

Linder v. Innovative Commercial Systems LLC

127 A.D.3d 670, 8 N.Y.S.3d 191, 2015 N.Y. Slip Op. 03617

Appellate Division, First Department · April 30, 2015

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Linder v Innovative Commercial Sys. LLC 2015 NY Slip Op 03617 [127 AD3d 670] April 30, 2015 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

As corrected through Wednesday, June 3, 2015

[127 AD3d 670] [*1] Gary Linder, Appellant, v Innovative Commercial Systems LLC et al., Respondents.

Siegel & Reiner, New York (Carl D. Bernstein and Craig Gold of counsel), for appellant.

Hodgson Russ LLP, New York (Mark A. Harmon of counsel), for respondents.

Order, Supreme Court, New York County (Eileen Bransten, J.), entered October 18, 2013, which, insofar as appealed from, granted defendants' motion for summary judgment dismissing the complaint, unanimously affirmed, without costs.

Given the seven-year course of dealing between the parties, in which plaintiff received regular statements about his commissions, and the always adhered-to practice of paying the commissions only if and when customers paid on the contracts plaintiff procured, plaintiff earned his commissions upon payment by the customer (see *Pachter v Bernard Hodes Group, Inc.*, 10 NY3d 609, 617-618 [2008]). Thus, absent an agreement expressly providing for posttermination commissions, plaintiff, [127 AD3d 671] an at-will commissions salesman, was not entitled to commissions for payments made by customers after his termination (see *id.*; *Yudell v Israel & Assoc.*, 248 AD2d 189, 189-190 [1st Dept 1998]). Furthermore, since plaintiff was fully compensated under his agreement with defendants, he had no claim for a violation of the Labor Law (see *Tierney v Capricorn Invs.*, 189 AD2d 629, 632 [1st Dept 1993], lv denied 81 NY2d 710 [1993]). Nor did he have a claim for unjust enrichment, where defendants merely retained the amounts that they were not obligated to pay for posttermination commissions. Concur—Acosta, J.P., Saxe, DeGrasse and Richter, JJ.