IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

ROBERT M. FRIDHANDLER, **Plaintiff Below, Appellant,**	)	
v.	)	**C. A. No. 2002-05-631**
HERCULES INCORPORATED **A DELAWARE CORPORATION** **Defendant Below, Appellee**	)	

Submitted October 5, 2004
Decided October 29, 2004

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DECISION AFTER TRIAL

This is an appeal brought pursuant to 10 Del. C. §9570 *et seq*. Trial took place on September 28, 2004. The Court reserved decision and the parties submitted post-trial memoranda. This is the decision and final order by the Court.

FACTS

In this action, Plaintiff, Robert Fridhandler (hereinafter "Plaintiff"), sues for breach of an employment contract. Plaintiff's primary residence was located in the State

of New York when the employment was offered. Plaintiff was offered a position with the Hercules Corporation by letter on October 26, 1999. This offer letter stated an annual salary amount and a guaranteed bonus for the year 2000 of no less than 10% of the annual salary. The letter also stated that Plaintiff would be eligible for an annual bonus. However, the letter further stated that "…With regard to future bonuses, Hercules' bonus programs are currently under review and we can not predict the exact structure at this time …"[1] The letter went on to state "… you will eligible for an award consistent with the class of people at your level … ."[2] The Plaintiff responded on November 4, 1999, by an acceptance letter.[3] In this letter he addressed additional items that he wanted covered that were not addressed in the offer letter. Plaintiff did not question the issue of additional bonuses for future years in the acceptance letter. Plaintiff did not ask for clarification or definition of what class of employee he was, or any other items mentioned in the offer letter.

Plaintiff started working for Hercules Inc. on November 15, 1999. He was hired as a "band 3" employee. The Plaintiff admits in testimony that he knew he was a band 3 employee, and he was given a copy of the job description.[4] At the time of the 2000 annual bonus distribution in March of 2001, Plaintiff was not issued a bonus. He called this to the attention of his superior, Mr. Hynes, and was subsequently issued a bonus as stipulated in the offer letter. Again, during the 2001 bonus distribution Plaintiff was not awarded a bonus. When he brought the issue up to Hercules management, he was told that his class of employees were not eligible for a bonus for 2001.

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[1] Joint Exibit 1
[2] Joint Exibit 1
[3] Joint Exibit 2

Mr. Hynes, Plaintiff's superior, testified that the Hercules Corporation was, at the time of the offer, looking into providing bonuses to other bands of employees such as the band 3 level. He explained there was a genuine hope that band 3 employees would be eligible for the bonus program. The Plaintiff testified that he knew, prior to being hired, that the bonus system for his class of employees was under review.[5] Mr. Hynes testified that his offer letter was composed as a joint effort with the personnel office to assure correct representations and that there was no intent to misinform or mislead the Plaintiff. He testified that in discussions prior to the offer being presented, the Plaintiff was aware that he was coming in as a band 3 employee. Mr. Hynes testified that being eligible for a bonus did not make the bonus a legal right, and many employees who were eligible were not awarded bonuses. Band 3 employees were not eligible for bonuses in 2001 despite efforts to change this policy.

DISCUSSION

At trial, Plaintiff abandoned the breach of contract claim and based his claim on the doctrine of promissory estoppel. The law of promissory estoppel applies when an otherwise enforceable contract does not exist. *Lord v. Souder*, 748 A.2d 393, (Del. 2000). The doctrine of promissory estoppel is not in dispute. As stated in *Chrysler Corp. v. Chapman Holdings*, 822 A.2d 1024, at 1032 (Del. 2003) the elements of promissory estoppel are:

1. a promise was made;
2. it was the reasonable expectation of the promisor to

[4] Defense Exhibit 1.
[5] Plaintiff also did not dispute the fact that his class of employees was not entitled, at the time, to bonuses under the then existing compensation program.

induce action or forbearance on the part of the promisee;

3. the promisee reasonably relied on the promise and took action to his detriment; and
4. such promise is binding because injustice can be avoided only by enforcement of the promise.

These elements must be shown by clear and convincing evidence.

The offer letter in this case states that the Plaintiff, "… as to future bonuses, will be eligible for an award consistent with the class of people at your level …"[6] The Court finds no language in the letter making a specific promise to guarantee future bonuses. The only definite promise that can be inferred reasonably by the language in the letter is the one for a "guaranteed bonus" in 2000. The letter alone was an offer, not a contract. The offer letter was followed by an acceptance letter. The acceptance came with stipulations that were honored by the Hercules Corporation but the acceptance did not question or dispute the bonus language.

The law of promissory estoppel provides that the promise must be clear, definite and unambiguous and the promise must manifest the promisor's intent to induce the promisee. Hercules made no attempt to induce the Plaintiff into accepting the offer based on future bonuses. Mr. Hynes clearly explained in the offer letter that the bonus program was under review. The Plaintiff did not address or dispute this issue. Plaintiff knew he was a band 3 employee, yet at no point until 2001, did he question the bonus program for band 3 employees. Therefore, no clear, unambiguous or definite promise of bonuses was made to the Plaintiff other then the 2000 bonus.

[6] Joint Exhibit 1

The Plaintiff could not rely to his detriment on the future bonuses with any reasonableness. The salary offer was 90% greater then the guaranteed 2000 bonus offer. The salary offer must have been a very substantial reason for accepting the position with the Hercules Corporation. The letter offer cannot reasonably be construed as a guarantee that future bonuses will be paid. With his professional background, Plaintiff must have known that bonuses are usually based on the recipient's level of employment, the economy, profits and other business factors. To accept a position solely on the basis of a bonus program that one knew was being currently reviewed by the company was not reasonable.

The Court finds no injustice has occurred to the Plaintiff. Plaintiff was offered a position; he knew what the salary was; he knew what band of employees he was in; he knew the bonus program was under review; and he knew he was guaranteed a bonus only in 2000. Further, to the benefit of the Plaintiff, Hercules Incorporated accommodated requests made by the Plaintiff in the acceptance letter. When made aware of the oversight during the 2000 bonus distribution time, Hercules corrected the error and paid the bonus as provided. They owed no other duty to the Plaintiff to pay future bonuses.

CONCLUSION

For these reasons the Court finds the claim of promissory estoppel unfounded. Judgment is entered in favor of the Defendant and against the Plaintiff, with costs to be borne by the Plaintiff.

IT IS SO ORDERED.

J, Retired[7]

[7] Sitting y appointment pursuant to Del. Const., Art IV §38 and 29 Del. C. §5610.