

STATE OF INDIANA        )  
                                  )ss:  
COUNTY OF MARION     )

MARION SUPERIOR COURT  
CIVIL DIVISION 10  
CAUSE NO. 49D10-0304-PL-0701

DANIEL HERNDON,                     )  
  )  
                                  Plaintiff,    )  
                                  vs.                     )  
  )  
J SQUARED, INC. d/b/a                )  
UNIVERSITY LOFT CO. and as        )  
UNIVERSITY LOFT COMPANY,        )  
  )  
                                  Defendants.    )

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**JUDGMENT FOR PLAINTIFF**

**Introduction**

Plaintiff, Daniel Hendon, (“Herndon”) seeks sales commissions after employment termination, as well as double damages and attorney’s fees under Indiana’s Wage Claim Statute. Defendants J Squared, Inc., d/b/a University Loft Co. (“ULC”) argues the parties’ conduct precludes post-termination commissions, and the Wage Claim Statute does not apply. The Court finds Herndon is entitled to commissions in the amount of \$14,629.53. The Court further finds the Wage Claim Statute applies, and also enters judgment for the additional liquidated damages amount of \$29,259.06 plus attorney’s fees.

## **Facts**

ULC makes furniture for colleges and does direct sales.

Herndon became employed at ULC in 1998 as an hourly intern. By February 26, 2000 he was a salesman working on draws and 2% commissions. In early 2002, Herndon became unhappy with his employment at ULC. The parties attempted to negotiate a voluntary end to Herndon's employment. When they could not agree, ULC involuntarily terminated Herndon on June 24, 2002.

ULC communicated a policy that sales commissions are "earned" when the merchandise is shipped, installed, and paid. Herndon understood this policy and accepted it. The parties stipulate Herndon made sales that were shipped, installed, and paid which totaled \$6,459,000.00, 2% of which is \$129, 180.00.

There is evidence that ULC intended to adopt a policy that sales commissions could only be paid during the time a person was employed, and not after termination. But it was not adopted nor fully communicated. Furthermore, the evidence shows it was not accepted or agreed by Herndon, other salespersons, or other key sales managers. All of Herndon's pending sales eventually paid after he was terminated, but ULC refuses to pay them. He was only paid draws and commissions totaling \$114,550.47.<sup>1</sup>

## **Law**

Under I.C. 22-2-9-2 ("Wage Claim Statute"):

Whenever an employer separates any employee from the payroll, the unpaid wages or compensation of such employee shall become due and payable at regular payday for a pay period in which separation occurred....

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<sup>1</sup> The Court finds holiday pay and other disputed compensation is properly included.

Sales commissions are “wages” for purposes of the Wage Claim Statute. Licocci v. Cardinal Associates (1986), Ind. App., 492 N.E.2d 48. When an employer fails to make payment of such wages, liquidated damages are double the amount of wages due plus reasonable attorney’s fees. I.C. 22-2-5-2.

As a general rule, a person employed on a sales commissions basis is entitled to commissions when the order is accepted even if the employee is terminated before payment is made. Vector v. Pequet (1982), Ind. App., 431 N. E. 2<sup>nd</sup> 503; Robinson v. Century Personnel (1997), Ind. App., 678 N.E.2d 1268; Sample v. Kinser Insurance (1998), Ind. App., 700 N.E.2d 802. Under Vector, “This general rule may be altered by a written agreement of the parties or by the conduct of the parties which clearly demonstrates a different compensation scheme.” 431 N.E.2d at 505.

### **Analysis**

Under Indiana law, the Wage Claim Statute includes sales commissions. Under Vector, those commissions are earned at the time the sale is made, even if they are paid after termination. Therefore, the wage claim statute clearly applies to Herndon’s commissions unless Vector’s general rule is “altered by a written agreement by the parties or by the conduct of the parties which clearly demonstrates a different compensation scheme.”

The evidence shows no written agreement by the parties to pay commissions only during the time of employment. The record does include evidence that ULC intended to adopt a different scheme by a written policy. However, there is no evidence showing a

written agreement between Herndon and ULC, or any conduct of the parties here showing such policy became the compensation scheme for Herndon.

Much of ULC's evidence and argument relates to whether Herndon's imputed or actual knowledge is sufficient to alter Vector's general rule. The record is inconclusive regarding Herndon's knowledge. Regardless, knowledge does not prove "conduct" or "agreement" as required by Vector.

Accordingly, Herndon is entitled to unpaid commissions in the amount of \$14,629.53, plus the double liquidated damage amount under the Wage Claim Statute of \$29,259.06, and attorney's fees.

### **Judgment**

Judgment entered for Plaintiff in the amount of \$43,888.59 plus attorney's fees.

Dated this 23<sup>rd</sup> day of June 2004.

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David J. Dreyer, Judge  
Marion Superior Court