

Q's and A's on agency law

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Q. I am informed by my principal that it is experiencing cash flow difficulties, and that that is the reason why I have not been paid my outstanding commission entitlement (which is already significantly overdue). What are my rights in this situation under the Commercial Agents Regulations, and what do you advise? As I further understand the position, my principal's main suppliers have been paid what they are owed, and I am not aware of any employees who haven't been paid their salaries.

A. My advice is that the Regulations contain "latest date" provisions as to when an agent should be paid his commission, and your agreement with your principal might moreover entitle you to receive your commission even sooner than those long stop dates, in any event. A persisting failure by a principal to pay its agent his commission on time may be tantamount to a repudiatory breach of contract, which, in turn, may then entitle the agent to resign his agency, and claim compensation/an indemnity. Clearly, if all other trading "partners" are being paid what they are owed, then it may be the case that your principal is regarding its obligation to have to pay you your commission, too lightly. You need to seek specialist legal advice, without delay, and before you take any action.

Q. My main principal (which I have been representing for approximately ten years) has recently written to me, "informing" me that, with effect from 1 August 2011, I am to lose a couple of Counties off of my territory area. I calculate that this will involve a loss of commission income to me of approximately 25%. I do not have any agreement in writing with this particular company, and this situation has not ever arisen before. In fact, no changes to the (unwritten) terms of my engagement with this principal have ever previously been made, without my agreeing to them. What do you advise that I do, and what are my rights?

A. Again, you need to seek specialist legal advice, straightaway, and before you take any action – time would appear very much to be of the essence here. Reason for the urgency is that what your principal appears to be intent on doing is coercing you into accepting a fundamental and very significant change to the terms of your agency, and, unless you are very careful, you may be deemed to have accepted the change, which ultimately may cost you dearly whenever (for example) an assessment is required to be made as to whatever may be your rights to receive compensation, on termination.

As with the previous question, if the principal does not promptly reverse its intentions, and thus back away from its attempt to make unilateral changes to the terms of your agency, then, depending on how (and how quickly) you respond, it may very well be deemed to be in repudiatory breach of contract.

Q. One of my main principals recently sent me a commission statement which appears to me to be inaccurate, in that no reference is made to a sale which I am fairly clear was concluded in the relevant period and which, if that is so, will have generated commission for me. What can I do in terms of verifying this information, and is my principal correct that I am not entitled to have access to its confidential sales data?

A. No, Regulation 12 provides that you are entitled to be supplied with all relevant information which [in the words of sub-Regulation 12(b)]:- "is available to [the] principal and which [the agent] needs to check the amount of commission which is due to him". That being so, and in appropriate terms, you should make clear your position in the matter and what therefore you require, to your principal.

Q. Whereas one of my main principals has recently started requiring me to complete its newly introduced "standard" call reports, I am concerned that the format of these reports makes them impractical, and that I would not be able to adequately comply with this request. I have held this agency for many years, and do not have any written contract – what is my legal position?

A. In the absence of there being any [relevant provision in any] written agreement nor any previous relevant "custom and practice", consideration of your position focuses on Regulation 3(c), which obliges you to "comply with all reasonable instructions" given by your principal. Clearly, however, as to what is a reasonable request in any particular situation depends on the relevant facts and circumstances and, that being so, I would need to establish with you factors such as what your principal is asking that you do, with what sort of regularity you would be required to comply, and the nature of your agency (i.e.:- what your function involves you having to do on the principal's behalf).

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