

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

A. KRIS NANDA,	:	CIVIL ACTION
Plaintiff,	:	NO. 96-7661
	:	
v.	:	
	:	
SELECTIVE INSURANCE COMPANY	:	
OF AMERICA a/k/a SELECTIVE	:	
WAY INSURANCE COMPANY,	:	
Defendant.	:	

M E M O R A N D U M

BUCKWALTER, J.

October 9, 1997

Plaintiff, A. Kris Nanda, ("Nanda"), an insurance agent has filed a seven count complaint against Selective Insurance Company ("Selective") relating to termination of his agency agreement with Selective. Presently before this Court is Selective's motion for summary judgment pursuant to Federal Rule of Civil Procedure 56 (Docket No. 11) and Nanda's answer thereto (Docket No. 13).

I. BACKGROUND

From 1974 until February 22, 1996, Nanda worked as an insurance agent for Selective pursuant to series of agency agreements, the most recent of which was executed on August 1, 1988 (the "Agreement"). Pursuant to the Agreement, Nanda sold Selective insurance policies, collected premiums, forwarded them to Selective and in return received commissions from Selective.

By a letter dated January 22, 1996, Selective's accounting department informed Nanda that a \$1685.23 check (dated December 14, 1995) that he had submitted to cover October premiums was being returned for insufficient funds. Nanda was also reminded that this was the company's fourth attempt to collect, Selective had previously called Nanda to inform him of the bounced check on January 4th, 9th and 19th. Selective requested that Nanda "Please overnight a Certified Check in the amount of \$1685.23 immediately."

By a letter dated February 12, 1996, Nanda was again reminded of his past due accounts. Phillip K. Houseknecht ("Houseknecht"), Field Operations Manager for Selective, wrote

"A recent review of your agency status reveals that your agency does not have a good working relationship with our underwriters and is not paying agency accounts by the due date (your October statement due December 15, 1996 is past due.) . . . At this time we would like to withdraw from your agency. I will call you this week to discuss a voluntary termination agreement that would provide your agency with three years of renewal business."

In a follow up phone call, during which Nanda rejected Selective's offer of voluntary termination, Houseknecht informed Nanda that Selective was in a position to unilaterally terminate the Agreement immediately due to Nanda's failure to pay October premiums. (Docket No. 13, Exhibit "C", Deposition of Phillip K. Houseknecht at 49). By a letter dated February 14, 1996, Houseknecht, warned Nanda that failure to pay October premiums

could potentially result in a reduction of money due Nanda under Selective's profit sharing plan. Finally, in a letter dated February 21, 1996, Houseknecht wrote:

"As a result of your failure to pay your delinquent account after demand, pursuant to Section 7 of its Agency Agreement, Selective hereby gives you notice of cancellation of its Agency Agreement effective upon receipt of this letter. We will begin to process nonrenewal notices for your clients as soon as practicable. For those who cannot be nonrenewed, the Company will furnish the appropriate statutory notices."

Meanwhile, on or around February 15, 1996, Nanda forwarded to Selective's accounting department a \$1685.23 money order dated February 15, 1996. Houseknecht acknowledges that the decision to terminate the Agreement was made prior to his realizing that Nanda had made payment. (Docket No. 13, Exhibit "C", Deposition of Phillip K. Houseknecht at 54). Houseknecht was first made aware of Nanda's February 15, 1996 payment on February 22, 1996, when Nanda called to request reinstatement and faxed a copy of the February 15, 1996 money order to Houseknecht. While on the phone with Nanda, Houseknecht confirmed Selective's decision to terminate despite Nanda's untimely payment. Id. at 55.

Following termination of the Agreement, Selective wrote to customers, who had purchased Selective insurance policies through Nanda, advising them that, upon expiration, their policies could not be renewed through Nanda's agency because

Nanda no longer represented Selective. Customers were given the option of obtaining coverage with another company through Nanda or renewing their Selective policy through another Selective agent. (Docket No. 13, Exhibit "L").

II. LEGAL STANDARD

Summary judgment may be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). When considering a motion for summary judgment this Court must view all evidence in favor of the non-moving party. Bixler v. Central Pennsylvania Teamsters Health and Welfare Fund, 12 F.3d 1292, 1297 (3d Cir. 1993); Meyer v. Riegel Prods. Corp., 720 F.2d 303, 307 (3d Cir. 1983), cert. denied, 465 U.S. 1091 (1984). To successfully challenge a motion for summary judgment, the non-moving party must be able to produce evidence that "could be the basis for a jury finding in that party's favor." Kline v. First Western Government Securities., 24 F.3d 480, 485 (3d Cir.), cert. denied, 513 U.S. 1032 (1994).

Because Nanda has failed to produce any evidence in support of his seven count complaint, Selective's motion for summary judgment is granted.

