

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NANCY TRUMBULL,)	
)	
Plaintiff,)	Case No. 12-CV-00321
)	
v.)	Judge Amy J. St. Eve
)	
SCI ILLINOIS SERVICES, INC. d/b/a)	Magistrate Judge Maria Valdez
ROSEHILL CEMETERY,)	
)	
Defendant.)	

**PLAINTIFF’S STATEMENT OF ADDITIONAL
MATERIAL FACTS PURSUANT TO LOCAL RULE 56.1(B)(3)**

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’s Motion for Summary Judgment.

1. It is a goal of Defendant to strive for sales counselors to write 2 or 3 pre-need contracts for every at-need contract they write. (Michael Dep., 95:9-24, 96:4).
2. Defendant could make more money off of pre-need contracts than it could make off of at-need contracts. (Hayes Dep., 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 contacts:

“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.”

<http://biz.yahoo.com/e/121025/sci10-q.html>

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

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. (Hayes Dep., 47:6-24, 47:17).

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

7. David Klein did not consider additional training in lieu of termination nor did he consider a written warning rather than termination (Klein Dep., 45:16-23).

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

9. Larry Michael did not ask Bob Caramusa if he instructed Plaintiff to write the Charles Hall contract as pre-need. (See Answers to Pl.'s Req. for Admis. Directed to Def., ¶5, Ex. 3).

10. David Klein did not ask Bob Caramusa if he instructed plaintiff to write the Charles Hall contract as pre-need. (See Answers to Pl.'s Req. for Admis. Directed to Def., ¶ 6, Ex. 3).

11. Trumbull made every effort to keep management informed of precisely what she was doing. 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 (Trumbull Dep., 349:2024, 350:15).

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

13. At that 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". (Klein Decl. Ex. D & Ex. 4).

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. (Klein Decl. Ex. D & Ex. 4).

16. Management at Rosehill subsequently allowed the burial to be completed on or about September 27, 2008 (See Ex. 4, Trumbull Aff., ¶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. (Klein Decl. Ex. D at ¶4 & Ex. 2).

18. Klein's declaration states that he received a response from 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." (Klein Decl. Ex. D at ¶14).

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”. (Klein Dep., 21:5-10).

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, SCI 02100 – 02108).

22. Larry Michael was the decision maker for both the Trumbull and the Caramusa terminations. (Michael Dep., 45:6-24, 46:9).

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

24. Handwritten notes of Gary Ritter contain notations of a meeting of January 12, 2009. In attendance were Bob Caramusa, David Klein and Gary Ritter. (Ex. 5, SCI 02100-02102; compare handwriting to documents attached to Ritter Decl. Ex. G, Ex. 3). 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, SCI02101). 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.”

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 "We'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 interment, 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)*

Michael Dep., 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. There does not appear to have been any investigation into that portion of Trumbull's explanation. (Michael Dep., 59:4-24, 60:3).