888/12

Den 2. april 2012 blev i sag nr. 80.585:

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xxxxxxx

mod

Alpha Insurance A/S
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

_____

Forsikringstageren har Mortgage Protection Payment Insurance i Alpha Insurance A/S. Han klager over størrelsen af præmien, som selskabet opkræver.

Klageren har tidligere haft forsikring i Assurant Solutions, men da dette selskab ophørte med at tegne det pågældende forsikringsprodukt for British Insurance Ltd.'s kunder, tilbød det indklagede selskab efter aftale med British Insurance Ltd. forsikringstagerne at tegne det pågældende forsikringsprodukt i det indklagede selskab. Klageren lod herefter forsikringen tegne i selskabet, men han er utilfreds med, at selskabet opkræver en højere præmie, end Assurant Solutions gjorde. Klageren gør gældende, at han ikke blev informeret tydeligt herom i forbindelse med forsikringens tegning, hvorfor han har rejst krav om fuld tilbagebetaling af den præmie, han har indbetalt til det indklagede selskab.

Af brev af 28/4 2009 fra British Insurance Ltd. til klageren fremgår bl.a.:

"**Change of Insurer**
We are pleased to inform you that we have joined forces with a premier insurer in the form of Alpha Insurance A/S, to offer you continued cover with no changes to your existing terms and conditions. These changes are being taken to ensure you continue to receive excellent customer service and cover at a time when the economic outlook is less certain.
…
Premiums and Direct Debit Collection

Unfortunately, given the current market, it has not been possible to totally avoid an increase in your monthly premium which will increase to £47.47 from June 2009 onwards, but we feel this is a small price to pay for a policy which offers all the quality you expect from us and will continue to provide a valuable safety net in this time of economic uncertainty."

Inden sagens indbringelse for nævnet indbragte klageren sagen for the Financial Ombudsman Service i Storbritannien. I klageskemaet anførte klageren bl.a.:

"On the 28th April 2009 British Insurance, the company with whom I purchased the MPPI policy from wrote to me to advise me that there were to be several changes to my policy. Please see attached letter.

The letter stated that there was to be a change in insurer, administrator and an increase to my premium. The letter also stated that no terms, conditions or wording of my policy had been changed. Naturally I was very disappointed in the increase to my premium as it had almost doubled.

lt was then that I checked with a number of other providers to see if I could get replacement cover at a similar monthly premium. Premiums were the similar but unfortunately all of the providers stated that there was a minimum qualification period of 6 months. Given that my company were going through a restructuring at the time there was some uncertainty about my job security. I simply couldn't change providers.

A number of months past and it became apparent in the press that providers had unlawfully increased premiums and that the FSA had asked these providers to refund the increase in premiums. lt was at this stage that I assumed that my policy was subject to the rules and I would receive a refund as well as being placed back into the same position I was in prior to the increases.

I continued to pay the insurance during a difficult financial period and decided to write to British Insurance in January to enquire about my refund. They told me that no decision had been made and that I should contact my insurer.

During February I received another letter this time from Trent Services advising me that they were my new administrator. As no further correspondence was received regarding the refunds and knowing that providers had until the June 2010 I wrote to Trent asking when payment would be made.

Their response on the 26th April (copy attached) advised me that I was not entitled to any refund as I had indeed taken a new policy out with Alpha (starting 1st June) and that my policy with Assurant had ended on the 31st May 2009. Nowhere in the letter dated 28th April 2009 did it tell me about this change or that I now had a new policy. Reading the letter I assumed that I didn't need to take any action. It simply stated no change to terms etc...

I find this response and wholly unacceptable and very convenient for the insurer. Had I been provided with the full facts then I would have been able to make an informed decision at no stage has British Insurance, Assurant, Trent or Alpha treated me fairly.

If they had told me about this being a new policy I would have been better informed and been able to assess my situation. As it happens I have now paid 10 months of this increased premium when I had expected to receive a refund."

The Financial Ombudsman Service gav ikke klageren medhold i sin klage for så vidt angik British Insurance Ltd. Hvad angik det indklagede selskab henviste the Financial Ombudsman Service til Ankenævnet for Forsikring.

Sagen er indbragt for nævnet den 19/5 2011.

