

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

<p>NANCY TRUMBULL,</p> <p style="text-align: center;">v.</p> <p>SCI ILLINOIS SERVICES, INC. d/b/a ROSEHILL CEMETARY,</p> <p style="text-align: center;">Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Plaintiff,</p> <p>Case No: 12-CV-00321</p> <p>Judge St. Eve</p> <p>Magistrate Judge Maria Valdez</p>
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PLAINTIFF, NANCY TRUMBULL’S, SECOND AMENDED STATEMENT OF ADDITIONAL MATERIAL FACTS PURSUANT TO LOCAL RULE 56.1(B)(3)(C)

NOW COMES Plaintiff, NANCY TRUMBULL (“Trumbull” or “Plaintiff”), by and through her attorneys, Eileen M. Letts, Martin P. Greene and Kevin T. Lee of the law firm of Greene and Letts, and submits the following Statement of Additional Material Facts in Opposition to Defendant, SCI ILLINOIS SERVICES, INC.’s, Motion for Summary Judgment.

1. It is the goal of Defendant to strive for sales counselors to write 2 to 3 pre-need contracts for every at-need contract they write. (Def.’s Ex. B, Michael Dep., at 95:9-24. 96:4).

2. Defendant could make more money off pre-need contracts than it could make off at-need contracts. (Ex. 1, Hayes Dep., at 56:14-24, 57:9).

3. A Securities and Exchange Commission filing for Defendant (Form 10-Q) on October 25, 2012, sets out the company’s view of the desirability of pre-need contracts:

Pre-need selling provides us with a current opportunity to lock-in future market share while deterring the customer from going to a competitor in the future. We believe it adds to the stability and predictability of our revenue and cash flows. (See, <http://biz.yahoo.com/e/121025/sci10-q.html>).

4. During the time that Lenny Hayes was General Manager at Rosehill cemetery, sales counselors sometimes would use the wrong contract and that happened possibly more than 15 times. (Ex. 1, Hayes Dep., at 46:16-24, 47:1-5).

**EXHIBIT
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5. When a sales counselor would use the wrong contract, what was typically done was that the counselor would be sent back to the family to have the contract re-written. (Ex. 1, Hayes Dep., at 47:6-24, 47:1-17).

6. Lenny Hayes could not think of anyone else who was fired for using a pre-need contract when an at-need contract should have been used, or vice versa. (Hayes Dep. 1, at 47:18-24, 48: 1-4).

7. David Klein did not consider providing plaintiff with additional training in lieu of termination nor did he consider a written warning rather than termination. (Def.'s Ex. E, Klein Dep., at 45:16-23).

8. Gary Ritter did not ask Bob Caramusa if he instructed plaintiff to write the Charles Hall contract as pre-need. (Ex. 3, Pl.'s Req. for Admis. Directed to Def., ¶ 4).

9. Larry Michael did not ask Bob Caramusa if he instructed plaintiff to write the Charles Hall contract as pre-need. (Ex. 3, Pl.'s Req. for Admis. Directed to Def., ¶ 3).

10. David Klein did not ask Bob Caramusa if he instructed plaintiff to write the Charles Hall contract as pre-need. (Ex. 3, Pl.'s Req. for Admis. Directed to Def., ¶ 3).

11. Trumbull made every effort to keep management informed of precisely what she was doing. (Ex. 2, Trumbull Dep., at 349:20-24, 350:1-15). Her process was to make the general manager, Lenny Hayes, aware of anything that was out of the ordinary and she did not attempt to hide any of her work on the Charles Hall contract. (Ex. 2, Trumbull Dep., at 349:20-24, 350:1-15).

12. According to defendant's own documents, management received notice of possible offending contact on September 5, 2008 by an email from Bob LaVoncher to David Klein and Gary Ritter. (Def.'s Ex. D, Klein Decl. at ¶ 3 & Ex. 1 at SCI00674).

13. At the time, the burial had not taken place.

14. Bob LaVoncher's email of September 5, 2008, was 38 days after he received a written warning as a "result of allegations made by Nancy Trumbull," including claims that

LaVoncher “harassed, discriminated, and accused Nancy of lying.” (Def.’s Ex. D, Klein Decl. at ¶ 7 and Ex. 4 at SCI00189).

