Ankenævnet for Forsikring

904/12

Den 3. december 2012 blev i sag nr. 82.480:

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mod

Alpha Insurance A/S
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

Forsikringstageren mener at have motorkøretøjsforsikring i Alpha Insurance A/S. Han klager over, at selskabet har afvist at yde dækning for udskiftning af gearkassen.

Det fremgår af sagen, at klageren den 12/2 2011 købte en bil hos den britiske autoforhandler Roundstone Van Centre Ltd., og i den forbindelse tegnede en forsikring gennem den britiske mægler Motorcare Elite (2008) Limited. Det indklagede selskab anfører, at det har givet den britiske mægler Kay International Ltd. fuldmagt til at tegne forsikringer på vegne af selskabet, men ikke til Motorcare Elite (2008) Limited.

Selskabet gør over for nævnet gældende, at der ikke er indgået en gyldig forsikringsaftale og henviser til, at Motorcare Elite (2008) Limited har handlet svigagtigt. Det er selskabets opfattelse, at dette er et anliggende for Finanstilsynet (FSA) i UK.

I et bilag til klageskemaet har klageren redegjort for sagen således:

> "I bought a Vauxhall Movano van from Roundstone Van Centre (near Brighton, England) in February 2011. As I was going to be using this van to travel to and from our property in France, for extra piece of mind, I took out the Mechanical Breakdown insurance offered by the van centre. After buying the van I had it fully serviced (new brakes, filters, oil, 2 new tyres, new timing belt). While in France on my first trip the gearbox on the van started to

make lots of noise and a grinding sound. A 650 miles journey home with this gearbox was not possible so I took it to an English mechanic and he arranged for a gearbox to be shipped from England. He then filted the gearbox and I returned to England without any problems.

On my return, I checked the policy and it said I was covered abroad if I paid for the work and then submitted the invoice for reimbursement on my return. I contacted Motorcare and was informed that they had not been underwritten since March and there was no record of my policy (which I took out in February). I contacted Roundstone Van Centre (…) and he said that the rep was still selling the policies and they were unaware that there were any problems with Motorcare. They had a record of my policy and confirmed that this had been paid with the rep. As a result of my call, Roundstone then contacted the rep who got Autoprotect to contact me as they had taken on the policies. They asked for the details in writing which I sent to them in May 2011.

Having then not heard anything from them, I called and was told that they would not pay out as the policy (page 9 refers) excludes vans. I find this completely ridiculous. The policy was sold to me by a van centre whilst I was purchasing a van - it would not occur to me that it would not cover vans. A person purchasing a car and being sold mechanical breakdown cover with it would not expect that policy to exclude cars! The policy itself was provided to the van centre by an insurance rep who was fully aware that it was a van centre (Roundstone Van Centre) and he provided the policies and took the payments. If the policy was not fit for purpose then it is the insurance rep who is at fault - no-one else.

Roundstone Van Centre told me that they were aware of other customers in the past who had taken out the same insurance and had successfully claimed. I have been informed by Autoprotect that the reason for their refusal is that my vehicle is a van and that the para 'Excluded Vehicle Uses' on page 9 of the policy refers. I consider the phrase 'transportation of goods' in this para to be very vague. Cars are often used to transport goods. I purchased the van for personal not commercial use and use it as a form of transport for my family as well as occasionally moving some of our personal possessions to our property in France. I also use our family Vauxhall Zafira in the same way, so I fail to see the difference. This, however, seems quite irrelevant to me, the key fast being that the insurance rep sold the policies via a VAN centre.

I have acted completely properly, taking out an insurance policy to cover me should anything go wrong. Now that something has gone wrong, I expect to be properly compensated. Having initially complained to the British Financial Ombudsman Service, I was informed that I needed to pursue the claim through the Danish Ombudsman Service as the underwriter of the policy is flow Alpha Insurance which is registered in Denmark. As a consumer I have no control (and often no knowledge) of who the underwriter of my policy is when it changes."

Selskabet har i brev af 18/6 2012 til nævnet bl.a. anført:

"**Background**

We have now seen many examples of situations within the conduct of business by Motorcare Elite (2008) Limited that give us cause for serious concern and as we have previously advised Ankenævnet for Forsikring, we have established a resolution protocol that has the dual aims of:

1. Seeking to deliver the fair treatment of customers

2. Protecting our own position and interests in the face of evidence of a wholescale fraud against Alpha Insurance A/S by Motorcare Elite (2008) Limited.

Within our protocol we have, after much investigation and effort (which continues), established what we consider the best data set as to the identity of policies that are on the balance of known facts and probabilities risks that true risk transfer to Alpha exists in respect of. We have established a process within which we are writing to the dealers who sold Motorcare policies, providing each contacted dealer with a full listing of all policies that we hold as insured by ourselves (Alpha Insurance A/S) which we know to have been sold by them and we have sought their advice and assistance in identifying and unravelling any transactions and actions taken by them that do not conform to the detail of that listing.

Policies that do confirm to the listing are accepted as Alpha Insurance A/S risks and honoured by Alpha Insurance A/S

In commencing this exercise we have concluded from extensive investigations (which continue) into the general and over arching conduct of the Motorcare business that since:

1. The schedules of insurance issued to policyholders by Motorcare - both Warranties and Elite (2008) Ltd, and their agents, in evidence of their insurance do not name or otherwise identify the underwriting insurer and we have clear evidence that;

2. Policies have been issued for levels and types of insurance that we have never agreed to underwrite, specifically policies purporting to provide 'Life of Ownership, coverage on vehicle types and models for which no facility exists' and certain high levels of claim indemnity.

3. Pre-printed policy booklets naming various insurers were circulated by Motorcare and distributed to policyholders attached to such schedules by Motorcare agents without such agents having knowledge or surety as to the standing or validity of such booklets.

4. Policies and premiums for policies that were purportedly attached to our account were severally: attached without authority and agreement, not declared to us as insurer, and/or correctly; rated, priced, and specified by Motorcare Elite (2008) Limited or their agents or Kay International Limited.

It follows from this;

1. That we, Alpha Insurance A/S, are not the insurer of any policy issued by Motorcare Warranties Limited; nor of all policies issued by Motorcare Elite (2008) Limited or its agents; or of any policy that was 'transferred' to our narre from any running policy first underwritten by a different insurer or otherwise passed between policyholders in circumstances not explicitly stated within the policy wording applicable; and/or for which we hold no record or; inaccurate record in the returns of written and bound business submitted to us by Kay International Limited as contract principal of Motorcare Elite (2008) Limited and holder of the facility granted by us.

2. The probability is that such policies as were not returned to us were either placed with other insurer(s) or not insured at all through Motorcare Elite (2008) