

Tini v Alliancebernstein L.P.

2012 NY Slip Op 31670(U)

June 14, 2012

Supreme Court, New York County

Docket Number: 100244/2012

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

LUCY BILLINGS
J.S.C.

PRESENT: _____
Justice

PART 46

Index Number : 100244/2012
TINI, JAY D.
vs.
ALLIANCEBERNSTEIN L.P.
SEQUENCE NUMBER : 001
DISMISS

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to 3, were read on this motion to dismiss the complaint
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ No(s). 1-2
Answering Affidavits — Exhibits _____ No(s). 3
Replying Affidavits _____ No(s). _____

Upon the foregoing papers, It is ordered that ~~this motion is~~ :

The court denies defendants' motion to dismiss the complaint pursuant to the accompanying decision. C.P.L.R. § 3211(a)(1) and (7).

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

FILED

JUN 22 2012

NEW YORK
COUNTY CLERK'S OFFICE

Dated: 6/14/12

Lucy Billings, J.S.C.
LUCY BILLINGS
J.S.C.

- 1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
- 3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46
-----x

JAY D. TINI,

Index No. 100204/2012

Plaintiff

- against -

DECISION AND ORDER

ALLIANCEBERNSTEIN L.P. and
ALLIANCEBERNSTEIN HOLDING, L.P.

Defendants
-----x

FILED

JUN 22 2012

NEW YORK
COUNTY CLERK'S OFFICE

LUCY BILLINGS, J.S.C.:

I. THE PARTIES' AGREEMENTS

The Century Club Plan Award Agreement ¶ 3 and the Incentive Compensation Award Program and 2010 Long Term Incentive Plan - 2010 Award Agreement ¶ 3, both between plaintiff and defendants, dated December 10, 2010, and incorporated in the Verified Complaint, provide as follows. First, plaintiff, defendant AllianceBernstein L.P.'s former employee, and referred to as "the Participant":

shall provide the Partnership with prior written notice of the Participant's intent to terminate employment with the partnership The notice period shall be . . . 60 days.

Aff. of Joseph Baumgarten Ex. 1, Schedule A, and Ex. 2. Second, plaintiff:

will continue to be eligible for base compensation (salary and/or commissions) and benefits during the notice period provided that the Partnership may, in its sole discretion, require the Participant to discontinue regular duties, including prohibiting the Participant from further entry to any of the Partnership's premises.

Id.

The parties do not dispute that plaintiff provided defendant partnership written notice October 12, 2011, of his intent to terminate employment with the partnership Friday, December 9, 2011. Paragraph 3 of the agreements, particularly when construed against AllianceBernstein L.P., the undisputed drafter, is susceptible of the interpretation that plaintiff was entitled to his salary, commissions, and any benefits that would vest through December 9, 2011. Cowen & Co. v. Anderson, 76 N.Y.2d 318, 323 (1990); Jacobson v. Sassower, 66 N.Y.2d 991, 993 (1985); Arbeeny v. Kennedy Exec. Search, Inc., 71 A.D.3d 177, 182 (1st Dep't 2010); Burgos v. Metro-North Commuter R.R., 40 A.D.3d 377, 378 (1st Dep't 2007). Defendants, in addition to being entitled to the advance notice of 60 days, in turn were entitled to limit or eliminate plaintiff's duties in the event defendants found his services or presence undesirable, while plaintiff remained subject to his obligations of undivided loyalty and noncompetition as an employee.

Nothing in the agreements permitted defendant to reduce the notice period of 60 days as they did. Although both defendants and plaintiff were entitled to terminate his employment at any time for any reason, and defendants were not obligated to provide any advance notice, once plaintiff met his unilateral obligation to provide the notice required of him, ¶ 3, specifically applicable in that event, governed defendants' ensuing obligation. Israel v. Chabra, 12 N.Y.3d 158, 168 n.3 (2009); SportsChannel Assoc. v. Sterling Mets, L.P., 25 A.D.3d 314 (1st

Dep't 2006); Chemical Bank v. Stahl, 233 A.D.2d 460, 461 (1st Dep't 1996).

Paragraph 7 of the Century Club Plan Award Agreement and the identical ¶ 6 of the Incentive Compensation Award Program and 2010 Long Term Incentive Plan - 2010 Award Agreement, on which defendants rely, provide that plaintiff's right to the vesting of benefits on future dates:

shall not confer on the Participant any right to continue in the employ of the Partnership and shall not in any way interfere with the right of the Partnership to terminate the service of the Participant at any time for any reason.

Id. This paragraph of the agreements, again when construed against the drafter, is susceptible of the interpretation that first, before plaintiff provided notice of his resignation, his right to the vesting of benefits on future dates did not limit defendants from terminating his employment immediately. Second, after he provided notice of his resignation, his right to the vesting of benefits after that resignation 60 days later did not confer a right to continued employment until future vesting dates after the 60 days.

II. DEFENDANTS' MOTION TO DISMISS THE COMPLAINT

Plaintiff's breach of contract claims for salary, commissions, and benefits due plaintiff through December 9, 2011, thus survive dismissal. As his salary and commissions, at minimum, constitute wages under New York Labor Law § 190, his claims under Labor Law § 198 also survive. Therefore the court denies defendants' motion to dismiss the complaint based on documentary evidence and failure to state a claim. C.P.L.R. §

3211(a)(1) and (7). Defendants shall answer the complaint consistent with C.P.L.R. § 3211(f). This decision constitutes the court's order.

DATED: June 14, 2012

Lucy Billings

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.

FILED

JUN 22 2012

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