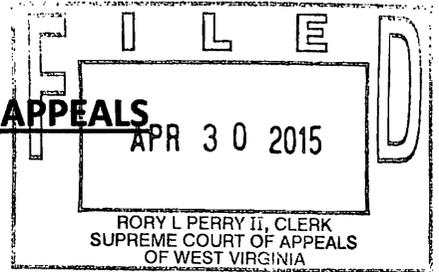


**STATE OF WEST VIRGINIA SUPREME COURT OF APPEALS**



MELISSA ROTRUCK  
Petitioner

v.

No. 14-1284

JANICE SMITH DBA  
INSURANCE QUEEN  
Respondent

**RESPONDENT'S BRIEF**

Janice E Smith DBA  
Insurance Queen  
Pro Se  
190 Smith Farm Ln  
Ridgeley WV 26753  
240-580-0240

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### ASSIGNMENT OF ERROR

1. The commission only job description that Melissa Rotruck signed and dated on July 21, 2011, clearly stated, obtaining a license no later than two months from the date of signing. This was never completed. Melissa Rotruck's failure to obtain a license, is the error that lead up to all of the issues in this case, and she needs to held accountable for it. Melissa Rotruck breached the contract by not obtaining a license.
2. Mineral county court determined that the Plaintiff failed to prove there was a wage assignment. "These transactions consisted of payments from the Defendant employer to the Plaintiff employee." Again, if the license was obtained, this would be a non issue.

### Summary of Arguments

A. Melissa Rotruck never obtained a license as agreed on July 21, 2011.

She agreed that this was a commission only position in court, therefore, without obtaining a license perhaps she should not have received any monies.

B. There was no wage assignment. Technically, she breached the contract by not obtaining a license, and should have been terminated.

### Oral Argument

Respondent believes, and therefore, asserts that oral argument is not necessary for the following reasons:

- (a) This case has already been tried and provided three and a half hours of oral testimony from both parties to the Mineral County Court. Along with numerous briefs, summaries and other written documentation.
- (b) The case was dismissed on December 18, 2013, a second trial denied and entered on January 15, 2014.
- (c) On October 15, 2014 the Supreme Court of Appeals dismissed the matter from the docket of the court.
- (d) Mineral County Court ordered the case be stricken from the active docket on November 14, 2014. “The plaintiff did not meet its burden of proving that the Court abused its discretion on any of its arguments by proving that the Court acted under a misapprehension of the facts or law.

Because the Plaintiff has not met its burden, this Court is not bound to grant the Plaintiff a new trial, especially given the West Virginia Supreme Court’s admonition against granting a new trial.”

- (e) The evidence was sufficient to prove that Melissa Rotruck received pay, despite the fact that she did not obtain a license and was changed to a salaried employee for her benefit. Which was against, the financial plan of the agency, nor the best interest of the agency. There was also efficient evidence to prove Melissa Rotruck’s character

is questionable.

### Argument

#### A. Illegal Contract

Melissa Rotruck was hired as a commission only associate. The fact that Melissa Rotruck did not take her Property and Casualty exam, and lied numerous times, is the most important factor here. If in fact, she would have obtained a license, as agreed on July 21, 2011 with her signature on the job description, she could have been paid commission. Again, she failed on her part to execute the most important part of the job description. If the job description is considered illegal, it was only illegal because of Melissa Rotruck's failure to obtain a license. This is a proven fact, as she did not sit for the exam, or take the test, during her time in the agency.

#### B. Assignment of Wages

Janice Smith did not do any assignment of wages. She was simply, a person with compassion for people. Melissa Rotruck failed to get licensed. Janice Smith tried to help Melissa Rotruck out while, she lied and misled Janice Smith into believing she was taking the exam, but struggling to pass.

When in fact, she never took the exam.

### Conclusion

The Respondents husband advised Janice Smith that Melissa Rotruck did not need immediate compensation, and that they understood it would take a while to earn commissions. She agreed to this in her own words during the trial, that she was told there was no salary. There was also a full understanding that the license had to be obtained immediately. Because Melissa Rotruck did not obtain a license and fulfill her agreement, she was unable to have the opportunity to earn commission. Janice Smith did not take advantage of Melissa Rotruck. Janice Smith went above and

beyond to assist Melissa in her career. She failed to take advantage of the opportunity she was given. Melissa Rotruck also misled, lied and concealed information from her employer, that would otherwise have led to a much earlier termination date. The facts have proven that Melissa Rotruck's honesty is questionable, and could lead to the assumption that this case is to better herself financially, without merit. An earlier termination date, would have prevented this case with no merit, continued lies to the courts, and wasting of the courts time.

