IN THE CIRCUIT COURT FOR COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

National Association of Professional Allstate Agents, Inc., et al. Plaintiffs, v. Allstate Insurance Company, Defendant.	Case No. 21-L-7947

ALLSTATE INSURANCE COMPANY'S REPLY IN SUPPORT OF ITS 2-619.1 MOTION TO DISMISS

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Plaintiffs' opposition to Allstate's motion to dismiss does not overcome the threshold deficiencies in NAPAA's standing, much less the legal and factual deficiencies underlying each of the plaintiffs' claims. Accordingly, for the reasons stated in Allstate's motion to dismiss and below, Allstate respectfully requests that this Court dismiss the Complaint with prejudice.

I. NAPAA lacks associational standing.

Regarding Allstate's challenge to NAPAA's standing, NAPAA argues that it need not establish that its members performed under their contracts with Allstate because it has alleged that its members are current and former Allstate agents, who have had a contractual relationship with Allstate. (Opp. at 4, citing Compl. ¶ 8.) NAPAA suggests that, by alleging its members entered into a contract with Allstate, it has established performance. (Opp. at 4-5 (arguing that "every EA necessarily has entered into the EA agreement and "performed" by accepting its obligation".))

This is a fallacious argument. Although Allstate acknowledges that NAPAA has alleged its members are bound by the EA agreement, NAPAA has failed to allege that the EA members performed their obligations under the agreement. Acceptance and performance are separate elements of a contract claim. To perform, a party accepting the contract must fulfill the obligations it accepted under the contract. Accepting the agreement is not enough to establish performance. *Gonzales v. American Express Credit Corp.*, 315 Ill. App. 3d 199, 206 (1st Dist. 2000).

Whether NAPAA members substantially performed their individual obligations under the EA Agreement begs several questions. Are NAPAA's members

agents in good standing? Were members of NAPAA terminated for cause? If so, how can they claim substantial performance?

Answering these factual questions will require substantial participation from NAPAA's individual members. Thus, NAPAA cannot meet the requirements of associational standing and its claims should be dismissed. 735 ILCS 5/2–619(a)(9); *International Union of Operating Engineers, Local 148 v. Illinois Department of Employment Security*, 215 Ill. 2d 37, 45, 51 (2005).

II. NAPAA failed to allege a claim on which relief can be granted.

Moreover, NAPAA's opposition does not address in any material way the legal and factual pleading deficiencies identified in Allstate's motion to dismiss.

A. NAPAA has not alleged a claim for breach of contract.

Without belaboring the point, NAPAA cannot state a claim for breach of contract without alleging its members performed under the contract. *Gonzales*, 315 Ill. App. 3d at 206. It has not done so, and its claims should be dismissed.

B. The complaint establishes that Allstate does not have a blanket policy of denying EAs' transfers of their economic interest.

Contrary to NAPAA's argument in its opposition, its conclusory claim that Allstate has a "blanket" policy of denying transfers of economic interests from one EA to another cannot be squared with its verified allegations showing that Allstate has, in fact, approved transfers of economic interests from one EA to another. By its plain meaning, a "blanket" policy is one that is "total and inclusive" and "covers all cases or instances." *The New Oxford American Dictionary* 175 (Elizabeth J. Jewell & Frank

Abate eds., Oxford University Press 2001). Therefore, NAPAA's verified admission that Allstate approves transfers of economic interest from one EA to another makes this claim untenable and it should be dismissed.

C. Allstate's exercise of the discretion granted to it under the EA Agreement cannot be a breach of contract.

NAPAA concedes that the EA agreement gives Allstate exclusive judgment to approve or disapprove the transfer of an economic interest by an EA. NAPAA, however, argues that this discretion is supplanted by an "implied covenant of good faith and fair dealing." This is incorrect.

NAPAA cites *Barille v. Sears Roebuck and Co.*, 289 Ill. App. 3d 171 (1st Dist. 1997), in support of its argument. In *Barille* an Allstate agent filed suit for breach of contract. She alleged that Allstate "abused its discretion by unreasonably increasing her costs of doing business, thereby causing her to go out of business and then retaining her book of business that was developed." *Id.* at 174.

It is true that, in affirming dismissal of the complaint, the *Barille* court noted that there is a "duty of good faith and fair dealing included in every contract as a matter of law." *Id*. *But* the court went on to note that this doctrine is "generally employed as a construction tool in assessing the intent of the parties when a contract is ambiguous." *Id.* at 175, *citing Dayan v. McDonald's Corp*, 125 Ill App. 3d 972 (1st Dist. 1984). Where the "terms of the contract are clear and unambiguous, they must be enforced as written, and no court can rewrite the contract to provide a better bargain to suit one of the parties." *Id.* ("Parties are entitled to enforce the terms of negotiated contracts to the letter without being mulcted for lack of good faith. Express

covenants abrogate the operation of implied covenants so courts will not permit implied agreements to overrule or modify the express contract of the parties.").

