

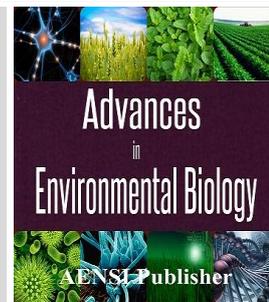


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The Liquidation of the Commission Obligations

Seyd Abbas Darghahi, Ramin Delkhoun Asl, Saieed Delkhoun Asl

Department of Law, Ardabil Payam-e- Nour, Ardabi, Iran

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ABSTRACT

The contract is a legal phenomenon that its supplementation has to take some periods and as usual it will be end up by achieving a commitment in this regard. The time of contract completion and its expiration depends on the type and subject of various reasons. The accurate recognition of every factor can assist on its supplementation considerably. Undoubtedly the commitment supplementation is the simplest way of achieving every contract but this is not achievable easily every time. It sometimes is out of contractors hands; in other words, there is no constant supplementation time. Along with an excuse, the whole conditions of the parties will be also changed and it may have a kind of frowning expiration in this regard.

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INTRODUCTION

1- Voluntary liquidation of a contract: the delivery and supplementation of a commitment is established based on two assumptions and or the possibility of delivery and supplementation of a contract may be taken place; as a result, the theory of supplementing a commitment should be achieved when the possibility of supplementation takes place or the commitment and delivery supplementation will be impossible and then due to the parties agreement regarding to two subjects of the resignation and discharge, the commission contract will be ended up and finalized in this regard.

1-1: Discharge of the commission:

The commercial legislation has not been pointed to the materials of the commission contract liquidation and for the reason, if the commission is represented by the agency contraction, it can be also given by the imperious regarding to the commission regulations and conclusion of an agreement according to the Article 358 of the commercial legislation and due to the nature of the conclusion of an agreement representation (commercial legislation). A client can discharge the agent at any time (Article 629 of the constitutional legislation is claimed that the discharge of the commerce successor regarding to the related proxy being predicted by the commerce owner. According to the Article 399, other commercial agencies: the discharge of the commercial successor should be accordance with the judicial ministry regulations and the liquidation of the board manager should be also achieved based on the Article 124 of the commerce legislation amendment; any situation can discharge the manager; hence, since the relationship of the commission is established based on the honesty and trust, thus when the imperious losses his trust towards the continuation of the work, the same discharge can be taken place in this pavement. The same commission does not have any influences on the liquidation or discharge but it will be considered as the imperious rights. The discharge of the commission such as the proxy is not relied on any conditions and the virtue of the imperious is free from the discharge of the agency liquidation but this freedom is not an absolute case and the parties agreement of the commission can also be established on this freedom controlling it as well. Article 679 of the constitutional legislation not only states a general regulation but also it includes an exceptional case allocating this general subject; when the proxy of an attorney or the lack of discharge is conditioned, the right of the discharge will be also rejected... for the reason that here the benefits and the options of the commission imply that this option should be removed from the imperious trying to follow the constitutional legislation in this pavement. Most Imamieh scholars consider the contract relying on the

conditions of the proxy and his discharge in the same contract necessary and whether the parties have enough power to reject the right of the discharge from the client or no in addition to the reliable contract conditions or mentioning into the proxy contract or causing to the silence of the parties and the client has not been guaranteed in any verdicts. Anyway, some scholars have considered the Freedom Legislation reliable according to the Article 10 of the constitutional legislation and they believe that what makes people to get relied on the private contracts is subjected to their power not into the form of agreement but the context of the contract and respect to the mutual requirements is necessary through the parties making the same obligation as an external case; that is, the criteria of the intention and the parties can effect on the statements and frameworks of both parties bilaterally. Thus the main condition of the contracts satisfaction is subjected to exception of the whole contracts. This belief is acceptable in the commercial agencies particularly in the commission contract logically because the commission activity field regarding to the agency supplementation is away from the imperious and in many cases it is achieved in out of the country. In the other hand, the benefits of the commission, basics of the speed and security of the commercial contracts imply that this condition regardless of its reliability should be mentioned. Another point is that the commercial agencies such as proxy as the constitutional understanding should make its agency aware from the related discharge in otherwisethe agency may continue the affairs regarding to the discharge. Article 680 of the constitutional legislation says that: it should make its attorney towards the client and the discharge of the commerce agency should be also registered by the same attorney and Article 399 of the constitutional legislation is also represented in this regard claiming the fact that this should be registered by the ministry of the Supreme Court or it should not be absolute in its discharge being considered as the proxy. According to the mentioned statements regardless of discharging the agency is not enough condition but it should make the attorney aware from the related discharge. Hence, the agency affairs towards the both origin and third party will be reliable in this pavement.

