893/12

Den 29. maj 2012 blev i sag nr. 81.195:

xxxxx xxxxxxxx
xx xxxxxxx xxxxx xxxxxxx
xxxxx xxx xxx
xxxxxxx

mod

Alpha Insurance A/S
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

_____

Forsikringstageren, der er engelsk statsborger og bosiddende i England, har haft "Short Term Income Protection Insurance" i Alpha Insurance A/S. Hun klager over selskabets afvisning af at yde forsikringsdækning i anledning af arbejdsløshed i perioden fra den 31/3 til den 8/6 2011.

Selskabet har afvist at yde forsikringsdækning med henvisning til, at klageren driver selvstændig virksomhed, og at hun ikke har godtgjort, at hun er ophørt hermed. Ifølge selskabet opfylder hun således ikke betingelserne for udbetaling ved arbejdsløshed.

I klagen, som nævnet har modtaget den 7/9 2011, hedder:

"FORMAL COMPLAINT - ALPHA INSURANCE GROUP, DENMARK

Re: [Klageren] Self Employed/Income Replacement Policy Numbers:
ADM/PC-… (established March 2007) and ADM/PC-… (established Dec 2005)

As a UK/English citizen, I write under the FIN-NET scheme to complain about the decision of the above named Insurance Company to decline a claim dated 31st March 2011 for Income Replacement/ Unemployment under my above-numbered Insurance Policies.

Alpha Insurance, Denmark administers its business in the UK via:
Trent Services (Administration) Ltd registered at Stroud Road, Cirencester, Gloucestershire GL7 6JN, England.
The Administrators were previously Adminicle Ltd, of the same address.

The Insurance was sold to me via:
UK Company `Paymentcare'.

I attach: 1 x FIN-NET CROSS BORDER FINANCIAL SERVICES COMPLAINTS FORM - duly completed.

Also for your brief perusal and in chronological order, I attach:

1 x copy [klagerens] letter dated June 28th 2011 to Trent Services - initial appeal/clarification of declination
1 x copy Alpha Group letter dated July 13th 2011 to [klageren] - initial response
1 x copy [klageren] letter dated July 31st 2011 to Alpha Group - formal complaint
1 x copy Alpha Group letter dated August 26th 2011 to [klageren] - final decision to decline claim.
All correspondence should be self-explanatory.

I DO have a more comprehensive file of documentation/evidence that I believe supports my claim AND my complaint - should you wish to see it.
However this file should be held, mirrored, by … - both for this current claim (from 31st March 2011, now ended but not advised June 8th 2011) and my previous claim (June 2009 - March 2010)

I make my complaint in the STRONGEST POSSIBLE terms.

Whilst the attached correspondence reveals the nature and essence of this dispute, I would like to add the following comments:

1. Alpha Insurance have first asserted I am a Company and now assert I am in Partnership.
1a. They agree that I was self-employed.
1b. They continue to assert I was actively 'trading' whilst claiming I was unemployed, and continue to assert I did not 'permanently Ceased to Trade' because of an active website.

2. I re-iterate I am not and was not registered as a Company OR a Partnership, nor do I or did I hold any Company or Partnership Bank accounts.

I am a sole, independent professional who works alone but promotes herself as able to work in association with others.
I believe this falls under their Term 'Self Employed' from their Terms & Conditions issued 2005-7.

3. In terms of association with others, I informed both … (claim 2009/2010) and … (claim 2011) in writing about the existence of my names and websites '[Klagerens] Associates' and '… Associates'.
They both form part of my independent professional profile as:

i) Private Stress Counsellor ([klagerens] Associates)
ii) Consultant and Trainer in Stress Management (… Associates)

My independent status in this field has spanned 20 years, and I have made only one previous claim for unemployment - 2009/2010.

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In said previous claim, … Ltd were informed in writing that both 3i) and 3ii) above would remain sources of potential income

In this current claim … were informed in writing of same/similar unemployment circumstances, current associations, potential income sources and attendant job searches.

3a) The homepage of website www...com uses the word 'partnership' with … to highlight our dovetailed training approach.

