

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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R. Brian Fechtel,

Plaintiff

Index No. \_\_\_62837/2014\_\_\_

- against -

**Affidavit in Opposition  
to Defendants' Motion to Dismiss  
submitted by pro se Plaintiff**

Northwestern Mutual Life Insurance Company, et.al.,  
(specifically: Ed Zore, former CEO; Mark Bishop, Regional Vice President,  
Eric P. Christophersen, Vice President; William Beckley, former Executive Vice President  
Todd M. Schoon, Executive Vice President; Sandra L. Botcher, Vice President  
William Koenig, former Chief Actuary; David R. Remstad, Vice President and Chief Actuary  
Trustees Facundo Bacardi, John N. Balboni, David J. Drury,  
Connie K. Duckworth, David A. Erne, James P. Hackett,  
Paul R. Hardin, Hans C. Heimerich, Dale E. Jones,  
Margery Kraus, David J. Lubar, Ulice Payne Jr.,  
Gary A. Poliner, John E. Schlifske, Peter M. Sommerhauser,  
Mary E. Stanek, Timothy W. Sullivan, Steve S. Voynich,  
Ralph A. Weber, Barry L. Williams, Benjamin F. Wilson,  
and Eileen M. Seabolt, Director of Network Office Supervision at the Seery Financial Group of  
Northwestern Mutual and Northwestern Mutual Investment Services

Defendants

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TO THE SUPREME COURT OF THE STATE OF NEW YORK

Plaintiff's Affidavit in Opposition

1. Northwestern Mutual and its Co-Defendants (hereinafter Northwestern or Defendants) state in Exhibit G to their Notice of Pre-Answer Motion to Dismiss Plaintiff's Complaint, "We acknowledge that Mr. Fechtel has had no customer complaints.....his [agent's] contract was terminated because of his continued failure to follow Company policies--no other reasons."(page 9, Defendant's Exhibit G) In fact, Defendants, after summarizing a purported litany of rationales in its Attorney's Aff. at #24, assert further that Plaintiff's contract had to be

terminated because of "his repeated refusals to comply with rules necessary to protect consumers from improper and unscrupulous insurance sales practices."(page 4, Memorandum)

2. Defendant's Memorandum [at VII] states or suggests, "While Fechtel's claim for breach of contract based on his August 15, 2008 termination is not time-barred, [virtually everything else - according to Defendants - based on pre-termination conduct is time-barred]."
3. Plaintiff Fechtel readily acknowledges that his pro-se filing of his suit on August 14, 2014 can appear to have jeopardized some of his claims (i.e. Northwestern's total prohibition of Northwestern agents' involvement in any viatical transactions promulgated in 1998). In many ways, though, the Court should appreciate that this clearly focuses the dispute.
4. Plaintiff reiterates his Complaint's claim that the act of termination - which Northwestern plainly acknowledges occurred August 15, 2008 - was, in and of itself, an action that was in violation of Plaintiff's contract's Covenant of Good Faith. This is clearly a cause of action that survives Defendants' Motion to Dismiss. This claim is exactly the type of question most appropriately resolved by a jury trial. In essence, this one cause of action summarizes the heart of the dispute. This litigation can be expeditiously resolved, as it depends on the straightforward answer to the simple question: When Agent Fechtel's contract was terminated on August 15, 2008 was his contract's implicit Covenant of Good Faith violated?
5. Admittedly, Northwestern and Plaintiff have very different views of the facts and circumstances. But, again, ascertaining the truth (especially in situations where the litigating parties themselves have such categorically opposing views), assessing the merit of a plaintiff's charges, and/or evaluating defendants' intentions and other matters are routine and vital functions and parts of almost every trial.
6. Northwestern's views expressed in its Memorandum are that Plaintiff claims "suffer from a variety of incurable substantive pleading deficiencies[,]" "each of those claims is based on

events occurring long before the expiration of the applicable limitations periods" and moreover, "does [/do] not require this Court to evaluate the merits of Fechtel's allegations of conspiracy and retaliation" because "Fechtel previously *peddled* the same *groundless allegations* [italics by Plaintiff] in this complaint in multiple insurance and FINRA regulatory complaints he filed against Northwestern Mutual over six years ago" and "the regulators rejected Fechtel's complaints against Northwestern Mutual, finding no basis for his contention that Northwestern Mutual had violated any insurance laws--much less that Fechtel had been "wrongfully terminated" for exposing Northwestern Mutual's purported violations of the insurance laws."

