

# Terminating and Replacing a Commercial Agent in the UAE

by El-Ameir Noor - a.noor@tamimi.com - Abu Dhabi  
Zane Anani - z.anani@tamimi.com - Dubai

August 2018

In the UAE, commercial agents are granted numerous statutory rights under the Commercial Agency Law (Federal Law No. 18 of 1981, as amended).

These rights are designed to protect an agent who may devote considerable effort and costs to build a profitable market for products or services.

In many cases in the UAE, a terminated agent may use the Commercial Agency Law to prevent a foreign principal from registering a replacement agent unless the original agent is paid what is due under the original commercial agency agreement.

In two recent cases, Federal Supreme Court Case 811 of 2017 and Federal Supreme Court Case 814 of 2017 both dated 27 March 2018, the agent's performance was poor and it was clear that he was in breach of a commercial agency agreement. As a result, he was terminated and the commercial agency struck off the Ministry of Economy's register. The Federal Supreme Court found that the agent was unable to prove that the termination was unjustified and was not entitled to receive compensation from the principal. The agent was also unable to preclude the principals from registering a replacement agent.

## Background

In the early 1980s, two principals (the "Principals") appointed an agent (the "Original Agent"), to represent them in the UAE. The Original Agent agreed to distribute, sell, and provide services on behalf of the two Principals in relation to three brands, two for Principal 1 and the third for Principal 2.

In 2004, problems arose when the Original Agent failed to pay for shipments within the timeframe agreed (30-90 days). As a result, the Principals obtained guarantees from the Original Agent and sent regular reminders to pay on time. The Principals continued to send shipments (because of the guarantees) and warned the Original Agent that he would be in breach of their commercial agency agreement if he continued to default. If he continued to be in default, the Principals would terminate the agreement.

The Original Agent defaulted under the agreement and a letter of termination was sent to him. The letter included a notice period for the Original Agent to improve and comply with the payment terms agreed upon and to settle all outstanding payments, failing which the agreement would be terminated. The parties attempted but failed to resolve their issues amicably and the Original Agent continued to breach the payment terms.

According to the Commercial Agency Law, the Minister of Economy is permitted to cancel a commercial agency arrangement if material reasons exist to terminate. The Minister at the time cancelled the commercial agency arrangement based on the letter of termination. Three letters were sent (one for each brand) and the Principals encashed the guarantees in lieu of the outstanding invoices.

The Original Agent filed three administrative cases (two against Principal 1 and one against Principal 2) seeking a declaration that the Minister's decision was null and void and asking for reinstatement as the agent in the Commercial Agency Register maintained by the Ministry of Economy. The agent argued that, according to Article 14 of the UAE Commercial Agency Law, a meeting should have been called first within 60 days of the letter of termination to address the Principals' reasons for its request to deregister and to give the Original Agent an opportunity to respond to those reasons. However, the Ministry failed to call such meeting within the 60 day timeframe and the Original Agent argued that the requirements under the law were therefore not met.

The Court of First Instance rejected the Original Agent's claim and held that the Ministry's duty was satisfied because of the communications exchanged between the parties. The Original Agent appealed the decision to the Court of Appeal, where he argued that the Court of First Instance was incorrect. He argued that calling a meeting was merely a formality but it existed to protect the rights of the agent. The Principals appealed to the Supreme Court. The Supreme Court upheld the Court of Appeal decision.

## **New agents**

After the Ministry struck the Original Agent from the Commercial Agency Register, the Principals appointed new agents (the "New Agents"). Principal 1 appointed two agents for the emirate of Sharjah and the Northern Emirates and a second for the emirate of Abu Dhabi. Principal 2 appointed an agent for the whole of the UAE. Both New Agents were registered in the Commercial Agency Register.

## **Court of First Instance judgment on the Original Agent's request to cancel the registration of the New Agents**

The Original Agent filed an action to declare the Minister's decision null and void and also to cancel the registrations of the New Agents. His request was rejected by the Court of First Instance.

One of the remedies sought by the Original Agent in addition to the request to nullify the Ministry's decision was the request to be reinstated in the Commercial Agency Register. However, the Court refused this on the basis that the New Agents had already been registered. The Court of First Instance did not issue a decision to cancel the new agency and the Original Agent then filed an appeal.

