

4 July 2007

## **Commercial agents are not entitled to two years' commission as compensation**

Commercial agents are entitled to compensation on the termination of a commercial agency agreement for loss of the right to future commissions which the proper performance of the agency contract would have procured the agent.

The House of Lords decided today in its judgment in the case of *Lonsdale v. Howard & Hallam Limited* that the value of this compensation is the amount which the agent could reasonably be expected to receive for the right to continue to perform the duties of the agency and receive the commissions arising from the agency.

Lord Hoffman emphasised that the value of the compensation was not what the agent expected to receive but what an agent would be given in return for the goodwill of the agency. The House of Lords rejected the suggestion that the French method of calculating compensation by valuing an agency at twice the average annual gross commission over the previous three years was the appropriate method of calculating compensation.

The decision of the House of Lords ends the uncertainty about how to calculate the amount of compensation to be paid to a commercial agent on the termination of a commercial agency which gives rise to a right to compensation under the terms of the *Commercial Agents (Council Directive) Regulations 1993*.

Mr. Lonsdale was a commercial agent for Howard & Hallam Limited, a shoe manufacturer based in Leicester, from 1 January 1990 until 30 June 2003 when his principal ceased trading and Mr Lonsdale's agency terminated on reasonable notice. As there was no written agency agreement between Mr Lonsdale and Howard & Hallam Limited, Mr Lonsdale had a statutory entitlement to compensation under the *Commercial Agents (Council Directive) Regulations 1993*. Howard & Hallam Limited paid Mr. Lonsdale £7,200 compensation. Mr Lonsdale claimed additional compensation valued at £19,670, in total roughly equal to two years' gross commission calculated by reference to the average of the last five years of his agency. In the Oxford County Court Judge Harris QC awarded Mr. Lonsdale additional compensation of £5,000. The Court of Appeal and now the House of Lords dismissed Mr. Lonsdale's appeals and Mr. Lonsdale's request that the matter be referred to the European Court of Justice has been declined.

The practical points of note arising from the case are:

1. The amount of compensation to be paid to a commercial agent on termination of an agency is to be valued by determining what could have reasonably been obtained for the agency at the date of termination;
2. The amount of compensation is to be valued on the assumption that the agency would have continued and the hypothetical purchaser would have been able to properly perform the agency contract;
3. The present value of the future income of the agency must be discounted by an appropriate rate of interest when valuing the agency;
4. Principals and agents should be able to agree on an appropriate valuation of an agency with the benefit of professional advice and without necessarily obtaining a full scale valuation involving the checking of income and expenditure.

It is also worth noting Lord Hoffman's comment that a principal would be entitled to pay no compensation to a commercial agent on termination of his agency if the agency was worth nothing for example because, as in the present case, the business of the principal had closed.

Finally, it is worth noting that if the parties had entered in to a written agency agreement, the litigation may never have arisen.

*Schofield Sweeney's commercial and competition team will assist you to implement and operate efficient commercial arrangements that meet your needs.*

*If you have any questions concerning commercial agency or your commercial arrangements, please contact Andrew Finfer [andrewf@schoeys.com](mailto:andrewf@schoeys.com) +44 (0)113 220 6285*

**St James' House, 28 Park Place, Leeds LS1 2SP DX 26409 Leeds Park Square**

Phone +44 (0) 113 220 6270 Fax +44 (0) 113 2439326 e-mail [law@schoeys.com](mailto:law@schoeys.com) Web [www.schofieldswweeney.co.uk](http://www.schofieldswweeney.co.uk)

This firm is regulated by the Solicitors Regulation Authority. A list of the members is available for inspection at our registered office. Schofield Sweeney is a trading name of Schofield Sweeney LLP, a limited liability partnership incorporated in England and Wales with registration number OC 303400. Registered office: Church Bank House, Church Bank, Bradford, BD1 4DY  
© Schofield Sweeney LLP 2007

The information and any commentary in the law contained in these bulletins is provided free of charge for information purposes only. Every reasonable effort is made to make the information and commentary accurate and up to date, but no responsibility for its accuracy and correctness, or for any consequences of relying on it, is assumed by Schofield Sweeney. The information and commentary does not, and is not intended to, amount to legal advice to any person on a specific case or matter. You are strongly advised to obtain specific, personal legal advice about your case or matter and not to rely on the information or comments in this bulletin.