

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

HEALTHSHARE BENEFITS, INC.,)	
)	
Plaintiff)	
)	
)	
v.)	Civil No. 91-193 P
)	
)	
ALLSTATE LIFE INSURANCE)	
COMPANY and ALLSTATE)	
INSURANCE COMPANY,)	
)	
Defendants)	

MEMORANDUM DECISION ON DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT¹

Before the court at this time is the defendants' motion for summary judgment on the promissory estoppel claims of Healthshare Benefits, Inc. ("Healthshare") against Allstate Life Insurance Co. ("Allstate Life") and its parent, Allstate Insurance Co. ("Allstate"), for failing to supply group health insurance products.²

I. SUMMARY JUDGMENT STANDARDS

¹ Pursuant to 28 U.S.C. § 636(c), the parties have consented to have United States Magistrate Judge David M. Cohen conduct all proceedings in this case, including trial, and to order the entry of judgment.

² The court (Hornby, J.) previously granted the defendants' motion to dismiss Counts I, II, V, VI, VII and VIII, and therefore only Counts III and IV remain.

Fed. R. Civ. P. 56(b) provides that "[a] party against whom a claim . . . is asserted . . . may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof." Such motions must be granted if

the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c). The party moving for summary judgment must demonstrate an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). In determining if this burden is met, the court must view the record in the light most favorable to the nonmoving party and "give that party the benefit of all reasonable inferences to be drawn in its favor." *Ortega-Rosario v. Alvarado-Ortiz*, 917 F.2d 71, 73 (1st Cir. 1990) (citation omitted). "Once the movant has presented probative evidence establishing its entitlement to judgment, the party opposing the motion must set forth specific facts demonstrating that there is a material and genuine issue for trial." *Id.* at 73 (citations omitted); Fed. R. Civ. P. 56(e); Local R. 19(b)(2). A fact is "material" if it may affect the outcome of the case; a dispute is "genuine" only if trial is necessary to resolve evidentiary disagreement. *Ortega-Rosario*, 917 F.2d at 73.

II. FACTUAL CONTEXT

Healthshare is a consulting firm designed to set up managed-care organizations relating to group insurance and health care programs. It was originally a division of Benefit Management of Maine, Inc. ("Benefit Management"), a corporation formed in 1982 to market and administer group health insurance products. Healthshare was spun off as a separate corporate entity in 1987 to take advantage of opportunities in the area of managed health care, which includes the development and oversight of health maintenance organizations ("HMOs") and preferred provider organizations ("PPOs"). The majority owner of Healthshare is Gordon Gray, a sophisticated businessman with extensive experience in the insurance industry. The only other shareholder is Alan Graffam. Gray also owns a majority interest in Benefit Management. Gray, acting through his various entities, had

been associated for a number of years with Allstate Life as a third-party administrator ("TPA") and group agent.

In April 1986 Allstate Life wrote to Gray in his capacity as president of Benefit Management to express an interest in discussing possible managed-care projects with Sun Health, also known as Sun Alliance, an association of hospitals located in the southeastern United States. In December 1986 Allstate Life wrote to Gray, this time at an entity called Group Marketing Services, Inc., to explore a pilot project in Baton Rouge, Louisiana. Oral statements by various Allstate Life agents made clear that Allstate Life was prepared to work with Healthshare to develop managed-care projects. Thereafter, Healthshare located a suitable provider organization in the Baton Rouge area, Gulf South Health Plans, Inc. ("Gulf South"), which is owned by two hospitals that are members of Sun Health.

On April 1, 1987 Healthshare entered into an agreement with Gulf South whereby Healthshare agreed to provide Gulf South with wide-ranging management and consulting services. One of Healthshare's several undertakings was that it would help Gulf South develop working relationships with insurance carriers that provide health insurance products important to the successful operation of a Gulf South HMO and PPO. The contract did not require that Healthshare actually procure for Gulf South a contract with Allstate Life or any other insurer. Healthshare's compensation for entering into the contract and agreeing to share certain proprietary information with Gulf South was a nonrefundable retainer of \$250,000. In addition, Healthshare became entitled to on-going consulting fees for the various services that it agreed to perform plus incentive-bonus compensation tied to the gross revenues of an entity to be formed by Gulf South to provide TPA services and to PPO fees remitted by insurance agencies to that entity.

Healthshare worked with Gulf South and Allstate Life to move the latter two companies toward the signing of a contract whereby Allstate Life would provide an insurance product for sale through

Gulf South. When Graffam left an October 27, 1987 meeting with Allstate Life he believed issues remained to be worked out before Allstate Life could agree to a contract with Gulf South. Before a written contract was consummated, and despite numerous representations by Allstate Life agents during late 1987 and 1988 that it was committed to the group health insurance business, Allstate Life decided to exit the employer group health insurance market by announcing in June 1988 its intention to seek a purchaser for its business. Prior to this announcement, Gray never discussed with either Gulf South or Allstate Life what the duration or termination provisions of any contract between those two entities would be. However, Gray was familiar with Benefit Management's own written agreement with Allstate Life which expressly allowed termination in the event Allstate Life decided to exit the business.

At all relevant times Gray knew that any contract with any insurance company for the resale of its products always allowed the insurer to terminate if it decided to go out of the business. Graffam, Gray's co-owner of Healthshare, knew that insurance industry practice allowed insurers to terminate a contract if the insurer decided to stop marketing a particular product. Indeed, it was general industry practice to include such a termination clause in any such contract and Mr. Gray had never seen or heard of a contract which required a carrier to provide a product even if it was no longer going to provide that product line. Insurance carriers drop product lines regularly.

