

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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MICHAEL NOCELLA and THE NOCELLA
INSURANCE AGENCY,

Index No.

Plaintiffs,

v.

**AFFIDAVIT OF
LUCIA MONTAÑO**

ALLSTATE INSURANCE COMPANY,

Defendant.

-----X

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

LUCIA MONTAÑO, being duly sworn, deposes and says:

1. I am employed by Allstate Insurance Company (“Allstate” or the “Company”) as a Senior Investigator, Investigative Services, Enterprise Business Conduct, in Allstate’s Law & Regulation Department. I submit this Affidavit in opposition to the Order to Show Cause and application for a Temporary Restraining Order that I understand Michael Nocella and the Nocella Insurance Agency (collectively, the “Nocella Agency”) have filed or intend to file today.

2. Allstate terminated its R3001S Exclusive Agency Agreement (the “Agency Agreement”) with the Nocella Agency, effective March 1, 2018, “for cause” under Section XVII.B.3 of the Agency Agreement. A copy of the Agency Agreement is attached as Exhibit A, and a copy of Allstate’s letter, dated March 1, 2018, and addressed to Mr. Nocella (the “Termination Letter”) is attached as Exhibit B.

3. As discussed below, the termination of the Agency Agreement was based on an investigation conducted by Allstate and in which I was involved that revealed that the Nocella Agency provided false information to Allstate in connection with four separate Allstate

Homeowner's insurance policies that were sold by the Nocella Agency. This conduct violates Allstate's Agency Agreement and the Company's written policies and procedures.

The Nocella Agency's Relationship with Allstate

4. The Nocella Agency became an agent of Allstate pursuant to the Agency Agreement that Nocella signed and that was made effective as of September 1, 2014. Among other things, the Agency Agreement makes clear that the Nocella Agency was "an independent contractor for all purposes and not an employee of [Allstate]", and that Allstate "own[s] all business produced under the terms of this Agreement." See Agency Agreement, Sections I.A. and I.D.

5. Under the Agency Agreement, the Nocella Agency, as an agent of Allstate, agreed to abide by certain duties and conditions. See Agency Agreement, Section II. The Agency Agreement further provided that the Nocella Agency was subject to the Supplement for the R3001 Agreement, the Exclusive Agency Independent Contractor Manual (the "EA Manual"), and the Allstate Agency Standards (the "Agency Standards"), which were expressly incorporated in their entirety as part of the Agency Agreement and further defined the Nocella Agency's duties and responsibilities to Allstate. See Agency Agreement, Section I.C.

6. For example, the Agency Standards expressly state that "Allstate is committed to operating its business in an ethical manner" and with respect to "Application/Endorsement Completion" provide that:

When writing new business or servicing existing business, agencies must:

Accurately and consistently apply the Risk Management Policies (RMPs) and other regional requirements. Obtain and transmit accurate and complete information to develop an accurate quote....

7. Moreover, the EA Manual provides, in part, as follows:

Agent Responsibilities

You are the person ultimately responsible for all sales and services of your LSP [Licensed Sales Producer] since he is acting under your direction or control.

...

You must ensure that certain responsibilities are met, including:

- Compliance with Company policies and procedures, including the Allstate Agency Standards, and all applicable laws and regulations relating to the conduct of business under the R3001 [Agency] Agreement.
- Compliance with the standards described under Ethical Standards in the conduct of business
- Obtaining accurate and truthful information on all applications

8. The EA Manual also contains a section entitled “Ethical Standards in the Conduct of Business” which provides, among other things, that “[a]ll agency activities must be consistent with Allstate’s ethical standards. Activities inconsistent with the standards may result in termination of your agency relationship with the Company.”

9. The EA Manual also sets forth a non-inclusive list of standards of conduct that applied to, and were to be followed by, the Nocella Agency and its members as representatives of Allstate. Those ethical standards include:

Integrity

As a Company representative, you are expected to act honestly and fairly in all of the Company’s business relationships.

Second, you may never falsify any state insurance department or Company documents, including applications, and you may never forge signatures.

Unacceptable Sales Practices

There are certain sales practices that are unacceptable for representatives of the Company, including, but not limited to, the following:

Misclassifying and Misrating: You may not knowingly misrate or misclassify in

order to provide a more attractive premium to make a sale.

Allstate's Termination of its Relationship with the Nocella Agency

10. Allstate terminated its Agency Agreement with the Nocella Agency after its investigation revealed that Mr. Nocella and a Licensed Sales Producer with the Nocella Agency had falsified information on four Allstate Homeowner's insurance applications (including an application for Mr. Nocella's home) in order to obtain homeowner's insurance coverage that the insureds (including Mr. Nocella) would otherwise have been unable to receive.

