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May 2009

THE COURTHOUSE PERSONNEL DEPARTMENT

ILLINOIS SALES REPRESENTATIVE ACT

PROTECTS POST-TERMINATION COMMISSIONS

The Illinois Sales Representative Act (“ISRA”) creates a cause of action for a principal’s failure to pay “commissions due at the time of termination of a contract between a sales representative and principal ... and commissions that become due after termination.” That assumes, of course, that there isn’t a valid sales contract in existence that provides otherwise. This issue was discussed in the December 2008 Seventh U. S. Circuit Court of Appeals case of *AA Sales & Associates, Incorporated v. Coni-Seal, Incorporated*.

FACTS

Coni-Seal, Incorporated (“Coni-Seal”) was a family-owned automobile parts manufacturer. Originally, it made brake parts and then expanded its product line to include, among other things, chassis parts – parts related to an automobile’s suspension system. AA Sales & Associates, Incorporated (“AA Sales”) was a manufacturers’ sales representative; Gerald Saltzman (“Saltzman”) was its owner and sole employee. Saltzman began working with Coni-Seal in the 1980’s. According to Saltzman, in the early days of the parties’ relationship Coni-Seal offered few products and had no large national accounts. Saltzman helped Coni-Seal secure its first large, national clients and Coni-Seal rewarded him by naming him its “special national accounts representative” in 1987.

The parties memorialized their 1987 agreement in a one-page contract. The relevant parts of the parties’ agreement were as follows:

[1] AA Sales & Associates, Inc. will act as the exclusive agent for Coni-Seal on selected accounts.

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[3] Coni-Seal Inc. agrees to pay AA Sales a Commission of six (6) per cent on all products sold to the approved accounts....

[4] Either party may terminate this agreement ... [on] ninety (90) days written notice....

[5] If termination is given by Coni-Seal, they (Coni-Seal) agree to continue to pay AA Sales a six (6) per cent commission on all accounts that had been previously called on and sold by AA Sales. This commission shall continue to be paid to AA Sales for a period of 5 years.

In 1994, Saltzman alleged Coni-Seal gave AA Sales oral approval to solicit sales from AutoZone, a large retailer of auto parts and accessories. (This fact remained in dispute after the Courts' opinions set forth below, but it will be assumed to be true for this article.) Relying on Coni-Seal's representation that AutoZone was AA Sales' account, Saltzman made approximately fifty sales trips at his own expense to AutoZone's headquarters in Memphis, Tennessee. AA Sales was promised a commission based on Coni-Seal's sales to AutoZone. In 2001, Coni-Seal expanded its product line to include chassis parts.

The relationship between AA sales and Coni-Seal deteriorated. In 2003, Coni-Seal authorized a second sales representative to make sales calls on AutoZone. When Saltzman learned of this, he confronted Coni-Seal's president who, Saltzman alleged, told him that Saltzman would share responsibility for the AutoZone account and assured him that he would still be entitled to a commission. Later in 2003, Saltzman alleged that Coni-Seal asked him to split his AutoZone commissions with its other sales representative and that he refused.

In 2004, Coni-Seal began selling chassis parts to AutoZone through the other sales representative. Around this time, Saltzman alleged that Coni-Seal's president asked him to stop making sales calls on AutoZone, but again promised him that he would be paid commissions. Although Coni-Seal had made several million dollars in chassis sales to AutoZone since 2004, it did not pay any commissions to AA Sales on these sales. Saltzman thus filed suit against Coni-Seal.

AA SALES' POSITION

AA Sales alleged that Coni-Seal breached the parties' contract, as well as the ISRA, by failing to pay it the commissions it was due. It alleged that it labored for nearly a decade to convince AutoZone to do business with Coni-Seal, and that Coni-Seal wrongfully denied AA Sales commissions after it finally started making sales to AutoZone. AA Sales also claimed that Coni-Seal failed to pay it the post-termination commissions it was due based on Coni-Seal's sales to AA Sales' former accounts.

CONI-SEAL'S POSITION

Coni-Seal responded that AA Sales was not entitled to any commision because Saltzman was not actually responsible – AA Sales was not the “procuring cause” – for persuading AutoZone to buy chassis parts from Coni-Seal.

ISSUE

The primary issue in this case was whether AA Sales was entitled to commissions on Coni-Seal's chassis sales to AutoZone under the 1987 contract and the ISRA even though AA Sales did not actually procure them.

DISTRICT COURT OPINION

The U.S. District Court found in favor of Coni-Seal on the basis that there was no evidence that AA Sales actually effectuated Coni-Seal's sales to AutoZone, so it was not entitled to a commission.

THE APPELLATE COURT OPINION

The U.S. Appellate Court disagreed with the District Court on the primary issue of whether AA Sales had to prove that it actually procured the sales to AutoZone in order to be entitled to a commission. The Court held that the 1987 contract, by its plain terms, required Coni-Seal to pay AA Sales a commission on all sales to "approved accounts," i. e., accounts with respect to which AA Sales had been authorized to act as its exclusive agent. This language did not require that AA Sales actually effectuate the sales.

The Court rejected Coni-Seal's attempt to rely on Illinois' "procuring cause rule" in refusing to pay commissions to AA Sales. Under the Illinois procuring cause rule, sales representatives are not entitled to a commission unless they can show that they actually sold the property in question, were instrumental in bringing about the sale, or procured a purchaser who was willing and able to purchase on the stipulated terms. However, the procuring cause rule is merely a default rule and is inapplicable when a contract specifies other bases of fee recovery for a sales representative. Because the 1987 contract did not require AA Sales to show that it was the cause of a sale in order to be entitled to pre-termination commissions, the procuring cause rule did not apply in this case.

The Court, however, agreed with the District Court that the contract's fifth paragraph – according to which AA Sales would be entitled to post-termination commissions only for accounts "previously called on and sold" – required that AA Sales actually make sales to customers, rather than merely making contact with customers. In arriving at this conclusion, the Court opined that the words "called on" and "sold" had different, clear meanings in this context.

CONCLUSION

The Appellate Court criticized the parties for the informal (read: sloppy) manner in which they arranged their affairs that resulted in the disputes between them. Had the 1987 contract been well-prepared at the outset, reviewed periodically, and amended in writing for changed circumstances and agreements between the parties, this dispute would not have ended up in the courts. Please do not hesitate to contact us if we can assist you in either properly documenting a transaction or relationship, or advise you about the consequences of an "informal" arrangement.

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