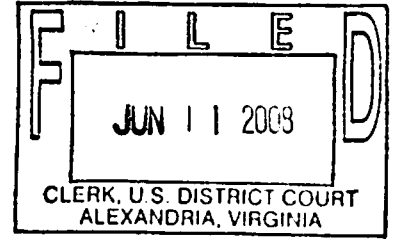


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division



_____)
WILLIAM ATKINS,)
)
Plaintiff,)
)
v.)
)
NOMINUM, INCORPORATED,)
)
Defendant.)
_____)

Civil Action No. 08-0461

ORDER

This matter comes before the Court on Defendant's Motion to Dismiss or, in the Alternative, to Transfer Venue. Plaintiff initially brought this suit in the Circuit Court of Fairfax County, Virginia. Plaintiff's complaint alleges breach of contract by Defendant for Defendant's failure to pay Plaintiff commissions Plaintiff allegedly earned while employed by Defendant. Defendant removed the suit to this Court and now seeks dismissal or transfer to the Northern District of California, San Francisco Division.

Defendant Nominum, Inc. is a Delaware corporation with its principal place of business in Redwood City, California. The majority of Defendant's employees, including its senior management, are located in California. In 2006, Defendant hired Plaintiff as Sales Director for Federal Government Accounts. While employed by Defendant, Plaintiff worked from his home in

Fairfax County, Virginia. Plaintiff's work involved procuring federal government contracts for Defendant between General Dynamics, a third party client, and the United States Air Force. Plaintiff was paid in part by commissions as set forth in the terms of his employment agreement, which is governed by California law. Plaintiff's work contacts were located primarily in northern Virginia, Maryland, and Washington, D.C. In March 2007, Defendant terminated Plaintiff's employment. Plaintiff thereafter brought this suit alleging breach of contract based on Defendant's failure to pay Plaintiff commissions earned while employed by Defendant.

"For the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). However, "a plaintiff's choice of forum should rarely be disturbed." Piper Aircraft Co. v. Reyno, 454 U.S. 235, 241 (1981).

It appears to the Court that, in this case, Plaintiff's choice of forum should be given deference and Defendant's Motion should be denied. When assessing Plaintiff's claims for sales commissions under California law, a highly relevant issue will be whether Plaintiff was a "procuring cause" of the sales he facilitated. See Wilson v. Turner, 89 Cal. App. 2d 589, 595 (1949); Wise v. Reeve, 183 Cal. App. 2d 3, 11 (1960).

