any equity issuances in that quarter (paragraph 19).

- [8] The unredacted portion of the bonus documents produced by the defendant disclose:
- (a) the gross revenue allocated to the bonus pool;
 - (b) the total expenses charged to the pool;
 - (c) the net revenue allocated to the bonus pool;
 - (d) the gross revenue allocated to the investment banking group in which the plaintiff worked;
 - (e) the transactions on which the plaintiff worked, including the name of the client and the revenue generated;
 - (f) the total amount of bonuses allocated to the investment banking group; and
 - (g) the bonuses allocated to the plaintiff.

The documents also show the proportion of net revenue and the actual dollar figures allocated to each of the plaintiff's banking group, the sales group and the research group.

- [9] What they do not show are the salaries or bonus amounts paid to other members of the investment banking group or to any member of the sales or research groups. Nor do they show the revenue generated by the sales and research groups in which the plaintiff was not involved.
- [10] The plaintiff has not challenged the salary numbers and there is no basis before me on which I would find that information relevant.
- [11] While the plaintiff pleads that he complained that his bonus was low relative to "his peers", he did not define what he meant by "his peers", so it is unclear at this stage whether his complaint relates to those with similar years of service, similar seniority, similar titles or similar revenue generators and whether these comparators are within his investment banking group or across the entire company.
- [12] It is also not clear, at least at this stage, how knowing the amount of the bonuses paid to others will assist the plaintiff in demonstrating either that he should have been paid the same 8% and 16% that he alleges the other managing directors with his co-lead roles and high-profit accounts were paid or that his bonus was unreasonable. His pleading alleges that the bonus was arbitrary. What the plaintiff wants to know, based on his pleading, is *why* others were paid more than he was. Disclosure of the redacted information will not assist him in that inquiry. It will only show *that* others were paid more than he was (or not).
- [13] The figures will not shed light on how the factors that affect the bonus calculation (nature and significance of the contributions of others on the team, transactions worked on, overall

responsibility, over-utilization of staff, personality assessment within the team and by clients) were assessed in his or any other individual case. This is something that must be explored on discovery when the plaintiff can ask how the defendant viewed his contribution, if and how it determined he overused junior staff, what were the relative contributions of other employees and what other criteria it used to set his bonus.

- [14] It remained open to the plaintiff to ask on discovery how the bonuses were allocated, and still does. While plaintiff's counsel deposed his belief that the unredacted bonus documents address "the various factors considered by the defendant when determining the Bonus Pool allocations", there is no evidence to suggest that this is so. If the plaintiff determines that to be the case when he continues his examination of the defendant, he is at liberty to bring this motion back on with that additional evidence.
- [15] Additionally, a comparison between the plaintiff's bonus figure and a "peer's" bonus figure could only be an apples-to-oranges comparison at this stage. The plaintiff may have worked on transactions 1, 2 and 3 and a "peer" on transactions 1, 3, 4 and 6. Given their bonuses would be based on their work on any number of different transactions, there is no evidence that disclosure of a raw bonus number would assist the plaintiff in proving he was treated unfairly in his bonus calculations.
- [16] Lastly, it appears from the pleading that the plaintiff is aware of the quantum of the bonus payments that others received but complains that he was treated differently. He pleads in paragraph 16 of his statement of claim that a payment of approximately 8% (rather than the 5% he received) would have been "in line with other Managing Directors" and would recognize his co-lead role and high-profile accounts. The defendant testified that the compensation committee considers each individual's performance from a qualitative and quantitative perspective and gave examples of some of the criteria discussed. It is open to the plaintiff to ask on discovery how the defendant applied those factors to his own calculations to challenge why he was not given the same percentage.
- [17] I am satisfied that, at least at this stage and on the evidence before me, the redacted information is not relevant to the issues. I am also satisfied that disclosure of the information would cause significant harm to the defendant, given its sensitive business nature and that disclosure of commercially sensitive financial information on expenses and salaries, and private and personal employee information would fail to protect an important public interest. (see *McGee v. London Life Insurance Company Limited* 2010 ONSC 1408).
- [18] In addition to the refusal to provide the unredacted version of the document discussed above, the defendant also refused to produce the document that sets out the various expenses per quarter that are deducted from gross revenue to arrive at the net revenue used for the bonus pool. It is the defendant's position that the request seeks irrelevant and commercially sensitive and proprietary information.
- [19] The bonus pool available for distribution is comprised of total revenues, less 50% to "the house", less expenses. That net revenue amount is then allocated to different groups within

the capital markets group. The defendant has disclosed that the expenses deducted from the revenue include investment banking expenses, salaries and draws and trading and commission costs. It has also provided the total amount of those costs, but not the individual breakdowns. The plaintiff is not satisfied with that response and requests disclosure of each expense.

- [20] I am not satisfied that this information needs to be disclosed. Looking back at the pleadings, the statement of claim does not allege that the pool was inappropriately calculated or wrongly diminished by deducting improper expenses.
- [21] The motion is dismissed without prejudice to the plaintiff bringing it back on if he obtains evidence on discovery that the redacted information deals with the factors applied by the defendant to determine bonus allocations and would be relevant on this basis.
- [22] If the parties cannot agree on costs, they may file submissions by 30 June 2023. Otherwise, I will assume that they were able to resolve this issue.

Associate Justice Jolley

Date: 30 May 2023