

THE LEGAL SIGNIFIANCE (IMPORTANCE) OF THE AGENCY CONTRACT

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Abstract

Internationally, the adoption of uniform regulations applicable brokerage account the different legal systems contribute to removing barriers to international trade and promote development of international trade. Depending on the subject or representation is general and special, direct or indirect act as intermediary in legal representative or the third person in his own behalf.

Key words: contract of agency, principal, agent, obligations of the parties, empowerment

INTRODUCTION

Under the auspices of the specialized agencies, was concluded at Geneva on 17 February 1983, the Convention on representation in international sale of goods, and the Hague on March 14, 1978, the Convention on the law applicable to such contract and representation.

All internationally to regulate brokering a matter of particular importance in 2004 and contracts have UNIDROIT Principles model issued by the International Chamber of Commerce in Paris.

In our system of law, Law no. 509/2002 to settle the legal status of permanent commercial agents, which are a special category of intermediaries in commercial activity. The legal instrument by which these agents operate is brokering agency contract. So traditional brokerage contracts in trade (the warrant, and the contract agreement consignment fee) was added and the contract agency.

Legal status of the agency contract is governed by Law no. 509/2002 which is based on a Directive of the European Union. Law no. 509/2002 shall be supplemented by the Commercial Code provisions on trade and the warrant under art. 1 C. com, the Civil Code provisions relating to the warrant. Regulating Law. 509/2002 does not apply to activities of persons acting as an intermediary in the stock exchanges and regulated markets for goods and derivatives and any business people who act as agent or insurance broker and reinsurance. Also, the regulation does not apply to work done by an agent that service unpaid, art. 2. of Law no. 509/2002, Law no. 509/2002⁶⁷⁹ permanent on traders, despite the name he wears governing, rather, the legal status of the agency contract, unless the status of the person exercising the functions of a professional commercial agent, contrary to what we suggest, literally, title law.

Despite the inconsistency of terminology, it should be noted that the enactment quoted legislative measure is a welcome expression of concern and effort to complete the institutional and legal reform, including the implementation of the Romanian law has some of the most important institutions, used the law of other countries with which economic agents trade relations in our country.

RESULTS AND DISCUSSION

The doctrine of international trade law defines as that agency contract - *agreement under which a person appointed agent undertakes, for a flat fee or percentage, to negotiate and conclude commercial business and the expense on behalf of another person - called the main-face which, however, is not subordinate in any way, acting independently.*

So viewed, the agency contract is trading closer to the mandate as it covered in Romanian law, because the specific representation. On the other hand, representation is not seen at least in Anglo-American law as the essence of the agency, the agent can act for principal *alieno nomine* be named or under and within *proprio nomine* received empowerment. In the latter case, the agent acting on its own, is evident near the agency to contract fee. Similarities can be identified and contracts, in so far as relating to the obligation to negotiate with potential business partners of the principal obligation as a result, satisfied at their own risk of the agent acting independently.

Particular feature that distinguishes essentially, the institution of mandates and agency commission therefore relate to the contractual terms: while the latter types of contracts are intended completion of legal acts, institution fulfilling the Agency's main business opportunities, negotiation business, and sometimes the conclusion of legal documents.

According to some authors the agency contract can be interpreted in two ways namely:

- a. a specific legal contract that near term contract
- b. an agreement by themselves without any need to trade in conjunction with the warrant.

Agency contract is a contract whereby one party, called the principal, empowers the other party steadfastly called agent, to negotiate business and to negotiate and do business with and on behalf of the principal, in exchange for remuneration. The agency is understood the report is established under the empowerment given by a person called the principal, another person called agent who agrees to act in his own name.

Agency report may result from either the parties' agreement or a legal presumption. If the mediation report is materialized by the parties,

being called by the expressions *agency agreement*, *agency by consent*, *agency act of the parties*. The agent must have real empowerment, *current authority*, which may be express or act on behalf default. He acts on behalf and under the control of the principal. If the mediation report is determined by a legal presumption, which is inferred from the conduct of the parties, *agency by estoppel*, or is justified in case of necessity, *agency by necessity*, in which case the agent empowerment is apparent - *apparent authority* - was created principal's conduct towards the party.

According to art. 18 of Law no. 509/2002, the agency contract concluded for a definite or indefinite period, including subsequent amendments and additions can be proved only by written text, whatever its value, both between the parties and third parties. Therefore, the agency contract is concluded in written form.

The requirement of written form is required for modification and subsequent completion of the contract. As required by law, agency contract can be proved only by written text, whatever the contract value.