7. Defendants essentially are declaring that Plaintiff's Complaint is ridiculous, if not outright frivolous. Admittedly, if what Defendants state were true, Plaintiff would have no case. But the facts and law are very different from Defendants' assertions.
8. It is not uncommon at the start of legal proceedings for defendants and plaintiffs to see the case's facts and circumstances very differently. What is, however, perhaps quite striking in this instant is Northwestern's representations, really misrepresentations, regarding fundamental legal matters. Plaintiff brings this to the Court's attention because of its explicit and vital relevance. Plaintiff thinks it may further help the Court highlight compelling reasons for dismissing Defendant's Motion.
9. **Northwestern asserts that Fechtel's complaints have already been heard and rejected by the regulators. But Defendants' affirmation is plainly false.**
10. On September 30, 2008, the New York State Department of Insurance informed Fechtel "Please note that this Department does NOT have the authority to arbitrate the matter of your termination from Northwestern Mutual and therefore we are unable to assist in this regard." (Exhibit E, page 2, Capitalization Added by Plaintiff. Page numbers are to pdf with Page 1 as its Cover Page.)

11. In a prior 2007 letter to Plaintiff the New York State Department of Insurance states, "With certain exceptions - such as the matter of agent compensation, which is governed by Insurance Law Section 4228 - the Insurance Department does not regulate relations between life insurance companies and its agents." (Exhibit E, pages 3-11, as this is a 9 page letter. For the record, Plaintiff notes that - as the Department itself states - the Department's proffered opinions are hardly dispositive.)
12. To Plaintiff, admittedly, not an attorney, these two statements by the New York State Department of Insurance certainly seem to directly contradict Defendants' assertion on a gravely material question. If it is helpful to the Court, Plaintiff testifies that this type of misrepresentation (stating something is true when it is not, or presenting a thing as something which it is not) is so similar to the misrepresentations so many Northwestern agents make where they endeavor (and quite often successfully) to confuse prospective consumers during sales presentations. (Please be sure to see Exhibit E, page 12, as it is well worth reading. In particular, please be sure to take special note of Professor Belth's statement that the industry tried to have him fired from Indiana University because of his advocacy for disclosure. Plato's admonition about "Everything that deceives can be said to enchant is spot on in its insight in the industry's deceptive sales practices. Finally, the Smoking Gun quote if from Northwestern's actuary John Keller; please also see his 1993 email to Plaintiff in Exhibit E, page 50.)
13. Moreover, an actual reading of Defendants' Exhibit J shows that the Wisconsin Department of Insurance came to no conclusions regarding Plaintiff's complaints of Northwestern's breaches of his agent contract. Defendants Exhibit J, which is essentially a 3 sentence letter, where sentence one reads as an apology, and its concluding sentence cites Wisconsin's limited authority, reads as follows: "Although I understand the frustration that caused you to contact us, I am unable to resolve your complaint to your satisfaction. Based on the information provided [apparently the

department did not obtain any independent actuarial expertise to assess Northwestern's submission and did not conduct a market conduct survey or even contact any of the quoted authorities in "The Right Blend," an article Plaintiff's letter to Wisconsin cited and (contained herein as Exhibit E pages 13-14)], it appears the insurance company did not violate **an insurance law or regulation** with respect to the issues raised in your complaint. **Our office has limited authority** to resolve complaints **when there has been no apparent violation of** the Wisconsin **insurance laws.**" [Plaintiff added bolding and underlining for emphasis] **Plaintiff inquires of the Court**, is it customary for an adversary to so selectively excerpt a quotation in writing its Memo for one of its sentences to be totally misleading? Moreover, given Defendant Northwestern's history of more than 150+ years in business in New York State, how can its assertion be reconciled with its experience? (Please again see Defendants' Memo page 4 and contrast with Bogan v. Hodgkins - a case about which Northwestern was very much involved, if not a named defendant; complete citation forthcoming.)

14. Furthermore, with respect to state insurance departments' investigating vigor (or lack thereof) and contrary to Northwestern's implications of having been exonerated by its home state regulator, Plaintiff needs to inform the Court that state departments of insurance have a history of seldom enforcing life insurance laws and regulations pertaining to market misconduct (see 1995 industry journal article "A Personal Perspective on Disclosure as an Ethical Imperative" Exhibit C, bottom of article's page 64 and top of 65. Cited author says that regulations "have never been enforced." The Court is encouraged to google this cited author to evaluate the significance of his statement). The Court is invited to also further research Plaintiff's online article about when he informed the New York State Department of Insurance about a blatantly

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