Healthshare concedes that Allstate Life did all that it expected until June 1988. In addition, Gulf South has fully paid Healthshare all compensation owed it under the April 1987 agreement. Healthshare made a profit in 1987, 1990 and 1991 and its worth has increased from par when formed in 1987 to in excess of one million dollars at the present time. Despite this, according to Healthshare's business plan for the years 1987 through 1992 it lost incentive compensation under its contract with Gulf South in the approximate amount of \$500,000 as a consequence of Allstate Life's pullout from the industry.

III. LEGAL ANALYSIS

Healthshare contends that, in reasonable reliance on Allstate Life's promise to provide group health insurance products necessary to the success of Gulf South's TPA and PPO operations, it negotiated the compensation package reflected in its April 1987 contract with Gulf South and entered into the contract. Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment ("Plaintiff's Memorandum") at 14-17. The plaintiff further contends that Allstate Life breached its promise and that Healthshare suffered a significant detriment as a consequence.³ *Id.* at 17. The plaintiff asserts that Allstate is liable for the acts of its subsidiary, Allstate Life, because the two companies share officers and directors who participated in events relevant to Healthshare's action. *Id.* at 17-18. In response, the defendants argue that the only promise Allstate Life could possibly be deemed to have made is that it would "try [to] negotiate a written contract with Gulf South allowing Gulf South to market and administer group products in Baton Rouge as long as [Allstate Life] continue[s] to stay in that business," and that it did not breach any such promise. Memorandum of Law in Support of Defendants' Motion for Summary Judgment at 9. The defendants further argue that, even if Allstate Life is deemed to have made the broader promise alleged by the plaintiff, the plaintiff's reliance thereon was unreasonable and that, in any event, Healthshare has not suffered a detriment. *Id.* at 10-18.

³ In its complaint, the plaintiff also contends that it lost other business opportunities as a result of Allstate Life's alleged breach of promise. Amended Complaint & 39. However, Healthshare fails to further develop this contention and thus it is waived. *Collins v. Marina-Martinez*, 894 F.2d 474, 481 n.9 (1st Cir. 1990).

In Maine "[a] promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee . . . and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise." *Stone v. Waldoboro Bank*, 559 A.2d 781, 782 (Me. 1989) (quoting *Restatement (Second) of Contracts* § 90 (1981)). Although an enforceable promise need not be express but may be implied from a party's conduct," *Martin v. Scott Paper Co.*, 511 A.2d 1048, 1050 (Me. 1986), it must constitute "a binding offer," *Santoni v. Federal Deposit Ins. Corp.*, 677 F.2d 174, 179 (1st Cir. 1982).

The record reflects that when Allstate Life announced that it was exiting the group health insurance business it was engaged in negotiations with Healthshare intended to facilitate a contract between itself and Gulf South. There is no evidence that at any time these parties discussed the intended duration of Allstate Life and Gulf South's existing or future relationship. Nor is there any evidence to suggest that they discussed under what conditions the parties might terminate such relationship. It is the general practice in the insurance industry to include in any such contract a provision permitting the carrier to terminate should it decide to drop a particular product line, and Healthshare's principals well understood this.

I conclude that the statements upon which the plaintiff relies in claiming that Allstate Life promised to provide group health insurance products as necessary for the success of Gulf South's operations are too indefinite and uncertain on this record to constitute anything other than a "mere expression of future intention." *Santoni*, 677 F.2d at 179. The evidence reflects at most only an

⁴ There are only three statements relied upon by the plaintiff that are even arguably of evidentiary quality. Two officers of Allstate Life testified at deposition that during a meeting with employees of Benefit Management they offered assurances that Allstate Life was "in this business for the long haul" and was "committed to the group business." Deposition of Mark Stadler at 60, Exh. 12 to Plaintiff's Statement of Material Facts in Opposition to Defendants' Motion for Summary Judgment ("Plaintiff's Statement"); Deposition of Donald B. Nystrom at 59, Exh. 13 to Plaintiff's Statement. According to

undertaking by Allstate Life that it would work toward signing a contract with Gulf South to provide health insurance products, nothing more. Allstate Life engaged in negotiations toward that end until it exited the business. Thus, there was no promise of the kind asserted by the plaintiff. Even assuming such a promise, given the general industry practice regarding termination and the plaintiff's knowledge of it, no reasonable trier-of-fact could conclude either that Allstate Life was prepared to bind itself to actually provide such products without reserving the right to terminate upon exiting the business or that the plaintiff reasonably relied on the promise in negotiating and signing its contract with Gulf South.⁵ *See Flower City Painting Contractors, Inc. v. Gumina Constr. Co.*, 591 F.2d 162, 165 (2d Cir. 1979) (parties aware of customary practice in local industry may be bound by it in absence of contractual provisions dictating otherwise); *see also Norton v. University of Me.*, 106 Me. 436, 439-40 (1910). Accordingly, the plaintiff's promissory estoppel claim against Allstate Life must fail. Since the plaintiff's claim against Allstate is derivative, it too must fail.

the plaintiff, this meeting took place on or about March 22, 1988. Plaintiff's Memorandum at 9. The third statement derives from deposition testimony of Gray that all through late 1987 and 1988 agents of Allstate Life represented that Benefit Management would be "a key player in the '90s with them." Deposition of Gordon Gray at 114, Exh. 10 to Plaintiff's Statement.

⁵ The only specific evidence of a promise in the record is the assurances made by officers of Allstate Life to Benefit Management personnel at a March 22, 1988 meeting and those allegedly made to Benefit Management in late 1987 and 1988, none of them before Healthshare entered into its contract with Gulf South in April 1987. *See supra* n.4. Therefore, they cannot support a detrimental reliance claim.

For the foregoing reasons, I ***GRANT*** the defendants' motion for summary judgment on Counts III and IV.

Dated at Portland, Maine this 28th day of July, 1992.

David M. Cohen
United States Magistrate Judge