

Supreme Court, Appellate Division,
First Department, New York.
H.P.S. MANAGEMENT CO., INC., et al., Plaintiffs-
Appellants,
v.
UNUM LIFE INSURANCE COMPANY OF
AMERICA, et al., Defendants-Respondents.

May 29, 2001.

[Susan R. Nudelman](#), for Plaintiffs-Appellants.

[Patrick W. Begos](#), for Defendants-Respondents.

***340** Judgment, Supreme Court, New York County (Ira Gammerman, J.), entered February 14, 2000, dismissing the complaint at the close of plaintiffs' case, unanimously affirmed, with costs.

***341** Under the subject commission agreements between plaintiffs insurance brokers and defendants insurers, plaintiffs' continuing right to service fees is unambiguously conditioned upon their satisfactory provision of services to the contractholders. Thus, the trial court properly rejected parol evidence offered by plaintiffs. While there is nothing on the face of the contract documents that prohibited plaintiffs from brokering additional annuities with other insurance companies and taking advantage of their access to information concerning the contractholders' participating employees, there is also nothing in the documents that prohibited defendants, or the contractholders, from using other brokers for new business outside the scope of the 1970 and 1972 annuities brokered by plaintiffs. Nor is there anything in the documents that prohibited the contractholders from terminating plaintiffs as their servicing agent for the 1970 and 1972 annuities. As the evidence showed that the contractholders were dissatisfied with plaintiffs, and as there was no evidence tending to show that such dissatisfaction was caused by defendants' management of the annuities in ways claimed by plaintiffs to be detrimental to the contractholders' employees, the trial court correctly found that plaintiffs failed to make a prima facie showing that their servicing of the annuities was satisfactory. The contractholders, highly counseled hospitals, were obviously competent to decide whether, as plaintiffs were claiming, their participating employees were not being well served by defendants. Plaintiffs' procedural arguments are improperly raised for the

first time on appeal, and its other arguments are unavailing.

[SULLIVAN](#), P.J., [NARDELLI](#), [WILLIAMS](#), [MAZZARELLI](#) and [SAXE](#), JJ., concur.

283 A.D.2d 340, 724 N.Y.S.2d 858, 2001 N.Y. Slip Op. 04643

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