This requirement of the law as between the parties and third parties. Since the contract can be proved only by written means that the written form prescribed by law is required and not *ad probationem* validity. Absence does not affect the contract document, but evidence of its existence (instrumental). In case of dispute, unless the document, the impossibility of proving the contract amounts, basically, the absence of contract. Regarding the effects of agency contract should consider the particularities of the brokerage contract. Like any contract, agency agreement between the contracting parties shall take effect, it gives rise to obligations on the agent and principal. In addition to the agent and principal, Law no. 509/2002 regulates the effects of the contract by the agency to third parties.

Law no. 509/2002 governs the obligations of the parties to the contract agency. Agent and principal obligations are subject to art. 5 and 6 of the act. Given the specifics of the agency contract, the rules governing the obligations of the parties are binding. In this sense, art. 9 of the act provides that parties may not derogate by agreement contrary to the provisions of art. 5 and 6 of the act. The same agency specific contract imposes a strict conduct of the contracting parties in performing their contractual obligations. In this respect, Law no. 509/2002 provides that in fulfilling their obligations and the principal agent must act in good faith and diligence of a professional - art. 5. and art. 6. This means that the agent and principal are liable for breach of contractual obligations, in whatever form and degree of fault (art. 1540 Civil Code).

The main duties of the agent are governed by art. 5 of Law no. 509/2002:

- a) the operator is limited to obligations arising from the powers received from the principal. The agent should act in accordance with instructions received and in furtherance of the principal interests. The obligations must be fulfilled by the agent personally or by its employees. Law no. 509/2002 agent permitted the substitution of another person. In this respect it provides that the enforcement agent empowerment by replacing, in whole or in part, with sub-agents is subject to the provisions of the Civil Code.
- b) the agent is obliged to procure and to communicate information regarding the principal region or regions in the agreement, the principal relevance to the exercise of the agency contract, a general plan to conduct his business. This information may relate supply and demand for goods and services offered by the principal, prices, competitors, merchant transactions.
- c) empowering the agent is obliged to satisfy the most favorable conditions for the principal. In this respect, the law requiring operators to exercise due diligence obligation to negotiate or, if applicable, the negotiation and conclusion of contracts subject to empowerment, the most profitable conditions for the principal activity.
- d) officer is required to properly comply with reasonable instructions received from the principal. As a reasonable instructions must understand the instructions that are part of normal, common, commercial brokerage activity under an agency contract, the performance of this duty must take account of the imperative, indicative or voluntary guidelines:
- ♣ mandatory instructions are binding, they express an order of the principal, to be followed precisely.
 - ♣ instructions are for indicative guidance, guidance in the implementation of empowerment by the agent.
 - ♣ optional instructions are instructions whose implementation is left to the agent.
- e) the agent is obliged to keep records of business transactions conducted on the basis of principal empowerment. Keep records of commercial transactions in a special register of the agent. If the agent acts for many of the principal, the records must be kept separately for each operation with its main concern.
- f) the operator is required to maintain appropriate conditions received from the principal property. Goods and samples received from the principal agent for negotiations as samples or, where appropriate, conclude contracts with third parties should be stored under conditions that maintain their characteristics in order not to damage the "image" primary dealer. If the agent works for several key goods and samples received from them must be stored so as to permit identification of belonging to each principal.
- g) the agent is bound to fulfill any obligation under the contract of agency or

provided by law. The main obligations of the principal are provided by art. 6 of Law no. 509/2002689.

a) the principal is required to provide staff samples, catalogs, prices and any other documents relating to goods and services it offers to recovery by issuing orders. in the negotiation or, where appropriate, negotiation and conclusion of contracts with third parties, the agent uses samples, catalogs, and any charges other documentary material provided by the principal. In this case, the law requires the principal to provide the agent in a timely and appropriate amount of catalogs, charges. necessary to achieve empowerment.

b) shall be obliged to provide information necessary for enforcement agent agency contract. The conditions under which staff are determined to act in agency contract. Besides this general framework, the enforcement of empowerment and may take some concrete information on which the principal must make them available to the agent. Such information is needed, especially in the case of cyclical changes in business activity in the region or regions on the scope of activity of the agent. Bringing them to the knowledge of these changes, the main agent is obliged to give necessary instructions and to provide information that is needed to fulfill its mandate. The principal is obliged to inform the agent in the case of the principal changes in trading activity. The act requires the principal to notify the agent in a good time when he stated that the volume of trade will be significantly lower than that which would normally have been expected. Finally, the main one is obliged to timely inform the agent, nature of the operation, acceptance, refusal or failure to execute a negotiated trade or, where applicable, the agent concluded.

c) agent that has the obligation to pay remuneration due. Payment of remuneration to be made under the terms of the contract of agency or provided by law. In the event that the agency contract the parties have agreed a fee payment of remuneration, in whole or in part, shall be obliged to pay the fee if the conditions specified in Art. 12 to 17 of Law no. 509/2002. Principal is obliged to pay the fee and, accordingly is entitled to receive commission agent for a transaction made during the existence of the agency contract, if the following conditions:

- the operation is terminated as a result of the brokerage agent;
- the operation is terminated without the intermediation of the agent, with a third person who was previously purchased by him as a client, provided that this operation should have previously completed a similar nature to that client;
- the operation is concluded with a client in a particular region or part of a determined group of people for whom the agent has received the exclusive authorization by the agency contract (art. 12 of law).

