

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF ERIE

-----X	:	Index No.
JEANNE KORNOWICZ and JOY HIGGINS,	:	
	:	
	:	
Plaintiffs,	:	<u>SUMMONS</u>
	:	
-against-	:	
	:	
HEALTHNOW NEW YORK INC., doing business as	:	
COMMUNITY BLUE and BLUE CROSS & BLUE	:	
SHIELD OF WESTERN NEW YORK,	:	
	:	
Defendant.	:	
	:	
-----X	:	

SUMMONS

TO DEFENDANT:

YOU ARE SUMMONED to appear in this action by serving your answer to the complaint on the plaintiffs' attorney within the time limits stated below.

Erie County is designated as the county where this action will be tried, because the underlying action is venued in that county.

TIME LIMIT TO ANSWER:

Because this summons is served by delivery to you personally within New York State, you must answer the complaint within TWENTY (20) days after such delivery.

IF YOU FAIL TO ANSWER THE COMPLAINT within the time stated, judgment will be entered against you for the relief demanded in the complaint.

Dated: July 8, 2008
New York, New York

NEW YORK CIVIL LIBERTIES UNION FOUNDATION,
by

s/Matt Faiella

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SUPREME COURT FOR THE STATE OF NEW YORK
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COMPLAINT

Introduction

1. This is a case about an insurance company’s refusal to treat a lesbian couple’s marriage the same way that it treats all other marriages under the contract it holds with an employer school district. Plaintiff Jeanne Kornowicz has been employed at the school district for nearly twelve years and has been in a committed relationship with her spouse, Plaintiff Joy Higgins, for nearly ten years. The couple married in Canada in April 2006 and Ms. Kornowicz sought spousal health care coverage for Ms. Higgins in February 2008, after learning that their marriage is entitled to recognition in this state under New York’s marriage-recognition rule. When Ms. Kornowicz submitted her

request for spousal coverage, the school district swiftly sought to grant the request, as it would for any other married employee, and forwarded the request to the insurance company. When the insurance company denied the request because it was for a married lesbian couple, the school district stood by Ms. Kornowicz and her family by making multiple demands that the insurance company reverse its determination and comply with the law. Nevertheless, the insurance company has consistently refused to comply with both the school district's demands and the law, preventing Ms. Higgins from receiving spousal health care coverage.

2. Under the Appellate Division, Fourth Department's decision in *Martinez v. County of Monroe*, Plaintiffs' marriage is entitled to recognition under New York's marriage-recognition rule. Pursuant to *Martinez*, an employer's denial of spousal health care coverage to a married lesbian couple, in light of its provision of spousal health care coverage for all other married couples, also constitutes unlawful sexual orientation discrimination under the Executive Law. Thus, the insurance company has failed in two respects to meet its legal obligations. First, as stated, Plaintiffs' marriage is entitled to recognition and, thus, the insurance company's denial of coverage for Ms. Kornowicz's spouse constitutes a breach of its contract with the school district because, under the terms of the plan it provides for group members, the company must grant spousal coverage when requested by a married employee. Second, the company's denial of spousal health care coverage to Ms. Kornowicz's spouse violates the Executive Law's prohibition against sexual orientation-based discrimination. Therefore, Plaintiffs seek equitable and injunctive relief and damages to ensure that they receive spousal health care

coverage and are compensated for their out-of-pocket expenses during the unlawful denial of Ms. Kornowicz's request for such coverage.

The Parties

Plaintiffs

3. Plaintiff Jeanne Kornowicz is an employee at the Cheektowaga Central School District ("CCSD").

4. Plaintiff Joy Higgins is married to Ms. Kornowicz.

Defendant

5. Defendant HealthNow New York Inc., doing business as Community Blue and Blue Cross & Blue Shield of Western New York ("BCBSWNY"), is a not-for-profit corporation organized under the laws of the State of New York with its principal place of business in the City of Buffalo, County of Erie, State of New York.

Jurisdiction and Venue

6. Jurisdiction is conferred upon this Court by N.Y. Const. art. VI, § 7, N.Y. EXEC. LAW § 297, N.Y. JUD. LAW § 140-b, N.Y. C.P.L.R. 3001, 6301.

7. The transactions and occurrences at issue in this complaint arose in the County of Erie, State of New York. Accordingly, venue is proper in this Court pursuant to N.Y. C.P.L.R. 503(c), 504.

