EMPLOYMENT TRIBUNALS

Claimant: Ms S Thompson

Respondent: Style & Comfort Interiors Ltd

JUDGMENT

The respondent's application for reconsideration of the judgment sent to the parties on 2 December 2019 is dismissed.

REASONS

The hearing

1. At a hearing on 11 November 2019, I had to decide whether or not the respondent had made unlawful deductions from the claimant's commission payments. (There were other aspects to the claim, but they are not relevant to this reconsideration application.)
2. At the outset of the hearing there was a discussion of the issues that I would have to determine. The main issue of principle was whether or not the claimant was entitled to commission at all. The claimant relied on an alleged oral agreement that she would receive commission as of right, according to an agreed formula. The respondent's position was that commission would be purely discretionary, and that automatic entitlement would only be triggered if the claimant hit pre-agreed sales targets. If that issue was determined in the claimant's favour, the respondent wished to raise issues relating to the calculation of commission. One issue was whether commission should be calculated on the basis of gross (VAT-inclusive) or net sales figures. The other issue, as I noted it, was whether or not orders from certain clients should be discounted for commission purposes on the ground that those clients were established customers before the claimant had started her employment and were therefore outside the scope of the agreed formula. I will refer to this dispute as the "established customer defence".
3. There was no mention of commission payments being disputed on the ground that the orders had resulted in bad debts.
4. In support of her claim, the claimant produced a list of commission amounts that she was allegedly owed. I gave the parties time to consider that list and asked them to cooperate to identify any amounts of commission that were disputed on the

grounds of the established customer defence. The respondent identified one point of dispute that related to an order for RAF Alconbury. The claimant stated that this order was not included in her claim.

5. I heard oral evidence. The respondent did not ask the claimant any questions about Sedbergh school or any other established customers. He did not mention Sedbergh in his oral evidence either. This fact was not mentioned in the respondent's closing arguments. Neither the oral evidence nor the closing arguments referred to bad debts.

6. Following the parties' closing arguments, I gave judgment on the question of entitlement to commission (which I found in the claimant's favour) and on the gross/net dispute, on which I ruled in the respondent's favour. I did not address the established customer defence, but, out of caution, I asked the respondent's director Mr Doyle the following question:

> "If the amount I calculate is the claimant's figure, less VAT, are you going to try to persuade me that the figure should be smaller?"

In response, Mr Doyle said,

> "There's no point in prolonging it".

The judgment

7. Following that conversation I gave judgment for the claimant in the sum of £811.26 for unlawfully-deducted commission. That judgment was confirmed in writing and sent to the parties on 2 December 2019.

The reconsideration application

8. By e-mail dated 25 November 2019 Ms Sue Clark e-mailed the tribunal on the respondent's behalf. Although headed, "Appeal Against Judgment", the e-mail was treated as an application for reconsideration. In her e-mail, Ms Clark accepted that commission payments were due, but contended that the judgment sum should be reduced by £121.22. In particular, she disputed the claimant's entitlement to three commission payments that were included in the judgment. One of them was disputed on the ground of the established client defence. Ms Clark's ground for disputing the other two was that the clients had bad debts with the respondent.

Relevant law

9. Rule 70 of the Employment Tribunal Rules of Procedure 2013 provides the tribunal with a general power to reconsider any judgment "where it is necessary in the interests of justice to do so".

10. Rule 71 sets out the procedure for reconsideration applications.

11. By rule 72(1), "An Employment Judge shall consider any application made under rule 71. If the Judge considers that there is no reasonable prospect of the original decision being varied or revoked… the application shall be refused…"

12. The overriding objective of the 2013 Rules is to enable the tribunal to deal with cases fairly and justly. By rule 2, dealing with cases fairly and justly includes putting the parties on an equal footing, avoiding delay, saving expense, and dealing with cases in ways that are proportionate to the complexity and importance of the issues.

13. The current 2013 Rules replaced the old procedure for reviewing judgments. Under their statutory predecessor, the 2004 Rules, review applications could only be

granted on one of a specified list of grounds. That list has been replaced by a single test: a judgment will be reconsidered where it is "necessary in the interests of justice to do so". There is no specific provision for fresh evidence. Nor is there any express prohibition a party relying on evidence about which he knew or ought to have known before the judgment was given. Nevertheless, the "interests of justice" test must, in my view, incorporate a strong public interest in the finality of litigation, even if it is not as inflexible as the proviso in the 2004 Rules. Where a party could reasonably have been expected to rely on the evidence first time around, it would take a particularly good reason to give that party a fresh opportunity to rely on it.

Conclusions – the established customer defence

14. In my view, it is not necessary in the interests of justice to allow the respondent to re-open the established customer defence. There is no reasonable prospect that I would be persuaded to re-open it. In its context, Mr Doyle's remark, "There's no point in prolonging it" had the effect of abandoning that line of argument. Even if he had not abandoned the established customer defence, there was no evidence upon which I could have found in the respondent's favour.

15. If the respondent wanted to dispute the commission payment for Sedbergh school, Mr Doyle could reasonably have been expected to give evidence about it at the hearing. I cannot see any way in which I could find it necessary in the interests of justice to allow that evidence to be introduced now. I also have to bear in mind proportionality. The total amount that the respondent wishes to dispute is less than £130.00. It would be disproportionate to convene another hearing for that amount of money.

Conclusions – bad debts

16. Largely for the same reasons there is no reasonable prospect of the respondent being allowed to start disputing commission payments on the ground of bad debts. This is an entirely new line of argument which could have been raised at the hearing.

Disposal

17. The respondent's application is accordingly dismissed and the judgment stands in the full amount.

13 January 2020

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Employment Judge Horne

SENT TO THE PARTIES ON

17 January 2020