

## Empowered sales rep protects his contract rights; delivers strong jolt to breaching principal



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William Valle's commission lawsuit against Powertech Industrial Co. Ltd. offers a little bit of everything.

Two versions of a contract, changing commission rates, enforceability questions, and the duty of good faith and fair dealing are all raised in this dispute. (So too is the perennial employee v. independent contractor battle, but that part of their contest will be saved for another day.)

The case recently went to trial before the Hon. Diane J. Casper, who years ago demonstrated her mettle while presiding over the criminal trial of Boston mobster and FBI “most wanted” list mainstay James “Whitey” Bulger.

### The beginning

A sales rep out of Massachusetts, Valle, signed his first rep contract with Powertech, a Taiwanese manufacturer of “power solutions,” including surge protectors and uninterruptible power supplies, in 2002, and represented the company into 2017.

He developed a relationship for Powertech with customer American Power Conversion (APC) and was to receive a 5 percent commission on all sales to APC. Valle also reeled in other customers, including Para Systems. Powertech and Valle entered into a separate contract for Para, which also called for payment of a 5 percent commission, and orally agreed on commission rates for other customers.

At Powertech’s request, the parties agreed to modify their agreement in 2008 to lower Valle’s commission rate on APC sales to 3½ percent, and to even lower rates for the sale of certain products.

### The operative 2009 rep contract

In 2009, Powertech again sought to change the contract terms, this time to implement a standard commission rate. Valle’s counter sought to preserve his original APC deal. The compromise that emerged was a new agreement providing that upon termination, Valle would receive commissions on all APC orders for two years.

Valle then sought to include commission rates for all his customers in the new agreement, but Powertech resisted, claiming that was too “complicated.” Instead, the parties’ 2009 contract merely stated that Powertech would provide Valle “a commission of the parties’ mutual agreed percentage in writing for the payment” from specified customers and enabled the parties to add other customers later.

Such unclear, mealy-mouthed language in an agreement often leads to trouble, and this case proved no exception. While the 2009 rep contract expressly stated that it “supersedes all prior agreements” between the parties, this vague term led Valle to believe that all existing commission rates would remain the same unless otherwise agreed. Adding to the confusion, he testified in his deposition that he knew the 2009 contract replaced the earlier 2002 version and admitted the 2002 deal was no longer effective.

In keeping with the spirit of the 2009 contract, the parties were able to agree on commissions through 2016. Powertech frequently sought to renegotiate Valle’s commission rates, and the parties generally found agreement, which Powertech reflected

on commission spreadsheets. Sometimes, however, Powertech did not discuss a commission change with Valle, but just showed it on the invoice he would receive.

Valle would regularly sign these invoices and send them back, which Powertech construed as his assent to the changes, but he denied signaling agreement with a changed commission by signing. He understood that Powertech would only wire his commission payments upon receipt of a signed invoice.

### The underlying conduct

According to Valle, Powertech began unilaterally changing commission rates in 2015 whenever it determined the profit on a particular product was not enough. He argued this violated the 2009 agreement's language requiring Powertech to provide "a commission of the parties' mutual agreed percentage in writing for the payment" because he did not agree to the changed rates.

In support, he relied upon a spreadsheet showing changes made by Powertech in 2015 and 2016 to earlier commission rates with his consent. Valle insisted that no other "writing" shows the parties' agreement to lower commission rates.

This highlights the crux of the commission dispute. Valle maintains that unless the rates in effect before the 2009 contract were renegotiated, they remained the same. He pointed to the 5 percent commissions on Para, which remained the same after the 2009 contract took effect, and to two documents showing that APC commissions remained at 3½ percent after 2009.

Powertech, in contrast, argued the absence of a commissions schedule in the 2009 agreement demonstrated how the parties reached no agreement on commission rates, and therefore contended that agreement was invalid and unenforceable on the grounds it lacked such a material term.

Powertech stopped paying commissions altogether at the end of 2016, ignoring the two-year post-termination payment provision. In February 2017, Valle sued in Boston federal court, including for breach of the 2009 contract, and for breaching the duty of good faith and fair dealing.

Four days later, Powertech terminated the 2009 agreement, and continued to withhold commissions. Meanwhile, its sales to APC remained brisk.

Both parties sought to avoid a trial by filing motions for summary judgment, asking the court to rule in their favor without the need to empanel a jury and hear evidence.

### The alleged breach of contract

Basic contract law requires the parties to agree on the material terms. Not all terms must be spelled out, but the essential terms must be sufficiently definite to make the parties' obligations ascertainable.

Powertech invoked this principle to contend the 2009 agreement was not enforceable because the material term of a set commission rate was lacking. It cited Massachusetts law recognizing that “an agreement to enter into a contract which leaves the terms of that contract for future negotiation is too indefinite to be enforced.”

However, Judge Casper was having none of it. She ruled that the 2009 contract, signed by both parties, expressly reflected their intent to be bound by it, and the document “incorporated the Powertech spreadsheets memorializing Valle’s commission rates, which existed prior to 2009 Agreement.”

By plainly referencing that Powertech would provide Valle with a separate document “in writing” that set out the commission rates, and contemplating it would change over time, Judge Casper determined the 2009 contract contained the necessary material terms. Even had the contract not incorporated the spreadsheets, the court found it would still prove enforceable based on the course of dealings between the parties, which had both parties relying on the spreadsheets’ commission rates for years.

After finding the 2009 agreement constituted a valid contract, the court reached the easy conclusion that Powertech had violated it by failing to pay commissions on sales to APC for the two-year post-termination period. Summary judgment in Valle’s favor was entered accordingly.

As to the claim that Powertech further breached by unilaterally changing the commission rates during the contract, Judge Casper found this was an issue for trial. Both parties’ arguments were reasonably plausible, and the jury would have to decide whether Powertech breached by changing the commission rates without Valle’s written approval, or whether the evidence showed Valle consented to those changes by signing and returning the invoices without challenging the amounts.

#### The alleged breach of the good faith duty

Massachusetts, like most states, reads into every contract an implied duty of good faith and fair dealing between the contracting parties. When entering into a contract, a party cannot act to interfere with “the right of the other party to receive the fruits of the contract.”

Valle alleged that Powertech’s failing to pay the commissions due, failing to negotiate the commission rates in good faith, and unilateral changes to the commission rates without his knowledge and/or consent violates the Massachusetts duty of good faith and fair dealing.

Like the claim for breaching the contract by reducing the commission rates, Judge Casper ruled that this issue too was subject to more than one reasonable conclusion, which meant she would not throw it out on summary judgment, and on this claim, Valle would get his day in court.

#### The trial

That day came in May. The federal jury had little trouble finding across the board for Valle and against Powertech, unanimously deciding that Powertech breached the 2009 rep

contract by failing to pay the agreed upon commissions during the contract period, and further finding that it violated the duty of good faith and fair dealing, the jury awarded Valle \$389,665.48 in damages. Then, the jury awarded Valle an additional \$387,678.91 for Powertech's withholding of the two years of post-termination commissions.

Powertech's apparent strategy of devising vague contract language to fuel a "flexible" approach to paying commissions plainly backfired and stands as a caution to reps and principals alike to draft contracts as though their terms matter. Valle insisted that they do, and today has at least 777,344.39 reasons to appreciate that he enforced his rights.