

Sometimes a Bad Contract Can Be a Good Thing

BY RANDALL J. GILLARY

I recently met with two clients of mine who worked together in a small sales rep agency. Their principal wanted them to start using a customer relationship management (CRM) software program to record sales contacts and a myriad of other information. They had both read my book and know that I caution salespeople about providing all their sales contacts and other details of their day-to-day work to their principal because such detailed information can be used to lay the foundation for their principal to go direct. In fact, one of the chapters in my book is entitled “Beware of the New Sales Manager.” Most sales reps are aware of instances where the new sales manager wanted to get all the customer contact information and to accompany the sales rep on all sales calls. The obvious concern is that the new sales manager is laying the foundation to go direct, terminate the sales rep and use the commissions’ savings to fund his bonus plan. This was in fact my clients’ concern.



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Another reason why my clients were objecting is that they looked at the time spent providing all the information as time that would be better spent soliciting new business. Plus, they objected to their principal micro-managing their sales activity.

The Sales Representation Agreement

My analysis always starts with the sales representation agreement. Interestingly, the sales representation agreement in this case was one of the most onerous that I had ever seen. The principal manufactured automotive production parts which

have a typical life of approximately five years. Some of the more onerous provisions were as follows:

- The principal had the right to sell directly to the sales rep's customers without compensating the sales reps. This is almost never a good idea.
- The principal could change the products covered by the Agreement at any time and for any reason. This means that they could eliminate the profitable products and leave the sales reps with the dregs.
- The sales commission rate could be changed (i.e., reduced) at any time and for any reason on 30-days' notice.
- The Agreement could be termi-

nated on 30-days' notice and commissions would only be paid for 90 days after the effective termination date.

- There was no asset sale protection.

My Recommendation

My clients expected me to recommend that they take a hardline approach and fight the attempt to implement the CRM program. They were quite surprised by my advice. There were a few key facts here that deserve mention. These were as follows:

- The Sales Representation Agreement was signed in 1996, 22 years ago.

My clients expected me to recommend that they take a hardline approach and fight the attempt to implement the CRM program.

- The commissions were running at the rate of about \$1 million per year.
- The principal genuinely looked at the sales reps as valuable members of the team and respected them.

I proceeded to tell them all the good things about their relationship with their principal. These included the following:

- They were earning about \$1 million per year. Duh!
- They had a long-term relationship and there was no indication that it was going to end at any time soon.
- The principal was family-owned, and the family had controlled the business for decades.
- The sales reps had close personal relationships with key family members.
- The principal valued the relationship and trusted the sales reps.

Frankly, the sales manager was quite upset that the sales reps did not seem to trust and respect the principal as much as the principal trusted and respected the sales reps. I told my clients that a good relationship with their principal founded on trust

and respect can sometimes be more important than anything contained in a written contract.

I learned long ago that having a good contract does not mean that the principal will comply with the contract. Having a good contract means that you will likely win the lawsuit, but it can take a long time to make that happen. There can be a fair amount of economic and emotional pain in the interim.

When I proceeded to tell my two clients that they should suck it up and call the sales manager to let him know that they would be happy to comply with his request to use the CRM software program, they laughed. One of them said that it sounded like the sales manager called me and told me what to say. Obviously, that did not happen. I told them that a good attorney sometimes must be like a good psychologist. Sometimes my job is to help my clients do what they already know they should do. The reason they laughed is that they knew I was right.

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I had a similar situation about a month prior. The owner of a small sales rep agency who had represented the principal for many years was retiring and the owner of the principal wanted to hire the remaining sales rep as an employee. The principal in this case was also a family-owned business. The sales rep was given an employment contract that was almost as bad as the sales representation agreement mentioned above. I would also point out that my client only wanted to work about another five years or so before retiring. My client talked with the owner of the principal. The owner looked him in the eye, shook his hand and said that he wanted the former sales rep to be a part of their team and that they would take care of him. The principal had many long-term employees and the employees were always treat-

ed like family. I told him that if it was me, I would take the deal.

Conclusion

Having a good contract does not necessarily mean that your principal is going to voluntarily comply with the contract. I often tell my clients that there have been many sales reps over the years who have made a lot of money on bad contracts. The objective is always to maximize your

commission revenue. Sometimes you should just trust your gut and take a chance. This does not mean that sales reps should channel Pollyanna but sometimes it is a good idea to put your faith in the people that you are dealing with. The trick is knowing when.

MANA welcomes your comments on this article. Write to us at mana@manaonline.org.

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