11. In New York, whether to provide homeowner's insurance coverage with respect to a particular home is determined by that home's Catastrophe Risk Management ("CRM") score. The application is rejected if the CRM score is above 8.5 and accepted if the CRM score falls below 8.5. The CRM score is impacted by Residential Component Technology ("RCT") factors, which are certain characteristics of a home such as the year in which the home was built, the type of construction and materials used, the square footage, and the replacement cost value.

12. During its investigation, Allstate learned that, for four Allstate Homeowner's insurance policies sold by the Nocella Agency, the initial CRM scores were above 8.5 and, therefore, the applications for homeowner's insurance were rejected by Allstate. However, for each rejected application, the Nocella Agency then changed the RCT factors several times by inputting false information about, for example, the home's replacement cost or square footage until an acceptable CRM score (i.e., a score below 8.5) was generated. Ultimately, each of those four Allstate homeowner's insurance policies were bound using a CRM score that was based on false RCT information provided by the Nocella Agency.

13. Mr. Nocella was among the persons interviewed in Allstate's investigation and during the interview he acknowledged that it is a violation of Allstate's policy to knowingly submit

false information to the Company, and acknowledged that he had provided false RCT information about a home in order obtain an acceptable RCM score. Significantly, during his interview Mr. Nocella also disclosed that he provided Allstate with false RCT information for his home after his first homeowner's insurance application had been rejected.

14. More specifically, in connection with the homeowner's insurance policy for Mr. Nocella's home, Allstate's investigation discovered that seven CRM scores had been generated (all using Mr. Nocella's Agent ID number) before the insurance application was accepted. The first CRM score generated for Mr. Nocella's homeowner's insurance application was 11.54 (and, therefore, rejected by Allstate). For that 11.54 CRM score, Mr. Nocella acknowledged during his interview that it was generated using accurate RCT information that Mr. Nocella provided for his home, namely, that it is a two-story, frame construction home that is over 2,000 square feet with a replacement cost of \$592,145.

15. The seventh and final CRM score for Mr. Nocella's insurance application was 7.09 (and, therefore, accepted by Allstate). However, as Mr. Nocella acknowledged during his interview, this CRM score was generated using false RCT information that Mr. Nocella provided about the same home in order to obtain an acceptable CRM score. To obtain the 7.09 CRM score, Mr. Nocella acknowledged that he intentionally provided the following inaccurate RCT information: the home is a 789 square foot (not 2,000+) one-story (not two) home with brick (not frame) construction.

16. This conduct is in direct violation of the Agency Agreement and Allstate's EA Independent Contractor Manual.

17. Under the Agency Agreement, Mr. Nocella was an independent contractor who could be terminated by Allstate with cause or without cause. See Agency Agreement, Sections

XVII.B.2 and XVII.B.3.

18. Based on the evidence uncovered and findings made, Allstate made the decision to terminate its Agency Agreement with Mr. Nocella and the Nocella Agency.

Any Request for Temporary Injunctive Relief Should be Rejected

19. Mr. Nocella, in an email sent to me by his attorney, Anthony P. DellUniversita, Esq., has suggested that he “owns his book of business” and threatened to “take immediate legal action in the form [sic] a declaratory judgment action, an injunction to enjoin [Allstate] from proceeding in any manner to reclaim ownership of his property....”

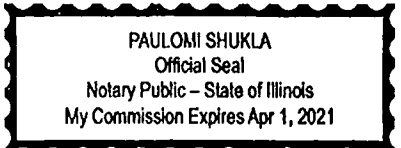
20. This is not an accurate statement because, under the Agency Agreement, neither Mr. Nocella nor the Nocella Agency owns that book of business. Conversely, as the Agency Agreement expressly states, Allstate “will own all business produced under the terms of this Agreement.” See Agency Agreement, Section I.A. Agents, on the other hand, “have an economic interest...in...Allstate customer accounts developed under this Agreement.” See Agency Agreement, Section XVI.B.

21. Moreover, as explained in Allstate’s letter providing notice of the termination of the Agency Agreement, Mr. Nocella (provided there is compliance with certain post-employment restrictive covenants set forth in the Agency Agreement) may be entitled to receive compensation for his economic interest in the book of business, if it is determined that he is eligible for such compensation. See Termination Letter, pp. 1-2.

Lucia Montano
LUCIA MONTAÑO

STATE OF ILLINOIS)
) ss.:
COUNTY OF COOK)

On the 14th day of March, 2018, before me, the undersigned, personally appeared Lucia Montano, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Paulomi Shukla
Signature of Notary Public – State of Illinois

(NOTARY SEAL)

PAULOMI SHUKLA
Name of Notary Typed, Printed or Stamped

ALLSTATE R3001S EXCLUSIVE AGENCY AGREEMENT

This Agreement is between ALLSTATE INSURANCE COMPANY and such affiliates and subsidiaries as are named in the Supplement for the R3001 Agreement (referred to in this Agreement as "the Company") and Michael Nocella (referred to in this Agreement as "you").

