

EMPLOYMENT LAW UPDATE

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California Law

An Agency Agreement Between An Insurance Company And An Insurance Agent Could Be Terminated At Will, Precluding The Agent From Maintaining A Cause Of Action For Breach Of The Covenant Of Good Faith And Fair Dealing Based On Alleged Misrepresentations Made By The Agent's Supervisors.

Bernard v. State Farm Mutual Insurance Company (2007) 158 Cal.App.4th 304

By Helen M. Kim and Jason A. Geller

Plaintiff William Bernard was an insurance agent for State Farm, subject to the standard agency agreement between State Farm and its agents. This agreement provided, in pertinent part: 1) “You or State Farm have the right to terminate this Agreement by written notice delivered to the other or mailed to the other’s last known address; and 2) in the event we terminate this Agreement, you are entitled upon request to a review in accordance with the termination review procedures approved by the Board of Directors of the Companies, as amended from time to time.”

After Bernard was injured in an automobile accident, he was physically unable to carry out the job requirements for the sales program to which he was assigned. He was forced to resign. Bernard alleged breach of the covenant of good faith and fair dealing and other claims against State Farm and two of his State Farm supervisors, alleging that the supervisors misrepresented the job requirements for the sales program,

which led to his constructive termination.

The Court of Appeal determined that Bernard’s allegation of breach of the covenant of good faith and fair dealing was a contractual-based cause of action for constructive wrongful termination, because the covenant is implied within every contract. Accordingly, Bernard’s claim would fail if the contract constituted an at-will employment agreement, because at-will employment may be ended by either party at any time, without cause, for any or no reason.

Citing *Dore v. Arnold Worldwide Inc.* (2006) 39 Cal.4th 384, the Court explained that a termination provision in an employment contract upon specified notice, without more, is not reasonably susceptible to an interpretation that the termination will occur only “for cause.” In other words, even if the agreement provides a notice period, but it does not specifically require cause for the

termination, the agreement may be terminated at-will.

Because the termination provision in Bernard's agency agreement with State Farm did not contain a requirement that Bernard's termination be for cause, the agency agreement was "at-will," and could be terminated by either party without cause. The Court held the agreement was terminated, and therefore, Bernard could not maintain his allegation for breach of the covenant of good faith and fair dealing against State Farm. The Court also held that the termination review procedures did not change the termination procedure to require more than specified notice.

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