

STATE OF MICHIGAN
COURT OF APPEALS

LINSEY PORTER,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 189352

Wayne Circuit Court

COLONIAL LIFE & ACCIDENT INSURANCE
COMPANY,

LC No. 94-411628 CK

Defendant-Appellee.

Before: Holbrook, Jr., P.J. and White and R. J. Danhof*, JJ.

WHITE, J. (concurring in part and dissenting in part).

I concur in the majority's determination that defendant's letter to plaintiff dated January 23, 1992 constituted termination of plaintiff's contracts. I conclude, however, that the contracts were terminated effective that date.

Regarding the split fee agreement, I concur in the result only. Additionally, I observe that plaintiff has identified no deposition testimony, affidavit or other documentary evidence to support his argument that there was an oral agreement preceding Scott's August 2, 1988 letter, which oral agreement provided for a 25% split fee commission without limitations. Thus, the only evidence of an agreement before us is Scott's letter, which set forth the 25% split fee terms and stated that it was based on the administration of the group to Scott's satisfaction.

I would affirm the circuit court's determination that plaintiff has no cause of action for termination of an employment contract, reverse the circuit court's determination that the written agreements were not modified by the agreement to pay plaintiff a split fee percentage, and remand for determination of the effective date of Scott's reduction of plaintiff's percentage under the split fee arrangement and whether plaintiff is owed any commissions.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

/s/ Helene N. White