

STATE OF NEW YORK
SUPREME COURT
COMMERCIAL DIVISION

COUNTY OF ALBANY

JANEEN A. JAVOROSKI,

Plaintiff,

-against-

DECISION & ORDER

SELECTQUOTE INSURANCE SVC, INC.,
SELECTQUOTE INSURANCE AGENCY,
SELECTQUOTE INSURANCE SERVICES,
SELECTQUOTE LIFE INSURANCE SERVICES,
SELECTQUOTE INSURANCE SERVICES, INC.,
CHARAN J. SINGH
595 Market Street
San Francisco, CA 94105,
FEINGOLD & SCOTT, LTD.
ROBERT BLAND
585 Stewart Avenue
Garden City, NY 11530,

RECEIVED
2017 FEB 27 PM 2:58
ALBANY COUNTY CLERK

Defendants.

Index No.: 4542-16

APPEARANCES:

PEMBERTON AND BRIGGS
Attorneys for Plaintiff
(Paul Briggs, of counsel)
202 Union Street
Schenectady, New York 12305

MOUND COTTON WOLLAN & GREENGRASS LLP
Attorneys for Defendants
(Kate Elizabeth DiGeronimo and Jodi S. Tesser, of counsel)
One New York Plaza
New York, New York 10004

Hon. Richard M. Platkin, A.J.S.C.

Defendants SelectQuote Insurance Services and Charan J. Singh move for dismissal of this action pursuant to CPLR 3012 (b), based upon plaintiff's failure to timely file and serve a complaint following defendants' demand. Plaintiff cross-moves for an extension of time to serve her complaint.

On August 18, 2016, plaintiff Janeen A. Javoroski served defendants SelectQuote Insurance Svc, Inc., SelectQuote Insurance Agency, SelectQuote Insurance Services, SelectQuote Life Insurance Services, SelectQuote Insurance Services, Inc., and Charan J. Singh with a summons with notice through service upon the Secretary of State (Business Corporation Law § 306). The notice indicated that plaintiff would be alleging a claim of "breach of contract for failure of William Penn Life Insurance Company of New York to pay life insurance proceeds under [a] policy . . . as a result of the August 7, 2013 death of Dennis G. Javoroski", who was plaintiff's husband, as well as a claim of negligence against "insurance agent Charan Singh" and the named SelectQuote defendants.

Defendants SelectQuote Insurance Services and Singh (hereinafter "defendants") filed a notice of appearance on September 27, 2016 and demanded service of the complaint. Based on plaintiff's failure to timely serve a complaint, defendants now move to dismiss the action pursuant to CPLR 3012 (b). Plaintiff cross-moves for an extension of time to complete service, claiming that she has both a reasonable excuse for her delay and a meritorious claim.

Pursuant to CPLR 3012 (b), plaintiff was required to serve her complaint within twenty days after service of defendants' demand. Plaintiff concedes that she did not comply with that deadline. Thus, to successfully oppose defendants' motion, plaintiff is required to show that she

has both a reasonable excuse for the delay and a meritorious cause of action (*see* CPLR 3012 [d]; *Kel Mgt. Corp. v Rogers & Wells*, 64 NY2d 904, 905 [1985]; *Gear UP, Inc. v City of New York*, 140 AD3d 515, 515 [1st Dept 2016]; *Amodeo v Gellert and Quartaro, P.C.*, 26 AD3d 705, 706 [3d Dept 2006]).

Plaintiff's counsel acknowledges that defendants' notice of appearance and demand for the complaint was received on October 3, 2016, but plaintiff did not attempt to serve a complaint until December 14, 2016. Plaintiff's attorney explains that the delay was due, in part, to a need to conduct further research to ascertain the identity of the "correct defendant or defendants". He states that his "[e]xtensive research" disclosed five different entities that included "SelectQuote" in their names and that "Charan J. Singh was affiliated with one or all of the SelectQuote entities".

Counsel further explains that, after receiving defendants' notice of appearance, he "renewed" his research so that he could "ascertain whether the appearing [SelectQuote] entity" was, in fact, the entity that sold the life insurance policy to plaintiff's husband. "In doing so, [he] removed the notice of appearance from the incoming mail resulting in the 20 day notice deadline not being diaried." According to plaintiff's attorney, this law office failure was not discovered until he received defendants' motion to dismiss.

For their part, defendants reject plaintiff's characterization of the delay as "short". They note that the complaint was served 79 days after defendants' demand and 118 days after service of the summons with notice. Defendants also submit proof that their moving papers were delivered to plaintiff on November 29, 2016, but the attempted service of the complaint did not occur for an additional two weeks.

Defendants also argue that the excuse for the delay proffered by plaintiff's attorney – that research was required to find the “correct” defendant – is not reasonable. According to defendants, the notice of appearance and demand for a complaint “plainly identifies SelectQuote Insurance Services as the correct entity name, which negated any need for research into its name”. Defendants also challenge the claim of plaintiff's counsel that “lingering doubt” about the identify of the proper defendants prevented him from timely filing and serving a complaint, observing that the complaint served in December 2016 “pleads identical, repetitive allegations against all five iterations of SelectQuote's name listed in the caption” of the summons. As such, defendants argue, it “was not necessary for the plaintiff to identify the correct corporate name to prepare the Complaint, and any confusion over SelectQuote's name is simply a pretext for the plaintiff's inexplicable failure to meet the deadline”.

Even if plaintiff's attorney had a legitimate need to research the name of the correct corporate entity, it did not absolve plaintiff of the obligation to serve a duly demanded complaint within the time allowed by statute. Further, as defendants point out, the complaint that plaintiff ultimately attempted to serve was not limited to allegations against the “correct” SelectQuote defendant. Thus, this does not seem to be a case where plaintiff lacked sufficient information at the time when the summons was served to assert the general allegations that eventually were put into her complaint (*Trudeau v Ford*, 60 AD3d 1186 [3d Dept 2009]).

