

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION**

PAUL WASGATT,
Plaintiff,

v.

ALLSTATE INSURANCE COMPANY,
GLENN T. SHAPIRO, SCOTT BLUME and
EDWARD NORCIA,
Defendants.

CIVIL ACTION NO. 4:20-CV-40118

**DEFENDANTS SCOTT BLUME
AND EDWARD NORCIA'S
MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO
DISMISS**

This action brought by Plaintiff, Paul Wasgatt (“Plaintiff”), arises out of his former relationship with Allstate Insurance Company (“Allstate”) as an insurance sales agent. In his Complaint, Plaintiff asserts three claims against Allstate – misclassification of him as an independent contractor in violation of M.G.L. c. 149 § 148B (Count 1); termination in violation of public policy (Count 2); and breach of contract (Count 3). In addition to his claims against Allstate, Plaintiff also names and seeks to hold three Allstate employees - Glenn T. Shapiro, Scott Blume (“Mr. Blume”), and Edward Norcia (“Mr. Norcia”) – individually liable under M.G.L. c. 149 § 148B.

Defendants’ Blume and Norcia, Allstate’s Territory Sales Manager and Sales and Recruiting Leader respectively, have moved pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss the claims asserted against them individually as the allegations set forth in the Complaint are insufficient to state a claim against them.¹ As more particularly set forth herein, Plaintiff has not alleged that Mr. Blume and Mr. Norcia hold the type of corporate office nor exercise the type of management responsibilities for Allstate that meet the plausibility standard articulated by the

¹ Defendant Shapiro has not moved to dismiss.

Supreme Court in Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007). Accordingly, Mr. Blume and Mr. Norcia respectfully request that this Court dismiss them from Count 1 of Plaintiff's Complaint, with prejudice.

This Memorandum is in support of that Motion.

ALLEGED FACTS²

Allstate sells insurance products and related services to consumers in the United States, including Massachusetts. Complaint, ¶ 8. Plaintiff was an Exclusive Agent for Allstate selling its insurance products. Id., ¶ 17. Plaintiff alleges, in part, that Defendants misclassified him as an independent contractor when he should have been classified as an employee. Id., ¶ 18.

Mr. Blume is employed by Allstate as a Territory Sales Manager, responsible for overseeing and managing Exclusive Agents. Complaint, ¶ 4. Mr. Norcia is employed by Allstate as a Sales and Recruiting Leader Northeast Region, responsible for overseeing and managing Exclusive Agents. Id., ¶ 5. Mr. Blume and Mr. Norcia supervised Plaintiff in the performance of his duties and responsibilities for Allstate. Id., ¶ 9.³

Plaintiff also alleges that Mr. Blume and Mr. Norcia were agents of Allstate "having management responsibilities for Allstate." Id. Plaintiff further alleges that Mr. Blume and Mr. Norcia were directly involved in the "overseeing, managing and promulgating the use of and alleged misclassification of its Exclusive Agents as independent contractors." Id., ¶ 9.

² On a Rule 12(b)(6) motion to dismiss, the Court "must assume the truth of all well-plead[ed] facts and give plaintiff the benefit of all reasonable inferences therefrom." Ruiz v. Bally Total Fitness Holding Corp., 496 F.3d 1, 5 (1st Cir. 2007).

³ Consistent with their titles, Mr. Blume and Mr. Norcia "directly supervised Plaintiff with respect to the performance of his duties and responsibilities at Allstate." They also "tracked the performance of Plaintiff" and had "a significant and controlling say in whether or not Plaintiff was to be terminated" from Allstate. They also "disciplined Plaintiff when they felt that Plaintiff's attitude and behavior did not comport with the corporate cultural (sic) of Allstate." Complaint, ¶ 10.

STANDARD OF REVIEW

To survive a motion to dismiss brought pursuant Fed. R. Civ. P. 12(b)(6), the plaintiff must state a claim that is plausible on its face. Twombly, 550 U.S. at 570. A complaint’s “[f]actual allegations must be enough to raise a right to relief above the speculative level, ... on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” Id. at 555 (internal citations omitted). The standard “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Id.

