
Strategies To Protect Your Commissions And Lines While Working

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While representing a principal, there are many steps to take to reduce the chances of commission payment problems. These include checking your commission statements and notifying the company immediately when you detect errors. You should also get in the habit of saving all correspondence, records and documents to confirm all deals and actions; reviewing your contract periodically to be sure both parties are complying with all of its terms and documenting all promises made to you.

In fact, by taking proper steps while representing a principal, you can help your case in the event you are terminated unfairly and can strengthen your claim immeasurably if it becomes necessary to take legal action down the road. All of these points and many more will now be explained in detail.

How to Obtain a Proper Accounting

Proper accounting is vital for any agent who works on a commission basis. Agents should of course rely on the honesty and integrity of their principals as to the accuracy of the figures that are presented to them. In most instances companies do give a proper accounting. However, some companies may not be as good at record-keeping as others. Following are some examples of inaccurate recordkeeping practices that can cause conflict:

- Failure to record sales properly;

- Issue inaccurate deductions for credits and returns;

- Do not give proper credit for all shipments into your territory; and

- Credit your sales to another agent and only pay commissions after drawing these errors to their attention.

These are just a few of the mistakes that either intentionally or unintentionally occur. You must be aware of these problems in order to avoid them. For example, the fact that you may get a computer print-out commission statement does not mean you are obtaining a 100 percent accurate accounting. This is because duplicate invoices are often photocopied in error. In addition, some companies give each of their sales agents a different identification number. If these numbers are fed into the computer incorrectly, other sales agents will receive credit for your sales.

You should also be particularly careful if copies of invoices and reports are delayed and the company informs you that you will receive supplementary sheets at a later date. There can be legitimate reasons for this, but repeated delays can be an early warning sign. Agents often forget to collect or review their sheets and lose valuable commissions.

When you receive your commission statement (which should always be furnished to you on at least a monthly basis) it is wise to spend some time spot-checking its accuracy. In doing so, you will be able to determine whether your principal has furnished you with a 100 percent accurate commission accounting.

Even auditing accountants sometimes have difficulty discovering mistakes in a company's internal books which reflect its marketing, distribution, billing and collection practices, particularly in small closely-held manufacturing concerns.

Also, be aware that commission statements can be in error. For example, companies sometimes use credit memos. These memos are issued for the purpose of reducing a customer's account balance by the amount of the customer's incorrectly allocated payments. Your commission statement should reflect any legitimate credits issued to the customer for returned goods, to correct shipment errors, make good on damaged goods and to fix billing mistakes. However, a wrong credit memo could "support" a reduction of an agent's commission on the statement. After checking their commission statements, including the wrong credit memo, many agents would be satisfied. Another way the agent could catch this problem would be to call the account to ascertain if credit was issued.

When calling your customer, keep a very positive attitude. Begin by asking whether your merchandise was shipped on time. Ascertain if he/she is satisfied with the product that was received. Anticipate complaints or requests for returns. Inquire about the volume of goods received. By being friendly and keeping the customer informed of any price fluctuations, delivery dates and other market news, you may gain the information you seek while maintaining positive relations.

If you discover that an error has been made, attempt to get copies of any and all documentation such as the revised invoice, bill of lading or the customer's signed copy of the shipping document. Your objection to the company will be much stronger with proof in hand, and you must save these documents in the event you decide to seek further remedies later on. For example, in a lawsuit you may have to make specific references to accounts or be required to furnish the dates of the sales in addition to the products that were sold. By demonstrating irregularities with the documents you obtained, your arguments would be enhanced.

The faster you get these documents, the better; so request these materials immediately. This is because you want to inform your principal of any errors as soon as possible. In some states, if you receive a commission statement, cash the check and fail to protest the incorrect commission sum, you may be deemed

by conduct to have accepted the reduced amount. Thus, it is important to document your protest and act immediately. This is done by sending a letter by certified mail, return receipt requested.

If you do not receive a response to the letter you send, you should consider calling the principal to discuss it, or writing another letter. Although it is best to write another letter, the principal may view such a tactic with disdain. However, if you are suffering a large amount of unfair deductions and reductions from your commissions, you may not wish to represent the principal anyway. Documenting the alleged unfair actions by the principal in letters while working will help you later on when you contemplate action.

In summary, in order to guarantee an accurate account, you must:

1. Before you begin working with a principal, negotiate to receive copies of all invoices, order acknowledgments and copies of other pertinent records, together with a representation that the company will maintain an accurate set of books and records and provide you with complete and detailed commission statements. This should be confirmed in writing.

2. Check your commission statements carefully when you receive them. Pay special attention to the commission rate you received on earlier orders, and the amount and the date of shipment to that customer. Carefully review all house accounts, accounts that are sold at a reduced rate, credits and shipping charges that have been applied against your commissions. Be extra careful to review computer-generated statements and be sure that all of your orders have been credited to you and not someone else.

3. Notify the company immediately when errors are discovered. Document all mistakes in writing. Merely calling your principal and discussing the problem may not be good enough, particularly if you later determine that the error was only the tip of the iceberg. Draft all letters carefully and send them by certified mail, return receipt requested, to prove delivery. Follow up your letter with additional letters if the company fails to promptly respond to your claims.