In any event, even assuming that plaintiff has proffered a satisfactory excuse for the delay in serving the complaint, it is apparent that plaintiff's affidavit of merit falls well short of containing “evidentiary facts sufficient to establish a prima facie case” of negligence against the named defendants (*Kel Mgt. Corp.*, 65 NY2d at 904).

Plaintiff complains that defendants were negligent in selling her husband a new policy of insurance after his original policy lapsed for non-payment, rather than advising him to seek reinstatement of the lapsed policy.¹ However, it is well settled that the duty of an insurance broker or agent is limited to “obtain[ing] requested coverage for their clients within a reasonable time or inform[ing] the client of the inability to do so” (*Murphy v Kuhn*, 90 NY2d 266, 270 [1997]; see *Hoffend & Sons, Inc. v Rose & Kiernan, Inc.*, 7 NY3d 152, 157-158 [2006]),² and agents and brokers generally are under no obligation to advise their clients to obtain additional or different coverage (see *Voss v Netherlands Ins. Co.*, 22 N.Y.3d 728, 735 [2014]). Plaintiff does not allege that defendants failed to obtain the coverage requested by her late husband, and defendants were under no common-law duty to offer advice regarding any option the decedent might have had to pursue reinstatement of the lapsed policy. Moreover, the complaint does not allege facts demonstrating that defendants agreed to assume duties in addition to those fixed at common law.

And even if defendants were under a duty of the type alleged by plaintiff, that duty was owed to plaintiff’s late husband, not plaintiff. An insurance broker or agent generally does not owe duties of care to non-customers with whom it is not in privity (see *American Ref-Fuel Co. v Resource Recycling*, 248 AD2d 420, 424 [2d Dept 1998]; accord *St. George v W.J. Barney Corp.*, 270 AD2d 171 [1st Dept 2000]). Rather, the duties of an insurance agent or broker

¹ Despite the representations made in the summons with notice, plaintiff has not sued the insurer or alleged a claim for breach of contract.

² As the Court of Appeals has observed, “[i]nsurance agents or brokers are not personal financial counselors and risk managers, approaching guarantor status”, and it is the insured who generally is in a better position than the agent or broker to protect his or her own interests (*Murphy*, 90 NY2d at 273).

typically run only to its customer (*see Arredondo v City of New York*, 6 AD3d 328 [1st Dept 2004]). Here, defendants' customer was plaintiff's husband, but plaintiff brings this action in her own right, not as the administrator or executor of her late husband's estate. And this is not a case where plaintiff alleges that she herself had any direct dealings with defendants, so as to potentially give rise to a near-privity relationship with defendants.

Accordingly, it is

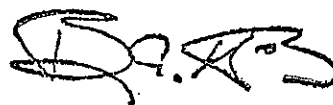
ORDERED that plaintiff's cross motion is denied; and it is

ORDERED that defendants' motion is granted, and the complaint is dismissed in its entirety.

This constitutes the Decision and Order of the Court. The original Decision and Order is being transmitted to counsel for defendants; all other papers are being transmitted to the Albany County Clerk. The signing of this Decision and Order shall not constitute entry or filing under CPLR Rule 2220, and counsel is not relieved from the applicable provisions of that Rule respecting filing, entry and notice of entry.

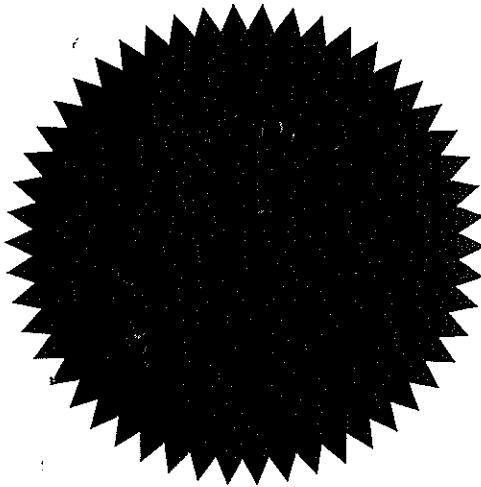
Dated: Albany, New York
February 21, 2017


RICHARD M. PLATKIN
A.J.S.C.



2-27-17

RECEIVED
2017 FEB 27 PM 2:58
ALBANY COUNTY CLERK



STATE OF NEW YORK

COUNTY OF ALBANY CLERK'S OFFICE

} SS.:

I, BRUCE A. HIDLEY, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, DO HEREBY CERTIFY that I have compared the annexed copy DECISION & ORDER with the original thereof filed in this office on the 27TH Day of FEBRUARY 2017 and that the same is a correct transcript therefrom, and of the whole of said original.

IN TESTIMONY WHEREOF, I have hereunto set my name and affixed my official seal, this 27TH day of FEBRUARY 2017

B. A. Hidley Clerk

Papers Considered:

Notice of Motion, dated November 28, 2016;

Affirmation of Jodi S. Tesser, Esq., dated November 28, 2016, with Exhibits 1-2;

Memorandum of Law, dated November 28, 2016;

Affirmation of Kate Elizabeth DiGeronimo, Esq. in Further Support, dated January 10, 2017, with Exhibits 1-3;

Reply Memorandum, dated January 10, 2017;

Notice of Cross Motion, dated January 3, 2017;

Affirmation of Paul Briggs, Esq., dated January 3, 2017, with Exhibits A-C;

Affidavit of Janeen A. Javoroski, sworn to January 4, 2017, with Exhibit A.