

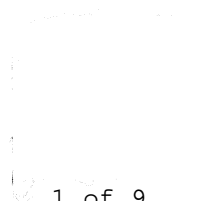
**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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RICHARD HOBISH AS TRUSTEE OF THE	:	Civil Action No.
HOBISH IRREVOCABLE TRUST, DATED	:	
1/22/96, and TOBY HOBISH	:	
	:	
Plaintiffs,	:	COMPLAINT
	:	
-against-	:	
	:	
AXA EQUITABLE LIFE INSURANCE	:	
COMPANY,	:	
	:	
	:	
Defendant.	:	
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Plaintiffs Richard Hobish as Trustee of the Hobish Irrevocable Trust, Dated 1/22/96 (the "Trustee") and Toby Hobish (the "Insured") for their Complaint against defendant AXA Equitable Life Insurance Company ("AXA"), allege as follows:

NATURE OF THE ACTION

1. This is an action brought on behalf of plaintiffs Richard Hobish, Trustee of the Hobish Irrevocable Trust, and Toby Hobish, who purchased an AXA Equitable Flexible Premium Universal Life II Policy Number 157207079 (the "Athena Policy" or "Policy"), and then was forced to surrender that Policy in July 2016, as the result of AXA's breach of the terms of the policy, deceptive business practices, and imposition of an excessive, unconscionable and unlawful cost of insurance ("COI") increase in premiums.
2. After deceiving Toby Hobish into purchase the policy, AXA imposed a massive premium increase, which raised the premium to an amount equal to more than 250% of the previously existing premium and nearly 500% of the original premium. This unconscionable and unlawful



increase in premiums was targeted solely at policyholders who were above 70 years in age with policies of \$1 million or more. Ms. Hobish, the insured, was 82 at the time of issuance of the Policy, and 92 when she was forced to surrender the Policy under protest.

3. In applying the increase based upon Ms. Hobish's advanced age and the face value of her policy rather than on her class designation as a "STANDARD NON-TOBACCO USER," AXA breached the Policy. In addition, AXA's targeting of this vulnerable age group for its steep premium increase violates the Policy's provision that any such premium increase "will be on a basis that is equitable to all policyholders of a given class."

4. As a result of AXA's unconscionable and unlawful increase, Plaintiffs surrendered the Policy for a value far less than its \$2 million face value and the \$913,804 the Plaintiffs had already paid as premiums for the Policy. Plaintiffs bring this action to recover the full value of the Policy and to recover damages for AXA's breach of the terms of the policy, deceptive business practices, and its excessive, unconscionable and unlawful premium increase.

PARTIES

5. The Hobish Trust is an irrevocable trust organized under the laws of New York. Herbert Hobish (now deceased) and Toby Hobish are the Grantors. As of January 5, 2016, Richard Hobish is the Trustee. The Trust is the owner of the Policy, and the insured under the Policy is grantor Toby Hobish who is currently 92 years of age.

6. The Policy was issued on June 15, 2007, and had a face value of \$2 million. Toby Hobish was 82 years old at the time of issuance. The Policy was in place until July 15, 2016 when Ms. Hobish was forced to surrender it. She had placed the Policy in trust for the benefit of her and Herbert Hobish's children upon her death.

7. Defendant AXA is a corporation organized under the laws of New York. AXA is one of the largest providers of life insurance and annuity products in the United States. AXA's September 30, 2016 Form 10-Q identifies that its principle executive offices are located at 1290 Avenue of the Americas, New York, New York.

JURISDICTION AND VENUE

8. This Court has jurisdiction pursuant to CPLR §§ 301 and 302.

9. Defendant AXA is a corporation organized under the laws of New York, and is headquartered in New York County. AXA maintains offices in New York, New York and regularly transacts business within the State.

10. Venue is proper in this Court pursuant to CPLR § 503. AXA conducts business and derives substantial revenues from activities carried out within New York County.

