

## Employee Has No Right to Post-Termination Commissions

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In *Nein v. HostPro, Inc.*, a Court of Appeal held that the language of the employee's employment agreement precluded him from recovering commissions following his termination of employment. Plaintiff worked as a sales representative for HostPro for a period of 2 years. He signed an employment agreement that expressly provided that Plaintiff would be eligible for commission pay "so long as [he] remains employed with the Company as a Sales Representative."

Plaintiff was terminated in December 2001. In January 2002, HostPro and a potential customer who Plaintiff had approached and negotiated with prior to his termination, completed the transaction. Plaintiff sued claiming he was entitled to commissions on the transaction. HostPro moved for summary judgment arguing that based on the terms of the employment agreement, it had no duty to pay Plaintiff commissions. The trial court granted summary judgment and Plaintiff appealed. The Court of Appeal agreed. It said that the employment agreement was "susceptible to only one interpretation – that once plaintiff ceased to be employed by defendant, he would no longer be eligible for commission pay."

**CAUTIONARY NOTE:** Despite the ruling in *HostPro*, employers should be careful when drafting commission plans and consult with their employment counsel since there are other cases which have interpreted similar language as punitive and resulting in a forfeiture of commissions when the sales was ultimately consummated based on the efforts of the employee prior to termination.

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