Facts

8. Ms. Kornowicz is and has been in a committed relationship with Ms. Higgins since June 1998 and, in April 2006, the couple married in the Province of

Ontario, Canada. In July 2007, Ms. Higgins gave birth to the couple's daughter, Elizabeth Higgins, and Ms. Kornowicz's second-parent adoption of Elizabeth became final in January 2008.

9. Ms. Kornowicz has been employed as a school psychologist at CCSD since August 1996.

10. Ms. Kornowicz is eligible for health care coverage for herself and her family under a group plan provided to CCSD employees by BCBSWNY pursuant to a contract between CCSD and BCBSWNY.

11. Ms. Kornowicz pays premiums for health care coverage under a group plan provided by BCBSWNY and described in a benefits booklet distributed to her by BCBSWNY. Each group member is a third-party beneficiary of the contract between CCSD and BCBSWNY. Under the group plan each group member receives individual health care coverage, and has the option of receiving health care coverage for family members, including a spouse. A group member can "Add a Spouse or Child" for health care coverage purposes by completing and returning to BCBSWNY a form requesting the addition. Also, if the group member is survived by her spouse, the spouse is entitled to purchase a new contract as a direct payment subscriber.

12. On February 1, 2008, the Appellate Division, Fourth Department held in *Martinez v. County of Monroe*, 850 N.Y.S.2d 740, 50 A.D.3d 189 (4th Dep't 2008), that a lesbian couple's valid Canadian marriage is entitled to recognition in New York under the state's marriage-recognition rule. Furthermore, an employer's failure to grant spousal benefits to a lesbian employee's spouse because the marriage is between

two persons of the same sex constitutes unlawful sexual orientation discrimination under the Executive Law.

13. On February 5, 2008, Ms. Kornowicz, having learned of the *Martinez* decision, submitted to CCSD an “Enrollment Application/Change Form,” seeking to add her newly adopted daughter and her spouse, Ms. Higgins, as dependents.

14. Sometime after February 5, 2008, CCSD personnel employee Karen Pszczolkowski forwarded Ms. Kornowicz’s enrollment application to BCBSWNY for its approval. BCBSWNY promptly granted Ms. Kornowicz’s request to add her daughter as a dependent, but communicated that it would need seven-to-ten business days to determine whether Ms. Kornowicz’s spousal coverage request would be granted.

15. On February 20, 2008, BCBSWNY’s Account Executive for Major Accounts, Kathleen Giardina, emailed Ms. Pszczolkowski, stating that BCBSWNY would not grant the request for spousal coverage. The email message characterized Plaintiffs’ marriage as a “Domestic Partner situation” and stated that the school district should obtain a domestic partnership rider in order to allow Ms. Kornowicz’s request to be granted.

16. On February 26, 2008, CCSD’s attorney, Thomas J. DeBoy, emailed Ms. Giardina to inform her that the law required BCBSWNY to reverse its determination. Mr. DeBoy wrote, in part:

I am the School Attorney for Cheektowaga Central School District. The District’s Personnel Clerk, Karen Pszczolkowski, has been keeping me informed of one of our employee’s efforts to obtain family coverage for her same-sex partner, whom she married in Canada. As I understand [from] your latest email to Karen, BCBSWNY is denying family coverage for the employee’s wife.

I respectfully disagree with the position being taken by BCBSWNY. The Martinez decision from the Appellate Division, Fourth Department, is controlling. See, *Martinez v. County of Monroe*,[] 2008 NY Slip Op 909, 2008 NY Slip Op 909; 2008 N.Y. App. Div. LEXIS 854; 42 Employee Benefits Cas. (BNA) 2692. (Copy of the decision is attached).

. . . **Martinez requires recognition of our employee's same sex marriage.** The decision does not require us to treat or view them as "domestic partners", but rather as a married couple. (For that reason, the District cannot accept your characterization that we are faced with a "Domestic Partner situation.")

(emphasis in original).

17. On March 3, 2008, Mr. DeBoy emailed Ms. Giardina again, asking her or someone else from BCBSWNY to respond to his prior message.

