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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: LOUIS B. YORK PART 2

0605546/2001

BENTLEY, ANTHONY M.
VS
JLT SERVICES CORP

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

SEQ 5

DISMISS

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☒ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

motion is decided in accordance with accompanying memorandum decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE

Dated: 7/9/03

LOUIS B. YORK J.S.C.

Check one: ☐ FINAL DISPOSITION @ NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.: 0605546101

Part 2

Anthony M. Bentley, Individually, and on behalf of Others similarly situated

Plaintiff,

-against-

JLT Services Corporation, a/k/a Jardine Group Services Corporation, a/k/a Jardines and AETNA US Healthcare

Defendant

DECISION/ORDER
Present:
Hon. Louis B. York
Justice, Supreme Court

In this wrongful termination of insurance action, defendant Aetna U.S. Healthcare ("Aetna") currently moves to dismiss for failure to state a cause of action pursuant to CPLR § 3211(a)(7), and summary judgment pursuant to CPLR § 3212. Defendant JLT Services Corporation ("Jardines") cross moves for summary judgment pursuant to CPLR 3212. For the reasons below, the court denies all of these motions.

Plaintiff, an attorney and solo practitioner, was enrolled in Aetna's health insurance plan offered to New York County Lawyer Association ("NYCLA") members. Jardines acted as the third party administrator of this plan. On June 4, 2001, Aetna gave Jardine 120 days notice that, effective October 1, 2001, it was ceasing to provide healthcare to groups of one member, including the plaintiff. Aetna did not notify plaintiff of this fact. Instead plaintiff first received notice from Jardines on August 15, 2001, approximately forty-eight days before the October termination date. Jardines offered plaintiff similar coverage through GHI. However, plaintiff has

not accepted the alternate coverage, and contends that his coverage was not lawfully terminated based on the failure of Aetna and Jardines to comply with statutory notice requirements. Plaintiff brought this action to reinstate his insurance retroactive to the alleged cancellation date, and to seek reimbursement on an outstanding insurance claim. Plaintiff has also proposed a class action on behalf of other "groups of one" similarly situated, with plaintiff as the class representative.

Defendant Aetna argues that dismissal for failure to state a cause of action, or in the alternative summary judgment, is appropriate here because it lawfully terminated plaintiff's health coverage. It contends that the notice requirements of Insurance Law § 3221(p)(3)(A) solely apply to groups of two or more persons, and not to groups of one such as plaintiff. Additionally, Aetna argues that it fulfiied its statutory duty by giving 120 days notice to the third party administrator, defendant Jardines.

Defendant Jardines, in its cross-motion, argues that summary judgment is appropriate because as a third party administrator, and not an insurer, it is not statutorily required to notify under Insurance Law § 3221(p)(3)(A). Furthermore, it contends that its Group Agreement, with Aetna, does not require it to notify under these circumstances, where the insurer is ending a class of coverage in the market.

If a "'plaintiff is entitled to a recovery upon any reasonable view of the stated facts' the complaint is legally sufficient, and the motion for dismissal for failure to state a claim must be denied." Hoag v. Chancellor, Inc., 246 A.D.2d 224, 228, 677 N.Y.S. 531, 533 (1st Dep't 1998)(*quoting* 219 Broadway Corp. V. Alexander's, Inc., **46** N.Y.2d 506 (1979); see CPLR § 3211 (a) (7). Defendant Aetna's motion must fail because under New York insurance law it had to give at least ninety-days notice to Plaintiff when it decided to discontinue plaintiffs class of

health insurance coverage. Insurance Law § 3221(p)(3)(A) states:

> In any case in which an insurer decides to discontinue offering a particular class of group or blanket policy of hospital, surgical, or medical expense insurance . . .the policy of such class may be discontinued by the insurer . . . only if . . . the insurer provides written notice to each policyholder . . . at least ninety days prior to the date of discontinuance of such coverage.

Thus, Aetna contends that section 3221(p) is not applicable here because the statute does not apply to groups of one. However this would not eliminate the notice requirement. Another provision, section 3216(g), applies to individual coverage and is virtually the statutory equivalent of subsection (p). Subsection (g) states:

> In any case in which an insurer decides to discontinue offering a class of hospital, surgical or medical expense policies in the individual health insurance market, coverage of the class of policies may be discontinued by the insurer only if . . . the insurer provides written notice of such discontinuance to each covered individual at least ninety days prior to the date of discontinuance of coverage.

Aetna discontinued a class of coverage, "groups of one," and notified the third party administrator within 120 days, but failed to notify the plaintiff directly about his terminated coverage. New York insurance law dictates that when an insurer is required to notify the insured of a termination in coverage it is not sufficient for the insurer to notify a third party, unless that party is acting as an agent for the insured. Bruckner Plaza Assoc. v. Generali of Trieste and Venice Ins. Co., U.S. Branch, 172 A.D.2d 408, 568 N.Y.S.2d 786 (1st Dep't 1991) (fire insurance policy was improperly terminated where insurer notified broker without timely notifying insured directly) (aff'd 78 N.Y.2d 1007 (1991); see Tomala v. Peerless Ins. Co. 14 N.Y.2d 862, 251 N.Y.S.2d 971 (1964) (termination notice to Bureau of Motor Vehicles was insufficient, where insured never received direct notification of cancellation). Thus, unless Jardines was acting as an agent for the plaintiff, Aetna did not meet its statutory requirements to notify the plaintiff of his termination in coverage. Additionally, any contention that a third party administrator is acting for the insured with the ability to receive notice

for him, which might make the 120 days notice statutorily sufficient and shift the notice requirements to Jardines, is an issue of fact that precludes summary judgment. Schenectady Steel Company, Inc. V. Guardian Life Insurance Company of America, 300 A.D.2d 854,752 N.Y.S.2d 161 (3rd Dep't. 2002) (issue of fact existed as to whether agency relationship existed between third party and insurance company). Therefore, Aetna's motions for summary judgment, or for dismissal for failure to state a cause of action, are denied.