15. LaVoncher was specifically warned that a “failure to follow any Company policy or procedure may lead to further disciplinary action up to and including termination” of employment. (Def.’s Ex. D, Klein Decl. at ¶ 7 and Ex. 4 at SCI00190).

16. Management at Rosehill subsequently allowed the burial to be completed on or about September 30, 2008. (Ex. 4; Trumbull Aff., at ¶¶ 37-40).

17. Further, according to the documents submitted by defendant, Klein waited until September 30, 2008, three days after the burial, to contact Jeffrey Craig, the Chicago Market Sales Director, for clarification. (Def.’s Ex. D, Klein Decl. at ¶ 4 & Ex. 2 at SCI00686).

18. Klein’s declaration states that he received a response for Jeffrey Craig by telephone and that Craig told him...”that if Ms. Trumbull had written a pre-need cemetery contract for someone in advance of death, then she had violated SCI’s sales policies and procedures.” (Def.’s Ex. D, Klein Decl. at ¶ 4).

19. Mr. Klein testified in his deposition that, “a pre-need contract is only written for the living. An at-need contract is only written for the dead”. (Def.’s Ex. E, Klein Dep., at 21:5-10; 25).

20. Defendant’s submissions do not seek to clarify or otherwise explain the inconsistencies between these two statements from David Klein.

21. Bob Caramusa was in the process of being terminated at the same time as the investigation into the Trumbull alleged policy violation. (Ex. 5, at SCI 02100 – 02108).

22. Larry Michael was the decision maker for both the Trumbull and the Caramusa terminations. (Def.’s Ex. C, Michael Dep., at 45:6-24, 46:9-11).

23. Michael claimed in his deposition that Bob Caramusa was fired for a “violation of company policy.” (Def.’s Ex. C, Michael Dep., at 46:10-14).

24. Handwritten notes of Gary Ritter contain notations of a meeting of January 12, 2009. (Ex. 5, at SCI 02100-02102) In attendance were Bob Caramusa, David Klein and Gary Ritter. (Ex. 5, at SCI 02100-02102). The notes reflect conversations about honesty, particularly as it related to a manager.

25. There is a specific mention of an occurrence of two months prior. There is also a specific statement, "Bob lied Friday to David (per David)". (Ex. 5, at SCI 02101). The Friday prior to January 12, 2009 was January 9, 2009.

26. David Klein went on to say "tough decision but because of dishonesty, lack of full disclosure which is against company policy & the dignity promise we have decided to terminate employment effective today." (Ex. 5, at SCI 02101).

27. On March 6, 2013, Larry Michael sat for his deposition. At that time he said the opposite:

2 Q. In the conversation with Bob, did you say
3 anything to the effect of "[w]e're conducting an
4 investigation of Nancy Trumbull related to a particular
5 contract. Did you ever tell her that she should write a
6 contract as a pre-need instead of an at-need" or
7 anything to that effect?

8 A. Most likely, I had a conversation something
9 like that, along those lines.

10 Q. What did he tell you?

11 A. As I recollect, he told me that -- not in
12 this order necessarily, but that he clearly understood
13 the policy of at-need. At-need was to be a written
14 contract for anybody deceased, irregardless (sic) of how long
15 they've been deceased or how long in the future they
16 intended to plan the internment, entombment or
17 inurement. He understood what a pre-need contract was
18 for, that it was clearly for somebody that had never
19 passed away yet.

20 As far as the details related to the Nancy
21 Trumbull incident, I asked him about that. And, again,
22 best of my recollection, we discussed the details
23 relative to that and he stated that he had not
24 instructed her to write an at-need service up on a

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1 *pre-need contract*. (Emphasis added). (Def.'s Ex. C, Michael Dep., at 54: 2-24,

55:1).

