

# Analysis of the commercial agents law essay sample

Law



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This paper focuses on the analysis of the 1993, the Commercial Agents (Council Directive) Regulations regarding the protection of commercial agents. The debate will focus on the aspects of the commercial law. A Commercial Agent or Agency is a self-employed arbitrator who has permanent responsibility to negotiate the purchase or sale of merchandises on behalf of the principal they are representing. All these aspects are related to the trade that is carried out between the involved parties. The law defines the responsibilities of the agent and the principal, the duration of the contract and the general outcome or consequences of termination.

The commercial agent is expected to negotiate, discuss and conclude all the transactions in the principal's name and on behalf of the principal. To establish and understand the subtext of the laws governing commercial agent's, the guidelines or policies guiding the involved parties ought to be first recognized. The number of different components within the commercial law definition to be considered when selecting an appropriate agent are pegged on the common rights and obligations possessed by the commercial agents (Bradgate & White, 2007).

The regulations set out and highlighted in the Regulations governing Commercial Agents (The Council Directive) were mainly introduced to align the laws of agencies in the UK with those of the European Union Member States. This paper will highlight a critical evaluation of the statement - Agents are in a vulnerable position with regards to their principals and, accordingly, stand in need of protection. The analysis evaluates the current roles of the Commercial agents' law (Regulations) through exemplifying the

key issues affecting agents and the subsequent approaches to solving the cases.

The 1993 Regulations governing Commercial Agents has gone long way towards providing agents with an appropriate level of protection, but much more remains to be done. The fact whether this is true or not is mainly dependent on the comparison that will be offered from various law case studies relating to the rules or regulations governing the Commercial agents' law.

### *Analysis of the Regulations Statement*

The key issues identified in the 1993 Regulations governing Commercial Agents are the issues of Compensation, location of operation and Interpretation of the contract. The right a commercial agent has to claim compensation or indemnity is a regulation put in place to ensure that an agent is rewarded for loss in accord with the section 17 of the Regulations governing Commercial Agents Directive. This regulation entitles commercial agent to reimbursement in the case of closure of the agency agreement.

For example, in the law case study of King v T Tunnock of the year [2000] is reflected upon as the most imperative case on the termination requirements of the Regulations governing Commercial Agents. In this particular case, an agency contract agreement was terminated by the principal but the contract did not cover or establish any entitlement for compensation or indemnity. In this case one can see that the agent was in a helpless spot since they were not protected by the regulations under comparable circumstances of the

contract termination. The level protection offered to the agent was marginal since there was reimbursement. Decisively, an additional action needs to be implemented to help protect negotiators with regards to their principal.

In a similar case involving *Decoro v Tigana* (QBD) of [2003] regarding compensation or indemnity on termination, the briefings clarified that compensation on termination was payable even in the scenario entailing contract agreement termination due to lapse of time. The law regarded and settled that the 'damage' that the agent underwent was rather a putative loss than an actual loss. This is a case contradicting the *King v T Tunnock* case which introduces arguable facts for criticizing the case since the level of protection the agent had was favored by the commercial agents' regulation. Though, the pre-contract statements ought to clearly define the terms relating to closure of the agency agreement due to lapse of time. This would protect agents by lessening the liability principals expect from the agency (In Burrows, 2013).

The commercial agent's regulation regarding compensation on termination of contract varies in different states, for instance, in France; it is conventional that payment is determined and calculated provisional for two years' loss of gross commission. It was decided that the commercial agent was eligible to reimbursement for the loss he suffered on termination and that the French methodology ought to be followed. This case scenario the agent was protected by the regulation due to the environmental location. This would have been different, let's say, maybe if it was in another State, the might have not been awarded, therefore this is an issue that needs to be

addressed to improve the protection of commercial agents around the world (Bradgate & White, 2007).

In addition to the specific issues mentioned under the Regulations, consideration needs to be given on the normal rules that sought to be applicable when determining whether a person is in a business relationship involving an employer and employee or if they are a self-employed agent. A 2003 court case issue (Julian Smith v Reliance Water Controls) highlights commercial agents' rules regarding interpretation, application and extent derived from the section 2 of the Regulations governing the Commercial Agents Directive. Mr. Smith was in a vulnerable position facing a possible contract termination with no compensation.

