

E-FILE

At a Special Term Part 48 of the
Supreme Court of the State of New
York, held in and for the County of
Suffolk, at the Courthouse thereof, 400 Cauletu
located at 1 Court Street, Riverhead, Avenue
New York 11901, on the 15th day of
March 2018.

HON. JERRY GARGUILO

PRESENT: HON. _____X
Justice of the Supreme Court
MICHAEL NOCELLA,

MOTION SEQUENCE # 001
ORIGINAL RET. DATE 4-11-18
RELIEF PI

Central
Islip

Index No.: 604642/2018

**ORDER TO SHOW CAUSE
REQUEST FOR A TEMPORARY
RESTRAINING ORDER**

Plaintiff,

-against-

ALLSTATE INSURANCE COMPANY
Defendant(s),
_____X

Upon the reading and filing of the annexed affidavit of the Plaintiff, **MICHAEL NOCELLA**, sworn to on March 9, 2018, upon on the supporting Affidavit of **Sharlene Basso**, sworn to on March 9, 2018, upon the Affirmation of **Anthony P. DellUniversita**, dated March 9, 2018, and upon all the pleadings and proceedings filed and/or had in this action,

LET the Defendant, **ALLSTATE INSURNCE COMPANY**, and/or their attorney, Show Cause before this Court, at a Special Term Part of the Supreme Court, Suffolk County, to be held at the Courthouse located at 1 Court Street, Riverhead, New York 11901, on April 11, 2018, at 9:30 AM/PM, or as soon as thereafter as counsel may be heard:

[Handwritten initials]

WHY an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a preliminary injunction, Pursuant to CPLR § § 6301 and 6311, enjoining the defendant from continuing in any manner, with terminating Exclusive Agent Agreement with plaintiffs;

WHY and Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a preliminary injunction, Pursuant to CPLR § § 6301 and 6311, enjoining the defendant from continuing with their process to force Michael Nocella to find a purchaser for his book of business by June 1, 2018 and to sell his book of insurance business by July 1, 2018 at a reduced price;

WHY an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a preliminary injunction, Pursuant to CPLR § § 6301 and 6311, enjoining the defendant from interfering, in any manner, including but not limited to, forwarding phone calls to Michael Nocella’s business phone line elsewhere, cutting Michael Nocella’s access to company information off, changing passwords associated with his Allstate business, and removing or making his website unavailable;

WHY an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a preliminary injunction, Pursuant to CPLR § § 6301 and 6311, enjoining the defendant from withholding Michael Nocella’s full compensation for paid renewals of which he earned , for any reason;

WHY an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a preliminary injunction, Pursuant to CPLR § § 6301 and 6311, enjoining the defendant from withholding Michael Nocella’s full compensation for new business commission of which he earned , for any reason;

WHY an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a preliminary injunction, Pursuant to CPLR § § 6301 and 6311, enjoining the defendant from terminating Michael Nocella’s appointments pursuant to their letter dated March 8, 2018;

WHY an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a preliminary injunction, Pursuant to CPLR § § 6301 and 6311, enjoining the defendant from notifying the Department of Insurance pursuant to their letter and withdrawing any notification to the Department of Insurance Prior to this Order;

WHY an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a preliminary injunction, Pursuant to CPLR § § 6301 and 6311, enjoining the defendant from terminating the appointments of Christina Guigliano, an employee of the Nocella Agency, and notifying the Department of Insurance;

WHY an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a **TEMPORARY RESTRAINING ORDER**, Pursuant to CPLR § § 6301 and 6313, hereby stayed and restraining the defendant from continuing in any manner, with the termination process of the Exclusive Agent Agreement with plaintiff pending a determination of this motion;

WHY an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a **TEMPORARY RESTRAINING ORDER**, Pursuant to CPLR § § 6301 and 6313, hereby staying and restraining the defendant from continuing with their process to force Michael Nocella to find a purchaser for his book of business by June 1, 2018 and sell his book of insurance business by July 1, 2018 at a reduced price pending a determination of this motion;

WHY an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a **TEMPORARY RESTRAINING ORDER**, Pursuant to CPLR § § 6301 and 6313, hereby staying and restraining the defendant from continuing with the following actions, and Ordering each of the following to be restored immediately, so that Michael Nocella can operate business as normal, this includes but is not limited to:

- a. Business and customer telephones calls no longer being forwarded to and serviced by a different office, pending a determination of this motion;
- b. Permitting Michael Nocella access to all programs, information, websites, databases as he was normally permitted access to pending a determination of this motion;
- c. Restoring all changed passwords by Allstate, pending a determination of this motion;
- d. Restoring Michael Nocella company website, pending a determination of this motion;
- e. Permitting Michael Nocella and his employees to continue to service clients already existing, seek and procure new business, bind policies as they deem fit, pending a determination of this motion.
- f. Restoring any employees working for Michael Nocella at the Nocella Insurance Agency that were terminated as part of this underlying action, pending a determination of this motion.

