**IN THE COURT OF APPEALS OF IOWA**

No. 1999-472 (9-729) / 98-2120
Filed March 29, 2000

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MAR 2 9 2000
CLERK SUPREME COURT

**JEAN K. JAMES,**
**Plaintiff-Appellant,**

**vs.**

**KDSM, Inc.,**
**Defendant-Appellee.**

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Appeal from the Iowa District Court for Polk County, Gary G. Kimes, Judge.

Plaintiff-Appellant, Jean James, resigned her position as an account executive selling advertising on a commission basis for Defendant-Appellee KDSM, Inc. She later sued contending she was owed commissions and that defendant violated Iowa Code section 91A (1995). Defendant counterclaimed contending it overpaid plaintiff. The district court agreed with defendant that plaintiff had been overpaid, denied plaintiff's other claims and entered judgment in defendant's favor. Plaintiff appeals contending the district court's findings are not supported by substantial evidence and that it incorrectly interpreted Iowa Code 91A. **AFFIRMED.**

**Mark D. Sherinian of Moranville, Jackson & Sherinian, P.C., West Des Moines, for appellant.**

**Steven M. Nadel of Ahlers, Cooney, Dorweiler, Haynie, Smith & Allbee, P.C., Des Moines, for appellee.**

Heard by Sackett, C.J., and Zimmer and Miller, JJ.

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**PER CURIUM**

Plaintiff-Appellant, Jean James, resigned her position as an account executive selling advertising on a commission basis for Defendant-Appellee KDSM, Inc. She later sued contending she was owed commissions and that defendant violated Iowa Code section 91A (1995). Defendant counterclaimed contending it overpaid plaintiff. The district court agreed with defendant that plaintiff had been overpaid, denied plaintiff's other claims and entered judgment in defendant's favor. Plaintiff appeals contending the district court's findings are not supported by substantial evidence and that it incorrectly interpreted Iowa Code 91A. We affirm.

Defendant operates the FOX network affiliate television station in Des Moines, Iowa. On June 13, 1994, defendant employed plaintiff as an account executive to sell advertising. Her duties, in addition to selling, required she collect and service her accounts. She was to be paid commissions based on a commission policy she reviewed and signed. Plaintiff was paid an advance on commissions on the fifteenth and last day of the month. Plaintiff received the advance on October 15, 1996. She resigned on October 31, 1996. She received no advance on October 31 or November 15. On November 15, 1996 plaintiff called the defendant's business office and was told according to the company policy on commissions she would not be paid until 120 days after her resignation. Plaintiff made two other attempts to collect commissions. On December 4, 1996, plaintiff's attorney sent defendant a letter demanding the payment of commissions he claimed were owed plaintiff. Defendant responded, sending plaintiff on December 5, 1996, a check for $1,808.11. She received the check on December 7, 1996. No other payments have been made to her.

In April 1996, plaintiff brought this action seeking commissions she alleged were unpaid on twenty-two accounts. She also included claims for breach of contract and unjust enrichment. Defendant filed a counterclaim contending it overpaid plaintiff commissions and seeking damages on allegations of negligence and fraud. Plaintiff's claim for unjust enrichment was dismissed on summary judgment. The other issues were tried to the district court. The court found defendant was not liable to plaintiff for additional commissions and dismissed her breach of contract claim. The court entered judgment for defendant on its counterclaim finding plaintiff owed it $660.21 for commissions unearned but paid.

Plaintiff contends the district court erred in (1) finding she had been paid all the commissions she earned; (2) finding defendant did not owe her an advance on November 15, 1996; (3) finding defendant's effort to collect accounts satisfied a duty it owed plaintiff; and (4) failing to award her liquidated damages.

This is a law action and we review for correction of errors at law. Iowa R. App. P. 4.; *Audus v. Sabre Communications Corp.*, 554 N.W.2d 868, 871 (Iowa 1996). The district court's findings of fact carry the force of a special verdict and are equivalent to a jury verdict. *Falczynski v. Amoco Oil Co.*, 567 N.W.2d 447, 449 (Iowa 1997); *Papenheim v. Lovell*, 530 N.W.2d 668, 671 (Iowa 1995).