In this court case, Reliance hired Mr. Smith as a sales representative, under the contract of employment. Following a ruling, it was then decided that Mr. Smith would keep on working for Reliance on a self-employed basis. This prompted the involved parties to enter into a new agency contract. This mandated that termination was on a three month notification period by either of the involved parties, and precisely for the Reliance Company in certain circumstances. The agreement or contract by the agency agreement was then terminated by Reliance. The pegging question that was brought up was if Mr. Smith was a commercial agent conferring to the Regulations or if he still was regarded an employee of Reliance. Why is this important? Because, this statement helps in clarifying that as a Reliance Company worker, Smith would only have the chance for a modest compensation for damages for termination of the contract.

On the other hand, considering the Regulations governing the Commercial Agents Directive, if Smith was regarded as a commercial agent under the Regulations mentioned, then, his chances of gaining a substantial compensation was likely to be higher. Following the ruling that there was no ground for dismissal of the contract, Mr. Smith was only entitled to damages even though a new agency agreement was signed between the involved parties. The court failed to protect the Mr. Smith on the unjust claims that he had continued as an employee under a contract of service throughout. Additional action need to done to review this regulation in order to protect the agent.

The judge ought to have examined and determined that plaintiff was self-employed under the new agency agreement. Therefore, following an appeal by the plaintiff, the 1993 Regulations governing the Commercial Agents Directive applied in this case after the provision of the new written contract document. Hence, this new and unchallenged evidence (the) gave the plaintiff the edge for authorizing the statement in the Section 17 of the Regulations - the Commercial agent is eligible for compensation as following the end of the agent's affairs with the principal (Great Britain, 1994). This is a perfect example of how the Commercial agent's law has intensified the level of protection for the agent (Smith). The regulations should be reviewed in order to mandate the use of written contacts including witnesses in order to increase the level of protection (In Rose, 2014).

The obligation of a contract is to highlight the duties for both parties pertaining to the contract agreement. A case summary involving Crocs

Europe BV v Anderson & Albrecht successfully favored the claimant in an important Court of Appeal case. The Crocs Europe BV v Craig Anderson & Todd Albrecht the Spectrum Agencies case scenario shows how the agency was in a vulnerable position in relation to the Principal. This relates to the case (Gledhill v Bentley Designs) where the right decision was reached based on the need for business change and development. The regulations were not significant enough to offer a high level of protection. The fact that agents should not question the Principal's business decisions dictates a reasonable action for implementing the regulations review to limit the level of oppression subjected to agents. This is because some issues are not serious enough to allow the principal to dismiss the agency contract.

The ECJ (European Court of Justice) resolved that even when the principal lives and operates in a non-Member State, then the sections 17 and 18 of the articles of the Council Directive are applicable if the commercial agent conducted his business activities activity in another Member State. Out of the preliminary literature regarding the article 27 of the Belgian Law of 13 April 1995 concerning Commercial Agency Agreements (which executes the Council Directive), it is established that the Belgian representative intended to protect the commercial agent that was affiliated to a principal who's business was placed in Belgium (Randolph & Davey, 2010).

This issue led to the ECJ bearing in mind certain articles of the Council Directive as mandatory. Though, the variation in opinions between that of the Belgian legislator and the ECJ addresses the fact that the ECJ warrant the protection of an agent on the basis depending on the location of business

activities. Referring to the Belgian Law, the directive denotes the main place or location of business activity. This is a major flaw that affects the protection of the agent depending on the location of the principal. Agents are at risk of losing contracts just because their Principals operate in different EU locations. This is an issue that should be addressed in order to improve the protection of agencies.