---

Janice Smith  
DBA Insurance Queen  
190 Smith Farm Ln  
Ridgeley, WV 26753  
240-580-0240

## SUMMARY

First and foremost, Melissa Rotruck fraudulently misrepresented herself on numerous occasions and misled Janice Smith the entire period of time she was involved at the insurance agency.

Melissa Rotruck did not ever take her Property and Casualty exam, which was a requirement of the position as indicated in the signed document on July 21, 2011. Copy enclosed. She was to be a commission only agent. The fact that she did not take the exam and lied about it continuously is a very important element in this case. The evidence provided to the Mineral County court was sufficient enough to see through the lies of Melissa Rotruck.

Melissa Rotruck continuously lied, and deceitfully allowed Janice Smith to believe that she had tried to take the exam and failed. Not once, not twice, not three times...but four different occasions where she was supposed to take the test, but failed to complete the test for whatever reason. She NEVER sat for the exam, which was confirmed by ExamFX and those documents were submitted to the court. These documents proved every appointment made by Melissa Rotruck to take the test, were "no shows".

Melissa Rotruck should have been turned away from Janice Smith's agency after 2 months went by when she did not obtain a license, as per the agreement she signed. Copy enclosed. She also did not produce proof that she even took the test when requested. Because she in fact did not ever take the test, but continuously insisted she had proof of taking the test but kept forgetting to bring it in. Again, fraudulently misleading Janice Smith.

Janice Smith tried to work with Melissa Rotruck because she led Janice Smith to believe she had taken the exam and failed. Janice Smith had never and still has never in her 15 years as an Insurance Agent had someone lie about taking an exam.

Melissa Rotruck was not the victim here, Janice Smith was. Janice Smith represented herself in this case because she could not afford an attorney. And actually felt it would be an open and closed case. She spent a large amount of time being her own lawyer. If anything Melissa Rotruck owes Janice Smith money for all of the business lost and time spent in this case. A case with no merit-as stated by the Mineral County judge.

I have attached a copy of the "ORDER FROM TRIAL BEFORE THE COURT" and highlighted the Mineral County Court findings in this case. I also enclosed a copy of the denial for a new trial in Mineral County.

I pray that the Supreme Court of Appeals reviews this case which was previously tried in Mineral County and does not waste the Supreme court's time. This was already the determination by Mineral County. See "ORDER FROM TRIAL BEFORE THE COURT" signed and dated December 18<sup>th</sup>, 2013 by Judge Phil Jordan.

A handwritten signature in black ink that reads "Janice E. Smith". The signature is written in a cursive style with a horizontal line underneath the name.

Janice E. Smith  
DBA Insurance Queen  
190 Smith Farm Ln  
Ridgeley, WV 26753  
240-580-0240

Pro se

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

MELISSA ROTRUCK  
Petitioner

v.

No. 14-1284

JANICE SMITH DBA  
INSURANCE QUEEN  
Respondent

**CERTIFICATE OF SERVICE**

I, Janice E Smith, Pro Se, hereby certify that a true copy of the respondent's brief/ summary response and a motion to supplement the Appendix, has been served by mail on this 29th day of April, 2015, upon the following:

Harley O. Staggers, Jr  
STAGGERS & STAGGERS  
P.O BOX 876  
190 CENTER ST  
KEYSER, WV 26726

  
\_\_\_\_\_

Janice Smith Pro se

DBA Insurance Queen  
190 Smith Farm Ln  
Ridgeley WV 26753  
240-580-0240

IN THE CIRCUIT COURT OF MINERAL COUNTY, WEST VIRGINIA

MELISSA ROTRUCK,  
Plaintiff,

v.

Civil Action No. 12-C-135

JANICE SMITH d/b/a  
INSURANCE QUEEN,  
Defendant.

ORDER FROM TRIAL BEFORE  
THE COURT

This matter came before Judge Phil Jordan on December 10, 2013, for a Trial Before the Court. The parties had previously waived a jury trial. Plaintiff, Melissa Rotruck was present in person and represented by Harley O. Stagers. Defendant, Janice Smith was present in person. She appeared *pro se*.

Each side gave opening statements. The Plaintiff called the Defendant as its first witness and the Plaintiff as its second witness and then rested. The Defendant cross-examined the Plaintiff extensively. After the Plaintiff rested, the Court noted that the more than three and a half hours of testimony made it clear to the Court that the Plaintiff had failed to prove its case. Therefore, the Court directed a verdict for the Defendant, Janice Smith.

