RENDERED: FEBRUARY 3, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2005-CA-000148-MR

SOUTH LOUISVILLE COMMUNITY MINISTRIES, INC. APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE STEPHEN K. MERSHON, JUDGE
ACTION NO. 04-CI-000458

ANTHEM HEALTH PLANS OF KENTUCKY, INC. APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BARBER, HENRY, AND KNOPF, JUDGES.

KNOPF, JUDGE: South Louisville Community Ministries (SLCM) appeals from a summary judgment of the Jefferson Circuit Court, entered December 21, 2004, dismissing its claim for contract damages against Anthem Health Plans of Kentucky, Inc. SLCM maintains that Anthem breached the parties' group health insurance contract when it refused to supply a preferred-provider organization (PPO) plan at an erroneously quoted rate.

Agreeing with the trial court that the parties never formed the alleged contract, we affirm.

In January 2001, Anthem offered to renew, at an increased premium, SLCM's existing health-maintenance organization (HMO) plan, which was to expire as of March 1, 2001. Unhappy about the premium increase, SLCM requested quotes for alternative PPO plans. An Anthem sales representative provided two quotes, one of which was for substantially full coverage at a group rate of $2,474.50 per month. This was more than $1,200.00 per month less than SLCM's renewed HMO rate, and so on March 30, 2001, Michael Jupin, SLCM's president, signed and submitted an application for the apparently bargain-rate PPO. When Anthem's underwriting department reviewed the application, however, it discovered that in preparing the quote the sales representative had applied the wrong "rate band" to SLCM's group. The proper rate for the PPO plan, Anthem promptly informed SLCM, was $4,085.56 per month. Anthem therefore turned down SLCM's application for coverage at the incorrect rate. SLCM then accepted "under protest" HMO coverage at the previous year's rate and brought the present action claiming that Anthem was bound by the sales representative's error.

The crux of SLCM's claim is its contention that the sales representative's quotation constituted Anthem's offer to contract on those terms and that SLCM's application constituted

its acceptance of that offer. Because this is a contention about the legal effect of undisputed facts, summary judgment was appropriate.[1] The question on review is whether the trial court correctly determined that Anthem was entitled to judgment as a matter of law.[2]

Contrary to SLCM's claim, the general rule is that an insurance company's ads, quotes, and solicitations are not contract offers, but merely invitations to the prospective insured to make an offer by way of an application.[3] The company is then free to accept or reject the offer depending on its estimate of the proposed risk.[4] Exceptions to this rule occur when the company or its agent expressly overrides it, by representing, for example, that coverage is to take effect

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[1] Steelvest, Inc. v. Scansteel Service Center, Inc., 807 S.W.2d 476 (Ky. 1991).

[2] Cabinet for Families and Children v. Cummings, 163 S.W.3d 425 (Ky. 2005).

[3] Pennsylvania Life Insurance Company v. McReynolds, 440 S.W.2d 275 (Ky. 1969); Mitchell v. AARP Life Insurance Program, New York Life Insurance Co., 779 A.2d 1061 (Md.App. 2001); Callahan v. Washington National Insurance Company, 608 N.W.2d 592 (Neb. 2000); Gerrish Corporation v. Universal Underwriters Insurance Company, 947 F.2d 1023 (2nd Cir. 1991).

[4] Mitchell v. AARP Life Insurance Program, New York Life Insurance Co., *supra.*

immediately upon the submission of the application or tender of the first premium.[5]

Here there is no reason to depart from the general rule. The sales representative did nothing tending to override it, and both the quote and the application embraced it. The quote clearly indicated that it was not a binding offer. It warned the prospective insured, "Do not cancel your current coverage until you receive underwriting approval. No broker or agent can bind Anthem Blue Cross and Blue Shield." And the application made clear that it was not an acceptance:

> The undersigned employer . . . hereby requests that it be approved for coverage. . . . The advance premium check does not create temporary or interim coverage and . . . receipt and deposit of that payment does not guarantee issuance of coverage. Rather, issuance of coverage is expressly conditioned on Anthem's determination that the group is an acceptable risk. . . . [I]n order for Anthem to accept or decline this application, all the information requested on this application must be completed. . . . The requested coverage is not in effect unless and until this application is approved by Anthem, that approval of coverage shall be evidenced by issuing Group contracts and/or policies to the employer.

SLCM acknowledges these provisions but insists that they merely condition the contract formed when it submitted its application. It points in particular to paragraph twelve of the application's certifications section, which provides that "the

[5] Fleming v. Monumental Life Insurance Company, 154 F.3d 1001 (9th Cir. 1998); Andrew Jackson Life Insurance Company v. Williams, 566 So.2d 1172 (Miss. 1990).

premium rates calculated for the employer are contingent based upon the accuracy of the eligibility data submitted on employees and covered dependents to Anthem by the employer." SLCM argues that under this provision Anthem is bound by the sales representative's quoted rate unless that rate was based on inaccurate eligibility data. We disagree.

As the parties note, contracts are to be interpreted as a whole with all provisions given effect if that is reasonably possible.[6] SLCM's reading of paragraph twelve negates the provisions quoted above reserving Anthem's right to accept or reject applications depending on its risk analysis. Read consistently with those provisions, paragraph twelve, far from limiting Anthem's right to reject applications, goes beyond that right and reserves to Anthem the right to adjust the premium rate even after underwriting approval and the issuance of a policy if inaccurate eligibility data affected the policy's rate.

In sum, we agree with the trial court that SLCM's application for the erroneously quoted PPO plan did not constitute the acceptance of an Anthem offer, but was rather an offer that Anthem was free to reject. Because there was no contract, there was no breach, and SLCM's claim was properly

[6] Warfield Natural Gas Company v. Cassady, 260 Ky. 548, 86 S.W.2d 276 (1935).

dismissed. Accordingly, we affirm the December 21, 2004, judgment of the Jefferson Circuit Court.

ALL CONCUR.

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