1-2: resignation of the commission:

Another selective discharge case of the commission being achieved by the single-sided virtue of the commission is subjected to the related resignation from the agency. The non-independent commercial agencies such as management of enterprises and commercial locum as non-arbitrator and or arbitrator such as the commission, the resignation of the commercial agency due to its reliability can be considered as the causes of the discharge. Since our commercial legislation regarding to the way of the commercial agencies resignation and its conditions has not represented any regulations in this case, hence, it is necessary to rely on some constitutional legislation issues regarding to the proxy case. Statement 2 of the 678 Article of the constitutional legislation has considered the proxy as one of the resignation reasons in this pavement. The resignation of an attorney should not be achieved in an unsuitable time. In other words, the attorney cannot establish his resignation by insisting on the imperious. Therefore, the abrupt resignation of the commission is established based on the abuse of the rights being acceptable and for the reason, in the rights of the Egypt the resignation of an attorney should be achieved in a suitable time like his discharge. Hence, the sudden or abrupt resignation of an attorney makes a client to ask his damage. The process of the resignation right has been defined for the enterprises managers and a manager can make his resignation at any time but it depends on some conditions that one of these is subjected to the lack of making any damages to the enterprise. In our rights the sudden or abrupt resignation of an attorney is not making any damage for the client and the legislator has defined some issues; for example, in the Article 36 of the commercial legislation the proxy issued in 1936 to prevent any unexpected harms by an attorney that implies him to choose another client in this case. In this regard, the Article 666 of the constitutional legislation can be established as the criteria and the cause is subjected to the abrupt resignation making any damage by an attorney that traditionally the attorney should introduce the commission of the related Article in this case and he will be responsible for achieving the same case potentially. The next point is subjected to the adaptation of the constitutional legislations awaking the client of the attorney resignation conditioning the proxy discharge and there is no seen necessary items for the attorney resignation but in the commercial agencies, it is better to consider the Article 680 and the Statements of the Article 36 of the proxy legislation in this case. That is, in the commercial agencies and the commission as well as the commercial operations, it is better to make the mentioned cases as the criteria and the general regulation not an exceptional verdict.

2- Involuntary discharge of the commission:

The contract is a righteous phenomenon that its supplementation can be continued for a period of time and as usual by the commitment supplementation, it will be ended up as soon. The times of the contract supplementation and its expiration are dependent on the type, subject and various reasons. The accurate recognition of every factor in this case can assist on its supplementation considerably. Undoubtedly, the supplementation of a commitment is the simplest way of achieving a contract but it is not always an easy case. Sometimes the supplementation of a contract does not exist for a short or long period of time. Today, in the rights of the commitments, the stable regulation of the contracts can be considered as the main general

legislation formally. The practical result of the related regulation is subjected to the obligation of the parties making them to get relied on the achievement of the commitments. But in some cases, the loyalty may confront with very difficult or impossible terms. This is possible that the contractors do not play a key role in these conditions. In other words, the lack of achieving the commitment may be out of their hands to be achieved in this case. In the next statements, the types of involuntary discharge of the commission will be investigated.

2-1: disappearance of the contract subject:

When the contract is disappeared due to external factors or the imperious or the commission action, the same commission will be automatically disappear removing the whole commitments of the parties. For example, the subject of the commission commitment is related to the sale of commodities that they have been destroyed due to the fire and its commitment will be automatically and naturally removed in this case. Sometimes, the discharge of the commission may be come from the right of the same commission; that is, he will not achieve or ended up the subject of the contract yet. In other words, removing the subject of the contract can be subjected to the basic result of an action such as a commodity being purchased by the agency commission and when it disappears the proxy will be also disappeared. It has been represented by the Article 683 of the constitutional legislation. The case of the proxy should be done by itself or it should be generally achieved by the benefit of the attorney proxy and the proxy will be removed in this case. Hence, the liquidation of the proxy or the commission regarding to the related case is subjected to the expiration of the commitment subject and for the reason, the legislation has been represented both cases in a one Article.

2-2: expiration of the commission time:

According to the general regulations of the contracts, the expiration of the contract time is considered as one of the most important tools of the contracts liquidation. The end of the agency time should be established as the main factors of the contract expiration of the commission although it has not been achieved by an agency; this will make again the same discharge of the contract and there is no need to the agreement of the parties in this pavement. Hence, if the commission of the contract is implied to be achieved in a certified time, this period will not be continued in the same contract after its expiration. For example, if the imperious gives four months for selling the commodity to the agency commission, the contract will be expired after selling the same commodity and removing the whole conditions of the same agency. In addition, due to the nature of the contract being optional like the commission, along with the expiration time, the origin of the same option will be also disappeared in this pavement because the permit of the imperious is subjected to the time; that is, it is made for a certified period.