The Court commented that the Plaintiff had failed to prove the basic elements of an unpaid wages claim. However, the Court noted that, in its opinion, Mrs. Rotruck owed Ms. Smith an apology for her actions during this case.

FINDINGS OF FACT

1. Defendant Janice Smith owns and operates an insurance business in Mineral County known as Insurance Queen.

2. In July of 2011, Plaintiff's husband, Richard Rotruck, approached Janice Smith and asked if there were any positions open at Ms. Smith's business. Ms. Smith told him that she had no openings, but said that she could give Mrs. Rotruck a sales position in which she could learn the insurance business while preparing for the Property and Casualty licensing examination. She was hired as a commission-only sales associate.

★ 3. A key point in this case was that Mrs. Rotruck was informed that she had to pass the test in order to be able to be paid a commission and to be a significant asset to the business. Mrs. Rotruck promised to prepare for the exam and take it as soon as possible. The job description signed by Mrs. Rotruck on July 21, 2011, contained a provision stating that she must obtain a license "within two months of the date of hire".

4. Mrs. Rotruck worked for Ms. Smith from July 21, 2011 until the Spring of 2012. Throughout that time, Mrs. Rotruck repeatedly assured Ms. Smith that she was trying to obtain her license. She told her that she had failed the exam and had to  
take it over.

5. In early 2012, Ms. Smith learned that Mrs. Rotruck had missed multiple opportunities to take the test, which is given almost weekly.

6. As a result, on March 5, 2012, Ms. Smith suspended Mrs. Rotruck with the opportunity to keep her job if she passed the test within 30 days. When she still failed to take the test, she was terminated on April 6, 2012.

7. The letter stated: "The reasons for the termination are:

1. Not obtaining licenses in a timely manner as previously agreed in July, 2011.
2. Unable to perform job duties including the completion of your insurance exam as per our agreement when you began your position...

3. Misleading your employer in regards to taking the P-C license exam on several occasions as confirmed by Exam FX.

8. Both parties agree that Mrs. Rotruck was paid \$4,309.39 from her employer in 2011 and \$3,079.00 in 2012.

9. This case was filed as a Complaint for unpaid wages under West Virginia Code §21-5-1 et seq. One of the issues raised by Mrs. Rotruck was a claim that a Sales Template given to her at the time she was hired constituted a promise to pay her a salary of \$50,967.

★ It was clear from the testimony and the documents that Mrs. Rotruck said she would like to earn around \$50,000 per year. Ms. Smith did some calculations to show how many policies an employee would have to sell to reach that figure and higher amounts.

It is obvious that any employee would have to obtain her license and sell those policies in order to earn that amount. To claim that as a promised salary is absurd and contradicted by Plaintiff's own pleadings which state Ms. Rotruck was not told a specific salary.

★ The Sales Template was not a promise to pay or a salary.

10. A second claim by Mrs. Rotruck was that the \$4309.28 she was paid in 2011 was an illegal wage assignment. Although Mrs. Rotruck did not have her license, Ms. Smith still paid her for the work she did in 2011 by what Ms. Smith called "referral" or "finders fees". She also advanced Mrs. Rotruck money on several occasions when Mrs. Rotruck had problems such as car payments and other expenses. The employer would withhold that amount from a future pay.

Both parties agree they were even on that practice.

11. However, counsel for Plaintiff asserts that all of the above constitutes an illegal wage assignment and requests that his client be paid any such money all over again. He cites Clendenin Lumber-Supply v. Carpenter, 172 W.Va. 375 (1983). Ironically, that very case stands on the contrary result. In that instance, the employee of the lumber supply store purchased goods from the store on credit. The Court held that "to another" as used in the definition of an assignment of earnings under W.Va. Code 46A-2-116(2) (b) includes "an employer when that employer is also the creditor of the employee." The Plaintiff has not produced evidence Ms. Smith acted as a creditor and has not proven there was an assignment of wages.

12. Mrs. Rotruck was paid by the hour in 2012 until her termination and there was no evidence that she was not paid as agreed by the parties.

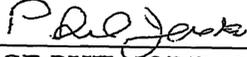
13. Mrs. Rotruck is not due any money from Ms. Smith.

★ 14. The Court finds Mrs. Rotruck's testimony to be totally lacking in credibility. She was inconsistent with the facts and her own testimony on several occasions.

★ Mrs. Rotruck lied to the Court just like she repeatedly lied to her employer. It is a shame that Ms. Smith had to be a victim of Mrs. Rotruck's deceit and it is unfortunate that so much of this Court's time was wasted by such a meritless case. ★

The case is **DISMISSED** with prejudice with a judgment for the Defendant. The Clerk shall send a copy to Ms. Smith and Mr. Stagers.

