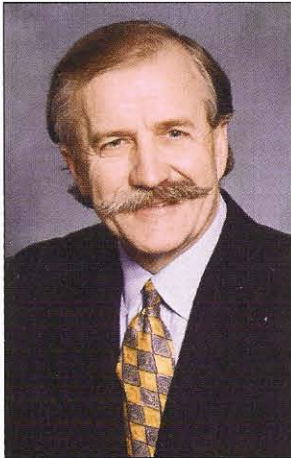


about commissions



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YOU HAVE A HORSE THAT YOU WANT TO SELL. SINCE YOU HAVE A TRAINER, YOU naturally ask him to market the horse for you. It is agreed that your trainer will use his best efforts to obtain the highest price possible, but that you would not sell the horse for less than \$50,000. It is further agreed that the trainer will receive a 10% commission for selling the horse. The horse is eventually sold and you receive your \$45,000. All is well until you find out that the buyer actually paid \$55,000 for your horse. When you confront your trainer, he explains that the buyer's trainer added 10% to the purchase price to the buyer for finding the horse. You are understandably upset and demand the additional \$4,500 you claim you are due.

Your trainer explains to you that this is the custom of the industry and refuses your request. What recourse do you have?

When a customer engages the services of a trainer to either buy or sell a horse the trainer becomes an agent of the customer and he owes a fiduciary duty to the customer. The law imposes upon the trainer, among other things, an obligation of fair dealing, honesty, loyalty and candor. In other words, the trainer has a duty of full disclosure and accurate accounting to his customer. To the extent that a trainer fails to provide material and relevant information to his customer regarding the transaction, he breaches his fiduciary duty and is subject to legal action.

In the above example it is not clear whether there was a lack of disclosure by the seller's trainer or whether the buyer's trainer had a separate agreement with the buyer regarding his commission. In a situation such as this, where each party engages the services of their own trainer, it is best to have each person pay their own trainer's fees to avoid potential conflicts of interest. Moreover, full disclosure and agreement by both the buyer and the seller to each other would be advisable.

There are other situations that are also problematic. For example, in the above example, if the horse were sold for \$50,000 and both trainers expected a 10% commission from the seller's proceeds. If this was not agreed upon in advance by the seller, he would have no obligation to pay a commission to buyer's trainer. Even if the trainers agree to split the fee, as is common in real estate transactions, the division of the fee should be revealed to both seller and buyer.

Sometimes there may be multiple trainers involved in the transaction and each one expects a percentage. As a result, the sale price is simply increased to the buyer to cover the additional commissions. Again, unless the seller agreed to these multiple fees in advance, he has no legal obligation to pay more than he contracted for with his trainer. Of course if seller's trainer either misrepresented or exceeded his authority, that would raise a whole host of other issues.

There are also various scams and schemes by dishonest trainers to obtain secret profits. For example, a buyer's trainer arranges for his customer to purchase a horse at a given price but the horse is actually purchased at a lower price, with the trainer keeping the difference. Or, the trainer finds a horse for his customer but he buys it himself and resells the horse to the customer at an inflated price. The trainer may arrange for the sale of a horse to his customer and then split the proceeds with the seller. Or, the trainer may receive an undisclosed commission from the seller.

All of the above examples have one thing in common—lack of disclosure. However, as long as the trainer discloses the terms of the deal and the customer agrees to it, the trainer can legally profit from the transaction. Nevertheless, there are some agreements that are so one-sided that they are unconscionable and therefore unenforceable. Moreover, there are some sale commission agreements that may be legal, but are unethical. It is best to deal with a reputable trainer that subscribes to a professional horseman's code of conduct and has a reputation for honesty and integrity.

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