

**IN THE SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

NATIONAL ASSOCIATION OF)
STATE FARM AGENTS, INC.,)
)
Plaintiff,)
)
vs.)
)
STATE FARM MUTUAL)
AUTOMOBILE INSURANCE)
COMPANY, et al.,)
)
Defendants.)

C.A. No. 02ca0004089
Calendar 7
Judge Neal E. Kravitz

AFFIDAVIT OF DAVID SWIFT

STATE OF TEXAS)
) SS
COUNTY OF BEXAR)

I, DAVID SWIFT, first being duly sworn, depose and say as follows:

1. My name is David Swift. I am the President of the National Association of State Farm Agents, Inc., and I have been a State Farm Agent for 34 years in the State of Texas.
2. I am submitting this Affidavit to advise the Court of facts of which I have personal knowledge and that are relevant to Plaintiff's Motion for Summary Judgment.
3. I became a State Farm agent in July of 1970 and I operate under an AA34 agreement. When I became an agent State Farm referred to is business system as a franchise. Although State Farm later stopped referring to its business as a franchise, no changes were made to the agreement or arrangements I had with State Farm. State Farm Agents offer, sell and distribute different insurance policies, which include automobile, fire (*i.e.*, homeowner) life, and health, as well as other types of insurance policies.
4. Agents invest considerable resources in order to sell State Farm policies, including marketing, advertising, and record keeping. On average, I spend \$12,000 per year on marketing and advertising my practice and the very cost of doing business each year amounts to at least \$145,000. Until late 2001 or early 2002, State Farm consistently urged its Agents to bill as much insurance as they possibly could. The Company and its agents,

consistent with the Agreement's language that we were to advance the interests of the Company, agents and policyholders, did not restrict us in the sales we could make. Rather, there was a well established and longstanding custom and practice, evidenced by continual encouragement, to sell vigorously, that our obligation as agents to make fulfillment of the Agent agreement our "principal occupation" meant that we were obligated to sell as much insurance as we could and that State Farm, in return, would make insurance products available to us to sell.

5. Agents have territories in which they solicit and sell insurance policies, collect premiums, assist with insurance claims, and conduct field underwriting. Agents are compensated via commissions they receive for every policy sold. Once an agent has sold to a customer in their given territory (set forth in their agreements) another agent cannot sell to that customer unless the customer requests to be transferred to another agent. Additionally, agents in fact deliver policies to clients, distribute them, and otherwise market and dispense policies to clients.
6. State Farm Agents spend considerable time, effort, and resources to build their practices and forge their reputations in their communities. Today, start-up expenses alone are at least \$60,000. In addition to the costs of running an office (salaries for staff, lease payments, etc.), Agents typically spend at least \$4,000 annually on supplies and equipment (including remembrance advertising) and another \$2,000 in general advertising.
7. To become a State Farm agent, an individual must first spend two-years as a trainee agent undergoing training to become an independent contractor agent. Agents attend many classes on how to sell insurance, which have included, classes entitled "Client Centered Selling."
8. During the two-year training program, trainee agents are paid a standard draw against the reduced commissions that they earn. Trainee agents are liable to State Farm if they do not generate enough money in commissions from the sale of insurance policies to cover the amount of draw paid by State Farm. The commissions that a trainee agent receives are substantially reduced from the commissions he or she would receive as an independent contractor, despite the fact that the trainee agent does substantially similar work. The compensation categories for trainees are numerous and far exceed three categories. Foregone commissions exceed \$500 per year.
9. In order to become an independent contractor agent, an agent must invest in a number of items, including the purchase of an exterior sign advertising the agent as a State Farm agent. While there is no express contractual language requiring that agents have or "sign," State Farm and its agents have for no less than 35 years, had a custom and practice of requiring that

agents have signs to advertise their business. As a practical matter, an agent cannot do business without a sign. It cannot serve the interests of policyholders and the company without a sign. A sign is, as a practical matter, required by State Farm. The cost of this sign is generally in excess of \$1,000. Many agents finance the purchase of the sign through State Farm.

10. Prior to 1995, State Farm did not pay a substantial portion of a trainee agent's office expenses. Additionally, once agents complete their training, they must purchase promotional items from State Farm in order to engage in the business. These promotional items include calendars, golf balls, cards, signs, stationery, sales brochures and other items. Agents typically spend at least \$500 on these items. State Farm makes it clear to agents that it expects them to buy these items so that Agents can fulfill their obligations under their Agent Agreements.
11. State Farm prohibits agents from producing and distributing their own sales brochures. Agents must purchase sales brochures from State Farm and typically spend at least \$25.00 on brochures a month.
12. Additionally, agents are required to use computer systems supplied by State Farm. Until 1996, agents paid a monthly fee to lease the computer systems. Since 1996, State Farm, while providing the computer system, does not allow agents to install any additional software on the computers, or attaching any equipment of their own, requiring agents to purchase, and pay for, additional software and equipment.
13. Agents are also required by State Farm to establish and maintain "Premium Fund Accounts," which are bank accounts into which Agents must deposit premiums collected from their customers. The Agents bear the cost of maintaining these accounts, but the accounts are maintained solely for the benefit of State Farm, which owns the funds in the accounts. Over the course of any given Agent's relationship with State Farm, the cost of maintaining a Premium Fund Account easily exceeds \$500 annually.
14. State Farm requires that agents hold themselves out as State Farm agents and not independent agents and require agents to advertise in accordance with State Farm guidelines and to use State Farm procedures and forms. Agents are authorized to use the State Farm name and mark on their stationary, signs, advertising, etc. in accordance with State Farm guidelines. The cost of this advertising exceeds \$500 per year.
15. In approximately 1995, State Farm decided to enter into the business of selling mutual funds and other financial products. In order for State Farm agents to sell mutual funds, they must be licensed to do so, and State