“The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 556). Dismissal is appropriate if plaintiff’s well-pleaded facts do not “possess enough heft to show that plaintiff is entitled to relief.” Ruiz Rivera v. Pfizer Pharm., LLC, 521 F.3d 76, 84 (1st Cir. 2008) (internal quotations and original alterations omitted). “The relevant inquiry focuses on the reasonableness of the inference of liability that the plaintiff is asking the court to draw from the facts alleged in the complaint.” Ocasio-Hernández v. Fortuño-Burset, 640 F.3d 1, 13 (1st Cir. 2011).

ARGUMENT

Mr. Blume and Mr. Norcia Are Not Personally Liable For Alleged Violations Of M.G.L. c. 149 § 148B⁴

As previously noted, Count 1 of Plaintiff’s Complaint alleges that Defendants violated M.G.L. c. 149 § 148B. Plaintiff’s attempt to hold all of the Defendants liable under §148B is

⁴ Defendants understand Count 1 of Plaintiff’s Complaint to assert a claim for violation of M.G.L. c. 149 § 148B. Complaint, ¶ 6. Although Count 1 references additional chapters of Massachusetts General Laws (i.e., M.G.L. c. 151, 152 and 62B), Defendants understand such references to have been included because they are referenced in M.G.L. c. 149 § 148B, and not because Plaintiff is attempting to plead claims under such statutes. However, to the extent Plaintiff is attempting to plead claims under these statutes, Defendants will address them in their Reply brief. For the time being, and to preserve their rights, Defendants state that the Individual Defendants are not personally liable under M.G.L. c. 151, Plaintiff has not met the procedural requirements necessary to pursue a claim under M.G.L. c. 152, and M.G.L. c. 62B does not provide a private right of action.

based on language from §148B(d) which states, in relevant part, that “[a]ny entity and the *president and treasurer* of a corporation and *any officer or agent having the management of the corporation or entity* shall be liable for violations of this section.” (Emphasis added).

Notwithstanding his attempt to the contrary, Plaintiff’s Complaint does not plausibly allege sufficient facts to hold Mr. Blume and Mr. Norcia liable in their individual capacities for Allstate. Indeed, there is no dispute that Mr. Blume and Mr. Norcia are not employed by Allstate as its president or treasurer. Complaint, ¶¶ 4-5. Likewise, and as addressed in further detail below, Mr. Blume and Mr. Norcia are not agents “having the management of the corporation or entity.”

Under both the Massachusetts Wage Act (M.G.L. c. 149 § 148) and the Massachusetts Independent Contractor Law (M.G.L. c. 149 § 148B), “[a]n officer or agent qualifies as ‘having the management’ of the corporation if he controls, directs and participates to a substantial degree in formulating and determining policy of a corporation.” Wiedmann v. Bradford Grp., 444 Mass. 698, 711 (2005) (superseded by statute on other grounds as recognized in Lipsitt v. Plaud, 466 Mass. 240 (2013)). Stated differently, for an agent to be personally liable, he must have “significant management responsibilities *over the corporation* similar to those performed by a corporate president or treasurer, particularly in regard to the control of finances or payment of wages.” Segal v. Genitrix, LLC, 478 Mass. 551, 559 (2017).

As noted previously, Plaintiff’s Complaint asserts that Mr. Blume and Mr. Norcia were agents of Allstate “having management responsibilities for Allstate...” and that they “were involved in the management of Allstate.” Complaint, ¶¶ 6, 9. Plaintiff similarly claims that Defendants Blume and Norcia “were directly involved in the overseeing, managing, and promulgating the use of and misclassification of its Exclusive Agents as independent contractors, including the Plaintiff.” Id. ¶ 9. However, Plaintiff’s barebones, conclusory assertions in this

regard are insufficient to state a claim under M.G.L. c. 149 § 148B and do not satisfy the relevant pleading requirements.⁵ See Patel v. 7-Eleven, Inc., 322 F. Supp. 3d 244, 248-250 (D. Mass. 2018).

In Patel, the plaintiff brought claims against 7-Eleven and two market managers in their individual capacities alleging violations of M.G.L. c. 149 § 148B, M.G.L. c. 149 § 148 (the Massachusetts Wage Act), and M.G.L. c. 151 §§ 1, 7 (the Massachusetts Minimum Wage Law). With respect to the individual defendants, plaintiff asserted that they worked as “market manager[s]” for 7-Eleven and “exercised extensive control over the plaintiffs’ work.” Id. at 248. Except for this assertion, plaintiff did not make any other allegations pertaining to the individual defendants. Id. The District Court held that plaintiff’s allegations were insufficient to state a claim upon which relief can be granted under M.G.L. c. 149 §§ 148, 148B. Id. at 249. In so holding, the Court reasoned that, when viewed against the pleadings standards articulated in Twombly and Iannacchino v. Ford Motor Co., 451 Mass. 623, 635-636 (2008), plaintiff’s allegations fell short. Id. at 249-250.