Entered this 18<sup>th</sup> day of December, 2013.

  
\_\_\_\_\_  
JUDGE PHIL JORDAN

**TESTE COPY**

  
\_\_\_\_\_  
Clerk Circuit Court of Mineral County, W. Va.

IN THE CIRCUIT COURT OF MINERAL COUNTY, WEST VIRGINIA

MELISSA ROTRUCK,  
Plaintiff,

vs.

Case No. 12-C-135  
Judge Phil Jordan

JANICE SMITH d/b/a  
INSURANCE QUEEN,  
Defendant.

ORDER DENYING PLAINTIFF'S MOTION FOR A NEW TRIAL

This matter came before the Court, Judge Phil Jordan presiding, on December 27, 2013, pursuant to the filing of Plaintiff's Motion for a New Trial. In support of her motion, Plaintiff dredges up the arguments and set of facts she used at trial and which the Court explicitly rejected during its role as fact-finder. The Court again rejects Plaintiff's version of the facts. Furthermore, Plaintiff mischaracterizes the Court's December 18, 2013, Order from Trial Before the Court.<sup>1</sup>

Because Plaintiff does not assert any facts or arguments that have not already been considered by the Court during the bench trial in this matter, it is hereby **ORDERED** that Plaintiff's Motion for a New Trial be **DENIED**.

---

<sup>1</sup> Specifically, Plaintiff states "[t]his court found that the parties agreed to an illegal contract" and cited to a specific provision of the bench trial order. Plaintiff's Motion for a New Trial, p. 4, paragraph II.A. This Court did not find that the contract at issue was an "illegal contract." Instead, the Court found that the Defendant hired Plaintiff as a commission-only sales associate. Although Plaintiff argues that the contract was illegal, the Court did not find it so.

H. Stagers  
J. Smith  
01-15-14  
SRM

The Clerk of the Court shall forward a copy of this order to (1) Harley O. Staggers, Jr., P.O. Box 876, Keyser, WV 26726; and (2) Janice Smith, 690 S. Mineral Street, Keyser, WV 26726.

DONE and ENTERED this 15<sup>th</sup> day of January, 2014.



---

Judge Phil Jordan, Chief Judge  
21<sup>st</sup> Judicial Circuit

**TESTE COPY**



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Clerk Circuit Court of Mineral County, W. Va.

Copy

**IN THE CIRCUIT COURT OF MINERAL COUNTY, WEST VIRGINIA**

**MELISSA ROTRUCK,  
Plaintiff,**

**vs.**

**Case No. 12-C-135  
Judge Phil Jordan**

**JANICE SMITH d/b/a  
INSURANCE QUEEN,  
Defendant.**

**AMENDED ORDER DENYING PLAINTIFF'S MOTION FOR A NEW  
TRIAL**

This matter came before the Court, Judge Phil Jordan presiding, on October 20, 2014, pursuant to the filing of an opinion of the West Virginia Supreme Court of Appeals entered on October 15, 2014. This opinion vacated this Court's January 15, 2014, Order Denying Plaintiff's Motion for a New Trial and instructs to enter a new order that addresses all of the issues raised in the Plaintiff's Motion for a New Trial.

This Court held a bench trial in this matter on December 10, 2013. Plaintiff Melissa Rotruck ("Ms. Rotruck") was represented by counsel, Harley O. Staggers, Jr. The Defendant, Janice Smith ("Ms. Smith"), d/b/a Insurance Queen, Inc., appeared *pro se*. Both Parties gave opening statements. Plaintiff presented the Defendant as her first witness and then the Plaintiff testified as the second witness. After Ms. Rotruck's testimony, Ms. Smith cross-examined her extensively. Plaintiff then rested. The Court noted that after more than three and a half hours of testimony, the Plaintiff had clearly failed to prove her case and

M. Staggers  
J. Smith  
11-14-14 XSM

failed to prove the basic elements of an unpaid wages claim. Therefore, the Court directed a verdict for the Defendant, Ms. Smith. The Court entered a judgment order on December 18, 2013, entitled Order from Trial Before the Court. The Court's findings of fact and conclusions of law from this order are hereby incorporated into this order.

The Plaintiff filed her Motion for New Trial on December 20, 2014. In her motion, Ms. Smith made the following arguments:

1. That the Court's alleged finding that the employment contract to be an illegal contract was unsupported by law;
2. That the Court's finding that the Sales Template was a written notice of pay under West Virginia Code § 21-5-9 conflicted with its finding that the Sales Template was not a promise to pay;
3. The Defendant's future wage assignments did not follow the requirements of West Virginia Code § 21-5-3 and thus were invalid and unenforceable;  
and
4. The Defendant owed the Plaintiff the value of the commissions she had earned.