## **Court of Appeal**

The Original Agent appealed to the Court of Appeal. The Court of Appeal ruled in favour of the Original Agent and declared the Minister's decision null and void.

However, the Court of Appeal refused to issue a decision on the deregistration of the New Agents on the basis that this issue was not addressed by the Court of First Instance at the time of issuing its judgment. The Court further ruled that, as this issue was overlooked by the Court of First Instance, the Original Agent could not appeal the Court of First Instance's decision. He must therefore go back to the Court of First Instance to seek a remedy.

The Original Agent appealed to the Supreme Court, who requested that the matter be referred to three experts (one for each brand). All three experts said that the Original Agent was in breach of his obligations and not entitled to any compensation.

Although the Original Agent won a judgment in its favour, the New Agents were still registered in the Commercial Agency Register. The Original Agent asked the Execution Court to enforce the

Court of Appeal judgment and requested to be reinstated as agent, reiterating that the Minister's decision was declared invalid and therefore the effect of its decision should also be declared null and void. This request was rejected.

## **Compensation claims by the Original Agent: Part 1**

The Original Agent filed three claims (one for each brand) against the Principals. The total claim amount was approximately AED 600 million (representing loss of earnings and expenses).

The Court of First Instance referred the cases to a panel of experts. The new panel of experts (like the previous panel) concluded that the Original Agent was in breach of the agreements and caused substantial loss to the Principals. The three experts reported that the breaches had been brought to the attention of the Original Agent to no avail. Therefore, they were not entitled to compensation. The Court of First Instance dismissed the three claims and the Original Agent appealed to the Court of Appeal. The Court of Appeal upheld the Court of First Instance judgment. The Original Agent again went to the Supreme Court and the Supreme Court rejected his appeal.

## **Compensation claims by the Original Agent: Part 2**

In 2014, the Original Agent filed three new lawsuits. In the new cases, he claimed approximately a total of AED 5 billion. The Original Agent also included the Ministry, the New Agents and the Principals as defendants to the action.

The Principals raised many defences including res judicata (as this new case was similar to the previous case already decided) and limitation on the grounds the claim was time-barred because the termination was in 2005 and the new claim was filed in 2014. In addition, the Principals also argued that the case should be rejected because of the Original Agent's breach of his agreement and the fact that there is no standing to sue (there is no relationship between the New Agents and the Original Agent).

The Court of First Instance accepted the New Agents' defences and rejected the case against the Ministry. The Original Agent appealed to the Court of Appeal. The Court of Appeal rejected the Original Agent's appeal.

## **Supreme Court of Cassation (final time)**

The Original Agent appealed to the Supreme Court for the second time. The Supreme Court dismissed the appeal and upheld the Court of Appeal judgment based on the grounds set out in the Court of Appeal decision.

## **Summary of case**

In summary, the Court of Appeal in all matters filed by the Original Agent referred the matter to a panel of experts.

All three panels confirmed that the Original Agent had committed many breaches such as non-payment of invoices, poor management of the business, lack of customer service and therefore the agent was not entitled to any compensation.

Accordingly, the Federal Supreme Court issued its judgment.

1. It rejected the appeal of the Original Agent and upheld the Court of First Instance judgment in its entirety.
2. It held that the cases should have been filed as a tort claim as it was a request for compensation for a wrongful act because of the alleged wrongful termination.

3. The Original Agent did not substantiate his claims and provide proof of damages allegedly suffered as a result of the agency being struck off the Commercial Agency Register.
4. The New Agents' involvement in the dispute had no legal basis. The New Agents were not a party to the dispute nor was there any evidence of any damage caused by the New Agents' appointment.
5. As confirmed by the panel of experts, the Original Agent had breached the terms of the agency agreement by failing to make timely payments to the Principals and did not report declining sales until the business incurred a major loss.
6. The Court of First Instance was correct in dismissing the action against the Principals.

## **Comments**

The outcome of the case was excellent for the Principals.

The decision confirms that notwithstanding the protections afforded to agents, agents who choose not to perform as expected will not benefit from the protections provided under the Commercial Agency Law.

This case also demonstrates the importance of substantiating any claims against a non-performing agent to justify termination.