



Much Obligated To You!

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Although it is obvious to state it, one of the most important facets of the relationship between a principal and an agent is as to what are their respective obligations to each other.

There are effectively two levels to this, and also fundamentally important potentially different consequences.

Level one is what is provided for in the Commercial Agents Regulations – as to this (and as many readers may already well know) Regulation 3 sets out what are the agent's duties to his principal (i.e.: – to look after the principal's interests, to act dutifully and in good faith, to make proper efforts to negotiate (and conclude) sales, to communicate all relevant information which is available to him, and otherwise to comply with all reasonable instructions), with Regulation 4 specifying the flip side of the coin, and being the principal's obligations to the agent – i.e.: – (likewise) to act dutifully and in good faith, to provide the documentation that the agent requires in relation to the goods which he is selling, to obtain and provide whatever information the agent requires and as is necessary to enable him to carry out his agency function properly, to let him know if sales are likely to be less than the agent could (otherwise) reasonably have expected, and to inform the agent (and to do so within a reasonable period of time) of its (the principal's) refusal, acceptance or non-execution of any sale which the agent had procured.

These duties are all basic and (in the sense that Regulation 5 (- "The parties may not derogate from Regulations 3 and 4") make clear that they are effectively mandatory) essential.

The second level as to principals' and agents' respective obligations to each other, is as to what is provided for in any written agreement, and/or what otherwise may be established by custom and practice.

These rights and obligations are (what I would label as being) supplementary to those set out in Regulations 3 and 4, and it is in respect to these that agents need to be particularly careful – for example, they need to be very aware that an obligation to have to achieve a particular minimum level of sales over a specified period (and, moreover, that any failure so to do may then be deemed as a fundamental breach of contract) is nothing stipulated, or even required, by the Commercial Agents Regulations, but (if agreed to by the agent) nevertheless becomes an obligation on his part, and which is in addition to the obligations which he always and anyway owes to every principal, pursuant to Regulation 3.

Not only that, but Regulation 18(a) enables a principal to then avoid what would ordinarily otherwise be its liability to have to pay compensation or an indemnity to an agent, where it [the principal] has terminated the contract because of a default on the part of the agent (such as, as an example, this failure to achieve a minimum level of sales), which would justify immediate termination under the terms of the contract.

As I say, and in the case of agents who don't have written agreements (as well as those who do), there may be other obligations which they have agreed to perform by virtue of those other obligations having become established by dint of custom and practice, over a period of time.

The point therefore about obligations which are agreed to in addition to those automatically taken on under the Regulations, is that those "supplementary" obligations may be very many and may be worded in such a way that the agent might be almost bound to fail to achieve them (and to then lose his or her prospective rights on termination, to compensation or an indemnity), no matter that, in actual fact, he or she might actually be an excellent agent.

The point about an agent allowing his or herself to become obligated to the principal to such an additional extent under the terms of a contract may therefore have nothing whatsoever to do with how good they might be as an agent or how well they carry out their functions, but everything instead to do with how deeply they looked into the terms of the contract which were presented to them, and whether they sought appropriately expert legal advice, at the relevant time.

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