Above all else, the Plaintiff mischaracterizes the Court's findings and the Court's December 18, 2013, Order from Trial Before the Court. In general, the Plaintiff recites arguments that she used at trial. Each argument will be addressed in turn.

## Legal Background

A motion for a new trial should be filed within ten days after of judgment. R.Civ. P. 59(b). Ms. Rotruck's motion was timely filed. The West Virginia Supreme Court of Appeals has made it clear that the power to grant a new trial should be rarely used. See Gerver v. Benavides, 207, W.Va. 228, 530 S.E.2d 710 (1999); Andrews v. Reynolds Memorial Hosp, Inc., 201 W.Va. 624, 499 S.E.2d 846 (1997); Tennant v. Marvin Health Care Foundation, Inc., 194 W.Va. 97, 459 S.E.2d 374 (1995). In order to overturn a trial court's ruling on a motion for new trial, it must be clear that the trial court acted under some misapprehension of law or evidence. Andrews v. Reynolds Memorial Hosp, Inc., 201 W.Va. at 630, 499 S.E.2d at 852 (quoting Syl. Pt. 4, Sanders v. Georgia-Pacific Corp., 159 W.Va. 621, 225 S.E.2d 218 (1976)). The Supreme Court reviews trial court's findings under the abuse of discretion standard. Id at 629, 851.

## Discussion

The chief issue in the trial was how the Plaintiff, Melissa Rotruck, was to be paid for her employment with the Defendant, Janice Smith d/b/a Insurance Queen, Inc. The Court found that Ms. Rotruck was clearly hired as a commission-only sales associate.

The Plaintiff herself conceded at trial that when she began employment with the Defendant, she did not expect to receive a salary. While Ms. Rotruck was being questioned by Ms. Smith, the testimony proceeded as follows:

Q: Were you advised, during the interview, that you will be working as a commission only sales associate?

A: Yes, ma'am.  
Q: So you were not expecting a salary?  
A: When I was first hired, when we discussed, when I was first hired, at that point, no I was not, it was commission only.  
Q: So just to clarify, you knew that it was commission only, no salary, when you were hired?  
A: That's what I was told.

Trial Transcript, December 10, 2013, p. 100, lines 5-16.

All of Plaintiff's claims are predicated on the assumption that Plaintiff was to receive a salary of \$50,967.00. With that assumption dismantled, Plaintiff's claims crumble.

### I. Illegal Contract

Ms. Rotruck argues in her motion that the Court found that the employment contract was an illegal contract and that this finding was unsupported by law. The exact phrase the Plaintiff used was "[t]his court found that the parties agreed to an illegal contract.<sup>1</sup> Such an interpretation is not supported by established law." She cites the December 18, 2013, Order, which states

[i]n July of 2011, Plaintiff's husband, Richard Rotruck, approached Janice Smith and asked if there were any positions open at Ms. Smith's business. Ms. Smith told him there were no openings, but that she could give Mrs. Rotruck a sales position in which she could learn the insurance business while preparing for the Property and Casualty licensing examination. She was hired as a commission-only sales associate.

December 18, 2013, Order from Trial Before the Court, p. 2, ¶ 2.

Plaintiff's Exhibit No. 3 at trial, a document entitled "Job Description" states under Subsection E., "Other Requirements" that the employee "[m]ust be licensed to sell insurance in the States determined by the management within 2

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<sup>1</sup> Page 2; #2

months of date of hire.” While the Plaintiff was employed by the Defendant, she did not acquire a license to sell insurance policies and the Court found that she actively concealed her failure to take or pass the requisite examinations from her employer.

The Plaintiff does not explain how the employment agreement was an illegal contract. Presumably the Plaintiff is arguing that an employee cannot be paid solely by commission. However, the Plaintiff did not raise this argument at trial and does not cite any legal authority in support of this proposition. This Court has reviewed case and statutory law on the subject and could not readily find any support for this proposition. Although not an issue in the case, the West Virginia Supreme Court noted that in Miller v. Massachusetts Mutual Life Insurance Co., the employee was paid mostly, if not entirely, by commission. Miller, 193 W.Va. 240, 455 S.E.2d 799 (1995). The Supreme Court did not exhibit any concern over the practice at that time.