It should be noted that … is also an independent professional who works alone but promotes herself as able to work in association with others.
To date, we have not performed any business as `… Associates.

4. For the duration of my 9 month claim 2009/2010, I was open and diligent in updating Adminicle Ltd around my efforts to secure income.
Together with all other requirements to evidence unemployment, I also copied them ALL attendant job search correspondence - including emails sent from both websites in guest for business opportunities. i.e. ….org.uk and ..com or letters sent with letterhead/details '[klageren] Associates' or '… Associates'

4a. Had this claim of 2011 with … been allowed, I would have followed the same format in point 4.above towards employment - despite the lack of 'endorsed as unemployed' evidence previously supplied by The Job Centre on the UK Government Form AB11.

For this period of unemployment March 31st to June 8th 2011 I have pursued all avenues of potential income to be an employed or self-employed person, and can document accordingly.

5. Despite the payment of my previous unemployment claim 2009/2010 by …, the decision of … to decline this same/similar 2011 unemployment claim appears to arise from now varying, incoherent and confusing interpretations of the Terms & Conditions issued with my policies in 2005 and 2007 respectively.

It is therefore my contention that this decision effectively precluded me from actively seeking business within a same or similar framework of my chosen profession/career of the last 20 years, and that this is grossly unfair and onerous in the extreme.

6. Lastly, I query the (moral) legitimacy of their actions in cancelling both these policies (their final response letter dated 26th August 2011) before I have had a chance to appeal the decision and bring the dispute to an independent conclusion.
Both policies are in respect of Unemployment AND Sickness/Accident.
I am therefore currently under-insured and thus, financially exposed in terms of covering my liabilities should I fall sick or have an accident leaving me unable to work.

7. It may be of interest to you to note that I hold one other Income Replacement Insurance policy with another UK provider, and that this has been paid in respect of my unemployment without issue or question.

I thank you for your time in reading this and would be grateful for your views and thoughts at your earliest convenience.
Clearly I am looking for you to ultimately adjudge Alpha Insurance liable to pay my Income Replacement insurances @ £867 per month for a period of unemployment March 31st 2011 to June 8th 2011."

Heroverfor har selskabet i brev af 4/10 2011 til nævnet anført:

"Firstly please note that while [klageren] refers to two policy reference numbers in her complaint, it is only the one policy reference … for Short Term Income Protection Insurance which is in fact insured with Alpha Insurance A/S (Alpha). We understand that the other policy is for loan payment protection and that is underwritten by another company. Confusion arose initially because both policies are administered by the same company, …, and we apologise for our error in including the other policy in our earlier correspondence with [klageren].

Our reply now is therefore only in respect of the income protection policy and if [klageren] has a complaint to make with regard to her other policy she will have to address that to the appropriate insurer.

We attach a list numbering the copy documents enclosed herewith and in the documents themselves we have occasionally highlighted certain text referred to herein.

Background

[Klageren] purchased a Short Term Income Protection Insurance Policy underwritten initially by Templeton Insurance Limited in March of 2007 from an internet site provided by a company named Paymentcare Limited. On the website Paymentcare Limited have the following disclaimer:

'Paymentcare Limited offers various insurance policies on a non-advised basis only. We offer no advice or re-commendation as to the suitability of a product for your specific financial needs. You should ensure that you are happy that the product is suitable for your needs. If you require advice we recommend you contact your financial advisor.'

[Klageren] was therefore expected to check that the product purchased was suitable for her needs or to have this checked on her behalf by an independent financial advisor.

Policy Terms

Please refer to Attachment 1 for the Policy terms and Conditions, Attachments 2 & 3 for the Certificates of Insurance and Attachment 4 regarding the change of insurer to Alpha.

[Klageren] purchased this policy to protect part of her normal monthly income during periods of unemployment. [Klageren] works as a self-employed sole trader, as a private stress counselor under the trading name … and as a consultant and trainer in stress management under the trading name ...