28. A part of Trumbull's explanation to Gary Ritter on January 7, 2009 was that there were other employees who were given the same instructions by Caramusa as Trumbull with respect to how to write contracts. (Def.'s Ex. C, Michael Dep., at 59:14-24, 60:1-3). There does not appear to have been any investigation into that portion of Trumbull's explanation. (Def.'s Ex. C, Michael Dep., 59:14-24, 60:3).

29. Plaintiff was not terminated for: "theft, falsifying company records, being deceitful, and engaging in any form of fraudulent activity." (See Def.'s SOF ¶ 14). According to the February 18, 2009 letter advising Plaintiff of her termination, defendant stated:

Accordingly, after reviewing and giving due consideration to your explanation, the Company has made the decision to terminate your employment as of today for violation of the sales policies and practices". (Def.'s Ex. 19, NT001267).

At no point in that letter did defendant reference "theft, falsifying company records, being deceitful, and engaging in any form of fraudulent activity" as its reasons for terminating plaintiff's employment.

30. Gary Ritter, one of the persons involved in the decision to terminate plaintiff, authored a document entitled "Nancy Trumbull Recap." (Def.'s Ex B, Ritter Dep., at 140:11-22). The recap contains the following entry:

October 14, 2008 meeting with Amy with approval to terminate (No Fraud)." (Ex. 6, at SCI 00667).

Moreover, Larry Michael testified in his deposition that Trumbull was not terminated for fraud. (Def.'s Ex. C, Michael Dep., at 75:13-15).

31. Defendant's Family Services Guidebook contains a different definition of At-Need and Pre-Need than its North American Sales Cemetery and Preneed Funeral Sales Policy. The Family Services Guidebook defines Pre-need as:

Preneed sales are all sales made in advance of death. *All sales contracts not specified as at-need sales are considered preneed.* See appropriate sections of the Cemetery Manual for further explanation." (Ex. 2, Trumbull Dep. & Exhibit 10, at NT00691, emphasis added).

The Family Services Guidebook defines At-need as:

Funeral or cemetery, arrangements made at the time of death. At-need sales can include interment rights (land spaces, mausoleum or lawn crypt, niches or urn spaces), and merchandise such as bronze or granite markers, granite bases, vaults, monuments and vases. (Ex. 2, Trumbull Dep. & Exhibit 10, at NT00681).

32. Plaintiff could not identify Defendant's North American Sales Cemetery and Preneed Funeral Sales Policy but she could identify the Family Services Guidebook. (Ex. 2 Trumbull Dep., at 101: 8-24; 102:17-23, 108: 17-24; 109:1-5 & Trumbull Ex. 10-11)

33. Lenny Hayes did not consider the training provided by Caramusa to be adequate. (Ex. 2, Hayes Dep., 19:22-24, 20:7). Plaintiff testified that someone showed her how to fill out the respective contracts and that she remembered how one contract was longer than the other. (Ex. 2, Trumbull Dep., 80:7-15). Plaintiff went on to state that there was nothing else that she recalled. (Ex. 2, Trumbull Dep., 80:16-17). During Trumbull's initial training, she sat alone in an off-site meeting room watching "Dignity DVDs" and was instructed by Bob Caramusa to watch these DVDs without benefit of periodical question and answer periods. (Exhibit 4, Aff. of Nancy Trumbull, at 46).

34. When Trumbull's position changed from Family Service Counselor to Community Service Counselor, she received no additional training regarding the appropriate use of contracts. (Ex. 3, Answers to Pl.'s Req. for Admis. Directed to Def., 45).

35. The Defendant's pre-need and at-need policies do not clearly define how cremated remains are to be treated. (See Pl's Resp. to Def.'s SOF ¶ 23). In instances where a client knows that they want to bury the cremated remains of a family member within a month or two, or later, the sales counselor would write the contract as pre-need. (Ex. 1, Hayes Dep., 71:12-24, 72:1). Accordingly, Trumbull asked her manager, Bob Caramusa, for guidance on how to write the Henle contract. (Ex. 2, Trumbull Dep., 349:1-16. 168:16-20).