FACTUAL ALLEGATIONS

A. The Athena Policy

11. On June 15, 2007, Toby Hobish purchased the AXA Athena Policy with a face value of \$2,000,000. The Policy is attached hereto as Exhibit A. The Policy was sold to Ms. Hobish by AXA insurance agent Jared Levy. On information and belief, Mr. Levy was an AXA employee at that time. When the Policy was sold, Ms. Hobish owned an existing Lincoln Flexible Premium Life Insurance Policy, issued by the Lincoln Life & Annuity Company of New York, which had a face value of \$1,800,000 and an account amounting to \$653,351.

12. AXA's agent Mr. Levy presented Ms. Hobish with life insurance policy options from AXA and Lincoln, Jefferson Pilot and SunLife. AXA's policy offered the lowest annual minimum premium of \$34,561.

13. AXA's agent Mr. Levy represented to Ms. Hobish that the Athena Policy contained more favorable terms relating to premiums than the Lincoln policy. Unknown to Ms. Hobish, these representations concerning the favorability of the Athena Policy's terms were materially false.

14. Acting in reasonable reliance on AXA's misrepresentations concerning the Athena Policy, Ms. Hobish surrendered her Lincoln policy and purchased the Athena Policy.

15. In order to buy the Athena Policy, Ms. Hobish surrendered the Lincoln Policy and paid \$653,351, the surrender value from her existing Lincoln policy account, to the Athena Policy account. In addition to the \$653,351, Ms. Hobish paid AXA \$15,985, her first premium payment on her new Athena Policy. Through 2016, Ms. Hobish made additional payments totaling an additional \$249,468, for a total of \$913,804 in payments she made to her Athena Policy account.

16. The Athena Policy is a form policy that has been used by AXA in excess of 1700 times. All of its provisions were drafted by AXA and Ms. Hobish did not negotiate any of the terms therein.

17. On page 3 of the Policy, AXA identified Ms. Hobish as belonging to "RATING CLASS: STANDARD NON-SMOKER." It also provided on page 11, "Changes in policy cost factors (interest rates we credit, cost of insurance deduction and expense charges) will be on a basis that is equitable to all policyholders of a given class"

B. AXA's Deceptive and Inequitable COI Increase

18. In a letter dated October 5, 2015, AXA notified Jacqueline Diamond, then the Trustee of the Hobish Trust, of a COI increase to Ms. Hobish's premium payments on the Policy. AXA explained that the increase was based on its "mortality and investment income expectations for a certain class of policies [being] less favorable than anticipated."

19. Subsequently, AXA provided illustrations of the post-increase impact on Ms. Hobish's premium amounts that showed that in order keep the Policy in force, Ms. Hobish would have to pay a premium that would be increased to more than \$164,300 annually. Such an increased premium would equal more than 250% of the then existing billed premium of approximately \$63,665, and nearly 500 % of the original AXA premium of \$34,560.

20. AXA's predatory increase in premiums is a flagrant tactic to increase revenues and to drive aging individuals out of their policies. Actuarial tables show Ms. Hobish is approaching the end of life and AXA exploited this vulnerability when it chose the most profitable moment to breach.

21. The increase to Ms. Hobish's premiums is particularly egregious because obtaining a replacement policy at the age of 92 is virtually impossible.

22. Distressed at the excessive increase, Ms. Hobish had Mr. Levy contact AXA on her behalf regarding the COI increase. AXA wrote in response that the COI increase would apply to a "class" of policyholders "with issue age of 70 and above and with face amounts of \$1 million and above."

23. Rebuffing Ms. Hobish's demand that AXA abide by the terms of the policy, AXA stated that the increase was "because [AXA had] determined that [its] mortality and investment income expectations for a certain class of policies are less favorable than anticipated at the time the current COI rates were established."

24. Nowhere in the Policy was a "class" of policyholders or policies "with issue age of 70 and above with face amounts of \$1 million and above" identified. Instead, the only class identified in the Policy was Ms. Hobish's "RATING CLASS: STANDARD NON-SMOKER."

25. Nothing in the Policy permits AXA to impose a COI increase based on issue age or the face value of a policy.

26. By increasing the premiums due under the Athena Policy—without regard to equitable factors, including whether it was treating policyholders aged 70 and above equitably compared to younger policyholders—AXA both breached the AXA Policy and engaged in deceptive business practices.

