

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

KATHY PARNASS,

Plaintiff,

vs.

WILTON REASSURANCE LIFE
COMPANY OF NEW YORK,

Defendant.

Civil Action No. 24-cv-1951

COMPLAINT

JURY TRIAL DEMAND

Plaintiff Kathy Parnass, by and through her counsel, Trief and Olk, alleges as follows:

PARTIES

1. Plaintiff Kathy Parnass (“Parnass”) is a natural person residing in New York City, New York, and is the owner of the policy at issue (the “Policy”), issued by North American Company for Life and Health Insurance of New York, insuring the life of her late husband, Milton Parnass (the “Insured”).

2. Upon information and belief, at all times relevant to this action, Defendant Wilton Reassurance Life Company of New York (“Wilton”) was a foreign corporation organized and existing under the laws of the State of Connecticut, with its principal place of business located at 20 Glover Avenue, Norwalk, Connecticut. Subsequent to the issuance of the Policy, Wilton acquired North American Company for Life and Health Insurance of New York.

3. Wilton is registered with the New York State Department of Financial Services and licensed to provide life insurance policies within the State of New York.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is complete diversity between Parnass and Wilton and the controversy exceeds \$75,000, exclusive of interest and costs.

5. Venue is proper in this District, pursuant to 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to this claim occurred in this District.

FACTUAL BACKGROUND

6. On or about August 17, 1995, North American Company for Life and Health Insurance of New York issued the Policy, a flexible premium adjustable life insurance policy with a face value of six hundred thousand dollars (\$600,000).

7. In the application for the Policy, incorporated into the Policy, the Insured named Parnass as the primary beneficiary.

8. Pursuant to the terms set forth in the Policy, the Insured chose to pay quarterly premiums of \$3,250; however, as a flexible premium adjustable insurance product, the amount of premium required to keep the Policy in force could vary over time, depending on the governing interest rate and cost of insurance, which increased as the Insured aged.

9. Various values were used to determine if the premiums paid were sufficient to keep the Policy in force: the accumulation value, the monthly deduction, and the cash surrender value.

10. The accumulation value was computed by adding (1) the previous month's accumulation value; plus (2) interest accrued on the previous month's value; plus (3) premiums received; minus (4) the monthly deduction.

11. The monthly deduction was the cost of insurance plus the cost of any monthly expense charge.

12. The cash surrender value was equal to the accumulation value minus the surrender charge.

13. Pursuant to the terms of the Policy, a lapse would occur when the cash surrender value was insufficient to cover the next monthly deduction.

14. Pursuant to the terms of the Policy, in the event of a lapse, a grace period of 45 days was allowed for payment of a premium sufficient to keep the policy in force for the month beginning on the date of a policy lapse.

15. Pursuant to the terms of the Policy, the amount of premium required to keep the policy in force was equal to the next monthly deduction.

16. On the Policy anniversary date in August of each year, the Insured received an annual report showing certain key data points regarding the Policy: the accumulated cash value at the beginning of the Policy year; a summary of premium payments made over the course of the preceding year; deductions for cost of insurance and fees; interest credited; and the accumulated cash value at the end of the year, taking into account the various payments, interest credited, and deductions.

17. These annual reports also included various projections for the forthcoming year, including the projected cash value, and the impact of continuing to pay the scheduled \$3,250 quarterly payment on the ability to maintain the Policy as active in force.

18. The annual report for the period from August 17, 2020 through August 17, 2021 (the "August 2021 Report"), showed that over the course of the preceding year, the monthly insurance deductions had increased from \$3,252.90 to \$3,384.15 per month.

19. Separately, the Insured received quarterly notices for the planned premium payments of \$3,250. These notices contained no information regarding any of the projections shown in the August reports.

20. The Insured made the quarterly premium payments beginning in August 1995 and continuing until February 2022, making payments in August, November, February, and May of each year, without significant incident.

21. On April 18, 2022, Wilton allegedly sent a notice (the “April 18 Notice”) to the Insured with the heading, “GRACE PERIOD NOTICE, ACT IMMEDIATELY.”

22. The April 18 Notice stated that the Policy had entered the Grace Period on April 18, 2022, and was “in danger of terminating at the end of the 61-day Grace Period.” The April 18 Notice stated that the regular premium payments were no longer sufficient to maintain the coverage, and noted that although the Insured might continue to receive the regularly scheduled payment notices, payment of the regularly scheduled amount “only may not be sufficient to keep the policy from terminating.”