## **II. Sales Template**

The Plaintiff argues that the Court’s findings regarding the Sales Template (alternately referred to as an “Income Planner” at the trial and was admitted into evidence as Plaintiff’s Exhibit No. 2) were contradictory. At trial, Ms. Rotruck claimed she was given no written notice of her pay, as required by W.Va. Code § 21-5-9 and that a Sales Template given to her at the time she was hired by the Defendant constituted a promise to pay a salary of \$50,967.00. The Court rejected

these arguments. West Virginia Code § 21-5-9 requires that employers notify employees at the time of hiring of their rate of pay.

First, the Plaintiff concedes in her pre-trial memorandum that the employment agreement “included an explanation of her compensation.” Plaintiff’s Pre-Trial Memorandum, p. 1, ¶ 2. Plaintiff’s Exhibit 1, “Job Description” stated that the employee would be paid by commission or a small salary supplemented by commission.

Second, at trial, Ms. Rotruck testified that “[t]his document [the Sales Template] was given to me and I was told it was a breakdown to show me what I would have to make, you know the given amounts and when I was given this document I was told, if I did what she instructed, this was what I would make for the first year, \$50,967.00.” Trial Transcript, December 10, 2013, pp. 59-60, lines 21-24, 1-2.

Third, the Court found that the Sales Template was a written notice of pay. As previously discussed in the trial order, Ms. Rotruck was hired as a commission-only sales associate. She was hired with the condition that she would be able to pass the relevant insurance examinations to allow her to earn commissions. Thus, the Sales Template was used by the Parties in order to illustrate how Ms. Rotruck’s pay by commission would be calculated. According to Ms. Smith’s testimony at trial, Ms. Rotruck stated that she wished to ultimately earn approximately \$50,000.00 per year on commission. Ms. Smith then used the Sales Template to work out how many policies Ms. Rotruck would have to sell in order to earn her desired income. The only way that the Sales Template could be

construed as a promise to \$50,967.00 would be if Ms. Rotruck had (1) earned her insurance license; and (2) had sold all of the policies indicated in the Sales Template within the time frame suggested. Neither of those conditions was met and thus the Sales Template was not a promise to pay a salary of \$50,967.00.

### **III. Future Wage Assignments**

The Plaintiff makes the same argument regarding wage assignments that she did at trial and does not demonstrate how the Court was mistaken regarding the facts or the law. She argues that the alleged wage assignments were invalid and enforceable because they did not meet the requirements of West Virginia Code § 21-5-3.

The Court found that the Plaintiff did not prove at trial that the alleged transactions were wage assignments. These transactions consisted of payments from the Defendant employer to the Plaintiff employee. While the case of Clendenin Lumber-Supply v. Carpenter, 172 W.Va. 375 (1983) does state that an employer can be considered “another” under W.Va. Code § 46A-2-116(2)(b) and can be considered a creditor of the employee, the Court found that the Plaintiff did not adequately prove that the employer here was a creditor. In her Motion for New Trial, the Plaintiff does not establish how the Court acted under a misapprehension of the facts and abused its discretion by finding that there was not enough evidence to prove the employer here was a creditor. Nor did the Plaintiff show in her motion how the Court failed to adequately interpret Clendenin Lumber-Supply v. Carpenter.

#### IV. Commissions

Plaintiff argues that by failing to object at trial to the introduction of evidence that the Plaintiff was paid commissions, the Defendant essentially conceded that the Defendant was paid commissions. The alleged failure of the *pro se* Defendant to object to the introduction of some of Plaintiff's evidence does not require the Court to adopt wholesale the Plaintiff's version of the facts.

It was undisputed at trial that the Plaintiff did not pass the licensing examination that would allow her to earn commissions. The Court further found that Ms. Rotruck repeatedly misled her employer about her alleged attempts to taking the licensing examination. When the Defendant required the Plaintiff to pass the examination within 30 days in order to keep her position, the Plaintiff failed to take the test and her employment was terminated. December 18, 2013, Order from Trial Before the Court, p. 2, ¶¶ 4-7. Ms. Smith testified that she did not pay the Plaintiff commission and the Court accepted her testimony as more credible than the Plaintiff's.

The Plaintiff has not shown in her Motion for New Trial how the *pro se* Defendant's alleged failure to object caused the Court to act under a misapprehension of the facts and abuse its discretion in finding that Ms. Rotruck was not entitled to commissions and was not paid commissions.

## CONCLUSION

The Plaintiff has not met its burden of proving that the Court abused its discretion on any of its arguments by proving that the Court acted under a misapprehension of the facts or law. Because the Plaintiff has not met its burden, this Court is not bound to grant the Plaintiff a new trial, especially given the West Virginia Supreme Court's admonition against granting new trial.