Selskabet har i brev af 14/6 2011 til nævnet bl.a. anført:

> "The insured, [klager], initially purchased a Mortgage Protection Payment Insurance (MPPI) policy via British Insurance Ltd. with Assurant Solutions as the insurer. Assurant Solutions gave notice to British Insurance early in 2009 that they were no longer prepared to provide mortgage payment protection insurance coverage to British Insurance's customers, due to the fact that they were losing money following the increase in the number of redundancies and the rising cost of claims. In order to protect their customer's interests, British Insurance asked other insurance companies, including Alpha Insurance A/S, to provide quotations for the business. These quotations were provided on the open market.
>
> Alpha Insurance A/S agreed with British Insurance Ltd. to offer insurance to [klager] so that he could continue to be protected, but at the advised increased premium. A letter informing him of the change in insurer and the new premium was sent to [klager] by British Insurance on 28th April 2009 and he has supplied a copy of that letter with his complaint. [Klager] was given 30 days notice of the change before Alpha Insurance A/S became his insurer and provided him with cover and the first premium payment was due at the end of June 2009. Alpha Insurance A/S agreed to offer cover with no changes to the existing policy terms and conditions (see copy policy, Attachment … hereto).
>
> In the completed FOS Complaints Form from May 2010, [klager] states, *'I feel the original letter dated 28th April has been written to deliberately confuse people. That is not fair'* and he would like Alpha Insurance A/S to *'Put me back in the position I would have been had it been clear that I was taking out a new policy. Full refund of my premiums for breach of treating customers fairly principles'.*
>
> Alpha Insurance A/S stepped into a breach created by [klagers] previous insurer's decision to leave the mortgage premium protection insurance (MPPI) market. This has been explained to [klager] by Alpha Insurance A/S in our e-mail to him of 26th April 2010, by our administrators Trent-Services in their letter to [klager] of the same date and by British Insurance in their letter to [klager] of 29th September 2010, copies of all supplied with the complaint.
>
> The letter sent out on our behalf in April of 2009 was by no means intended to create confusion. In our opinion the situation was stated clearly and simply. All affected customers received similar letters with details of the new premium that Alpha Insurance A/S would be charging for coverage. The valuable advantage in retaining the existing policy terms and conditions was that no new exclusion period was imposed by Alpha Insurance A/S. [Klager] has noted on Page 2 of his complaint, *'I checked with a number of other providers to see if I could get replacement cover at a similar monthly premium. Premiums were similar but unfortunately all of the providers stated that there was a minimum qualification period of 6 months'.* [Klager] goes on to state, *'Given that my company were going through restructuring*

at the time there was some uncertainty about my job security. I simply couldn't change providers.'

Clearly [klager] considered Alpha Insurance A/S offer carefully before deciding to accept. However, on Page 3 of his complaint form [klager] goes on to contradict himself completely, *'Had I been provided with the full facts then I would have been able to make an informed decision at no stage has ... Alpha treated me fairly.*
If they had told me about this being a new policy I would have been better informed and been able to assess my situation.'

The fact is that [klager] was so well-informed that he did assess his situation upon receipt of the April 2009 letter, even going so far as to compare prices and terms offered by other providers before deciding to accept Alpha Insurance A/S' offer, possibly because of his potentially precarious job situation. If [klager] had made a claim, Alpha Insurance A/S would have honored our obligation under his policy. [Klager] received the same fair treatment from Alpha Insurance A/S as all other potential customers and he consciously decided to accept our offer by paying the premium we had set.

[Klagers] dissatisfaction only seems to have arisen when he became aware via the media that the UK FSA and various UK market associations were looking into MPPI premium variation clauses and that in October of 2009 an industry-wide agreement, commonly called the 'Safe Harbour Agreement' was entered into. Under this agreement in certain circumstances MPPI providers were obliged to make refunds of premiums.

Alpha Insurance A/S is fully aware of the Safe Harbour Agreement dated 7th October 2009, a copy of which is enclosed as Attachment … hereto. We have moreover been in direct contact with the UK FSA on this subject and we enclose an excerpt from a letter from the UK FSA dated 13th July 2010 (Attachment …).

This letter clearly states that we have not contravened the terms of the Safe Harbour Agreement, *'Based on what you have told us, it therefore would not appear to be a premium increase under an unfair variation term in an existing contract, but a new offer from a different MPPI provider'.* [Klager] was already informed that the FSA had taken this position in the British Insurance letter to him dated 29th September 2010 which was included with his complaint.
Not satisfied with this response, [klager] decided to lodge a complaint against British Insurance with the Financial Ombudsman Service (FOS). The FOS concluded in their response to [klager] of 21st January 2011 as follows, *'I appreciate your dissatisfaction with the content of British Insurance's letter to you in April 2009 in which it confirmed the change of insurer was 'to offer you continued cover with no changes to your existing terms and conditions'. However, this comment did not state that the policy itself was continuous - simply that you would continue to receive the same level of cover with Alpha Insurance (from 1 June 2009) as you did with Assurant Solutions (up until 31 May 2009) and on the same terms and conditions, albeit at a different premium level.'*

[Klagers] complaint was not upheld. [Klager] was again not satisfied with this response and he wrote once again to the FOS and there is an undated 'follow up letter' enclosed with the complaint, which was seemingly sent on 22nd February 2011, where he raises various additional matters.

To provide the fullest response possible to the complaint against Alpha Insurance A/S it appears to be necessary for us to deal with the matters raised in that 'follow up letter' in detail.

