

Supreme Court Rules that Employers will be Held Liable for Relied Upon Promises of Employment

April 27, 2021 | by Alex Lee

In a recent decision in ~~Goldfarb v. Solimine~~, A-24-19/083256 (February 18, 2021), the New Jersey Supreme Court ruled to confirm that an employer will be held liable for damages based on a rescinded oral offer of employment that was relied upon by the employee, despite the lack of a written employment agreement. Although this decision was made in the context of a dispute regarding the applicability of the [New Jersey Uniform Securities Law of 1997](#) (“the Securities Law”), and applies most specifically to employers in the investment advisory industry, employers in all fields and industries should take note of the general principles underlying this decision.

Factual Background: An Employer Rescinds an Oral Job Offer to an Investment Advisor

Plaintiff Jed Goldfarb, who had previously worked as a financial research analyst, alleged that following several conversations with defendant David Solimine, Solimine offered him a job managing his family’s sizable investment portfolio. Goldfarb was assured by Solimine that he had a job even though he was not provided a written employment agreement. Based on the promised job offer Goldfarb quit his old position and began providing Solimine with financial advice. Shortly thereafter, Solimine reneged on the promise and told Goldfarb he would not employ him.

Goldfarb responded by filing a lawsuit including a claim for promissory estoppel seeking payment of the wages lost in reliance of Solimine’s promise of employment. In response, Solimine asserted that Securities Law required investment advisers to have a writing memorializing the terms for an investment relationship, and that due to the lack of any written agreement, this barred Goldfarb from making any claims against Solimine. Following a trial, the jury found for Goldfarb on liability, and the trial court limited Goldfarb’s damages to the minimum salary he would have made in Solimine’s

employ.

The Appellate Division's Decision: Confirming Liability, and Remanding on Damages

Upon appeal by defendant Solimine, the Appellate Division affirmed the verdict on liability, and remanded for a new trial limited to the issue of reliance damages, stating that Goldfarb should have been entitled to present evidence regarding reliance damages, leading to a petition for certification to the Supreme Court.

The Supreme Court Decision: Promissory Estoppel Claim Not Barred by the Lack of a Written Agreement

In a 5-1 decision, the Supreme Court affirmed the Appellate Division's ruling as to liability in favor of Goldfarb, explaining that the Securities Act did not bar the promissory estoppel claim. Justice Jaynee LaVecchia issued the decision explaining that even without a written agreement, the Securities Law only banned suits "on the contract" and therefore did not prohibit suits based on promissory estoppel. The Court explained that suits to enforce [contracts](#) and suits predicated upon promissory estoppel claims were distinct in both their requisite elements and goals. Therefore, Goldfarb's claim was not based on a contract, but rather on his reasonable reliance on Solimine's promise of a job, and thus permissible.

The Court further found that because the claim of promissory estoppel was not contractual, the trial court had erred on the issue of damages by permitting expectation damages per the benefit of the bargain, rather than simple reliance damages based on what Goldfarb would have earned if he had worked for Solimine based on the promise of employment by Solimine, and thus remanded to the trial court on the issue of damages.

Justice Barry Albin issued a dissent in which he argued that the plaintiff's conduct, by failing to abide by the writing requirement of the Securities Act, should in fact have barred him from bringing suit. Albin expressed concern that the Securities Law's consumer protection purposes would be undermined by permitting a sophisticated professional to evade the writing requirements of the

Securities Act, and seek damages under a theory of promissory estoppel, and opined that this decision could lead to an evisceration of the writing requirement.

Takeaways for New Jersey Employers

Although this decision was made in the context of the Securities Act, which specifically requires written agreements for investment advisors in that industry, employers should expect the basic principle of the ruling confirming the enforceability of promissory estoppel claims in the context of oral offers of employment to be broadly applicable.

Employers must therefore be cognizant that even without formal written offers of employment, employers may be liable for reliance damages in the event that a prospective employee reasonably relies on a job offer that is later rescinded. To prevent future disputes, employers should document any oral offers of employment, even if there is no formal written employment agreement.