WHY an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a **TEMPORARY RESTRAINING ORDER**, Pursuant to CPLR § § 6301 and 6313, hereby staying and restraining the defendant from withholding compensation for paid renewals and new business commissions due and owed to Michael Nocella of which he earned, pending a determination of this motion.

WHY an Order should not be made and entered in favor of the Plaintiff, against the Defendant, granting a **TEMPORARY RESTRAINING ORDER**, Pursuant to CPLR § § 6301 and 6313, hereby staying and restraining the defendant from terminating the appointments of Michael Nocella and Christian Guigliano and staying and restraining defendant from notifying the Department of Insurance of said termination, pending a determination of this motion.

WHY an Order awarding costs, disbursements and reasonable attorney's fees; and

WHY an Order granting Plaintiff such other and further relief as this Court may deem just and proper together with costs and disbursements of this action.

Pending the hearing of this motion:

~~ORDERED that upon service to the defendant or the defendant's attorney, the termination of Michael Nocella's Exclusive Agency Agreement is hereby ceased and the Exclusive Agency Agreement is in full force and effect allowing Michael Nocella to operate business as normal;~~

JM BSC

ORDERED that upon service to the defendant or the defendant's attorney, the forced sale of Michael Nocella's book of Allstate Insurance business is stayed and ceased;

JM BSC

ORDERED that upon service to the defendant or the defendant's attorney, phone calls of customers and for the business will be rerouted back to the office of Michael Nocella; *only as to existing business*

JM BSC

ORDERED that upon service to the defendant or the defendant's attorney, all passwords required to operate business as usual will be restored back to the office of Michael Nocella;

JM BSC

ORDERED that upon service to the defendant or the defendant's attorney, Michael Nocella will be permitted access to all programs, information, websites, databases; *only to the extent necessitated for daily operation*

JM BSC

ORDERED that upon service to the defendant or the defendant's attorney, Michael Nocella's website for his Allstate business is fully restored;

ORDERED that upon service to the defendant or the defendant's attorney, Michael Nocella and his employees to continue to service clients already existing, ~~seek and procure new business, and policies as they deem fit;~~

JM BSC

JM BSC



~~ORDERED~~ that upon service to the defendant or the defendant's attorney, defendant will continue to compensate Michael Nocella in full for new business commissions and paid renewals;



~~ORDERED~~ that upon service to the defendant or the defendant's attorney, the appointments of Michael Nocella and Christina Guigliano, an employee of the Nocella Agency, are reinstated and any notification to the Department of Insurance be withdrawn;

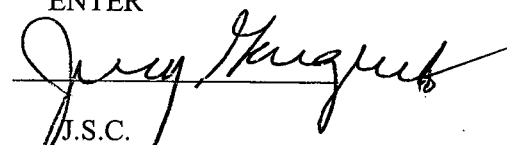
SUFFICIENT CAUSE APPEARING THEROF, it is hereby

SUFFICIENT CAUSE THEREFORE APPEARING, let service of a copy of this order, together with the papers upon which it was granted, upon the defendant's attorney, Emily Renfro, Staff Attorney, Insurance Operations Law, 2775 Sanders Road A2E Northbrook, IL on or before the 3 day of ~~March~~ ^{April}, 2018, by Federal Express overnight delivery to be deemed good and sufficient service, or any service this court may deem proper. An affidavit or other proof of service shall be presented to this court on the return date directed in the second paragraph of this Order.

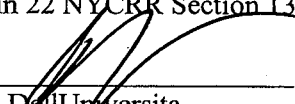


Signed this 15 day of March, 2018, Mineola, New York

Dated: ~~March 6, 2018~~ **MAR 15 2018**
~~Commack, NY~~

ENTER

J.S.C.
HON. JERRY GARGUILO

To the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the within document(s) and contentions contained herein are not frivolous as defined in 22 NYCRR Section 130-1.1-a.


Anthony P. Dell'Ursogna

GRANTED
MAR 15 2018
Judith A. Pascale
CLERK OF SUFFOLK COUNTY