

Promises, promises: When job offers are too good to be true

By **MARJO JOHNE**

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For more than a year, California-based Blue Pumpkin Software Inc. pursued Torontonians Melissa Antidormi to lead its expansion into Canada and Latin America.

The software company lured her away from a stable, high-paying job as channel sales manager for Canada with BEA Systems Inc., another California-based software firm, with promises of better pay, greater responsibilities and job security.

And she bit -- only to be terminated less than six months later, when the company changed its business plan to concentrate on the U.S. market.

The company gave Ms. Antidormi two weeks severance, an offer later increased to four weeks. That wasn't enough for Ms. Antidormi, who took Blue Pumpkin to court, suing for wrongful dismissal.

After two years and thousands of dollars in legal fees, last September, Ms. Antidormi finally won her fight against Blue Pumpkin, when it was ordered by an Ontario Superior Court judge to pay her about \$320,000 -- the equivalent of one year's salary, commission and bonuses -- plus her legal costs.

"I broke down when I heard the ruling," says Ms. Antidormi, whose performance at Blue Pumpkin was described in court by a former Blue Pumpkin vice-president as "outstanding."

"I cried because I felt that the judge got it -- really understood what I had gone through because of the actions of this company."

Ryan Hollenbeck, a spokesperson for Georgia-based Witness Systems Inc., which acquired Blue Pumpkin in January, says the company cannot comment on the particulars of Ms. Antidormi's case, which concluded before the acquisition took place. "And all the Blue Pumpkin people who were involved in the case are no longer with our company," he says.

Nevertheless, Ms. Antidormi's case serves as a cautionary tale for employees who may be so excited about a career opportunity and the carrots that a potential employer dangles that they fail to take steps to ensure that what they're being offered is what they're actually going to get.

The case also underlines the risks employers take when they induce someone to quit a secure job with enticements that they don't deliver. The clear message to employers: Be careful what you promise.

Indeed, although Ms. Antidormi's lawsuit was a wrongful dismissal case, the presiding judge based her decision primarily on previous cases involving employees who had

been induced to quit secure jobs by companies that promised greater career opportunities and, in some instances, job security.

Over the years, employees in Canada have successfully fought a number of lawsuits against companies that had persuaded them to give up years of seniority with a previous employer, and then failed to live up to their promises.

Ms. Antidormi's case stands out because she had worked for her previous employer for just over a year, but the court concluded she likely would have stayed longer had Blue Pumpkin not promised her job security for as long as she met the company's targets, says Caroline Ursulak, an employment lawyer who works at Ogilvy Renault LLP's Toronto office.

Also of note is the fact, she says, that Ms. Antidormi was awarded the equivalent of 12 months' salary, commission and bonuses -- even though she was employed by Blue Pumpkin for less than six months. The court ruled that Ms. Antidormi deserved 10 months' notice because Blue Pumpkin had misrepresented certain facts -- in particular, the job security she would enjoy as long as she performed well -- to make itself attractive to her as an employer.

Another two months were added to penalize the company for acting in bad faith after it had dismissed her. In her decision, the judge noted that Blue Pumpkin had ignored Ms. Antidormi's request for a reference letter and was delinquent in issuing a record of employment and paying outstanding commissions.

"What we're being told by this ruling is that there are consequences for employers who induce employees and make false statements about prospective job opportunities," says Natalie MacDonald, an employment lawyer with the Toronto law firm Grosman Grosman & Gale LLP, which represented Ms. Antidormi.

Lisa Bagin, a career consultant with Dean & Associates, a Toronto employment agency, says false promises are a common job-hunting hazard. In their eagerness to hire top talent, some companies will offer things they cannot deliver -- from guaranteed promotions and salary increases to years of job security.

For employees aggressively recruited away from good jobs, the fallout from misrepresented career opportunities can be particularly devastating, Ms. Bagin says. Most are in senior, high-paying jobs; when things don't work out, finding a similar position at the same level is often difficult, she says.

So what can employees being enticed away from current jobs do to make sure an offer dangling in front of them is really as attractive as it appears?

Krista Hiddema, a human resources consultant with the Toronto law firm Woolgar VanWiechen Ketcheson Ducoffe LLP, offers four words of advice: Do your due diligence.

"When I talk to individuals who are in the interview process, it never ceases to amaze me that they fail to ask the important questions."

Ms. Hiddema says it's important to learn as much as possible about the scope of the job as well as a prospective employer's short- and long-term business plans.

She suggests asking to speak to other employees to confirm what the company is telling you. And, contrary to popular advice that says don't talk about money in the interview, she says you should always ask about the details of the compensation package.

