
Recent Court Decisions

by MITCHELL A. KRAMER

A number of recent court decisions dealing with manufacturers' representatives point out the dangers lurking in failure to understand a contract with your principals.

Post-Termination Commissions

Chase v. Matsu Manufacturing was decided by the 6th Circuit Court of Appeals in August 2005. J. Michael Chase was in the purchasing department of General Motors for 28 years. After retiring from GM, Chase became a sales representative in the automotive supply business. He became a sales rep for Matsu, a Canadian manufacturer that hoped to use Chase's experience and relationships to sell product to GM. Despite Chase's experience and excellent bargaining position, he was bullied into signing the contract that was offered him by Matsu and did not seek any legal advice.

Chase not only succeeded in persuading GM to buy from Matsu, he also negotiated long-term contracts for Matsu to supply parts to GM. Despite being so successful, Chase was terminated without notice and told he would receive no more commissions either on existing or future business.

The contract said nothing about how long it was for or why

it could be terminated. Agreeing with most courts, the appeals court said that because the contract was for an "indefinite time," it could be terminated at will and without cause.

The contract said that if Chase becomes inactive in its sales management activities for Matsu "his commissions on new business will cease to be paid." Chase argued that he didn't become inactive, he was fired. Chase lost. Because the contract allowed him to be terminated at will and he was no longer active in Matsu's sales, he was not entitled to commissions on post-termination sales.

The silver lining on this gray case was that because Matsu had not even paid Chase commissions made before termination, he was entitled to those commissions, plus

multiple damages under the Michigan Sales Representative Act.

The issue of the right to post-termination commissions came up in two additional recent cases, *Maqtadir v. Micro Contracts* (6th Circuit, August 2005) and *Zauderer v. C&J Industries* (U.S.D.C., South Carolina, July 2005). Zauderer was a case handled by Barbara Kramer of our law firm.

In *Maqtadir*, a sales representative sent its principal a proposal to change its contract to allow commissions on orders placed prior to termination regardless of when they actually shipped. The principal never agreed in writing to the proposal, but the representation continued. When the sales representative was terminated, the Court held that he was only entitled to commissions on product

Because the contract allowed him to be terminated at will and he was no longer active in Matsu's sales, he was not entitled to commissions on post-termination sales.

shipped before termination as the earlier signed contract specified.

In *Zauderer*, the sales representative, Zauderer, had worked for several years to put together a complex deal involving the Segway Human Transporter. With Zauderer's help, Zauderer's principal C&J was given the right to produce the wheel rims for Michelin Tires, which went on the Segway, a product that was introduced with great hype and publicity. Rather than being rewarded for its hard work, Zauderer was terminated just before C&J signed a valuable contract with Michelin. Fortunately, Zauderer, while working on the deal, had signed a short agreement with C&J, requiring that C&J pay its sales representative, Zauderer, a five percent commission on the "value-added processes" in the Segway deal. Although C&J thought by terminating Zauderer before the contract with Michelin was signed that it could avoid paying commissions, the contract as drafted protected it, and commissions were — and are still — being paid. However, continuing a trend that has eroded sales representatives' protections under many state sales representative acts, the Court found that the South Carolina Sales Representative Act did not apply, so the sales representative was able to recover commissions *but was excluded from the other benefits of the act*.

Covenant Not to Compete

The issue of post-termination covenants not to compete was dealt with in *Emerson Electric v. Rogers* in a decision by the 8th Circuit Court of Appeals in Au-

Life of Contract Clause

In *Brawo v. Metals Enterprises* (California Court of Appeals, April 2005), the Court engaged in a long analysis of the facts and the law to determine whether a requirements contract is an "order" so that a rep must be paid commissions after termination. After pages of discussion the Appeals Court sent it back to the trial court to decide. A clearly written "life of the contract clause" could have saved a great deal of legal fees and wasted time.