Principal is obliged to pay the fee, that agent is entitled to receive commission and a transaction completed after termination of agency law are met

- the operation was completed within a reasonable time after termination of agency and end its business is mainly provided by staff during the duration of the Agency;

- order a third party was received by the principal or agent prior to termination of the agency contract (art. 13 of law). If the agent is replaced, the new agent is not entitled to commission if it is appropriate under the law, the initial agent. However, the commission is divided between the initial agent and new agent if the specific circumstances that it is fair that that fee to be divided between the two agents (art. 14 of law). By law, the obligation to pay commission arises after the following conditions are met:

- major perform its contractual obligations towards third parties;
- main would have to perform its contractual obligations under its agreement with the third person, third person performs its contractual obligations.

The law provides, without being able to waive the detriment of the agent, it must be born no later than the date on which the third person to meet its obligations, or would have had to execute, where the principal and it would be properly executed its duty (art. 15 of law). Commissions and principal due to transactions carried out, but the parties have waived their execution. in these cases properly apply the rules on payment of the principal obligation birth.

The law provides, without the ability to waive the detriment of the agent, that agent is not entitled to commission if the transaction is completed off between principal and third person does not run due to circumstances attributable to the principal. If a partial execution of the third person, the agent is entitled only to pay a share of the fee proportionate to the amount received by the principal (article 16 of law). Agent commission to be paid no later than the last day of the month following the quarter during which the liability was born, that the right to a commission agent (art. 17 of law).

d) principalulul is limited to perform any other obligation incumbent on him under contract and the legal provisions. According to art. 1 of Law no. 509/2002, the principal empowers the agent to negotiate with third parties certain legal acts for the principal or to negotiate and conclude certain legal documents with third parties on behalf and on behalf of principal. In the first case, the contracts are concluded directly between the principal and third parties directly. Agent's role is to find others interested in negotiating the future contract by the principal staff will finish third. If the agent receives notice of a particular transaction negotiated in time leading third party not directly or through agents, acceptance, operation is considered abandoned and therefore will not end contract (art. 7 of the Act). In the second case, the

contracts are negotiated and concluded by the agent, the name and on behalf of principal. Under the rules of the mandate by the conclusion of contracts between the agent (attorney) and others to establish direct legal relationships between the main (principal) and third parties. This means that the obligations arising from these contracts are executed by the principal and third parties (delivery of goods and payment of the price). Since in both cases, the legal relations are set differently between the principal and others, means that the agency contract, which was the basis of perfecting the legal relationship between principal and third parties do not have any effect against third parties.

In other words, the agency contract is not born of legal relationships between agents and third parties. Law no. 509/2002 contains provisions on the enforcement of obligations under contracts concluded under the agency contract the agent is involved. They are about to pay the price and vice reclaiming goods or services.

In all cases, (because the legal relationship established between s main account), pay the price of goods and services provided primarily by third parties is the principal directly. According to art. 1541 Civil Code, the trustee is obliged to furnish what the principal has received the mandate power, even if the principal would be due.

CONCLUSIONS

Based on the above legal provisions, it can be said that if the agent has negotiated and concluded a contract with the third party, the name and on behalf of the principal, the price paid by the third agent can be done with its obligation to remit principal sum of money.

Article 8 of Law no. 509/2002 derogating from the provisions of art. 1541 C. civ "stating that the agent may, without special authorization to receive payment from the third party. Also, the agent can not, in the absence of special powers to grant reductions or deferrals for the debt principal. Settling direct legal relationship between principal and third party claims of third parties on the principal defects of goods and services must be delivered to the principal. Article 8 para. (2) of Law no. But 509/2002 provides that the agent may receive complaints about irregularities in goods and services. However, staff may request any measures to ensure the interests of principal (finding defects in the conditions of contract, making remedies). On receipt of complaints and measures taken, an agent is obliged to notify the principal.

In Anglo-American legal system is not regulated mandate, there is

no distinction between agent and broker as legal forms of representation are made by agency institution. Intermediation in the common law system is based on the identity of the principal agent theory, which is authorized to act within the limits of empowerment granted.

The institution is distinguished by its pragmatism agency, to adapt to business needs and flexibility. Depending on the nature of the transaction, the relationship between the parties can take the form of a simple form of a contract or agreement.

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