Horse Sale Commissions Revealed

From as early as Columbus' second voyage, horses have been imported and traded in this country. Horse trading itself is one of the oldest professions on earth. For such an old profession, it is surprising to learn about the widespread practice of undisclosed profit taking in horse sale transactions. Perhaps it is part of the usual and customary practice that has developed or perhaps it is because there are very few regulations governing the industry. Many clients trust their trainer's expertise and expect that the trainer will receive a fair commission or finder's fee, often without asking how that fee will be calculated. The problem arises when clients learn that a trainer involved in their transaction will receive undisclosed proceeds, sometimes at the client's expense. It is a practice that is starting to be regulated from within the industry.

In the racing industry, the Thoroughbred Owners and Breeders Association recently created a Sales Integrity Task Force to address the issues of undisclosed profit taking and to improve soundness disclosure requirements, as they pertain to racehorse auctions. You can read more about their materials at www.salesintegrity.org and you can see an advocate group's discussion of this issue at www.allianceforindustryreform.com.

This issue does not simply affect racehorse owners and trainers; it permeates every discipline and every level of the equine industry. Although most trainers are honest and forthright, there are little if any industry imposed regulations governing the few unethical horse sale transactions that occur. Undisclosed profit-taking is a practice which often violates civil laws and may even be criminal. Undisclosed profit-taking may be simple enough: buy a horse cheap and sell it at a huge profit. There is nothing inherently wrong or illegal with this scheme, unless one commits a fraud or violates a statute in order to accomplish his or her objective. There are laws against breaches of fiduciary duty, fraud, misrepresentation, breach of contract, or Deceptive Trade Practices Act violations.

As the industry has not yet self-regulated undisclosed profit taking, the courts have been increasingly called upon to decide these cases. The Texas Court of Appeals recently addressed this issue in Laxson v. Giddens, 48 S.W.3d 408 (2001). In Laxson, the buyer claimed she was duped into paying an outrageous price for a registered quarter horse because of the actions of two trainers. The Court agreed with the jury and found that both trainers were responsible under the Deceptive Trade Practices Act. The buyer was awarded damages for the difference in the undisclosed purchase price, together with interest and attorney fees. Similarly, in Neal v. Janssen, 270 F.3d 328 (6th Cir. 2001), a jury awarded compensatory and punitive damages against a trainer who sold his client's dressage horse for $480,000, but only disclosed $312,000 of the proceeds, and took his 10% standard commission in addition to the undisclosed profit. These cases stand for the general proposition that when a client engages a trainer to assist in the purchase or sale of a horse, the trainer becomes the client's agent, and owes the client a fiduciary duty. A breach of that fiduciary duty may then be legally actionable.

In two other recent cases, the federal government has brought criminal cases against well-known Virginia hunter-jumper trainers. Prison sentences were handed down by the Court in these horse sale schemes where none or only a portion of the proceeds were paid to the clients. So, the remedies may be both civil and/or criminal in nature when undisclosed profit taking occurs.

As long as the trainer discloses the profit, and the client agrees to it, there is nothing unlawful about earning a profit for assisting in a horse transaction. Trainers provide a valuable service and deserve to be compensated. Most clients are more than willing to pay for that service and the trainer's expertise in these matters. As a general rule, each person should pay for the respective trainer that he or she hires to assist in the transaction, to avoid issues of a conflict of interest where one client is paying for another client's agent. However, if the trainer is acting as a "transaction broker" rather than a buyer's or seller's agent, any dual agency should be clearly disclosed in a written agreement. Where two trainers are being paid by the seller, such an arrangement should be in writing to protect all parties. Regardless of the role of the trainer (i.e., seller's agent, buyer's agent, transaction broker, training for sale, or finder's fee), to protect all parties involved, any level of compensation (commissions which typically range from 10-25% of the sales price, consignment fees, mark-ups, showing fees, or any other expenses), should be in writing.

A written agency agreement defining the terms is often provided by reputable trainers if they are engaged in sale of a horse with a five-figure or more asking price. If one is not provided, the client should elect to engage counsel to prepare a written agreement to protect all of the parties involved. As a written contract also protects the trainer's right to be paid for their effort, reputable trainers will appreciate the effort to protect their interests, as well. These written agreements not only protect the client from undisclosed profit-taking, but they also protect the trainers who spend a lot of time and effort preparing legitimate deals, from being cheated out of their commission once the buyer comes in direct contact with the seller. A little effort spent on a preventive agreement could save all the parties involved from exposure to criminal and civil litigation when a deal goes bad, or from claims of undisclosed profit-taking. HC

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