WHEREFORE, the Court hereby **ORDERS** that the Plaintiff's Motion for New Trial be **DENIED**. It is further **ORDERED** that this case be stricken from the active docket of the Court.

The Clerk of the Court shall forward a copy of this order to (1) Harley O. Staggers, Jr., P.O. Box 876, Keyser, WV 26726; and (2) Janice Smith, 690 S. Mineral Street, Keyser, WV 26726.

DONE and ENTERED this 14<sup>th</sup> day of November, 2014.

  
\_\_\_\_\_  
Judge Phil Jordan, Chief Judge  
21<sup>st</sup> Judicial Circuit

**TESTE COPY**

  
\_\_\_\_\_  
Clerk Circuit Court of Mineral County, W. Va.

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 15<sup>th</sup> of October, 2014, the following order was made and entered:

Melissa Rotruck,  
Petitioner Below, Petitioner

vs.) No. 14-0104

Janice Smith, doing business as  
Insurance Queen, Respondent Below,  
Respondent

On April 28, 2014, the petitioner, Melissa Rotruck, by counsel Harley O. Staggers, Jr., Staggers & Staggers Law Firm, perfected her appeal from a judgment of the Circuit Court of Mineral County (No. 12-C-135) entered on January 15, 2014, with the filing of her petitioner's brief and appendix. Thereafter, on July 16, 2014, the respondent, Janice Smith, *pro se*, filed a respondent's brief. Finally, on July 28, 2014, the petitioner, by counsel, filed a reply brief.

Upon consideration, the Court is of the opinion to and does hereby vacate the January 15, 2014 order entered in Mineral County Circuit Court No. 12-C-135. It is further ordered that this matter be, and it hereby is, remanded to the Circuit Court of Mineral County with instructions to enter a final order with findings and conclusions that addresses all of the issues raised in the petitioner's motion for new trial.

This matter is hereby dismissed from the docket of this Court.

A True Copy

Attest: /s/ Rory L. Perry II, Clerk of Court



Document #1

COMMERCIAL SALES SPECIALIST  
JOB DESCRIPTION

REPORTS TO OPERATIONS SPECIALIST

A. SUMMARY:

Sell commercial products in keeping with agency and individual goals. Meet established goals and build relationships with clients. Identifies and solicits sales prospects by making sales calls from various sources. Provides leads for all other lines of insurance to appropriate sales people. Uphold the agency's reputation and professional manner of conducting business with clients and Nationwide Insurance.

B. ESSENTIAL FUNCTIONS:

- Prospecting, obtaining X-dates and entering them into the system. Obtain all contact info if possible. Phone, fax, email, website.
- Gather all necessary information to create a quote, using quote sheets/forms.
- Following up with prospective clients to get necessary information to finalize quote.
- Communicate with underwriting as needed for prior approval, questions and pricing if necessary.
- Prepare and communicate proposals along with an Agency brochure announcing all available products we offer.
- Process policies, collect necessary deposits, obtains signed applications. Order any reports necessary first(credit, loss runs, inspections...)
- Obtain necessary trailing documents including photos if needed.
- Provide prompt attention to new business follow-up and processing. Maintains a first and final basis.
- Develop additional prospects through referrals from present/new accounts and use the New business referral sheet. Send thank you card and referral sheet.
- Contact new clients 1 month touch, 6 month touch and then 45 days prior to renewal with us. *Set up Appt. for Employees.*
- need* -Annual risk reviews with current clients. Calendar should be marked. This review should include life/financial information.
- Log every customer interaction via a contact note in Client Management. *Life or Retirement Plan Personal Lines / Partner*
- Present prior days quotes, sales, call activity, OYS reviews completed at morning meetings.
- Perform special projects and other duties at management's request.
- Focus on Nationwide Target Markets, but attempt to place all other opportunities as well.

C. MARGINAL FUNCTIONS:

- Remove trash from own desk area.
- Maintain own work area clean, neat and assists with general office housekeeping.
- Initial all receipts.
- Support and enhance the reputation of the agency with clients.

o Figure Comm. Premium

X average 14%

X 60%



DATE: 02-12-2013  
 CASE: ROTRUCK VS SMITH  
 DEPONENT: JAVICO SMITH  
 EXHIBIT #: 3 VR #: 28-1  
 TOTAL PGS: 3 REPORTER: L. DCAJ

**D. KNOWLEDGE, SKILLS AND ABILITIES:**

- Must be aggressive/assertive, a self-starter with the ability to influence others. Should have demonstrated effective presentation skills through both verbal and written communications.
- Must be willing to travel as needed and attend agency events.
- Expected to meet monthly new business premium goals through a variety of sources: cold calls, referrals, etc. *Sales @ Genie*

**E. OTHER REQUIREMENTS:**

- Must be licensed to sell insurance in the States determined by the management within 2 months of date of hire.
- Maintain knowledge of Nationwide Products and underwriting criteria.
- Fully understand the Employee Handbook.
- Telephone skills/etiquette required.

