UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

TAMIKA FERRANTE,	:	3:00cv1205 (WWE)
Plaintiff,	:	
	:	
v.	:	
	:	
METROPOLITAN PROPERTY AND CASUALTY INSURANCE COMPANY,	:	
Defendant	:	

DECLARATORY RULING ON ISSUE OF NOTIFICATION

This action arises from the destruction by fire of a three-unit apartment building owned by the plaintiff, Tamika Ferrante ("Ferrante"), said fire taking place within hours of the effective date and time of cancellation of property insurance by the defendant. The plaintiff has alleged that the defendant, Metropolitan Property and Casualty Insurance Company ("Metropolitan") has breached its agreement/contract with Ferrante in failing and refusing to honor its obligations under its policy of insurance [Count One]; has breached the implied covenant of good faith and fair dealing [Count Two]; was negligent [Count Three]; has violated the Connecticut Unfair Insurance Practices Act ["CUIPA"], Conn.Gen.Stat. §§ 38a-815 and 38a-816, due to unfair settlement practices [Count Four]; has violated the Connecticut Unfair Trade Practices Act ["CUTPA"], Conn.Gen.Stat. §42-110b *et seq.*, due to unfair and deceptive trade practices [Count Five]; has caused Ferrante to suffer from negligent infliction of

emotional distress [Count Six]; and has caused Ferrante to suffer from intentional infliction of emotional distress [Count Seven].

The parties filed cross-motions for summary judgment. This Court denied both motions for summary judgment on January 23, 2002, concluding that the threshold issue in the present action is whether there was notification of cancellation to the plaintiff that complied with the terms of the insurance contract and statutory requirements of the state of Connecticut, and that this issue is a genuine issue of material fact, precluding summary judgment.

A bench trial was held on June 19, 2002, to decide the issue of sufficient notification to the plaintiff of cancellation of the insurance policy. This Court heard, *inter alia,* that the United States Post Office does not have a policy in place to retain proof that notification of a certified letter is made to the postal customer. If the postal customer is not at home, the postal carrier notes on the certified letter that an attempt has been made to deliver the letter, and according to policy, leaves a pink slip, USPS form 3849, in the postal customer's mail box. No copy of the slip is retained. A given number of days later, the postal clerk issues another pink slip which is sent with the carrier to be placed in the customer's mail box. The clerk writes on the certified letter that another attempt has been made to notify the postal customer, but there is no way to verify that delivery of the pink slip was made. If the customer has not picked up the letter at the post office

within ten days, the certified letter is returned to sender.

The Court also determined that the defendant has no policy in place to ascertain what happens when a notice of cancellation is returned to the company. In the present case, the unopened certified letter was returned by the United States Post Office to Metropolitan offices in Utica, New York. Mail room personnel at Metropolitan sent the returned certified letter to Metropolitan's underwriting office, but the underwriter handling the Ferrante cancellation was never notified.

The Court concurs with the plaintiff's conclusions of law that the defendant has the burden to prove its special defenses, and the defendant accepts this burden. The Court also agrees that in Connecticut, insurance contracts are recognized as contracts of adhesion, and as such, must be construed against the drafter. Although the defendant claims that the terms certified mail, and certified mail return receipt requested, are interchangeable, United States postal regulations, specifically § S912 of the Domestic Mail Manual, state otherwise. The defendant also cites cases in its conclusions of law that can be distinguished from the present case by, for example, the distinct wording of the cancellation notice in those particular circumstances, non-payment of premiums that would put the insured on notice, or oral notice of cancellation by an insurance agent.

The Court finds that when the defendant instructed Ms. Hash to

send the cancellation notice by certified mail, return receipt requested, it undertook delivery by the means and method calculated to actually deliver notice to the plaintiff's address. The defendant did not send the notification by registered mail, certified mail, or by United States Post Office Certificate of Mailing, as specified by the mailing requirements in the insurance policy.

Based on the exhibits, testimony of witnesses, and the post-trial briefs submitted by counsel, this Court issues its declaratory ruling that there was not sufficient notification of cancellation of insurance to the plaintiff.

The parties requested the June 19, 2002, bench trial to allow this Court to decide the notification question, a genuine issue of material fact. The parties are now instructed to proceed in this action in accordance with the Court's ruling on notification, and to request amendment of the scheduling order to accommodate additional discovery, if needed.

SO ORDERED this 19th day of July, 2002, at Bridgeport, Connecticut.

_____/s/_____
WARREN W. EGINTON, Senior U.S. District Judge