

BATTLES OVER SALES COMMISSIONS NEVER END

Two recent sales commission cases illustrate some common issues which arise when former employees allege that they are owed sales commissions. The first involved a terminated sales representative who claimed that he was due commissions on sales to an account after he was terminated. The former employer argued that the former salesman was not the procuring cause of the account, showing that the customer approached the employer first and another employee had put the sale together. The former representative only was put on the account after the relationship with the customer was solidified. The court agreed with the employer and affirmed dismissal of the former salesman's suit. Dana v. Top Die Casting Co., Inc., 2013 IL App (2d) 121000-U.*

The second case involves sales commissions owed a former owner of a business. There, the former owner entered into an employment agreement with the purchaser of the company under which he was due commissions on certain sales of the company. The former owner filed suit for sales commissions owed him under the employment agreement. The company was unable to produce summary reports for 34 months of the period of time for which the

former owner claimed he was due sales commissions. The court, therefore, allowed the former owner to prove the unpaid commissions based "on his personal knowledge and sales numbers for the surrounding time period." The finding by the trial court was upheld on appeal. Interestingly, the appellate court noted that it would have been difficult and costly for the former owner to inspect the voluminous available documents which could have verified the actual amount owed the former employer, indicating that under the circumstances he did not have to perform that burdensome task. Kay v. Prolix Packaging, Inc., 2013 IL App (1st) 112455.

*The "U" at the end of the case citation means that the opinion may not be used as precedent for other cases.

Bruce Schoumacher is a shareholder and Co-Chair of the Construction Practice Group of Querrey & Harrow, Ltd. He concentrates his practice in construction but also practices in several other areas, including professional liability, product liability, commercial law, insurance, and antitrust.

If you have questions regarding this bulletin, please contact Bruce via bschoumacher@querrey.com.

Disclaimer: This article is intended for informational purposes only and should not be construed as legal advice. It is not intended to create, and receipt of it does not constitute, an attorney-client relationship. Readers should not act upon this information without seeking legal counsel. This communication may be considered attorney advertising in some jurisdictions.

Querrey & Harrow, Ltd.

www.querrey.com

© 2013 Querrey & Harrow, Ltd. All rights reserved.