In order for a self-employed sole trader to make a claim under this insurance policy they must comply with the terms of the policy and Section 10, in particular:

Unemployment cover under this Policy will vary in accordance with Your Employment status as detailed below:

Self Employment - You will be insured if You have permanently Ceased to Trade due to circumstances entirely beyond Your control ... and have:
a) filed closing accounts with the Inland Revenue if You operate alone; …

'Self Employment' is defined as follows:

Means You are in Business alone or in association with others, classed as Schedule D for income tax purposes and paying Class 2 National Insurance contributions and are not classified as being Employed. You will be deemed to be Self Employed if You fall into one of the following categories:

• You are a Proprietor or a Controlling Director; ...

and

'Ceased to Trade' is defined as follows:

Means the Business has permanently stopped trading due to circumstances entirely beyond Your control ..., and has been wound up ...

Claim

The crux of this claim is that Alpha Insurance A/S has required [klageren] to demonstrate that she has 'permanently ceased to trade' and her business 'has been wound up' and [klageren] has not done so. Instead, [klageren] has refused to accept that this is a valid requirement under her insurance policy with Alpha.

[Klageren] has made a similar claim under this insurance policy previously for the period from June 2009 - March 2010 and in that case her claim was paid in full. That claim was dealt with by Alpha's previous administrators, Adminicle Ltd. and was paid on the understanding that [klageren] had permanently ceased to trade. Adminicle appear to have accepted on good faith that [klageren] had in fact ceased to trade and wound up her business activities, possibly because they were supplied with copies of UK government forms endorsing [klagerens] status as being unemployed in that instance.

The fact is that in connection with that earlier claim [klageren] did not in fact 'permanently stop trading' or wind up her business. She merely allowed the websites connected with her business to remain dormant, until such time as she decided business had picked up sufficiently for her to resume trading again. Attachments 5 and 6 hereto are web-site print outs connected to the businesses in [klagerens] name. These demonstrate that [klageren] did not cease trading or wind up her business, in accordance with the insurance policy pre-requisites to obtaining cover.

[Klageren] in her letter to Alpha dated 8th August 2011 confirms that during her recent period of unemployment she was actively seeking work under the names of these websites. It is of course a separate requirement defined under 'Unemployment' that for [klageren] to obtain benefit under her policy she must be registered as available for and actively seeking work, but this should be through a Job Centre Plus or any equivalent benefit office in the United Kingdom.

[Klageren] is to be applauded for actively seeking work through additional avenues, but at the same time it was pointed out to her by our administrators that her refusal to cease trading and wind up her business activities made her ineligible for benefit under this particular insurance policy. Whether [klageren] is actively trading or unemployed seems to be

something she alone can decide, dependent upon the amount of business generated through the afore-mentioned websites.

If [klageren] is able to fulfill the criteria set by the UK government to obtain unemployment benefit during slow periods, that is a matter between her and the Job Centre. Likewise, if she has obtained payment under another income replacement insurance policy with a different insurance provider for her recent period of unemployment, that is a matter between her and that insurance company.

We do not consider that any precedent has been set by Alpha by the payment of the previous claim without receipt of proof of [klageren] having permanently ceased trading. We are however adamant that this requirement be properly fulfilled for any further claim to be considered. [Klageren] has refused to comply and is therefore not entitled to compensation for her period of unemployment during 2011.

Cancellation

Under Section 18 of the policy Alpha Insurance A/S is entitled cancel [klagerens] policy at any time by giving 30 days notice in writing. Such notice was given in our letter dated 26th August 2011, but naturally that notice only applies to the policy actually provided by Alpha Insurance A/S and again we regret any confusion caused by our initial mistaken belief that both policies were ours.

Please note that we did make it clear to [klageren] that the cancellation of her policy at that time would in no way prejudice her right to complain with regard to her claim that is the subject of this complaint.

Conclusion
Alpha Insurance A/S does not find that [klageren] has complied with the specific provisions of her policy with us and her claim for income protection for the period from 31 5t March to 8th June 2011 is rejected."

Efterfølgende har parterne ført en omfattende brevveksling, som i sin helhed er forelagt nævnet sammen med de fremlagte bilag.

Af de fremlagte forsikringsbetingelser fremgår bl.a.:

"**3. WHAT THE WORDS MEAN**

Some of the words and phrases **We** use in these **Policy** terms and conditions have special meanings and these are shown below in **bold type** with their meanings alongside them. Except where the context otherwise requires, the masculine shall include the feminine, the singular shall include the plural and vice versa as appropriate.