We are bound by the district court's findings of fact if they are supported by substantial evidence. Iowa R. App. P. 4(f)(1); *Audus*, 554 N.W.2d at 871. Evidence is substantial if reasonable minds would find it adequate to reach the same findings, even if we might draw a contrary inference. *Falczynski*, 567 N.W.2d at 449. When determining whether evidence is substantial, we view the evidence in the light most favorable to upholding the trial court's judgment. *Id.*

However, we are not bound by the trial court's application of legal principles or its conclusions of law. When the trial court has applied erroneous rules of law which materially affected its decision, we will reverse. *Id.*

The company policy for paying an account executive commissions basically provides that commissions are not earned until the order is aired, billed, paid, and adjustments are made for any rebates, cancellations, discounts and credits on the customer account. Bimonthly advances are paid based on the prior month's billing, less credits and other adjustments. Furthermore, if the account is not paid within 120 days of billing, no commission is owed, and if an advance had been made on that commission then it has to be repaid. If an account has a number of charges, any payment is first applied to the oldest charge. This includes instances where defendant and an account have agreed that the account pay a percentage of its total unpaid balance and defendant writes off the remaining unpaid balance and credits the remainder to the account. Additionally, there are times when an account is unhappy with an aired advertisement and refuses to pay and defendant provides a "make good" schedule at no additional charge. A make good schedule gives the account commercials equivalent to the original schedule. Payments by the account then apply to the make good commercials. The account executive who negotiated the make good schedule stands to receive the commission. The general sales manager has reasonable discretion to adjust payables to a terminated account executive for work done by the account executive's successor in servicing and collecting on the account.

Defendant sends monthly statements to accounts specifically itemizing those accounts currently due, over thirty days past due, over sixty days past due, and over

ninety days past due. Defendant sent monthly statements to the accounts for which plaintiff claims she was owed commissions.

With this information in mind, we examine the evidence to determine if the district court's factual findings are supported by substantial evidence. The district court made extensive factual findings and determined that plaintiff had been paid all commissions due her. The court rejected plaintiff's claims for commissions on other accounts finding the accounts paid for a make good schedule negotiated by another account executive; or any payment was correctly applied to past due accounts for which plaintiff was not entitled to a commission. There is substantial evidence to support these findings.

Plaintiff contends the district court's finding defendant had no further obligation to collect her accounts is incorrect. The district court while finding defendant had no obligation to collect the account went on to find if it did have an obligation to do so, that obligation was satisfied. Consequently, the only issue we need address is whether there is substantial evidence to support the latter finding. We find there is and affirm on this issue.

We conclude that there is substantial evidence to support the district court's finding the check defendant sent plaintiff on December 5, 1996, that was received by plaintiff on December 7, 1996, paid plaintiff all commissions she was due.

Plaintiff next contends she should have been paid an advance on her commissions on November 15, 1996. This issue is rendered moot by our decision plaintiff is owed no commissions.

Plaintiff further contends that defendant owes her liquidated damages under Iowa Code section 91A.8. The district court denied this claim finding defendant did

not intentionally withhold payments because defendant did not believe it owed plaintiff commissions or that it was obligated to pay her the $1,808.11 on November 15, 1996. The Wage Payment Collection Act distinguishes between the intentional and unintentional failure to pay wages for purpose of an award of liquidated damages. Iowa Code § 91A.8. *Condon Auto Sales & Service, Inc., Crick,* 604 N.W.2d 587, 597-98 (Iowa 1999) Liquidated damages are charged against an employer who fails to pay wages knowing the wages are due. *See Halverson v. Lincoln Commodities, Inc.*, 297 N.W.2d 518, 523 (Iowa 1980). There was a dispute over commissions actually owed. Liquidated damages are not available if an employer maintains a good faith dispute over the amount of wages. *Id.*

The district court found defendant did not have the requisite intent to entitle plaintiff to liquidated damages. There is substantial evidence supporting this finding. There was a good faith dispute about the amount owed. Defendant believed payment was not due for 120 days. Plaintiff was paid more than she was owed on December 7, 1996.

**AFFIRMED.**