Ms. MacDonald notes that the fact Ms. Antidormi did as much research as she could about Blue Pumpkin worked in her favour in court. But there have been other cases where the courts found employees partly responsible for their misfortunes because they failed to do their homework before accepting a job, Ms. MacDonald notes.

Perhaps even more important than getting all the answers to your questions, Ms. Hiddema says, is getting them in writing.

She advises taking copious notes of everything said during the recruitment process. And when you get an employment contract or letter of employment offer, always have it reviewed by a lawyer before you sign on the dotted line, she says.

Richard Cantin, a Toronto-based sales and marketing expert, took the extra step of building a termination clause into his employment contract with Qwest Communications International Inc., a telecommunications company based in Denver, when Qwest offered him a job four years ago as regional president for Canada while he was working at the Canadian offices of UUNET, now MCI Inc.

"Qwest approached me and told me they were looking to have someone explore opportunities in Canada," Mr. Cantin recalls.

"I told them 'that's great, but you're asking me to leave a job I have on hand, so we need to prearrange something in case this thing doesn't pan out.' "

Mr. Cantin hired an employment lawyer to draw up an agreement that essentially required Qwest to pay him a certain amount of money should the company decide to let him go. When Qwest decided not to pursue an operation in Canada, it paid Mr. Cantin the amount specified on his contract's termination clause -- no questions asked.

Stuart Ducoffe, an employment lawyer at Woolgar VanWiechen Ketcheson Ducoffe, says it's not unusual for companies hiring high-level people to agree to longer termination-notice periods should a relationship not work out.

Still, he continues to see senior-level executives accept offers of employment that provide for only the minimum notice period set by provincial labour standards.

"They see an opportunity that they want, and at the honeymoon stage they don't want to think about the downside," he says.

Mr. Ducoffe says some people also fear a prospective employer will be offended, or view them as selfish, if they take steps to protect their interests in case a job doesn't work out.

Today, Ms. Antidormi, who has a background in advertising and media, hosts a TV show for a cable station in Toronto. But the volunteer position does not pay and Ms. Antidormi, who was forced to sell her house after she lost her job with Blue Pumpkin, continues to look for work.

Blue Pumpkin's failure to provide a reference letter, she says, has hurt her job search. She fears that prospective employers may see it as an indication that she did something that caused the company to terminate her.

"What a price to pay," she says. "But if any good is going to come out of this, I hope it's that employers realize that they have a serious responsibility to their employees. The employment relationship isn't just about business, it's very personal and it can control the outcome of a person's life."

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Protect against promises

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Want to protect yourself against false promises or misunderstandings? Here are expert tips:

Employees

Do your homework. Find out as much as you can about the company by looking up financial reports, articles, business analyst reports, websites and legal databases.

"Courts will want to see that an employee has done his or her due diligence," says Natalie MacDonald, an employment lawyer with the Toronto law firm Grosman Grosman & Gale LLP.

Do a reference check. Ask to speak with other employees to confirm what you've been told by the hiring manager and to get a better feel for the company.

Have the money talk. Don't shy away from discussing the compensation package in detail before you accept a job, says Krista Hiddema, a human resources consultant with the Toronto law firm Woolgar VanWiechen Ketcheson Ducoffe LLP.

Get everything in writing. Take notes about all that is said during the recruitment process and make sure you get a written employment contract or letter of employment offer reflecting all that was promised.

Get legal advice. Hire an employment lawyer to review the employment contract or letter of offer. Beware the company that pressures you to accept an offer right away, or discourages you from seeking legal counsel, says Stuart Ducoffe, an employment lawyer at Woolgar VanWiechen Ketcheson Ducoffe.

Build a safety net. Negotiate a termination agreement that will require the company to pay you beyond the standard notice period should things not work out.

Employers

Tell it like it is. Anything you say during the recruitment process can be held against you, warns Caroline Ursulak, a labour and employment lawyer with Ogilvy Renault LLP's Toronto office.

"It's fine to paint a bright picture but be brutally honest as well, making sure that all representations are accurate."

Buddy up for interviews. Have more than one person from the company present during interviews, Ms. Hiddema suggests.

Follow up after each meeting. Paul Hamilton, recruitment manager for Microsoft Canada Co. of Mississauga, says that job candidates can go through up to nine interviews with various managers. To make sure all are following the same script, Microsoft's recruitment co-ordinators follow up with job applicants after each interview.

Present the job offer in writing. "It really benefits both parties to put the employment terms and conditions in writing so everybody's expectations are clear," Ms. Ursulak says.

Give candidates time to review the job offer. Five to 10 business days is appropriate, Mr. Hamilton suggests.

Stay on top of third-party recruiters. Employers can be held liable for the actions of the headhunters they use to recruit employees, Ms. MacDonald says, so make sure they're not making false promises on your behalf.

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