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Case Study

All Real Estate Brokers in the UAE: Entitlement to Commissions Notwithstanding the Employer's Actual Redemption of the Deals' Outcome from Clients

STEERING LEGAL

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The Mere Completion of a Deal by an Employee Entitles the latter to Compensation for the Works Done in spite of the Fact that the Employer has not yet Been Reimbursed by the Clients for the Relevant Closed Deals

Overview

Commissions construe an integral part of many businesses, serving as a performance-based incentive structure that rewards employees for achieving sales targets and driving revenue growth. Commissions constitute a type of compensation, variable but not fixed, that is directly dependable on an individual's sales or business performance. They are typically calculated as a percentage of the sales revenue generated by an employee or a team and are designed to motivate and incentivize employees to maximize their efforts in conducting sales and meeting, yet exceeding specific targets. Directed by the aim to restrain the risk associated with partnership, shareholders tend to limit their liability through their choice entity type. Commissions play a cornerstone role in driving sales performance and motivating employees in various industries. By linking compensation directly to sales achievements, businesses create a performance-driven culture that aligns the goals of the organization with those of its employees. The ultimate target towards which commissions are directed resides in aligning the interests of employees with the goals of the organization. Commissions are often used in sales-driven industries, such as retail, real estate, insurance, and finance, where motivating employees to generate revenue is crucial for business success. The judicial system in the United Arab Emirates marks numerous disputes related to commissions between employees and employers. Despite various attempts of remedies executed by employment parties to prevent the occurrence of such disputes which might include but is not limited to clear-provisioned agreements, accurate commission calculations, and commitments to prompt commissions settlement by employers, innumerable disputes still take place between parties to employment relationship.

Legal and Judicial Framework

In the United Arab Emirates, the legal framework for commission payments to employees is primarily governed and regulated by the UAE Labour Law (Federal Law No. 8 of 1980 and its amendments namely the Federal Decree No. 9 of 2022). The Article 60 of the Federal Law No. 8/1980 regulates the commission payments. According to the said article, it has been stipulated that in the event that the salary of an employee comprises a commission or any other form of percentage of sales, the employer has the obligation of specifying the method of calculation related to the commission and all of the requisites for its eligibility in the employment contract entered into between the employee and its employer. That said, the

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legislator in the UAE imposed a requirement pursuant which the employment contract should outline and indicate the commission structure, the terms and conditions related to calculation methods, the timeline during which the commission shall be payable, and any other applicable requirement of thresholds. The timing associated with commission settlements shall be explicitly specified in the employment contract or any related applicable internal policy. In this regard, it is worth noting that most employers tend to pay commissions on a regular schedule for instance monthly basis or quarterly basis. Nonetheless, other employers may have different timelines dependable on successful completion of sales or any other performance metrics. On a similar note, the Article 61 of the same Federal Law has outlined crucial elements related to the recovery of commission settlements. According to the latter article, it is conceivable for an employer to recover commissions paid to an employee in the event the contracted requirements agreed upon in the contract for the eligibility for such rewards are not fulfilled, for instance in case of sale deal's cancellation or products' return and refund. The formerly referenced articles construe the general legal framework for commissions payments to employees in the United Arab Emirates which has not been amended after the implementation of the new labour law in 2021. However, the application and interpretations of laws related to commission payments may vary in practice on the judicial level in the UAE. Courts tend to follow customized interpretations and considerations when adjudicating disputes related to commission payments between employers and employees. In some cases, courts may rely on the specific language and provisions of the employment contract or commission agreement for the purpose of highlighting the rights and obligations of the parties regarding the topic. Courts may also take into account the personalized circumstances, evidence, and arguments provided by both parties during legal proceedings. The majority of employer, supported by case precedents, abstain from paying the commissions to employee who has successfully closed a deal with the client, until complete reimbursement of the employer by the client. This is extensively witnessed in the real estate field. Nevertheless, directed by the aim to empower employees, who are often deemed the weaker party in the employment relationship, the Court of Cassation in Dubai has taken a significant and distinguished stance on commission payments.

Judgment Under Study

The case under study is a verdict rendered by the Dubai Court of Court in 2010. Pursuant this notable judgment, the Court of Cassation has ruled in favor of employee, granting the latter the right to receive commission payments even if the employer has not yet received the outcome of the sale from the client. The decision underlines the Court's commitment to protecting and preserving employees' rights and entitlements through ensuring that they are not being unfairly deprived of their entitled commissions. By entitling employees to obtain

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commissions prior to any receipt of payment from the clients by the employer, the Court of Cassation recognizes the importance of emphasizing the employees' efforts and performance, for the purpose of incentivizing them, notwithstanding any and all other external factors that may delay payment from the related client. According to the provisions of the verdict it has been agreed that: "*As for the employee, the latter shall in no case bear the company's losses, but rather he shall receive his percentage from the profits resulting from the sales that he undertakes for the account of the company constituted in a commission, notwithstanding the method of paying their value, cash or into instalments, early or deferred. The employee is not responsible of the company's budget, or the type of products being sold by the employee. The latter is eligible for immediate commission payment regardless of the type of debt to be collected by the employer, whether certain and secured debt or debt at risk not be collected from clients. The employee shall not be responsible of the logistics and shall be entitled to commissions notwithstanding any other external factor*".

As per the Court's ruling, the employee's commission shall be paid immediately after being calculated based on the overall generated sales, which might include both mmediate and deferred transactions from clients to employer. For further elaboration, in instances where sales result in complex debts, guaranteed collections, or doubtful debts, the employee will still be eligible for commission unless expressly agreed otherwise. The ruling shed light on the employee's right to be compensated fairly for their sales efforts, regardless of the outcome or payment status of individual transactions. It serves to protect the worker's interests by ensuring that they receive their entitled commission from the overall sales results, irrespective of any specific circumstances or payment arrangements. That said, the Court has stated that in the absence of any explicit agreement to the contrary, the general principle remains that the employee shall be immediately compensated commission based on the profits resulting from the sales they undertake for the company.

Conclusion

In conclusion, it is worth noting that this particular judgment reflects the stance of the Court of Cassation in Dubai with regards to the commission's payment to employees pursuant this specific ruling, and that other courts in the United Arab Emirates may have different interpretations or consideration in relation to similar topics. The judgment under study safeguards the employees' financial interests and incentivizes them to actively contribute to the company's sales efforts, as their commission is tied directly to the overall profitability of the sales they generate regardless to the payment timeline of the sales' outcome from the clients to the employer.

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