In the case of Tony Vick's agency, the Vogle-Gapes Company got worried by Mr. Vick's performance standards. Consequently, the Court addressed the problem of the valuation of payment that Mr. Vick's agency would get due to the loss of contract. This can be related to the decision made in the case of (Lonsdale v Howard & Hallam Ltd). In both scenarios, evaluating the sum of compensation that the agents expected was subject to the Regulation section 17 (Great Britain, 1994). Both agents were in vulnerable position given that the Principal intended to award them based on their current performance status. The level of protection should be amended to allocate for better valuation of the goodwill that agencies obtain from Principal at the time of agency contract termination. This is because the agencies had managed to expand business sales and opportunities for their respective Principal therefore entitling them to reasonable and appropriate compensation claims.

Court proceedings between Michael Edwards v International Connection (UK) Limited is another case that aims to prove claims that were duly issued by Mr. Edward. The proceedings delivered claims related to Regulations section 7, 8, 12, 15 and 17 of the Regulations governing Commercial Agents. These



sections aimed to limit the loss or damages that Michael Edwards would incur by entitling him to commissions for transactions during and after the agency covenant is ended. The agent was in a compromising situation given there was a possibility that he was not entitled to periodic supply of information possessed by the principal's, e. g., company financial books. These are vital aspects that determine the amount of claim or compensation the agent stands to gain due to termination of agency contract.

Following the closure of the agreement, the resulting trials contributed to a number of arguable claims presented by both parties. The main interpretation of this particular case study contradicts with the case of *Tony Vick v Vogle-Gapes Ltd* in which Mr. Vick was not entitled to damages even though sections he had managed to acquire and increase the business opportunity and territory for the company. Much more needs to be done to protect agents from possible unreasoned settlement by their Principals. The law should take into account the issues providing facts that agents are vital to the Principals business growth. Reviewing these laws accordingly and using them consequently would go long ways towards increasing the level of protection for agencies.

The other vital issue addressed in the 1993 Regulations governing the Commercial Agents Directive is the issue regarding termination payment. In the case of *Douglas King v Tunnock Limited* (2000) S L T 744, this specific issue is discussed to clarify Mr. King's payment options. Mr. King had been a commercial agent, acting exclusively for the Tunnock Company, which was a biscuit and cake manufacturer, since the year 1962. Following the

termination of their contract agreement, in the year of 1994, the Court granted Mr. King a sum of £4, 762 as compensation conferring to the Regulations terms defining a commercial agent. Regulations ought to be lenient and appropriately favor an agent depending on the length or duration the contract lasted.

Consequently, Mr. King filed for an appeal to seek fairness in compensation. Tunnock Limited's option to provide an inadequate sum of compensation were based on the argument that compensation would be evaluated on any grounds that entail the market conditions, the type of goods, the relevant business practices, and the effect on Mr. King's customers had on the company. In relation to the Principal's decision to disregard the duration of contract agreement, the agent was prone losing the contract with minimal reimbursement. Therefore, much more should be done to improve on the regulations that protect agents from domination by the Principal especially regarding contract durations like exemplified in the above case.

The appeal granted to Mr. King because the court determined that the regulations section (7 and 17(6)) provided that there was no need for assessing the amount of compensation or loss based only on Mr. King's post-termination activities. Besides, given the long standing relationship the agency had with the company was enough reason for Mr. King to expect a high level of compensation. It is worth noting that when assessing or evaluating the worth of an agency, an individual ought to consider or factor in the agency's earning (income generation) capability since it defines the compensation parameters as well.

Conclusively, the most important points to consider include the need for the agent's and the principal's to properly draft agency agreements with individual perspectives that take into account the Regulations (Councils Directive). It is essential to note that it is not possible to entirely omit the use of the 1993 Regulations governing the Commercial Agents Directive if the information or facts provided by the Regulations relate to an arrangement between the parties. Although some of the agent's protections can be barred by both express and direct contractual provisions.

Nonetheless, it is possible to reject specific aspects which subsequently lessen the effect of the 1993 Regulations governing the Commercial Agents Directive. This possible precisely with regards to the principals, or conversely the contract can make interpretations that boost certain rights discussed by the Regulations (as far as the agent is concerned). All these aspects are related to the rules guiding the remuneration, termination and Termination payment - Indemnity or Compensation issues relating to business agency law agreements.

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