

**STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE**

**JOHN W. BUYERS, JR., BRUCE M. BUYERS,
MARGOT B. HAMPLEMAN, and WENDY B.
GRIFFIN, Individually and as Trustees of the
Buyers Family Trust,**

Plaintiffs,

vs.

DECISION

INDEX NO. 806586-2015

**THE UNITED STATES LIFE INSURANCE
COMPANY IN THE CITY OF NEW YORK, in
its own interest and as Successor in Interest to
American General Life Insurance Company of
New York; AHRENS FINANCIAL GROUP;
COCHRANE, FLYNN, AHRENS, MICHAL and
ASSOCIATES, INC.; RFA AGENCY INC.;
RONALD F. AHRENS; and JOHN R. AHRENS,**

Defendants.

**HON. HENRY J. NOWAK, J.S.C.
Justice Presiding**

Defendant The United States Life Insurance Company In The City of New York ("US Life") moves to dismiss this action, and plaintiffs cross-move to amend their complaint. In 1994, plaintiffs, with the intention of providing for wealth transfer and estate planning for their mother, Marjorie Buyers, who was then 76 years old, purchased a million dollar universal life insurance policy on her life from American General Life Insurance Company of New York ("American General"). Plaintiffs claim that the policy was represented to them by defendants to be a form of

“permanent insurance” that would cover Marjorie Buyers for the rest of her life, and would maintain significant cash value. Plaintiffs further claim that illustrations of the policy were provided to them before, at and after the time the policy was purchased, and that such illustrations showed that the policy would pay a million dollar death benefit (which was later increased by the plaintiffs’ election of a certain option) and would yield substantial cash surrender value in the event that plaintiffs chose to terminate the policy prior to Marjorie Buyers’ death.

Plaintiffs claim that they relied on these illustrations and even questioned some defendants and their agents about their content, ultimately receiving explanations from various defendants which defendant US Life now claims were inaccurate.

From 1994 through October 2012, plaintiffs paid premiums of approximately \$ 61,000.00 per year for this insurance policy, totaling approximately \$ 1,160,000.00. In October 2013, US Life, the successor by merger to American General, claimed that the policy had expired because Marjorie Buyers had survived to the age of 95. Accordingly, US Life paid the sum of \$ 11,219.55 to the plaintiffs as what it claimed was the then remaining cash value of the policy.

Plaintiffs allege causes of action for violations of General Business Law § 349 and Insurance Law § 4226, breach of fiduciary duty, negligent and intentional misrepresentation, unjust enrichment, and breach of contract. Specifically, plaintiffs claim that defendants misrepresented and failed to disclose key details of the policy as US Life now interprets it. Plaintiffs further claim that US Life and other defendants did not administer the policy as it was represented to them, and also because they failed to monitor and manage the plaintiffs’ interests in the policy so as to prevent the result that occurred.

Plaintiffs seek to amend the complaint as a matter of right pursuant to CPLR § 3025 (a) because defendants have not yet answered the complaint. Plaintiffs have filed a cross-motion for leave to amend in the event that the court finds that leave is required.

US Life claims that the plaintiffs' causes of action fail to state a cause of action based upon documentary evidence. However, the documentary evidence fails to show that the Buyers Family Trust was entitled to the sum of only \$ 11,219.55 upon the maturity date of the policy.¹ US Life also claims that plaintiffs' causes of action are time-barred. However, pursuant to CPLR § 214 (2), claims under New York General Business Law have a three year statute of limitations, which begins to run when the plaintiffs suffer harm. Plaintiffs claim they suffered harm in October 2013, when US Life refused to pay the designated amount under the policy or extend the policy's life, instead offering the plaintiffs the sum of \$ 11, 219.55. Plaintiffs' remaining causes of action are based on allegations of misrepresentation, and are therefore also timely pursuant to CPLR § 213 (8), which extends the statute of limitations for two years from the discovery of the misrepresentation. Plaintiffs claim that they discovered the misrepresentation in June 2013,

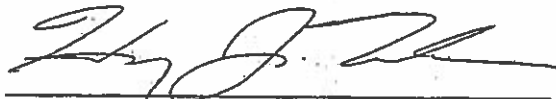
¹ The terms of the policy provide that the Trust was entitled to the "Cash Value" upon the maturity date, which is defined elsewhere as the "Accumulation Value less the Surrender Charge, if any." The Accumulation Value is set by a complex formula, which appears to begin with 95 % of the premiums paid. By the date of maturity, the premiums paid totaled approximately \$ 1,160,000.00. The policy further provides that a request for surrender may be made "at any time during the Insured's lifetime before the Maturity Date." Since this policy reached the maturity date, there could have been no request to surrender, and thus, no surrender charge. To the extent that the terms of the policy are ambiguous or uncertain, the court may consider extrinsic evidence (*Concoff v Occidental Life Ins. Co. of California*, 4 NY2d 630, 638 [1958]). Here, plaintiffs have provided an illustration given to them in December 1994, shortly after they purchased the policy, and the illustration makes no reference to a remaining cash value upon maturity of \$ 11,219.55, or any figure close to that amount. Instead, the illustration reflected that with an interest rate of 6 %, plaintiffs could have expected a surrender value of \$ 839,049.00 had they surrendered the policy one year before the maturity date.

when John Ahrens first called plaintiffs to advise them that, contrary to all advice he and other defendants had given to plaintiffs previously, the policy was about to expire. The action was commenced in May 2015, less than two years after that disclosure. The court also rejects US Life's contention that the individual plaintiffs lack standing pursuant to *Orentreich v Prudential Ins. Co. of Am.* (275 AD2d 685 [1st Dept 2000]). The claims in this action go beyond the claims presented in *Orentreich*, specifically in regard to misrepresentations made to individual plaintiffs.

Accordingly, US Life's motion is denied. Plaintiff's cross motion to amend the complaint is granted.

Submit order.

Dated: July 15, 2016



HON. HENRY J. NOWAK, J.S.C.