

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:11-CV-151-H

SAMUEL HOSP

PLAINTIFF

V.

GENEVA, LLC

DEFENDANT

MEMORANDUM OPINION AND ORDER

Plaintiff originally brought this case in Jefferson Circuit Court, alleging that Defendant failed to fully compensate him for certain commissions earned during his employment. Soon afterwards, on March 11, 2011, Defendant removed this case to federal court on the grounds of diversity of citizenship and the amount in controversy exceeding \$75,000. On April 1, 2011, Plaintiff moved to remand this case on the grounds that Defendant had failed to show that Plaintiff's claims exceeded the \$75,000 requirement to establish diversity jurisdiction.

Everyone admits diversity of citizenship and the amount of unpaid commissions as approximately \$30,000. The parties also agree that pursuant to KRS 337.385 Plaintiff could be entitled to recover twice the amount due or a total of \$60,000. Moreover, the Kentucky Wage and Hour Act permits an award for attorney's fees. There is no dispute that such fees can be considered toward the amount in controversy.

Defendant argues that it is quite reasonable to assume that the attorney's fees would exceed an additional \$15,000. Considering the statutory availability of attorney's fees, the limited amount of time necessary for the fees to exceed \$15,000 or the reasonable application of a contingency fee which would exceed \$15,000, this Court concludes that Defendant has

demonstrated that the amount in controversy in this case exceeds \$75,000. That the matter might be settled quickly for a total amount less than that does not change the basic analysis.

In conclusion, the Sixth Circuit allows a reasonable estimate of attorney's fees to be considered in determining the amount in controversy. The likely amount of those fees plus the \$60,000 which Plaintiff seeks in his complaint established by a preponderance of the evidence that the total amount in controversy exceeds \$75,000.

Being otherwise sufficiently advised,

IT IS HEREBY ORDERED that Plaintiff's motion to remand is DENIED.

cc: Counsel of Record