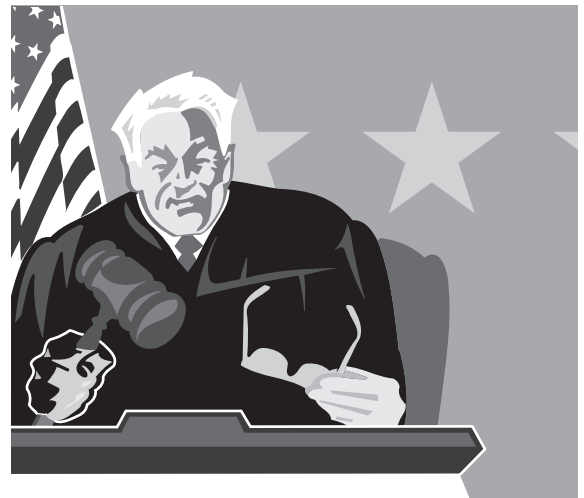
gust 2005. Rogers was a sales representative selling lighting products for Emerson and other lighting products for various principals. He had been in the business for 30 years. When he contracted with Emerson, Rogers brought a book of customers with him. However, the contract he unwittingly signed with Emerson provided that he could not sell competing products for one year after the relationship ended. Rogers' most important principal was Minka. When Minka began manufacturing ceiling fans, it pressured Rogers to give up Emerson and sell Minka's fans instead. Rogers complied. Emerson successfully sued Rogers to enforce the non-compete and prevent him from selling Minka's products. The court rejected Rogers' argument that the customers were his, not Emerson's, holding that a contract is a contract. Rogers was prohibited from competing with Emerson in his former territory for one year.

In *LD Circuit v. Sprint* (U.S.D.C. Kansas, April 2005), the court was faced with the issue of whether a sales representative's claim for breach of contract and tortious interference

could be capped at one month's commissions as the contract said.

In this case the rep argued that its three-year contract was improperly terminated for failure to meet quota when it had, in fact, met quota. Sprint said that the contract limited the sales representative, regardless of what the claim was about, to one month's average commissions. The contract clause read:

"Liability of Parties. In no event shall either party be liable for special indirect, incidental, exemplary or consequential damages, or loss of profits, arising from



**ABOUT THE
AUTHOR:**



Mitchell A. Kramer is a partner in the law firm of Kramer & Kramer, LLP, specializing in issues affecting manufacturers' representatives and distributors. The firm has offices in suburban Philadelphia, Pennsylvania and Ann Arbor, Michigan. He is a graduate of Dartmouth College and Yale Law School. To contact the firm of Kramer & Kramer call (800) 451-7466 or (734) 930-5452.

the relationship or the conduct of business under this agreement. Liability of Sprint in any and all categories, including but not limited to mistake, negligence, act or omission, intentional acts, and breach, shall not exceed in the aggregate, one (1) month's average commission paid to sales agent."

The Court held that under Kansas law the limitation was valid and the rep's damages were limited to one month's average commissions, about \$5,000. The Court said that unlike negligence cases where limitations of damages are not enforceable when one acts intentionally, such limitations are enforceable in breach of contract cases.

All of these decisions regard-

ing an agent's rights after he has been unfairly treated by his principal were decided on the language of the contract he signed before he began doing business.

A sales rep's contract with his principal is one of the most important documents the sales rep will ever sign. It is also a document that can have enormous impact on the rep's profitability. Before you sign it you must read it and understand how it covers each situation that might arise during and after your representation. Remember that the principal almost certainly hired a lawyer to draft a contract that would benefit its client, the manufacturer. The most successful sales representatives **read, understand and negotiate** their agency agreements. □

Copyright © 2006, Manufacturers' Agents National Association

One Spectrum Pointe, Suite 150, Lake Forest, CA 92630-2283 • Phone: (949) 859-4040 • Toll-free: (877) 626-2776 • Fax: (949) 855-2973
E-mail: MANA@MANAonline.org • Web site: www.MANAonline.org • All rights reserved. Reproduction without permission is strictly prohibited.