Farm began a campaign to have its agents obtain such licenses. Approximately forty percent (40%) of State farms agents elected not to become licensed to sell mutual funds.

16. State Farm then instituted a program commonly referred to as the “Partnering Program” in an effort to market financial products to customers of agents who were not licensed to sell them. Under the Partnering Program, a licensed agent is paired with a non-licensed agent. Customers of the non-licensed agent are then referred to the licensed agent when they inquire about mutual funds. Licensed agents are allowed to market directly to the customers of non-licensed agents. Non-licensed agents raised concern that the licensed agents would steal information about their customers and books of business. State Farm has never announced that the Partnering Program has been discontinued.
17. Another program that State Farm has instituted allows State Farm to unilaterally appoint certain agents as “select agents,” and give such agents rights and privileges that are not given to other agents or otherwise reasonably made available to them. Additionally, under this program rights that agents once had as a matter of course are now made conditional on an agent meeting certain objectives selected by State Farm. For instance, prior to the institution of the Select Agent program, all agents were allowed to participate in the co-op advertising program. Furthermore, agents are no longer allowed to place their after-hours numbers in their yellow pages advertising.
18. To become a “select agent,” an agent must meet several requirements, including a requirement that an agent achieve a certain “profitability goal” which is achieved when the claims of an agent’s policyholders do not exceed a certain level. Additionally, the agent must submit a “business plan.” Finally, the agent must sell a certain amount of insurance.
19. Profitability goals are difficult, if not impossible, for agents in certain territories to achieve. For instance, agents located in high-risk territories such as the inner city, cannot achieve the profitability goals for becoming Select Agents because their customers, as a result of their location, simply experience higher incidents of loss.
20. Additionally, the requirement that an agent submit a business plan in order to satisfy one requirement of becoming a “select agent” is unfair because it requires an agent to reveal their business practices without any guarantee that it will not be shared with other State Farm agents who could call upon that agent’s customers. Additionally, State Farm created no standards, policies, or procedures for what an agent should include in a business plan or how it would be evaluated.

21. In addition to the Select Agent and Partner Agent Programs, State Farm also began infringing on agents' independent contractor status by requiring them to attend certain "compliance" meetings, which unreasonably cut into an agents' working day.
22. Since at least 1977, State Farm had never, until September of 2001, prescribed any limitations on the number of policies that agents could sell in Texas. But in September of 2001 State Farm completely restricted the ability of agents in Texas to sell fire policies. This restriction was in effect for nearly three years, ending in April of 2004. These restrictions deprive agents of product to sell and make it extremely difficult to function.
23. Despite the fact that the Agent Agreement provides that an agent may broker for other companies and that State Farm has decided to take itself out of the business of selling certain kinds of insurance, State Farm has refused to grant the requests of agents to sell insurance policies for other insurance carriers to replace the product lines that State Farm prohibits those agents from selling.
24. Agents bear a risk of loss as part of the process of selling insurance policies because agents receive no income for the investment of time and resources it takes to sell an insurance policy, if that policy is not ultimately issued. Agents also assume some risk during the sales process because they may be held liable if some error is made in the processing or sale of the insurance policy.
25. In many states, the rates for insurance premiums are, in fact, set by state regulators and not by State Farm.
26. Under their IPSI Agreements, State Farm agents collect premiums for Fortis, Anon and Phoenix insurance companies in addition to State Farm.
27. Agents receive commissions of 7% on assigned automobile policies and 10% on assigned fire policies.
28. With respect to assigned business, if an assigned automobile policy stays in the assigned agent's account for a minimum of ten years, then it is subject to having the commissions rate on that business (which has been reduced) returned to the same rate as a policy that is personally produced by the agent. But an assigned fire policy is never returned to the same rate as a personally produced policy, no matter how long it has been in the assigned agent's account.
29. Agents operating under the AA3 and AA4 Agreements were provided with an Amendment to the AA97, when they switched to the AA97 Agreement, which guaranteed that the term payment that the agents would have been

eligible for under their old AA3 or AA4 Agreements would not be diminished as a result of signing the AA97 agreement and agreeing to accept AIP payments.

- 30. Many agents, approximately 3,000, who are part of the AQA Program, are required by State Farm to attend several meeting each year under threat of termination if they fail to attend and participate.

FURTHER YOUR AFFIANT SAYETH NOT.

DATED: _____, 2004.

By _____
David Swift

Subscribed and sworn to before
me this ___ day of _____,
2004.

Notary Public

My commission expires _____.