Like the complaint in Patel, the threadbare allegations in Plaintiff’s Complaint asserting that Mr. Blume and Mr. Norcia were involved in the management of Allstate fall short of the requisite pleading standards. In this respect, Plaintiff’s Complaint is devoid of any allegations that Mr. Blume and Mr. Norcia had “management responsibilities over the corporation similar to those performed by a corporate president or treasurer, particularly in regard to the control of finances or payment of wages.”

To the contrary, according to the Complaint, Mr. Blume is employed as a Territory Sales Manager, responsible for overseeing and managing Exclusive Agents, and Mr. Norcia is

⁵ This Court should disregard “legal conclusions masquerading as facts, as well as factual allegation which, ‘while not stating ultimate legal conclusions, are nevertheless so threadbare or speculative that they fail to cross the line between the conclusory and the factual.’” Saxena v. University of Massachusetts Medical School, 442 F. Supp. 3d 395, 398 (D. Mass. 2020) (quoting Ocasio-Hernández, 640 F.3d at 12).

employed as a Sales and Recruiting Leader Northeast Region, responsible for overseeing and managing Exclusive Agents. Complaint, ¶¶ 4-5. Clearly, the positions Mr. Blume and Mr. Norcia hold at Allstate are narrowly tailored to a certain subset of Allstate's business (i.e., sales) and do not consist of responsibilities performed by a corporate president or treasurer, nor is there any allegation that they have any control over the finances or payment of wages. By holding their respective positions, Mr. Blume and Mr. Norcia cannot be said to have "assumed and accepted individual responsibility for the management of the corporation, justifying the imposition of personal liability for Wage Act violations." Segal, 478 Mass. at 558 (claims for individual liability under the Massachusetts Wage Act against corporation's directors who actively participated in corporate decision-making; jury verdict for Plaintiff reversed and remanded for entry of judgment for individual defendants).

In addition, Plaintiff's assertion that Mr. Blume and Mr. Norcia were involved in the "overseeing, managing and promulgating the use of and misclassification of [Allstate's] Exclusive Agents as independent contractors..." misconstrues the standard for personal liability articulated by the Supreme Judicial Court in Segal. Specifically, Plaintiff's allegation does not assert that Mr. Blume and Mr. Norcia exercise management responsibilities *over all of Allstate as a whole*, but, rather, is limited to one alleged decision concerning Allstate's sales business. As noted by the Supreme Judicial Court, "[m]erely holding a managerial position over some branch, division or office of a corporation does not, by itself, mean that that [individual] has the 'management' of the 'corporation' as a whole." Wiedmann, 444 Mass. at 712.

WHEREFORE, for the reasons set forth above, Defendants Blume and Norcia respectfully request that this Court grant their Motion and dismiss Count 1 of Plaintiff's Complaint against them, with prejudice.

**ALLSTATE INSURANCE COMPANY,
GLENN T. SHAPIRO, SCOTT BLUME &
EDWARD NORCIA**

By their attorneys,

/s/ Brian M. Casaceli

Richard C. Van Nostrand, BBO #507900
Brian M. Casaceli, BBO #690580
Mirick O'Connell DeMallie & Lougee, LLP
1800 West Park Drive, Suite 400
Westborough, MA 01581-39426
Telephone : (508) 860-1453
Facsimile : (508) 983-6264
rvannostrand@mirickoconnell.com
bcasaceli@mirickoconnell.com

Robert G. Lian, Jr. (*pro hac vice*)
Katherine I. Heise (*pro hac vice*)
Akin Gump Strauss Hauer & Feld LLP
2001 K Street N.W.
Washington, DC 20006
blian@akingump.com
kheise@akingump.com
Telephone: (202) 887-4000
Facsimile: (202) 887-4288

Dated: October 20, 2020

CERTIFICATE OF SERVICE

I, Brian M. Casaceli, hereby certify that this document, filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this day.

/s/ Brian M. Casaceli

Brian M. Casaceli

Dated: October 20, 2020