**F. EQUIPMENT AND SOFTWARE USAGE:**

- Personal computer, calculator, on-line information system, scanning system, fax on-line system, and various software including but not limited to Microsoft Word and Excel.

**G. WORKING CONDITIONS:**

- Fast paced multiple tasking conditions, high disruption environment.

**H. JOB PERFORMANCE STANDARDS:**

- Create goals/income planner: Premium/units per month.
- X date calls (Example: 150 x dates requires about 750 calls) \_\_\_\_\_ x dates/week.
- Send postcard when Xdate is obtained.
- Use activity log, sales tracker, score card for tracking activities.
- Contact notes will be reviewed at random. During the review the Operations Specialist will look for several key points including but not limited to: Who we spoke with regarding the account, where they were calling from(if not insured), reason of the call, if pricing a change or quoting..include prices and details. Details should be clear enough so someone else can help that person if needed.
- X date activity will also be monitored.
- The Operations Specialist will also monitor success of calls vs quotes, vs sales-quote to bind ratio.
- Expectations include continued education & training.
- Operations Specialist will review on a daily basis all activity including incoming and outgoing calls, walkins to determine proper use of time is being followed.
- All quotes should be followed up on 1/5/30/5 months.

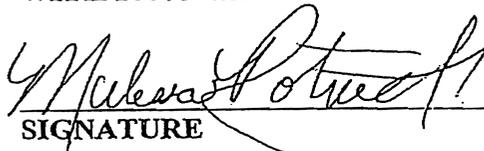
*Mon & Tues.  
Better for X-  
dates.  
25 a week*

*Agree you controlled the  
process of selling insurance*

**I. COMPENSATION PLAN**

- Sales Associates are compensated by commissions or a small salary plus commission at a lower rate.
- A substantial portion of a Sales Associates income is expected to be life commissions.
- Sales Associates are eligible for an annual bonus based on the agency achieving its performance objectives and the Sales Associate meeting job performance standards. Up to \$1500.
- Agency must be profitable for the Sales Associate to receive a bonus.
- Net new performance bonus is paid monthly. The objectives for the bonuses will be determined. \$100/month

**I HAVE READ, UNDERSTAND AND AGREE TO ABIDE BY MY POSITION WITH 100% DEDICATION.**

 1/21/11  
SIGNATURE DATE

April 6, 2011

Melissa Rotruck  
PO Box 342  
Maysville, WV 26833

Dear Melissa:

This is to inform you that your agreement with Insurance Queen LLC has been terminated effective April 6, 2012. The reasons for the termination are:

1. Not obtaining licenses in a timely manner as previously agreed in July 2011.
2. Unable to perform job duties including the completion of your insurance exam as per our agreement when you began your position. I will remind you that we attempted to work with you by modifying the requirement many times to accommodate your situation.
3. Misleading your employer in regards to taking the P&C license exam on several occasions as confirmed by ExamFX.

No insurance premiums should be collected by you on behalf of Nationwide Insurance, Insurance Queen LLC, or Knippenberg Insurance. In addition, no solicitation or contacts should be made to Nationwide policyholders. You are required to return any Nationwide business related materials, policyholder files, and any other related materials such as lists belonging to the agency. In addition, office supplies, posters, brochures, etc should also be returned. Also, if you have any business cards, they need to be returned. All of the aforementioned should be returned no later than April 30th.

Please note that any personal items that belong to you will be sent to your most recent mailing address that we have on file.

Please remove the Nationwide software from all of your computers, desk top and lap top. Your ID has been cancelled along with any future access.

Regards,



Sincerely,

Janice E. Smith

Insurance Queen, LLC

Document #14



Progress?  
Janice E Smith to: melissa6

03/09/2012 11:57 AM

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Hi Melissa,

Please call the office or my cell. I have left you several messages.

Thanks,

Janice Smith  
Knippenberg Insurance and Financial Services, Inc.  
Presidents Conference All Star Agency  
On Your Side Certified  
On-Your-Farm Certified Agent  
888-983-4427  
smitj237@nationwide.com

Document #13



P&C test  
Janice E Smith to: Melissa Rotruck

01/16/2012 12:25 PM

You need to register for your test asap. Please check the dates and let me know what date you are registered for.

I also need the forms the test center gave you the other two times for my file please.