Although there is a different contract at issue in this case than *Barille*, the principle prevails. The EA Agreement expressly vests Allstate with exclusive judgment to approve or deny an EAs' proposed transfer of the agent's economic interest. Allstate's exercise of its express rights under the contract cannot be the basis of a breach of contract claim. Thus, Count I should be dismissed.

D. NAPAA's allegations in Counts II and III fail to establish a claim for breach of contract.

Regarding Count II ("Independent Agent Encroachment") and Count III ("Poaching"), NAPAA concedes that the EA Agreement does not grant its members the rights they claim. Instead, NAPAA argues, a course of conduct "supplements" the terms of the contract. But where, as here, the parties' relationship is governed by a written agreement that includes an integration clause, the terms of the agreement cannot be supplanted by extrinsic evidence like "course of conduct." *Air Safety, Inc. v. Teachers Realty Corp.*, 185 Ill. 2d. 457, 462 (1999) (holding that "where parties formally include an integration clause in their contract, they are explicitly manifesting their intention to protect themselves against misinterpretations which might arise from extrinsic evidence").[1] Thus, because NAPAA has not identified any portion of the EA

[1] The case NAPAA cites in its opposition, *Hentze v. Unverfehrt*, 237 Ill. App. 3d 606 (5th Dist. 1992), does not apply. That case did not involve a contract with an integration clause.

Agreement that establishes the rights claimed in Counts II and III of the complaint, these claims should be dismissed.

E. Allstate's implementation of the AAV platform does not violate the EA Agreement.

Regarding Count IV, NAPAA ignores the fact that the EA Agreement gives Allstate the right to establish technology requirements for ensuring legal compliance (such as with the Telephone Consumer Protection Act), safeguarding its customer's data, protecting its reputation, and ensuring a consistent experience for its customers. (Compl. Ex. 3, R3001 Supplement, 32.) This is what the AAV platform does. Again, Allstate's exercise of the rights granted to it under the EA Agreement cannot be the basis of a breach of contract claim. Thus, Count IV should be dismissed.

F. NAPAA is not entitled to injunctive relief.

NAPAA's opposition also misses the mark regarding its claims for injunctive relief. At its heart, NAPAA's complaint asserts that Allstate should be enjoined from taking any action that NAPAA claims is inconsistent with the EA Agreement. NAPAA also seeks to enjoin Allstate from terminating agents who do not adopt the AAV platform.

NAPAA's claims are like those made by the plaintiffs in *Alderman Drugs v. Metropolitan Life Ins. Co.*, 161 Ill. App. 3d 783, 790-791 (1st Dist. 1987). In that case, the plaintiffs alleged that the defendant breached its contract by unilaterally amending the terms of the contract and then terminating the plaintiffs when they chose not to accept the new terms. *Id.*at 784-789. Specifically, the plaintiffs asserted

that the defendant's conduct breached the implied covenant of good faith and fair dealing. *Id.* at 789-790.

In affirming judgment in favor of the defendant, the appellate court noted that a "contract terminable at the will of either party can be modified at any time by either party as a condition of its continuance." *Id.* at 792 (cleaned up). What's more, in rejecting the plaintiffs' claims for injunctive relief, the court cited *S & F Corp. v. American Express Co.*, 60 Ill App. 3d 824, 829-830 (1st Dist. 1978), which holds that "an injunction will not be granted to restrain a party from discontinuing performance under an executory contract which is terminable at will." These principles make clear that EAs—and by extension, NAPAA—cannot receive injunctive relief for the claims asserted against Allstate.

III. The opposition does not offer a basis for saving the individual plaintiffs' claims.

A. The individual plaintiffs have not alleged performance.

The opposition ignores the fact that the individual plaintiffs have not alleged performance. Because they have not done so, each of their claims should be dismissed. *Gonzales*, 315 Ill. App. 3d at 206.

B. The individual plaintiffs have not established a claim for "interference."

In their opposition, the individual plaintiffs argue that Allstate breached the EA Agreement by interacting with potential buyers of their economic interests. But the provision plaintiffs cite does not confer any rights to the EAs. Rather, the language simply states that Allstate will not be a party to the agreement between an EA and a

buyer. [2] Thus, it does not provide a basis for the individual plaintiffs' interference claims (Counts V-VII).

C. Verbarg has not established a claim for breach of contract.

Finally, Mr. Verbarg has not offered any meaningful counterargument to Allstate's motion to dismiss Count VIII and his claims should be dismissed.

CONCLUSION

For the foregoing reasons, Allstate respectfully requests that this Court grant its motion and dismiss all of Plaintiffs' claims with prejudice. Allstate further requests such other relief as this court deems just and appropriate.

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[2] See Opp. at 13, citing EA Manual, p. 38:

> In sale of agency situations, Allstate is never the buyer or seller. The only times Allstate is involved is to approve the buyer and when you elect to receive the termination payment. If you elect to sell, you do not receive the termination payment from Allstate. It is your responsibility to establish a value and negotiate the sale price for your economic interest in any of the business included in the transfer.

Dated: November 23, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing document was filed on November 23, 2021, using the court's electronic filing system and via email to:

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