

*Be Careful What You Wish For:
A Rep's 'Expectation' Is Met, But Disappointment Follows*

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The Facts

Working from an oral agreement made in 1999, Steinke & Assocs., a Michigan sales rep firm, began rep'ing Loudon Steel, Inc., a metal products manufacturer. By October 2002, the relationship was starting to tarnish, and Steinke exercised its undisputed right to resign.

In its somewhat hasty letter of resignation, Steinke stated that its "only expectation" as to commissions is for payment of "commissions on the jobs that have been awarded to Loudon to date." Although no written or oral agreement had been reached on post-termination commissions, Steinke crossed its fingers and specifically identified two contracts with Ford Motor Co. on which it sought payment.

Construing the demand as a gift horse it couldn't possibly look in the mouth, Loudon quickly cut commission checks to Steinke totaling \$25,000 on the two Ford purchase orders awarded before the date of the letter, and hoped the matter was resolved. Perhaps because payment came relatively quickly, however, Steinke soon had a change of heart. Sizeable addendums had been submitted on the original Ford purchase orders, on which Steinke did not originally demand to be paid commissions. Later, Steinke brought suit under Michigan's Sales Representative Commission Act (the "Act") for commissions on the Ford purchase orders awarded after it resigned.

Finding that Steinke was the procuring cause of these additional sales, which were placed as a direct result of its efforts in procuring the original purchase orders, the trial court awarded double damages under the Act, attorney's fees and interest. Loudon appealed.

The Law

The Act does not directly address post-termination commissions, so when Steinke filed its motion for summary judgment, the issue for the court focused on a legal doctrine sales reps turn to with increasing frequency in commission disputes, the “procuring cause rule.” In its March 2006 decision, the Court of Appeals of Michigan recognized that state law enables a rep to recover commissions, whether or not it has personally concluded a sale, if its efforts were the procuring cause of the sale. This was also the trial court’s premise, and it required Steinke only to show that its efforts procured the two addendums to the Ford purchase orders, which significantly increased the quantities of racks that were ordered at the same price.

Unfortunately for Steinke, the appellate court went on to examine how the purpose of the doctrine is to ensure a manufacturer does not unfairly benefit from an opportunistic termination (*e.g.*, by axing the rep after it procured a sale but before the actual deal was solidified). Finding the purpose of the doctrine inapplicable in this atypical sales rep case where Steinke terminated and then demanded payment of the two orders placed by the termination date, terms met by the principal, the court held that “Absent an agreement that provides for further compensation,” Steinke was “fully compensated” for the work it actually produced.

Essentially rejecting the common sense argument that Loudon would never have received the enlarged rack orders had Steinke not procured the original orders, the court ruled: “The fact that additional work spawned from the original purchase order is of no import. That work was awarded after plaintiff terminated its relationship with defendant, and thus plaintiff has performed no services in relation to that new work.” Only if the original purchase orders had been “blanket” orders, or had the rep obtained a written

contract specifically granting post-termination commissions, might the result have been different, according to the Michigan court.

Comment

The court did not, of course, concern itself with the rep's practical ability to negotiate such post-termination terms, nor did it offer a principled basis for concluding that the rep who resigns a line, even if jumping before getting pushed, forfeits any extra commissions it had procured, while the rep who is terminated retains the ability to seek such additional commissions. While discouraging opportunistic terminations is one purpose of the Sales Representative Commission Acts passed in most states, such reasoning would appear to encourage the inherent inefficiency of having Michigan reps cling to failed lines with irreparable principal-rep relations whenever commissions may be due, rather than move on and seek out mutually productive relationships. This approach also represents an apparent turn away from the more receptive treatment the procuring cause rule has received in certain other jurisdictions that are willing to consider whether the principal would have been positioned to receive the continued orders had the sales rep not procured the original business.

While this unpublished opinion has little precedential value even in Michigan, it does serve to highlight the need for reps to be aware pre-termination of their commission rights, if any, on a post-termination basis. Even reps who routinely enter into written contracts with their principals often find when approaching the end of the relationships that the contracts fail to clearly establish post-termination commission obligations. Reps are well-advised to gain an awareness of the applicable law governing commission payments in advance of going to contract, and certainly before tendering a resignation.