18. On March 5, 2008, Mr. DeBoy again emailed Ms. Giardina to request that BCBSWNY respond to his emails and reverse its determination denying Ms. Kornowicz's request. Mr. DeBoy clearly articulated the fact that BCBSWNY's domestic partnership application would preclude any married couple, like Plaintiffs, from eligibility for domestic partnership coverage, as the application requires a couple to attest to the fact that they are not married. Also, Mr. DeBoy emphasized the following:

Our employee is married and remains married, and the **Martinez** decision requires recognition of that marriage. Accordingly, I renew the District's request that BlueCross BlueShield of Western New York cease its delay, and process the employee's change of enrollment request form, dated February 5, 2008, the same way it would for any other married couple. Our employee is entitled to family coverage for her spouse, effective as of March 1, 2008.

I further note that, according to the District's Personnel Clerk, none of our heterosexual married employees have ever suffered the kind of delay in processing an enrollment change form that Jeanne Kornowicz is being subjected to relative to her marriage. This is unacceptable.

It is my sincere hope that this matter can be quickly resolved to the satisfaction of the District and our employee. However, if I do not see some evidence of a good faith effort on the part of BlueCross Blue Shield in the very near future, then I will have no choice but to commence legal action on behalf of the District.

19. On March 17, 2008, Plaintiffs' counsel faxed and mailed a letter to Kenneth Sodaro, General Counsel for BCBSWNY, stating that BCBSWNY was violating the law by denying Ms. Kornowicz's request for spousal health care coverage.

20. On March 19, 2008, in an abundance of caution, Ms. Kornowicz submitted a new enrollment change form to BCBSWNY, on which she explicitly checked "Marriage" as the basis for adding her spouse, Ms. Higgins, as a dependent.

21. On March 26, 2008, Plaintiffs' counsel spoke to Carmen Snell, Assistant General Counsel for BCBSWNY. Ms. Snell advised that BCBSWNY would not grant any of Ms. Kornowicz's requests for spousal health care coverage.

22. On May 1, 2008, Plaintiffs' counsel mailed Ms. Snell a letter specifying that BCBSWNY was breaching its contract and violating the Human Rights Law by failing to grant Ms. Kornowicz's requests for spousal coverage.

23. On May 8, 2008, Ms. Snell advised Plaintiffs' counsel, via voicemail, that BCBSWNY would continue denying Ms. Kornowicz's requests for spousal coverage.

FIRST CAUSE OF ACTION

Breach of Contract

24. As an employee covered by a group health care plan and as a spouse of that employee, Plaintiffs are third-party beneficiaries of the insurance contract between CCSD and BCBSWNY.

25. The group health plan under which Ms. Kornowicz is a member provides that, when an employee at CCSD submits an enrollment change form to add a spouse as a dependent for health care coverage, BCBSWNY will provide coverage to the spouse.

26. New York's marriage-recognition rule requires recognition of Plaintiffs' marriage.

27. Although Plaintiffs are married and Ms. Kornowicz completed two separate enrollment change forms to add Ms. Higgins for family coverage as a dependent, BCBSWNY has refused to grant Ms. Kornowicz's requests for spousal health care coverage and characterized Plaintiffs' marriage as a domestic partnership.

28. Accordingly, BCBSWNY breached its contract with Plaintiffs by denying Ms. Kornowicz's requests for spousal health care coverage.

SECOND CAUSE OF ACTION

Violation of Executive Law § 296

29. Section 296 of the Executive Law prohibits discrimination based on sexual orientation.

30. By failing to provide Plaintiffs with spousal health care coverage, BCBSWNY is unlawfully discriminating against them based on their sexual orientation, in violation of the Executive Law.

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs, Jeanne Kornowicz and Joy Higgins, respectfully request that this Court:

- A. Issue declaratory relief stating that:
 - (1) BCBSWNY's denial of Ms. Kornowicz's request for spousal coverage constitutes a breach of its contract with CCSD and Plaintiffs as third-party beneficiaries;
 - (2) By failing to provide Plaintiffs with spousal health care coverage, BCBSWNY is engaging in unlawful sexual orientation discrimination in violation of section 296 of the Executive Law;
- B. Issue injunctive relief barring BCBSWNY, its agents, servants and employees from continuing to deny spousal health care coverage to Ms. Kornowicz's spouse because she and her spouse are of the same sex;
- C. Award Plaintiffs damages plus interest; and
- D. Grant Plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, New York
July 8, 2008

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