2-3: death and madness of the contract parties:

One of the most important factors of liquidating the commission is subjected to the death or madness of one of parties making the contract expired. Generally, the commercial agencies should be established based on the parties' agreements and permit to continue their treaty. So, in the commission like the proxy continuance, it is necessary to consider the reasons of every factor for removing the resources of the contraction conditions. Therefore the death or the madness of the parties may cut the continuance of the related resource. Another representation is the fact that because the commission is established based on the mutual trust of the imperious and the commission, the personality of the parties is another factor regarding to the contract. For the reason, the death and madness of parties can discharge the contract conditions. The substitution of the commission contract does not have any opposition against the benefits of the agreement. For the reason, the multiple benefit of a contract is a kind of substitution contract due to its reliability due to the death and madness of the parties being achieved by the owner. Article 550 and Article 551 of the constitutional legislation stated that the MOZAREBEH contract is subjected to the contract that has been issued by the constitutional legislation to expire for the benefit of the parties. The main question is whether the death or madness of the imperious can prevent the origin of the liquidation or no? In other words, are the actions of the agency rights penetrative before the death or the madness? Our constitutional legislation has been silent in relation to the same issue and Article 678 of the constitutional legislation has been also represented regarding to the client effect. Hence, the conscious and unconscious of the attorney from the client death do not have any influence and only the transactions will not have reliability after the death date due to the cut of the agency regarding to the client rights and these transactions cannot be considered reliable after the death of the client due to maintain the rights of the third parties in this case. Imamieh scholars and some other lawyers have also considered the action penetration of an attorney before the aware of the client liquidation as an exceptional verdict in this regard. This cannot be applied to compare the death and madness. Hence, the verdict of the Article 680 of the constitutional legislation is established against its origin and it should be limited to some exclusive conditions. Therefore, the penetration of the transactions of an attorney after the client death should be clarified by an apparent agency conditioned to the commission during the transaction with other third parties virtually. Secondly, the existence of the whole conditions of the apparent agency can reject the righteous involvements after the death; in otherwise,

due to the nature of the reality of the agency and exceptionality of the Article 680 of the constitutional legislation, the death and madness of parties expires the commission and the awareness or unawareness of the verdict regarding to the death and madness do not have any effect on the case.

2-4: imperious bankruptcy and commission:

The subject of the bankruptcy in the process of the commission liquidation can be represented by designing the related question whether the bankruptcy of the commission such as death and madness can make the contract discharge or no? Does the bankruptcy make the discharge? It should be mentioned that the bankruptcy takes place when both parties are merchant and they may be an organization regarding to the merchandise or non-merchant people in relation to the constitutional legislation. There is no any suspicious in the commission of being merchandise. Hence, when the commission gives its bankruptcy due to the prevention of the payment and other payment confirmation, the whole properties will be prevented, too. The involvement of the bankruptcy regulations towards the imperious is also taken place when the commercial legislation introduces him as a merchant. Thus, in spite of merely one or more sales or purchase of commodities the commission is not being established at the merchants' ranking never considering a merchandise case in this pavement. While the Articles 557, 423, 418 of the constitutional legislation the merchant will lose his power due to the same bankruptcy being refined by the manager of the same enterprise his own properties as well. For the reason, any events such as death or madness and bankruptcy can prevent any transactions and commercial deals potentially. This makes the cause of the liquidation potentially. Another reason influencing on the commission liquidation is subjected to the imperious bankruptcy. A kind of deduction comes from the Article 551 of the constitutional legislation. The related Article is achieved through the parties' benefits that destroying the owner. However the constitutional legislation never considers any of these contracts as the factor of the owner destruction. The parties' benefits have the same nature of the commission being constructed between the investment and the related agent. In the parties' benefits the commission is given to the agency to account for the commerce and he never deals with another investment at all. Apparently the contract party is the origin but it is considered another investment at hidden that this makes the related field of application; hence, both parties and an honest commission as well as the lawyer of the owner investment can deal regarding to the same commerce and the legislator takes the certification of the owner due to prevent any destructive cases towards the parties. Since the date of the bankruptcy the investment of the owner is given to the party and he cannot continue the dealership with this investment unless other clients satisfy to the related case.

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