III. DISCUSSION

Nanda alleges that termination of the Agreement by Selective constituted: 1) breach of contract; 2) tortious interference with contractual relations; 3) an unfair or deceptive practice or act as defined by 73 Pa. Cons. Stat. § 201-2(4); 4) wrongful termination; 5) breach of implied duty of good faith; 6) fraudulent misrepresentation; and 7) a violation of 40 Pa. Cons. Stat. § 242(a) and (f) regarding termination of agency agreements.

Those portions of the Agreement that are relevant to this Court's analysis of Nanda's claims are as follows:

"4. Premiums

C. The Agent, . . . , shall be responsible for payment of all premiums If monies are not received by the 90th day following the end of the month for which the account is rendered, the Agent shall be in default of this Agreement. . . ."

"6. Ownership of Expirations

A. In the event this Agreement is terminated and the Agent has not accounted for and paid all such premiums and other monies, the records, ownership, use and control of all expirations shall be vested in the Company."

"7. Termination

A. This Agreement may be terminated by either party upon not less than ninety (90) days written notice given to the other party, except where termination is due to: (1) failure to pay to the Company all monies for which the Agent is liable"

Based on the record before me it is clear that Selective's termination did not constitute breach of contract, thus, Count I of Nanda's complaint is unsupported. The parties do not dispute that in accordance with section 4(C) of the Agreement, by January 31, 1996, the 90th day after his October premiums were due, Nanda was in default of the Agreement due to nonpayment. That he subsequently submitted payment on February 15, 1996 did not remedy his default status. Additionally, pursuant to section 7(1) of the Agreement, Selective was well within its contractual rights when it unilaterally terminated the Agreement without providing Nanda with written notice ninety (90) days prior to termination.

Similarly, the record does not support Count IV, wrongful termination; Count V, fraudulent misrepresentation and Count VI, breach of implied duty of good faith. Correspondence between the parties demonstrates that Selective informed Nanda several times that his failure to pay premiums in a timely fashion placed him in a precarious position, yet Nanda failed to heed the warnings.

The record reveals that Count II, Nanda's claim that by contacting his customers to inform them of the termination Selective tortiously interfered with contractual relations, is unfounded. At his deposition, Houseknecht testified that under

New Jersey and Pennsylvania statute Selective was required to inform policyholders of a change in agency status. (Docket No. 13, Exhibit "C", Deposition of Phillip K. Houseknecht at 43). Additionally, pursuant to section 6(A) of the Agreement, Nanda's failure to remit October premiums in a timely fashion caused ownership of outstanding Selective policies (also known as "expirations") to transfer from Nanda to Selective. Thus, once the Agreement was terminated Nanda no longer maintained a contractual relationship with Selective policyholders. Moreover, nothing in the record indicates that Selective harbored ill will or malicious intent in advising customers of the termination of Nanda's agency.

Counts III and VII, in which Nanda claims that termination of the Agreement violated Pennsylvania statutory law, are also unsubstantiated. In Count III, Nanda contends that Selective's conduct constituted an unfair trade practice under Pennsylvania's "Unfair Trade Practices and Consumer Protection Law" as codified at 73 Pa. Cons. Stat. 201-1 et seq. Based on my review of Selective's conduct, as evidenced by the record before me, it is clear that the company's actions could not be construed as "unfair or deceptive acts or practices" as defined by 73 Pa. Cons. Stat. § 201-2(4). Likewise, 40 Pa. Cons. Stat. § 241 et seq., regarding agency termination, is not applicable to Nanda's case. Nanda contends that under § 242(a) he was entitled to

ninety (90) days written notice prior to termination and under § 242 (f), before terminating the Agreement, Selective should have offered to enroll him in a rehabilitation program. What Nanda neglects to note is that § 241.1(b) entitled "Nonapplicability" clearly states that "the provisions of this act do not apply to: . . . (3) an agent . . . whose contract has been terminated for . . . failure to pay over to the insurer moneys due to the insurer after his receipt of a written demand thereof." Selective's January 22, 1996 letter requesting Nanda to immediately remit payment constitutes a written demand, one which Nanda failed to act on in a timely manner. Consequently, the statutory protections of prior written notice and rehabilitation are unavailable to Nanda. Accordingly, because Nanda has failed to provide sufficient support for any of his seven claims Selective's motion for summary judgment is granted.

An order follows.

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A. KRIS NANDA,	:	CIVIL ACTION
Plaintiff,	:	NO. 96-7661
	:	
v.	:	
	:	
SELECTIVE INSURANCE COMPANY	:	
OF AMERICA a/k/a SELECTIVE	:	
WAY INSURANCE COMPANY,	:	
Defendant.	:	

ORDER

AND NOW on this 9th day of October, 1997, upon consideration of Defendant's motion for summary judgment pursuant to Federal Rule of Civil Procedure 56 (Docket No. 11) and Plaintiff's answer thereto (Docket No. 13), it is hereby ORDERED that Defendant's motion is **GRANTED**. Accordingly, judgment is entered in favor of Defendant, Selective Insurance Company of America a/k/a Selective Way Insurance Company, and against Plaintiff, A. Kris Nanda.

BY THE COURT:

RONALD L. BUCKWALTER, J.