…

Business Means a company, trade, industry or profession which is registered in the United Kingdom.

…

Ceased to Trade Means the Business has permanently stopped trading due to circumstances entirely beyond **Your** control or the control of any director or partner in Your Business, and has been wound up or put into

the hands of a registered insolvency practitioner or, if the **Business** is a partnership that the partnership has been permanently dissolved.

...

Controlling Director Means **You** directly or indirectly own 10% or more of the issued share capital of the **Business You Work** for;

…

Employed or Employment Means **You** are in **Permanent Employment** and **Your** employer is deducting P.A.Y.E. tax and National Insurance contributions from **Your** gross salary.

…

Proprietor Means **You** own, alone or with others, the **Business You Work** for.

…

Self employed or Self Employment Means **You** are in **Business** alone or in association with others, classed as Schedule D for income tax purposes and paying Class 2 National Insurance contributions and are not classified as being **Employed. You** will be deemed to be **Self Employed** if **You** fall into one of the following categories:

- **You** are a **Proprietor** or a **Controlling Director;**

…

Unemployed or Unemployment Means **You** are entirely without **Work** directly due to circumstances entirely beyond **Your** control (which includes the managing or assisting of any part of the day to day duties of operating a **Business**) and **You** are not in receipt of any payment from **Your** former **Employment** including **Payment in lieu of Notice**, and **You** must be:
a) Receiving Income Support or Job Seekers Allowance or **You** do not qualify for these benefits because **You** have been entitled to make reduced National Insurance contributions in the past and;
b) Registered as available for and actively seeking **Work** at a Job Centre Plus or any equivalent benefit office in the **United Kingdom;**
c) If **You** are **self-employed You** must comply with (a) and (b) above, and have permanently **Ceased to Trade** due to circumstances entirely beyond **Your** control and if **You** are a **Controlling Director Your** company has been wound up by a creditor who is not a director of **Your Business.**

…

Working or Work Means gainful **Contract Employment, Permanent Employment** or **Self Employment** for sixteen hours or more each Week. **You** must also be paying the appropriate National Insurance contributions in the **United Kingdom.**

You or Your or YourSelf Means the person or persons named on **Your Certificate of Insurance**

…

10. PAYMENT OF CLAIMS FOR UNEMPLOYMENT

…

Unemployment cover under this **Policy** will vary in accordance with **Your Employment** status as detailed below:

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…

- **Self Employment** - **You** will be insured if **You** have permanently **Ceased to Trade** due to circumstances entirely beyond **Your** control and if **You** are a **Controlling Director Your** company has been wound up by a creditor who is not a director of **Your Business** and have:

  a) filed closing accounts with the Inland Revenue if **You** operate alone; or
  b) had **Your** company put in the hands of an insolvency practitioner following the actions of a third party outside **Your Business;** or
  c) had **Your** partnership dissolved and final accounts filed with the Inland Revenue following the actions of a third party outside **Your Business**.

…

18. CANCELLATION TERMS OF THIS POLICY

…

We may cancel this **Policy** at any time by giving **You** 30 days notice in writing to **Your** last known address. This will not affect any rights to **Monthly Benefits** which **You** may already have received under this **Policy** before the **Termination Date** of **Your** cover."

Nævnet udtaler:

Efter sin gennemgang af parternes indlæg og de fremlagte bilag finder nævnet ikke grundlag for at kritisere selskabets afgørelse om ikke at yde forsikringsdækning for klagerens arbejdsløshed i perioden fra den 31/3 til den 8/6 2011. Afgørelsen må efter nævnets opfattelse anses for at være i overensstemmelse med forsikringsbetingelserne.

Det tilføjes, at selskabets opsigelse af forsikringen ses at være sket i overensstemmelse med forsikringsbetingelserne, hvorfor nævnet heller ikke kan udtale kritik heraf.

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Som følge heraf

b e s t e m m e s :

Klageren får ikke medhold.

Svend Bjerg Hansen
Udskriftens rigtighed bekræftes

Henning Jønsson