On the first page [klager] refers again to the British Insurance letter from April of 2009 and to the premium imposed by Alpha, which was higher than that paid to his previous MPPI provider Assurant Solutions. We have already illustrated above that the letter was indeed clear in the opinion of Alpha Insurance A/S and the UK FSA. [Klager] made a conscious and informed decision to accept our offer, having compared this to other products available in the market. While the poor economic climate was not of our doing, [klager] was also aware of the great advantage afforded him by our not imposing a new exclusion period.

[Klager] goes on to refer to the Safe Harbour Agreement and on Page 2 of his letter he lists various points of that agreement which he feels relate to his complaint. Referring to each in turn our responses are as follows:

- Alpha Insurance A/S has only insured [klager] since 1st June 2009. He was advised of the premium we would be charging prior to the inception of his policy and he decided to accept our offer. We have not increased his premium thereafter.
- Alpha Insurance A/S has not cancelled [klager]'s policy. If [klager] has a grievance with regard to cancellation this should have been referred to his previous insurer, Assurant Solutions.
- The premium was agreed in advance of policy inception with no increase imposed thereafter. No refund was due and thus it was not relevant for Alpha Insurance A/S to write to customers on this subject.
- Not applicable.
- Alpha Insurance A/S has abided by this.
- [Klager] received a copy letter from Trent Services in February of 2010 advising him of the change in administrator (referred to on Page 3 of [klagers] complaint form).
- Alpha Insurance A/S and our business associates Trent Services and British Insurance have replied to all of [klager]'s letters and e-mails fairly, consistently and promptly.
- No such guarantee or commitment was provided.
- This has been done for new customers.

We disagree completely with [klagers] concluding paragraph on Page 2 of this letter. No refund of premium is due from Alpha Insurance A/S.

On Page 3 of [klagers] follow up letter he refers to an FSA footer comment, which he again misinterprets to mean that he is entitled to a refund of premium. Again we disagree completely with [klagers] view. The situation described relates specifically to cancellations. As stated in Alpha Insurance A/S' e-mail to [klager] of 26th April 2010, we believe that the premium we are charging him of £47.47 per month is the rate that is right for the risk involved. We have quoted the same rates for [klager]'s insurance coverage as for all other applicants wishing to effect cover through British Insurance and no refund is due.

At the bottom of Page 3 of his follow up letter [klager] notes that he was referred to the FOS in the first instance with his complaint. This is standard procedure for policyholders in the UK with complaints because under the rules of the European Financial Services Dispute Network (FIN-NET), the simplest way for U.K. consumers to lodge a complaint against a financial services provider in another European country is actually to contact the FOS. They will provide advice and assistance and will either automatically refer the complaint to the relevant scheme in Denmark, or provide contact details, as has happened here.

[Klager] also refers to entries for Alpha Insurance A/S in the UK FSA Register. He seems to be inferring some sinister intent on our part by the presence of two entries, but the explanation is actually quite simple and was advertised in the London Gazette on 4th February 2010 (see Attachment …).

The Board of Directors of our parent company, decided to simplify our company structure. The portfolio of the 'old' Alpha Insurance A/S (FSA no. …84) was transferred to Gaia Insurance A/S (FSA no. …21). The two companies were merged with retroactive effect from 1st January 2009 and Gaia was renamed Alpha Insurance A/S, retaining the 'old' Gaia FSA no. of …21. Alpha Insurance A/S is authorized by the FSA to provide cross-border insurance services in the UK.

[Klager] has asked to be, *'Put back in the position I would have been had it been clear that I was taking out a new policy. Full refund of my premiums for breach of treating customers fairly principles'.* [Klager] has already received a response from the FOS on 28th February 2011 where in the penultimate paragraph they state, *...'for these reasons and those set out in my letter of 21 January 2011 I regret to say I remain of the opinion that your complaint should not be upheld'.*

Alpha Insurance A/S is of the same opinion. We firmly believe that this claim for a refund has been dealt with in a proper and professional manner and we maintain that [klager] is not entitled to any refund of premium from Alpha Insurance A/S. We trust that the above information and the enclosures are helpful and we will look forward to receiving notice of the decision of Ankenævnet for Forsikring in due course."

Nævnet udtaler:

Efter sin gennemgang af sagen finder nævnet at kunne lægge til grund, at Assurant Solutions opsagde forsikringsaftalen med klageren, og at klageren herefter tegnede en ny forsikring i det indklagede selskab. Nævnet finder, at klageren ved British Insurance Ltd.'s brev af 28/4 2009 tydeligt blev informeret om, at ændringen af forsikringsudbyder ville indebære en forhøjelse af præmien, ligesom størrelsen af den fremtidige præmie blev oplyst. Nævnet finder herefter ikke at grundlag for at pålægge det indklagede selskab at tilbagebetale præmien.

Som følge heraf

b e s t e m m e s :

Klageren får ikke medhold.

Marianne Højgaard Pedersen

formand