23. The April 18 Notice stated that a minimum payment of \$13,660.26 (the “Minimum Payment”) was due by June 18, 2022 (the “Due Date”).

24. The April 18 Notice instructed the Insured to pay at least the Minimum Payment due on or before the Due Date, and stated that payment of a lesser amount would result in the Policy terminating or lapsing.

25. The April 18 Notice did not provide the Insured with any computations showing the Policy’s accumulation value; cash value; or the total insurance deductions made between the issuance of the August 2021 Report and April 2022, when the Policy allegedly entered the grace period. The Insured therefore did not have sufficient information to review Wilton’s assessment

that the Policy had entered the grace period or to understand the amount due going forward to keep the Policy in force.

26. The April 18 Notice also stated that once the Minimum Payment Due had been made, the Insured would need to continue or resume making sufficient premium payments or the Policy would reenter the Grace Period.

27. The Insured was encouraged to contact Wilton to receive assistance in determining the amounts he should pay regularly in order to keep the Policy from reentering the Grace Period.

28. The Insured did not receive the April 18 Notice.

29. On or about May 15, 2022, the Insured sent Wilton another quarterly payment for \$3,250, which would have been due on or around May 17, 2022.

30. Wilton cashed this check on or about May 27, 2022.

31. After sending the May 2022 payment to Wilton, the Insured received a notice from Wilton dated May 16, 2022 (the “May 16 Notice”; collectively, the April 18 Notice and the May 16 Notice are the “Notices”), which duplicated the same information as that included in the April 18 Notice.

32. Upon receipt of the May 16 Notice, the Insured was confused, as he had been sending in his quarterly payments regularly and did not understand why Wilton was suddenly requesting a payment of more than \$13,000.

33. On occasion, there had been problems with Wilton receiving the Insured’s checks, so he became concerned that Wilton had not in fact received the payments recently mailed.

34. As directed by Wilton in the Notices, the Insured contacted Wilton to find out what he needed to do to ensure the Policy remained in force.

35. Contemporaneous notes made by the Insured in late June or early July 2022 indicate that the Insured called Wilton multiple times after receiving the May 16 Notice.

36. Despite the Notices stating that a Wilton representative would “provide . . . assistance in determining the amount [he] should pay regularly,” in fact, the representatives provided inaccurate information.

37. The Wilton representatives told the Insured that his most recent checks had been received, and that everything was in order.

38. The Wilton representatives made no attempt to explain to the Insured that because of the structure of the Policy, the quarterly premiums (which had remained constant for the life of the Policy) were no longer sufficient to maintain the Policy.

39. In reliance on affirmative representations provided by Wilton’s representatives that any necessary premium payments had been received, and given the absence of any information regarding the need to pay anything other than his regularly scheduled premiums, the Insured did not send in any further payment.

40. The Insured then received a Wilton notice dated June 20, 2022 (the “June 20 Notice”), informing him that the Policy had lapsed as of June 19, 2022, because the Grace Period had expired without Wilton receiving the \$13,660.26 it had demanded.

41. Wilton offered the Insured the opportunity to apply to have the policy reinstated.

42. The Insured submitted an application, but due to his advanced age (he was 92 years old at the time) reinstatement was denied.

43. The Insured passed away suddenly in March 2023.

COUNT I
BREACH OF CONTRACT

44. Plaintiff repeats and realleges Paragraphs 1-43 as if fully set forth herein.

45. Pursuant to the terms of the Policy, if a Policy lapse were to occur due to the surrender value being insufficient to cover the next monthly deduction, the amount of premium required to keep the Policy in force would equal the next monthly deduction.

46. Also pursuant to the terms of the Policy, a grace period notice setting forth the premium required to keep the policy in force was to be mailed to the policyholder at least 30 days prior to the expiration of coverage, and was to provide a grace period of 45 days for payment of sufficient premium to keep the Policy in force.

47. The Notices sent by Wilton did not comply with these provisions.

48. The Notices did not provide the amount of premium required to keep the Policy in force that would equal the next monthly deduction.

49. Based on the monthly deductions set forth in the August 2021 Report, which showed the July 2021 monthly deduction (or cost of insurance) as \$3,384.15, the monthly deduction should have been approximately \$3,400.

50. Wilton demanded far more, *i.e.*, the \$13,660.26 demanded in the Notices.

51. By demanding more than it was entitled to seek, and failing to provide notice of the amount of premium required to keep the Policy in force that would equal the next monthly deduction, Wilton breached the terms of the Policy.

