

Case Details

Case Details

National ID	link
Member State	Belgium
Common Name	Voyages I.D. Travel / M. Ph. Belle
Decision type	Other
Decision date	02/01/2003
Court	Commission de litiges voyages (Others)
Subject	
Plaintiff	
Defendant	
Keywords	

Directive Articles

Unfair Contract Terms Directive, [Article 2](#) Unfair Contract Terms Directive, [Article 3, 1](#). Package Travel Directive, [Article 2, 2](#). Package Travel Directive, [Article 4, 5](#).

Headnote

1. When the traveller dissolves the contract because of circumstances which are attributable to him, the travel intermediary is entitled to demand damages (Article 26 of the Act of 16 February 1994 regulating the package travel contracts and the travel intermediation contracts ("Travel Act")). The traveller who without any reason does not collect his travel documents and who renounces implicitly to depart, dissolves unilaterally the contract. This dissolution is attributable to him.
2. The travel intermediary cannot demand payment from an additional cancellation insurance when he acts as an agent for the insurer, since solely the insurer is the creditor of the traveller so that the travel intermediary does not possess the required interest nor the required capacity.
3. The penalty clause which states that any late payment gives cause to an extra payment of a fixed compensation of 15% with a minimum of EUR 37 is unlawful and null insofar the clause only determines the amount due by the consumer (traveller) who does not meet his obligations, but does not provide for an equivalent compensation in the event the seller (travel intermediary) does not meet his obligations (Articles 32, 15° and 33,§1 Act of 14 July 1991 on trade practices and consumer information and protection ("TPA")).

Facts

The claimant, Voyages I.D. Travel, has committed herself, on payment of EUR 831,53, to supply the defendant, M. Ph. Belle, with the specific performance consisting of airline transport and accommodation. To that aim, the claimant entered into a travel intermediary contract, within the meaning of Article 1 No 2 of the Travel Act, with the defendant. The defendant however omitted without any reason to collect his travel documents and did not depart. Therefore, the claimant demands damages to the amount of EUR 781,96, to be increased with a fixed compensation, and expenses in accordance with the signed order form of 23 April 2001. Furthermore, the claimant demands that the defendant should pay the premium of the additional cancellation insurance which the latter had subscribed.

Legal issue

Concerning the dissolution of the contract:

Article 26 of the Travel Act states: "The traveller can at any time dissolve the contract partly or entirely. When the traveller dissolves because of a reason which is attributable to him, he compensates the travel intermediary for the damages suffered because of the dissolution".

In the present case, the defendant has dissolved the contract unilaterally because he omitted to collect his travel documents without any reason and thus renounced implicitly to depart. Hence, there is no doubt that the dissolution is attributable to him and the claimant entitled to demand damages.

Concerning the insurance premium:

The defendant has been invited to pay the premium to the claimant, in his capacity of insurance intermediary, and not to the insurer. The claimant acted as an encashment agent for the insurer. As a result, solely the insurer is the creditor of the defendant, so that the travel intermediary does not have the required interest nor the required capacity to demand payment of the premium.

Concerning the penalty clause:

In the application of her general conditions on travel contracts, the claimant demands payment of a fixed amount of EUR 73,37 from the defendant. The cited general conditions indicate that any late payment gives cause to an extra payment of a fixed compensation of 15% with a minimum of EUR 37.

In the present case, the general conditions are in principle enforceable against the defendant because the order form mentioned explicitly that he took notice of them. However, taking into account the Articles 32 No 15 and 33 §1 of the TPA, the clause in question is unlawful and null because it solely determines the amount due by the consumer who does not meet his obligations, but does not provide for an equivalent compensation in the event the seller does not meet his obligations.

Decision

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