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NORFOLK,SS COMMONWEALTH OF MASSACHUSETTS SUPERIOR COURT NO. 02-265

CHESTER LATA, PLAINTIFF

v.

REMILLARD INSURANCE AGENCY, INC., ET AL. DEFENDANTS

RECEIVED & FILED CLERK OF THE COURTS NORFOLK COUNTY 10/29/04

MEMORANDUM OF DECISION ON DEFENDANT REMILLARD INSURANCE AGENCY INC.'S MOTION FOR SUMMARY JUDGMENT

The plaintiff obtained his automobile insurance needs through the defendant, Remillard Insurance Agency, Inc. His application for personal automobile insurance for the year beginning February 27, 1998 included underinsured motorist coverage in the per person amount of \$25,000. Arbella Mutual Insurance Company issued the policy pursuant to the application. On June 2, 1998 the plaintiff was involved in a motor vehicle accident with a motorist who carried the statutory minimum liability coverage of \$20,000. Asserting that the underinsured motorist coverage which he purchased through Remillard was inadequate, he sues Remillard and Arbella for misrepresentation, negligence and breach of contract. Defendant Remillard now moves for summary judgment.

The crux of plaintiff's claim is that Remillard did not adequately explain underinsured motorist coverage, and advise him as to the availability of higher coverage at a higher premium. Remillard had no duty to so advise. Absent "special circumstances of assertion, representation, and reliance", an insurance broker has no fiduciary duty to a purchaser of insurance. Robinson v. Flynn, 39 Mass. App. Ct. 902 (1995). An insurance agent assumes no duty to advise unless he holds himself out as an insurance specialist,

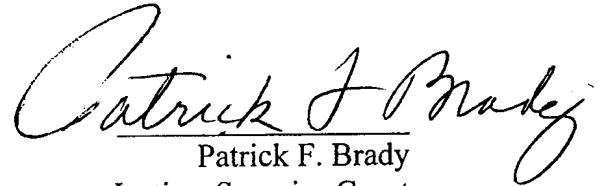
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consultant or counselor and is receiving compensation for consultation and advice apart from the premium paid by the insured. Baldwin Crane & Equipment Co. v. Riley and Reiley Insurance Agency, 44 Mass. App. Ct. 29, 32 (1997).

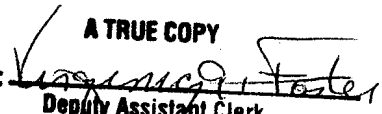
The summary judgment record does not support a claim of such a special relationship between plaintiff and Remillard, or that Remillard was being paid for advice apart from the premiums. Simply because plaintiff had used the services of Remillard for many years does not establish the special relationship required by our case law. The case of Robinson v. Flynn, 39 Mass. App. Ct. 902 (1995) is substantially on point.

ORDER

The motion for summary judgment by the defendant Remillard Insurance Agency, Inc. is **allowed**.


Patrick F. Brady
Justice, Superior Court

26 Oct 04

A TRUE COPY
Attest: 
Deputy Assistant Clerk
10/29/04

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