36. Lenny Hayes was the General Manager for the Rosehill cemetery at all times relevant to this matter. (Ex. 1, Hayes Dep., at 60:12-24). One of Hayes' responsibilities was to

review, sign, and approve all contracts submitted by sales counselors. (Ex. 1, Hayes Dep., at 60:12-18). Hayes also relied on his Office Manager, Cathy Uzitas, to review submitted contracts for errors and flag any irregularities prior to submitting them to Hayes for his approval. (Ex. 1, Hayes Dep., at 61:1-15). Leonard Hayes, as General Manager, reviewed the Charles Hall contract. (Ex. 1, Hayes Dep., 78:18-24; 79:11-14).

37. On April 1, 2008, Plaintiff made a Careline report concerning an incident where LaVoncher hung up the phone abruptly while she was talking with him and his continuous rude and curt behavior toward her. (Ex. 2, Trumbull, at 188:20-24; 189: 1-18; 198:21-24; 199:6-17).

38. On April 2, 2008, Plaintiff addressed her concerns regarding LaVoncher to Leonard Hayes. (Ex. 2, Trumbull Dep., at 199:18-22; 200:5-8). However, following her discussion, LaVoncher told Trumbull that she should not have spoken with Hayes regarding the April 1, 2008 incident. (Ex. 2, Trumbull Dep., at 207:16-20).

39. On June 20, 2008, Plaintiff placed her second Careline call complaining that LaVoncher had again hung up the phone on her and was mistreating her and subjected her to a greater degree of harassment because she is African American. (Ex. 2, Trumbull Dep., 227:8-24, 228:1-4 & Ex. 29).

40. On July 19, 2008, another Careline investigator substantiated that LaVoncher did hang up the phone on Trumbull and often loses his temper with her. (Ex. __Ritter Dep., 57:9-16). David Klein then issued LaVoncher a written memorandum warning LaVoncher of the consequences of failing to comply with SCI directives. (Ex. __Ritter Dep., 59:23; 60:1-5; 64:13-16).

41. On August 25, 2008, plaintiff told Careline, "that because she is the only African American woman there, she wonders if she is being racially discriminated against. (Ex. __, Trumbull Dep. & Exhibit 29). Plaintiff stated that she did not have any other reason to suspect she is being discriminated against because of her race. (Ex. 2, Trumbull Dep. & Exhibit 29).

42. Plaintiff alleged that LaVoncher stole a sales lead from her. (Ex. 2, Trumbull Dep., at 272:23-24, 273:1-14).

43. Gary Ritter conducted an investigation and substantiated Trumbull's April 1, 2008 claims against LaVoncher. (Def.'s Ex. B, Ritter Dep., at 43:18-24, 44:1-8). Accordingly, Ritter engaged LaVoncher in a "coaching" conversation as a means of corrective action in order to improve LaVoncher's conduct. (Def.'s Ex. B, Ritter Dep., at 43:18, 44:1-8).

44. On September 5, 2008, Bob LaVoncher notified SCI management that plaintiff had written a preneed contract for someone who was deceased. (Def.'s Ex. D, at ¶ 3). LaVoncher notified SCI management shortly after receiving a verbal and written warning by management concerning plaintiff's June 2008 Careline complaint wherein she complained that LaVoncher may have been subjecting her to harsh, unfair, and discriminatory treatment because she is African American. (Def.'s Ex. D, at ¶ 7 & Exhibit 4; Ex. 2, Trumbull Dep., 227:8-24, 228:1-4 & Ex. 29). LaVoncher was counseled on July 29, 2008. (Def.'s Ex. D, Klein Decl., at ¶ 7 & Exhibit 4). Accordingly, Bob LaVoncher's notice of the preneed contract was 38 days subsequent to his having been counseled.

45. SCI Human Resource policy regarding the investigation of Careline reports prohibits an assigned HR manager from conducting or otherwise having any input into a Careline investigation if the manager is named in the charge. (Def.'s Ex. B, Ritter Dep., 54:6-21). Gary Ritter did not suggest the adoption of a similar policy in investigating Trumbull.

