

IN THE COURT OF APPEALS OF IOWA

No. 7-554 / 96-1484

000107

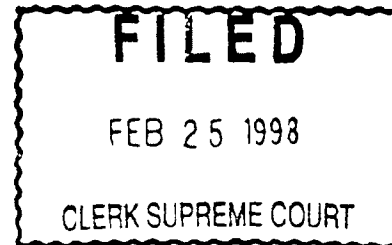
EXECUTIVES WORLDWIDE,

Plaintiff-Appellant,

vs.

**ENVIRONMENTAL SCIENCE &
ENGINEERING, INC.,**

Defendant-Appellee.



Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,
Judge.

Executives Worldwide, an Oregon-based employment agency, appeals the district court's grant of summary judgment in favor of Environmental Science & Engineering, Inc. in its breach of contract suit. **AFFIRMED.**

Mark J. McCool of the McCool Law Firm, Cedar Rapids, for appellant.

Scott P. Duncan of Duncan, Green, Brown, Langeness & Eckley, Des Moines,
for appellee.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

PER CURIAM

Plaintiff-appellant Executives Worldwide sued defendant-appellee Environmental Science and Engineering, Inc., alleging defendant breached a September 30, 1992 contract. Plaintiff claimed it was owed a fee for presenting a candidate, John Wheeler, for employment to defendant pursuant to the contract. Wheeler was introduced in February 1993 and was hired in March 1994. Defendant moved for summary judgment contending the September 1992 agreement was superseded by a June 1993 written agreement containing a limitation that no fee would be owed for an employee hired more than one year after being introduced by plaintiff. Defendant further contended plaintiff had not asserted any further efforts toward Wheeler's employment after the February 1993 introduction. Defendant filed affidavits of Wheeler and Kurt Wadler, Director of Human Resources for defendant corporation, supporting the contentions in the motion for summary judgment.

Plaintiff's resistance included a demand letter dated May 5, 1994 from plaintiff to defendant and the September 30, 1992 contract. Plaintiff did not contest defendant's evidence the June 1993 agreement controlled or that Wheeler was hired over one year after introduction. The district court sustained the defendant's motion dismissing plaintiff's claim and awarding defendant \$4570 in attorney fees.

Plaintiff appeals contending the district court erred in granting summary judgment and in awarding attorney fees to defendant. We affirm.

Plaintiff in response to defendant's request for admissions admitted a new placement service agreement was executed on June 11, 1993; that the agreement superseded "any and all prior discussions, arrangements, and understandings, verbal or written between [the parties];" that a fee was owed if the candidate was placed with defendant within one calendar year; and that if suit was brought for a fee and defendant was found not liable, plaintiff was responsible for "all attorney fees" paid by defendant to defend the suit.

Defendant filed affidavits stating Wheeler took a position with another company in 1993 after defendant did not hire him; that defendant hired him away from that employer after negotiations initiated by Wheeler began on April 1, 1994, and concluded on April 18, 1994; and that defendant's offer of employment in 1994 was based on the candidate's relationship with an employee of defendant which developed during 1993 and 1994.

In its resistance to the motion, plaintiff submitted a copy of an earlier demand letter, a copy of its 1992 contract, and restated its claim for a fee. Plaintiff did not provide any specific facts or information from which the court could find any material facts in dispute. Its admissions, in contrast, prove the new contract supersedes the old contract and support defendant's statement of the undisputed facts.

To establish uncontroverted facts that are legally controlling as to the outcome of the case, the moving party may rely on admissions in the pleadings, *see Fisher*

Controls Int'l v. Marrone, 524 N.W.2d 148, 149 (Iowa 1994), affidavits or depositions, answers to interrogatories, and admissions on file. Iowa R. Civ. P. 237(c). Since no material facts were in dispute, summary judgment was appropriate. *Wilson v. Darr*, 553 N.W.2d 579, 582 (Iowa 1996); *Griglione v. Martin*, 525 N.W.2d 810, 813 (Iowa 1994).

The 1993 contract provided as follows:

If [plaintiff] fails to honor the terms and conditions of this Agreement, [defendant] will not be obligated to pay the cost of collection of the placement fee or attorney's fees. In addition, if [plaintiff] brings suit against [defendant] for a fee associated with the placement of a candidate, and [defendant] is subsequently found not liable for the fee, [plaintiff] will be responsible for reimbursement of all attorney's fees paid by [defendant] in defense of the suit.

A successful party normally cannot recover attorney fees unless authorized by statute or contract. *Audus v. Sabre Communication Corp.*, 554 N.W.2d 868, 874 (Iowa 1996). The 1993 contract provides plaintiff will reimburse a successful defendant for all attorney fees. We therefore affirm the district court's award of \$4570 as attorney fees.

AFFIRMED.