COUNT II
DECLARATORY RELIEF

52. Plaintiff repeats and realleges Paragraphs 1-43 as if fully set forth herein.

53. The Notices failed to comply with the requirements of New York Insurance Law §§ 3203(a)(1), and 3211(b)(2).

54. Pursuant to § 3203(a)(1), the Notices were required to give the Insured a 61-day grace period within which he could have paid a sufficient premium to keep the Policy in force for three months.

55. Pursuant to § 3211(b), the Notices were required to accurately state the amount that would have been owed to keep the Policy in force for three months.

56. The Notices did not comply with these requirements, in that they did not provide information as to the amount of premiums that would be required to keep the Policy in force until July 18, 2022, *i.e.*, three months from the date the Policy had entered the grace period on April 18, 2022.

57. Upon information and belief, the Notices did not set forth the correct amount of premiums owed in order to keep the Policy in force until July 18, 2022.

58. Instead of providing the requisite information to the Insured as to the amount required to keep the Policy in force until July 18, 2022, the Notices directed the Insured to contact Wilton “to provide [him] with assistance in determining the amount [he] should pay regularly” to avoid the Policy reentering the grace period.

59. Additionally, the language in the Notices did not clearly set forth the status of the Policy, with portions stating that the Policy *would* lapse, but others stating only that it *might* lapse, if the additional premium were not paid, and therefore did not comply with the statutory requirements.

60. Because Wilton did not comply with the notice provisions of § 3211(b)(2), Wilton’s attempt to cancel the Policy for failure to pay the premium due was not effective.

61. Pursuant to § 3211(a)(1), forfeiture was prevented for one year following the default in April 2022, *i.e.*, until April 2023, and the Insured was entitled to remedy any outstanding premiums owed until that time.

62. The Insured died in March 2023, when it was still possible to remedy any outstanding premiums owed.

63. Because the Policy should have been in force at the time of the Insured's death, Plaintiff is entitled receive the death benefit owed under the Policy, subject to deductions for the outstanding premiums owed at the time of the Insured's death.

64. Accordingly, Plaintiff is entitled to a declaratory judgment, pursuant to 28 U.S.C. § 2201, declaring that the Policy was in force at the time of the Insured's death in March 2023, and that the proceeds of the Policy are payable to Parnass, less any premiums owed for the period running from June 18, 2022 until the death of the Insured on March 13, 2023.

COUNT III
ESTOPPEL

65. Plaintiff repeats and realleges Paragraphs 1-43 as if fully set forth herein.

66. The Insured lacked knowledge of the accurate information regarding the amount of premium he was required to pay to keep the Policy in force after it had entered the grace period on April 18, 2022.

67. The Insured contacted Wilton to find out how much he was required to pay to keep the Policy in force after it had entered the grace period on April 18, 2022.

68. The Wilton representatives provided false information or concealed material facts that were calculated to convey the impression that the Insured had already sent the required premiums and that Wilton had received such payments.

69. In directing the Insured to contact Wilton to find out further details as to the premiums owed, Wilton intended the Insured to rely upon the information provided by its representatives.

70. In reliance on the information the Insured received from the Wilton representatives and assurances that he had nothing to worry about, the Insured sent no further payment, with the understanding that his recent quarterly payment was sufficient until at least June 18, 2022 – if not August 2022, when the next quarterly payment would have been due.

71. In light of the foregoing, Wilton is estopped from asserting that the Policy lapsed due to nonpayment.

72. Because the Policy should have been in force at the time of the Insured's death, Plaintiff is entitled to receive the death benefit owed under the Policy, subject to deductions for the outstanding premiums owed at the time of the Insured's death.

JURY TRIAL DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues so triable.

WHEREFORE, Plaintiff Kathy Parnass respectfully requests that this Court enter judgment against Defendant Wilton Reassurance Life Company of New York as follows:

A. Pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. § 2201, declaring that the Policy was in force at the time of the Insured's death in March 2023, and that the proceeds of the Policy are payable to Parnass, less any premiums owed for the period running from June 18, 2022 until the death of the Insured on March 13, 2023;

- B. Awarding Parnass the full amount of the policy benefits, plus interest, attorney's fees, and costs, less outstanding premiums owed from June 18, 2022 until March 13, 2023; and
- C. Awarding such other and further relief as this Court may deem just and proper.

Dated: March 15, 2024

TRIEF & OLK



By: Shelly L. Friedland
750 Third Avenue, Suite 2902
New York, NY 10017
Phone: (212) 486-6060
Email: sfriedland@triefandolk.com
Attorneys for Plaintiff Kathy Parnass