4. Be prepared to lose the line by taking such ac-

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tion. The reason is that in some typical agent-manufacturer agreements, either party can terminate the other without cause (i.e. without a reason) merely by sending notice a specified period of time in advance (i.e. 30 days). If you are making a large amount of money with the line, and believe you have discovered discrepancies,

then it may not be worth protesting the company's actions from a practical point of view, but it is prudent to draw their attention to these discrepancies.

Take Action Immediately When There is a Problem and Verify Improper Actions by the Principal in Writing

In many cases, it has been found that a sales agent and the principal agreed to a modification of their prior written agreement merely when their actions demonstrated a change in their working relationship. If the company decides to lower your commission rate and you do not object, a court could decide that you consented to the change by your actions even though you never signed a formal agreement to that effect. Even if you signed a written agreement which states "no change, addition, or erasure of any portion of this agreement shall be valid or binding upon either party unless reduced to writing, consented to and signed by both parties" courts may allow the contract to be modified orally or by actions even if the change is not in writing.

All agents are advised that when the company makes changes in their contracts that they object to, a letter must be sent objecting to the changes. For example, if the company decides to reduce your commission rate, or draw, or change your territory, and your contract forbids any changes unless they are agreed to in writing by both parties, send a letter to document your protest where applicable. The reason is that if you don't take steps to indicate your dissatisfaction (and oral protests are hard to prove), you will probably be viewed as

having consented to such changes by your conduct. However, by taking proper action and sending such letters protesting a company's actions, you can strengthen your position should you seek damages for the company's wrongful acts via litigation.

Always save a copy of such letters and send them by certified mail, return receipt requested to prove delivery any time the company fails to act in a manner as contemplated by your agreement.

Recognize the Importance of Saving All Records

The next important consideration to remember while representing a principal is the requirement of saving all correspondence, orders and documents confirming all deals and actions. As indicated above, this includes sending the company (and saving a copy) a letter by certified mail, return receipt requested to prove delivery, any time the company fails to act in a manner as contemplated by your agreement.

It is crucial to save all commission statements, copies of commission checks, letters, memos and other documents received by the company and sent to them while representing the principal. All of this information may be useful in ways you cannot imagine! For example, most agents fail to copy all commission checks after receiving them. Copies of these checks are useful because they indicate the bank, address, account number and identity of the payer. For example, when reviewing same, you can often determine if you are being paid by a parent company or a subsidiary, whether the manufacturer conducts business as a corporation, partnership or sole proprietorship, and whether there are any restrictions on the check which have significance. Also, if you have a record of the account number and the bank's address, you may be able to use this information if you are considering filing an action to attach and freeze the account in appropriate proceedings. Needless to say, you can't do much without this information.

When an agent requests a legal review to determine if he/she has a strong case, the more complete the file, the more accurate an opinion a lawyer can provide. At best, agents should provide the following if possible:

- A copy of the written agreement between the parties;
- Copies of any letters or formal agreements modifying or superseding the agreement;
- Copies of all letters sent to and received from

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the company while representing them;

- Copies of all pertinent documents received from customers;
- Copies of all memos received from sales managers, including favorable letters of reference or performance;
- Copies of all commission statements, checks and letters sent by the agent protesting mistakes with the statements received;
- Copies of the letter of resignation or termination sent or received;
- Copies of the response to the company's letter of termination.

After all of this information is reviewed, an attorney can then make a determination of the probability of success with your case. Obviously, the more information that is provided, the more accurate that opinion can be. Additionally, when proper action was taken (e.g. letters were sent protesting and seeking to correct a company's wrongful conduct), the agent will have strengthened his/her position should damages be sought via litigation. By taking such action and saving copies of the letters sent, your claim can be strengthened all around.

Anticipate Future Lawsuits and Plan Ahead

If you believe that a future lawsuit with your principal is inevitable, you can get an edge by planning ahead. For example, it is easier to obtain pertinent documents from customers while you are still working with them for a particular principal than after. (Note: You could be viewed as violating the law by contacting them and requesting property belonging to the company after you no longer represent the principal.) The same holds true for commission statements, copies of invoices and other pertinent documents you need (to strengthen your case) from the principal. For example, agents sometimes sign contracts but don't keep a copy. They then get terminated and ask the former principal for a copy of the agreement to determine their rights. Principals often refuse to provide them with copies of the agreement, especially when it is in their interest not to do so. Obviously, your chances of obtaining a copy of the agreement and other documents are greater when you are still representing the principal and have good relations.

The key to strengthening your case is to evaluate your chances of success before you are terminated or resign and to act accordingly if possible. For example,

if the company sells the division you are representing while you are under contract with them, you may want to know how to protect your relationship and commissions vis a vis the purchasing (new) principal. Or, if you are not receiving your commission promptly, it may mean that the company may be heading toward trouble and you should know what your rights are, the ramifications of this potential problem and what to do about it now.

Agents who believe they have been wronged should consult with an attorney as soon as practical and not wait until after their relationship with the manufacturer has been terminated. If you perceive problems with the manufacturer, your lawyer may be able to recommend additional strategies, such as requesting a copy of the agreement, sending a final letter of protest, requesting a meeting to discuss and attempt to resolve any difficulties, etc., which may not be available after the agreement is terminated and which can enhance your case if litigation proves necessary. □



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