

The At-Will Condition:

IMPLIED EMPLOYMENT CONTRACT:

Facts:

1: The words relied upon were sufficiently definite to constitute a promise both in the company President's assurance in the hiring interview that the company "does not discharge management employees," and "want you to retire from this job" and in the subsequent contacts from consultant Don Hallett asking for assurances from the employee to agree to 'retire' from the position. The words in all instances were spoken and it was reasonable to rely upon them in that they were spoken seriously and not in jest. Present at the employment interview meeting were Charlie Cohn, Lynn Martin (who made the initial assurance upon which the employee based the decision to accept the position) and consultant Don Hallett.

2: Emails received by the employee from the consultant clearly stated the employee had 'found a home' [1] and praised the efforts and work of the employee [2][3][4].

3: At no time were any comments made, accusations presented, written or oral statements made indicating a poor performance of the employee prior to discharge.

4: At no time were any comments made, accusations presented, written or oral statements made indicating that poor performance of the station in ratings would indicate the responsibility of the employee. In fact, all references made to poor station performance (if there was any) was referenced by Charlie Cohn and Consultant Don Hallett as a lack of cume persons.

5: Word relied upon to accept the position offered and to remain in the position offered even through harassment were based upon the belief that the owner-President Lynn Martin was telling the truth in the hiring process and was continuing to tell the truth in instructing consultant Don Hallett to repetitively inquire as to the employee's continued desire to remain in employment until retirement.

6: Such actions, words and relied upon acts constitute an implied contract for employment to continue until retirement which restricts the at-will authority of company to terminate employment without having to state a reason.

7: Reason for termination was provided by Charlie Cohn when asked what the reason was for discharge when he stated, "the station did not perform as well as expected".

8: Termination took place on Tuesday June 23, 2002 two days after the Spring Arbitron rating period ended. Any determination indicating poor station performance was based upon illegally acquired (the station was not then a signatory of Arbitron) station ratings provided by Steve Jason of Citadel Communications of Charleston acquired while the rating report was embargoed and un-weighted which constitutes fraud, oppression, and malice.

9: Subsequent release of the full Spring 2002 Arbitron as published in the Charleston Post & Courier Saturday August 10, 2002 by reporter Mindy Spar places the station tied for 9th place in adults 25-54 with its sister station WYBB which is a significant increase over the previous ratings period.

Quoted from <http://www.charleston.net/pub/entertain/tvpage/10mindys.htm>

- The spring 2002 Arbitron ratings are in, and there are big smiles on the faces of the folks at Citadel Communications.

Among radio listeners ages 25-54, Citadel stations took the top-three spots. For the first time ever, WMGL-FM Magic 101.7 was first in its demographic, with an 8.3 share. That number is up from the winter's No. 2 spot and a big improvement from Magic's No. 4 showing in spring 2001.

WSSX-FM 95.1 posted a 6.8 share to take the No. 2 slot. That was way up from a winter number of 4.2. WSUY-FM 96.9 took a 6.6 share to come in at No. 3, which was fairly consistent with the winter book number of 6.5 but up nicely from spring 2001's 5.5 share and a No. 7 showing.

Citadel Communications General Manager Steve Jason says he is proud of what the stations have accomplished. "We stayed the course even when things were tight financially last year, and it's exciting to see us reaping the rewards of consistency, solid programming and an ongoing commitment to our community," he says.

The top 10 list among listeners 25-54 looks like this:

1. WMGL-FM 101.7
2. WSSX-FM 95.1
3. WSUY-FM 96.9

4. WXLY-FM 102.5
5. WWWZ-FM 93.3 and WRFQ-FM 104.5
7. WJNI-FM 106.3
8. WEZL-FM 103.5
9. WYBB-FM 98.1 and **WCOO-FM 105.5**.

The usually dominant WEZL-FM 103.5 took a dive this time around. Last spring, WEZL was in first place and a year later is sitting in the eighth spot. One reason for this could be that country music is in a downswing overall. There's no Faith Hill or Garth Brooks bringing in listeners.

But WEZL's parent company, Clear Channel Communications, steadily has been losing market share among this demographic. Last spring, the company's six stations earned a 29.6 share, but this book they posted only a 23.5. Conversely, Citadel, LM Communications (WYBB-FM 98.1 and **WCOO-FM 105.5**) and Jabar Communications (WJNI-FM 106.3 and WWBZ-FM 98.9) **all have shown increases in market share over the past year.**

SUMMARY:

The employment was accepted based upon good faith and a belief that L.M. Communications “does not discharge management employees,” and based upon the good faith and belief that L.M. Communications statement made by its President desiring for employee to “retire from this job” was an implied contract.

Continual repeating of the topic of “retire from this job” by consultant Don Hallett at the direction of Lynn Martin in personal discussions held during in station visits further underscored the implied contract between the employee and L.M. Communications.

The “at-will” condition does not apply to this termination as an implied contract was in force from the moment of the hiring interview and continued to be in force and supported throughout the employment.

[1]

----- Original Message -----

From: DWHALLETT@aol.com

To: leekent@comcast.net

Sent: Tuesday, March 19, 2002 4:17 PM

Subject: Re: aircheck

In a message dated 3/17/02 7:29:31 PM Eastern Standard Time, leekent@comcast.net writes:

aircheck

The aircheck sounds great. My God, I think you found a home, Mr. Kent.

Send tape sometime. Any progress on the aircheck system? If you'd like, call Phil in Lexington. He's ready to assist.

Regards--
DWH

[2]

----- Original Message -----

From: DWHALLETT@aol.com

To: leekent@comcast.net

Cc: lmccohn@hotmail.com

Sent: Tuesday, July 09, 2002 8:19 PM

Subject: Re: massive luck with music hunt

Lee:

First of all, I haven't been ignoring you in regard to your evaluation of the ARB trends. The teeter tottered? Low cume? Marketing required? In my assessment tracking COOL with its current cume is really hard on any scale, especially in dayparts. But, I admire your take and your detailed work. Nice job.

I reached out to Charlie today on another topic and we had a conflict of schedule and I suspect he might get me in route to another client by car. I'll be on cellular in the morning from around 8:30-9:00AM until 11:30AM or so. Maybe we can all hook up?

Regards--

DWH

[3]

----- Original Message -----

From: DWHALLETT@aol.com

To: lk@leekent.com

Sent: Friday, March 08, 2002 12:10 PM

Subject: Re: John Majhor

In a message dated 3/8/02 3:52:44 AM Eastern Standard Time, lk@leekent.com writes:

Programming is a bunch of individual kingdoms.

Break down the walls, but don't create, stir or instigate battles.

Tough days ahead.... You have my support!

Regards--
DWH

[4]

----- Original Message -----

From: DWHALLETT@aol.com

To: lk@leekent.com

Sent: Saturday, February 09, 2002 7:30 PM

Subject: Re: Meeting synopsis

In a message dated 2/8/02 7:32:16 PM Eastern Standard Time, lk@leekent.com writes:

>In the one discussion I have had with Stevie since arriving here I let him do all
>the talking
>and I learned he has decades of experience, is a programming guru and has
>ideas to make
>things better in the nights. I'll be happy to hear them.

Tread lightly.... And do what you do all so well.

Why don't you have a key???? Criminelle!

Great job with the staff meeting and thanks for sharing.

How's the new house???

Regards--
DWH