The Company and you agree as follows:

I. AUTHORITY:

- A. Effective 9/1, 2014, the Company appoints you as its agent to represent the Company in the Exclusive Agency Program. You are authorized on behalf of the Company, during the term of this Agreement, to receive and accept, subject to such restrictions on binding authority as may be established by the Company, applications for insurance covering such classes of risks located in the state(s) of NEW YORK as the Company may from time to time authorize to be written. You are also authorized to sell products specified by the Company and through the companies specified in the Supplement for the R3001 Agreement (referred to in this Agreement as "Company Business"). The Company will own all business produced under the terms of this Agreement. You will not represent yourself as having any authority other than that specifically granted to you by the Company. You will not alter any contract or incur any expense or obligation for the Company without prior written approval from the Company.
- B. This Agreement is the sole and entire agency agreement between the Company and you, and it supersedes and replaces any prior employment, agency, or other agreement between the Company and you. This Agreement also supersedes any prior oral statements and representations by the Company to you and any prior written statements and representations by the Company to you in letters, manuals, booklets, memoranda, or any other format.
- C. The Supplement for the R3001 Agreement ("Supplement") and the Exclusive Agency Independent Contractor Manual ("EA Manual"), and the Allstate Agency Standards ("Agency Standards") as they may be amended from time to time, are expressly incorporated in their entirety as part of this Agreement. The Company reserves the right to amend the Supplement, EA Manual, and Agency Standards at any time without prior notice to you, except that notice regarding changes to commission amounts will be given as indicated in Section XV.
- D. You are an independent contractor for all purposes and not an employee of the Company. You will have full control of your time and the right to exercise independent judgment as to the time, place, and manner of performing your duties, which are defined in this Agreement and the incorporated Supplement, EA Manual, and Agency Standards. You will not represent that you have authority to act on behalf of the Company or enter into any contract on behalf of the Company, except for contracts of insurance or other contracts as expressly authorized by this Agreement.
- E. You will not, either directly or indirectly, solicit, sell, or service insurance of any kind for any other company, agent, or broker, or refer a prospect to another company, agent, or broker, without the prior written approval of the Company. You may, however, write applications for insurance under an assigned risk, cooperative industry, or government established residual market plan or facility in accordance with the Company's rules and procedures.

- F. The Company will determine in its sole discretion all matters relating to its business and the operation of the Company including, but not limited to, the following:
1. The determination of contract forms and provisions, premiums, fees, and charges for insurance and other Company Business;
 2. The acceptance or rejection of any application;
 3. The termination or modification of any contract or the refusal to renew any contract;
 4. The limitation, restriction, or discontinuance of the writing or selling of any policies, coverages, lines, or kinds of insurance or other Company Business;
 5. The obtaining of any licenses of the Company or the Company's withdrawal from any state, jurisdiction, or territory; and
 6. The type and quality of customer service received by Company policyholders.

II. DUTIES AND CONDITIONS:

- A. You will act as an agent of the Company for the purpose of soliciting, selling, and servicing insurance and other Company Business in accordance with the provisions of this Agreement. As an agent of the Company, you will provide customer service, including the collection of payments, for any and all Company policyholders and you will assist in claims administration in accordance with the Company's rules and procedures.
- B. You will meet certain business objectives established by the Company in the areas of profitability, growth, retention, customer satisfaction and customer service. You will build and maintain a profitable book of business, assist the Company in its efforts to achieve market penetration for all forms of insurance offered by the Company and other Company Business, and service the Company's customers in a manner consistent with the Company's goodwill, reputation, and overall business strategy.
- C. You will record, transmit, and process insurance and Company Business in the manner prescribed in the then current provisions of the Supplement.
- D. You agree to maintain any required agent license in the state or states in which you are appointed to represent the Company and to comply with any and all applicable federal, state, or local laws, rules, regulations and ordinances affecting your operation.
- E. The Company recognizes that you may, in your sole discretion, arrange to have business conducted at your sales location in your absence by your own employees or other persons and that the time during which you are physically present at your sales location is entirely in your sole discretion. You must, however, remain actively involved in the conduct of business at your sales location.
- F. You agree that the Company will have the authority to use your name and signature, or facsimile thereof, on policy documents and customer communication materials.
- G. You agree to maintain a professional business relationship with the Company, and, when requested, to meet with Company representatives at mutually convenient times to discuss various business topics. You also agree that, because you are conducting business with the public under the Allstate name, Company representatives shall be permitted access to your agency to review compliance with this Agreement during agency business hours.