46. Although Garry Ritter, David Klein, Larry Michael, Bob Caramusa, and Bob LaVoncher, all participated in the Henle contract investigation, Lenny Hayes and Bob LaVoncher, almost exclusively, conducted the investigation into the underlying facts. (Def.'s Ex. E, Klein Dep., at 28:19-24; 29:1-7). David Klein relied on LaVoncher and Hayes' investigatory findings, even though he was aware plaintiff had asserted numerous charges of misconduct and discrimination against LaVoncher. (Def.'s Ex. E, Klein Dep., 27:24, 28:1-8).

47. Even though plaintiff named Lenny Hayes him in a Careline Report for failing to offer a "satisfactory resolution" for her ongoing dispute with LaVoncher, Hayes was permitted to investigate the underlying facts in the Henle contract matter. (Def.'s Ex. B, Ritter Dep., 51:1-6). Despite plaintiff's complaints otherwise, Hayes believed LaVoncher "was doing a good job," and regarded him as a "nice and generous man," who "didn't seem unfair." (Ex. 1, Hayes Dep., 29:20-22; 36:7-20). Hayes also did not agree that LaVoncher's conduct in hanging the phone up on Trumbull warranted discipline. (Ex. 1, Hayes Dep., at 30:11-23).

48. Despite knowledge that sales counselors often made errors in assigning the proper contract to cremated remains, SCI conducted no investigation to conducted to determine whether other sales counselors were incorrectly instructed as to the application of preneed and at-need contracts in that situation. (Ex. 1, Hayes Dep., at 46:16-19).

49. Hayes testified that in his SCI experience, which spanned over three decades, it is possible that there were more than 15 incidents of counselors using the wrong contract. (Ex. 1, Hayes Dep., at 46:16-24; 47:1-5). Thus, because of the frequency of the problem, rather than terminating the offending counselor, SCI management would: (a) sometimes issue a verbal warning to the counselor-in-error; (b) coach the counselor to explain to the family the contracting error; and (c) re-write the contract correctly. (Ex. 1, Hayes Dep. 47:6-19). Hayes testified that he cannot recall SCI ever terminating a counselor for writing the wrong kind of contract. (Ex. 1, Hayes Dep., 47:18-24; 48:1-4).

50. David Klein testified that in his 14 years with SCI, he cannot recall anyone being disciplined for writing the wrong kind of contract. (Def.'s Ex. E, Klein Dep., 50:13-18; 51:1-6). In fact, Trumbull's Charles Hall contract was the only such contract dispute ever brought to his attention. (*Id.* at 51:17-22).

51. SCI has engaged similarly situated employees in a progressive-like disciplinary process for clear-cut transgressions of corporate policy. For instance, Tom Bornstein, non-African American former SCI employee, began his SCI career as a FSC but later transferred to

CSC. (Ex. 1, Hayes Dep., 43:14-20). Bornstein violated SCI's Internment verification procedure; however, instead of immediate termination for causing the wrongful burial of remains, he was given a written warning. (Ex. 1, Hayes Dep., at 43:14-24, 44:1-9).

52. SCI Internment Verification Procedures are some of SCI's most important because they prevent the burial of a body or remains in the wrong plot, which would leave a heavy financial cost upon SCI. (Ex. 1, Hayes Dep., 44:7-24; 45:1-3). In Leonard Hayes' estimation, violation of Internment Verification Procedures is a more egregious violation than incorrectly writing a pre-need contract. (Ex. 1, Hayes Dep., . at 46:12-24). Hayes recalls SCI terminating quite a few employees for violating SCI's Internment Verification procedures. (Ex. 1, Hayes Dep., at (49:12-24).

53. Tom Hetman, a non-African American former SCI sales counselor, admitted to lying directly to Leonard Hayes and Michael Griep and was not terminated. (Ex. 8, Tom Hetman Personnel File, at SCI 01228). Rather, SCI informed him that "failure to maintain an appropriate and professional demeanor at all times while in the workplace will result in further disciplinary action up to and including termination of your employment." (Ex. 8, Tom Hetman Personnel File, at SCI 01228). Despite Hetman's ultimate termination, SCI rehired him, and Hayes even put in a good word for him. (Ex. 1, Hayes Dep., at 42:13-24).