Defendant Jardines bases its motion for summary judgment on Insurance Law § 3216 (g) and § 3221 (p), which do not impose notification requirements on third party administrators similar to those required of insurers. However, Jardines' Group Agreement with Aetna might impose on Jardines this statutory duty to notify the plaintiff of the termination of his insurance. Jardines relies on the Group Agreement to demonstrate that Aetna was required to notify the insured of a termination in coverage under these circumstances. The Group Agreement states:

> It is the responsibility of the Contract Holder [Jardines] *to* notify the Subscribers [plaintiff] of the termination of the Group Agreement in compliance with all applicable laws, except that HMO [Aetna] will notify the Subscribers in cases where HMO ceases to offer coverage in the market or ceases to offer coverage of a specific product in the market in accordance with state law.

(Group Agreement p. *5)*. It is not clear whether the portion that states ". . .ceases to offer coverage in the market or ceases to offer coverage of a specific product in the market . . ." refers to situations like the one at hand, in which the insurer ceases to offer a class of coverage in the market. If this portion of the Group Agreement is read to require Jardines to notify the insured in this type of circumstance, then the Agreement also requires Jardines to notify the insured "in compliance with all applicable laws," including the statutory requirements of Insurance Law § 3216(g) and § 3221(p). Danzig v. Dikman, 78 A.D.2d 303,434 N.Y.S.2d 217 (1st Dep't 1980).

Plaintiff, however, was not notified about the termination in his coverage until approximately forty-nine days before the effective date, which is well below the ninety-day requirement. Insurance Law § 3216 **(g),** § 3221 (p). Both sections 3216(g) and 3221(p) were enacted in 1997 to conform New York insurance law to the requirements of the federal Health Insurance Portability and Accountability Act of 1996, and thus to "assure renewability of coverage in the group and individual markets subject to termination for specific reasons . . . [and set] forth requirements to be met by insurers which decide to discontinue a class of policies." Insurance Law, ch. 661, 1997 N.Y. Laws 2633-2634. Thus, notions of justice and fairness, as well as the Legislative purpose in enacting the notice requirements of § 3216(g) and § 3221(p), dictate that those who are insured should be given proper and legal notice of the discontinuation of their insurance coverage. Insurance Law, ch. 661, 1997 N.Y. Laws 2633-2634. Whether Jardines was the entity required to notify the plaintiff under the Group Agreement in accordance with the applicable laws is an issue of fact that precludes summary judgment. "Where the language of an insurance contract is ambiguous and susceptible to two reasonable interpretations, resolution of the ambiguities is for the trier of fact." Mawardi v. New York Property Insurance Underwriting Association, 183 A.D.2d 756, 757, 585 N.Y.S.2d 215, 215 (2nd Dep't 1992) *(citing* State of New York v. Home Indem. Co., 66 N.Y.2d 669 (1985).

Furthermore, even if the Group Agreement, between Aetna and Jardines, was sufficiently unambiguous as to who should notify in this circumstance, it is not clear from the submitted papers whether plaintiff was sufficiently aware of, and bound to, the terms and conditions of the Agreement of those parties. see Tannenbaum v. New York Dry Cleaning, 2001 WL 914272 (N.Y. City Civ. Ct.) *(citing* Deutsch v. Long Island Carpet Cleaning Co., Inc., 158 N.Y.S.2d 876

(1st Dep't 1956). In Weissman v. Blue Cross of Western New York, Inc. and Blue Shield of Western New York, Inc., 126 Misc.2d 341, 482 N.Y.S.2d 659 (Erie Cty. Ct. 1984), the court denied a motion for summary judgment because there were questions of fact over whether one of the insured of a group health insurance policy received notice of amended coverage to make it binding on her. The court reasoned that to make the amended coverage binding on the plaintiff, she would have had to receive proper notice of the amendment, however, it was an issue of fact based on the record before it whether this was the case. Id. Similarly, in this case, although the Group Agreement states that the insured is bound to all the terms and conditions, there is no indication whether plaintiff received proper notice of the terms and conditions of the agreement to grant a motion for summary judgment based on the agreement. Where there are ambiguous or unclear terms in an insurance contract that can not be resolved on the face of the document, this presents a triable issue of fact that precludes summary judgment. Rivera v. St. Regis Hotel Joint Venture, 240 A.D.2d 332, 659 N.Y.S.2d 270 (1st Dep't 1997). Therefore, this court shall not grant a motion for summary judgment based on the agreement.

Accordingly, it is

ORDERED that defendant Aetna's motions for summary judgment, or to dismiss for failure to state a cause of action, and defendant Jardine's cross motion for summary judgment, are denied.

ORDERED:

Dated July 7, 2003

LOUIS B. YORK, J.S.C.

LOUIS B. YORK