

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 26-1307

DEVRAJ PATEL,
Appellant

v.

VMWARE INC.

On Appeal from the U.S. District Court, D.N.J.
Judge Edward S. Kiel, No. 1:22-cv-05731

Before: BIBAS, MATEY, and BOVE, *Circuit Judges*
Submitted: Oct. 19, 2026; Filed: Oct. 20, 2026

NONPRECEDENTIAL OPINION*

BIBAS, *Circuit Judge*. A deal is not over until it is over. Devraj Patel argues that VMware changed the terms of his commission for a deal after it was done. It did not. When VMware changed the terms, the deal was far from over.

Patel worked for software company VMware, selling its products and services to schools in New York and New Jersey. He earned a base salary of \$155,000 plus commissions as provided by semiannual goal sheets. From the start, VMware reserved the right to adjust commissions for “exceptional transactions,” such as single deals worth more than \$10 million or more than 100% of an employee’s quota. Starting in early 2020 (the start of fiscal year 2021), it arguably changed the default rule. Instead of reserving the right to adjust commissions down for “exceptional transactions,” VMware now reserved the right

*This is not an opinion of the full Court and, under 3d Cir. IOP 5.7, is not binding precedent.

to adjust them up from a default cap at 300% of the compensation plan’s metrics. Each year, Patel electronically signed and accepted the revised goal sheets.

In 2019, before VMware changed the terms of his goal sheets, Patel started working on a large sale to the New York City Department of Education. One part of the sale closed in August 2021—more than a year after VMware changed Patel’s goal sheets—and the other part later that year. The combined value of the sale was around \$20 million. Near the end of that year, VMware flagged the deal as an exceptional transaction. At the end of fiscal year 2022, it finished reconciling transactions and applied the 300% cap to his million-dollar-plus commission from the deal, cutting it in half.

Patel sued VMware in New Jersey state court for breach of contract, breach of the covenant of good faith and fair dealing, and violation of New Jersey’s Wage Payment Law. VMware removed the suit to federal court. The District Court granted summary judgment for VMware on all counts. Patel appeals only the Wage Payment Law count. We review *de novo*. *Tundo v. Cnty. of Passaic*, 923 F.3d 283, 286 (3d Cir. 2019).

Patel complains that VMware retroactively reduced his commission more than two years after he started working on the deal and four months after he closed the first part of it. Under New Jersey law, an employer must “[n]otify his employees of any changes in the pay rates or pay days prior to the time of such changes.” N.J. Stat. Ann. § 34:11-4.6(b). In Patel’s view, that law requires that VMware pay him according to the terms that were in place when he started work on the deal. And he thinks that those original terms, by vesting discretion in VMware over exceptional transactions, violate that law.

But Patel did not earn the commission until *after* the fiscal year 2021 changes took effect. The agreement was clear: Commissions are not earned until VMware finishes reconciling transactions and reviewing exceptional transactions, after the deal closes. And in New Jersey, the right to commission is defined by the parties' agreement. *De Benedictis v. Gerechoff*, 339 A.2d 225, 228 (N.J. Super. Ct. App. Div. 1975). So by the time Patel earned the commission, the 2021 fiscal-year terms were in effect, and the cap on the commission was the default rule. And even before those terms were in effect, he was on notice that VMware could reduce the commission for a deal worth more than \$10 million.

Resisting this conclusion, Patel relies on one New Jersey case, but it is inapt. In that case, the lower court had treated sales commissions as categorically different from wages and thus not covered by the Wage Payment Law. *Musker v. Suuchi, Inc.*, 331 A.3d 900, 904 (N.J. 2025). In reversing, the New Jersey Supreme Court held only that commissions count as wages covered by the law. *Id.* at 907–08. It said nothing about when those commissions are earned, when employers may change their methods for computing and paying them, or whether employers may retain discretion to cap them. New Jersey's Wage Payment Law ensures an employee's right to notice of changes to his wages, and Patel had notice. So *Musker* does not help him, and there is no need to certify the question to the New Jersey Supreme Court. We will thus AFFIRM.