

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

CARLOS A. CARRERO

Plaintiff

V.S.

MOLINA HEALTHCARE OF PUERTO
RICO, INC.

Defendant

CIVIL NO.:

DECLARATORY JUDGMENT

COMPLAINT

TO THE HONORABLE COURT:

COMES now plaintiff through the undersigned attorney and very respectfully,
SETS FORTH and PRAYS:

I. JURISDICTION AND VENUE

1.1. This Honorable Court has subject matter jurisdiction over the instant matter pursuant to 28 U.S.C. § 1332 as there is complete diversity among the parties and the contractual rights upon which declaratory judgment is sought exceed the jurisdictional amount of \$75,000.00¹. As in any other federal action for declaratory judgment, relief is sought pursuant to 28 U.S.C. § 2201.

1.2. The District of Puerto Rico is the proper venue in which to hear the instant matter, pursuant to 28 U.S.C. § 1391, all of the relevant facts occurred within that jurisdiction.

¹ Of course, its hornbook law that “[i]n actions seeking declaratory or injunctive relief, it is well established that the amount in controversy is measured by the value of the object of the litigation”. Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333, 347 (1977).

II. THE PARTIES

- 2.1. Plaintiff, Carlos Antonio Carrero, is of legal age, married, an insurance business executive, and, at the time of filing, a resident of Oviedo, Florida.
- 2.2. Defendant, Molina Healthcare of Puerto Rico, Inc. (hereinafter referred to as “Molina”) is a domestic, for-profit corporation chartered under the laws of the Commonwealth of Puerto Rico, with its principal offices located in San Juan, Puerto Rico. Defendant is a subsidiary of Molina Healthcare, Inc., a for-profit corporation chartered in the state of Delaware with principal offices located in Long Beach, California².

III. THE FACTS AND THE REMEDY SOUGHT

- 3.1. Both Molina and its parent company are engaged in the health insurance industry.
- 3.2. Defendant was chartered on February 28, 2014 and shortly thereafter became a major provider for Puerto Rico’s “Mi Salud” publicly-funded³ health insurance plan which was later renamed “Vital” by virtue of a contract with the Puerto Rico Administration of Health Insurance Services (hereinafter referred to as “ASES” for its Spanish language acronym).
- 3.3. The contractual relationship with ASES was the only business venture in which Molina incurred in Puerto Rico as it kept away from the private and individual health insurance policy markets.

² On May 2015, the Commonwealth’s Department of State issued an authorization for this company to do business in Puerto Rico.

³ The plan is funded by a combination of Medicaid funds with contributions by the Commonwealth and by the 78 municipal governments.

- 3.4. Plaintiff herein has over 40 years of experience in the health services industry during which he has steadfastly received stellar reviews from former employers.
- 3.5. In early 2017, defendant began efforts to recruit plaintiff into its organization
- 3.6. After a thorough recruitment process, on March 17, 2017, defendant notified plaintiff of a written employment offer for the position of Chief Executive Officer (hereinafter referred to as “CEO”) with a base salary of \$270,000.00 per year with an additional compensation package that included medical insurance, life/disability insurance, performance and participation in what the employer dubbed as the “Employee Stock Purchase Plan”, which entailed the assignment of stock in defendant’s parent company.
- 3.7. Plaintiff accepted defendant’s offer and began working for it on April 3, 2017.
- 3.8. Plaintiff’s execution of his duties as Molina’s CEO were always undertaken in an exemplary matter, earning no disciplinary actions or adverse evaluations from his employer.
- 3.9. On or around the summer of 2020 Molina advised ASES that it would cease providing services for the Vital program, which essentially meant that Molina was ending its business activities in Puerto Rico by August 2021.

- 3.10. Upon returning from sick leave, plaintiff was engaged by his employer in the negotiation of a paid severance agreement.
- 3.11. During the negotiation process, plaintiff was led to believe that, as of the termination date that was being discussed at the time, he would lose his employment no matter what and defendant would not fill his position during the few months between that date and the close of operations.
- 3.12. It was reasonable for plaintiff to believe defendants representations as, during that period he was charged with performing tasks directly leading to a cease of operations such as, *inter alia*, negotiating the termination of lease agreements, closing out vendor/supplier accounts and handling pending claims.
- 3.13. Between late May and early June 2020, plaintiff received from his employer a draft "Waiver and Release Agreement" which included incentives for plaintiff to resign with a termination date that was left blank in the copy of the document that was signed by plaintiff (simultaneous execution was not required), with the understanding that plaintiff would work until February 2021, although the third "whereas" contained a blank termination date.
- 3.14. The termination date was crucial as, had plaintiff made it to March 1, 2021, he would have been entitled to collect on his 2021 Employee Stock Purchase Plan.
- 3.15. Plaintiff was led by defendants' misrepresentations to believe that the February 2021 termination date was set in stone and therefore, the

incentivized resignation that was being offered at the time was the best deal that he could possibly hope for.

- 3.16. Based on the above, plaintiff signed the Waiver and Release Agreement in June 2020 but he was never given copy of the fully-executed document, with all blanks filled out.
- 3.17. On January 2, 2021, Molina prepared a letter addressed to plaintiff in compliance with the “Worker Adjustment and Retraining Notification Act”, advising him of his termination on **March 1, 2021**.
- 3.18. The above notwithstanding, an amendment to the Waiver and Release Agreement was signed on February 14 and 15, 2021 (again, simultaneous execution was not required) to add \$15,000.00 of additional compensation, a document that did state a concrete February 28, 2021 termination date.
- 3.19. Plaintiff indeed worked until February 28, 2021.
- 3.20. To plaintiff’s utter surprise and dismay, on March 29, 2021 Molina announced that Ms. Zivany García was being appointed to his former CEO position.
- 3.21. Had plaintiff known that defendant would have employed a CEO beyond February 2021, he would have not agreed to the proposed Waiver and Release Agreement, as he would have made it past March 1, 2021 and consequently he would have received the agreed amount of shares in Molina’s parent company which, as he had done in past years, he would have immediately sold at market price (we are talking about a solid,

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