27. Upon information and belief, AXA targeted individuals over the age of 70 as potential policyholders without disclosing the possibility of an exorbitant COI increase imposed after buying the policy.

28. It has been reported in the news that AXA has inequitably raised the monthly premiums of about 1,700 life insurance policyholders who were older than 70 and whose policies had a face value of over \$1 million. *See Why Some Life Insurance Premiums Are Skyrocketing, New York Times*, August 13, 2016, <https://www.nytimes.com/2016/08/14/business/why-some-life-insurance-premiums-are-skyrocketing.html>

29. AXA's COI increase went into effect on March 8, 2016. After determining that paying increased annual premiums of more than \$164,300 made no financial sense, as the value of the Policy would be quickly approached by the new premium, Ms. Hobish surrendered the Policy under protest on July 15, 2016.

30. The sole reason for the surrender was AXA's excessive, inequitable, deceptive and unlawful COI increase. The surrender value was \$448,274.50. AXA deducted \$35,586.49 as "SURRENDER CHARGES" from that amount and issued a check for \$412,688.01.

FIRST CAUSE OF ACTION

(Breach of Contract)

31. Plaintiffs repeat and realleges, as if set forth herein, the allegations of all preceding paragraphs.
32. Plaintiffs and AXA entered into a binding written policy for life insurance in exchange for annual premiums.
33. Until the July 2016 surrender, Ms. Hobish made payments totaling \$913,804 to her AXA Athena account.
34. AXA's 2016 COI increase breached the Policy, which bars inequitable treatment of members of a "given class." Rather than spreading the COI increase across the entirety of Ms. Hobish's "RATING CLASS: STANDARD NON-SMOKER," AXA impermissibly created a subclass of policyholders "with issue age of 70 and above and with face amounts of \$1 million and above." In imposing its COI increase upon a purported subclass nowhere identified in the Policy, AXA breached the Policy's non-discrimination provisions and acted contrary to its obligation to treat all members of a given class equally. Ex. A (AXA Athena Policy) at p.11.
35. Plaintiffs are entitled to compensatory and consequential damages for AXA's breach of the Athena Policy.

SECOND CAUSE OF ACTION

(New York General Business Law § 349 Deceptive Business Practices)

36. Plaintiffs repeat and reallege, as if set forth herein, the allegations of all preceding paragraphs.

37. New York General Business Law § 349 prohibits "deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service" in New York State.

38. By providing life insurance, AXA conducts "business" or provides a "service" within the meaning of New York General Business Law § 349.

39. AXA has engaged in deceptive acts and practices in the conduct of its business or provision of its services, in violation of New York General Business Law § 349, by increasing premiums due under the Athena Policy, without regard to equitable factors, including whether it was treating policyholders aged 70 and above equitably compared to younger policyholders in the same "given" class as required by the policy.

40. Upon information and belief, AXA targeted individuals over the age of 70 as potential policyholders without disclosing the possibility of an exorbitant COI increase imposed after buying the policy.

41. AXA's deceptive acts and practices were consumer-oriented conduct in that they were designed to mislead elderly consumers into believing that they would not be targeted for premium increases that would be both substantial and not applied generally and equitably to all members of a designated class.

42. As a consumer of AXA's business or provisions of services, Ms. Hobish was deceived and injured by AXA's deceptive acts and practices.

43. As a result of AXA's violations of New York General Business Law § 349, Plaintiffs are entitled to recover actual damages in an amount to be determined at trial and an award of reasonable attorney's fees.

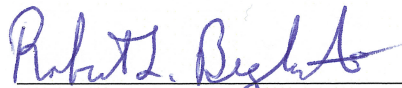
PRAYER FOR RELIEF

WHEREFORE Plaintiffs pray for relief as follows:

- (a) On the First Cause of Action for breach of contract, for an award of compensatory and consequential damages in an amount to be proven at trial;
- (b) On the Second Cause of Action for deceptive business practices, for an award of actual damages in an amount to be determined at trial, and an award of reasonable attorney's fees; and
- (c) Such other and further relief as the Court deems just and proper.

DATED: January 19, 2017
 New York, New York

Respectfully submitted,



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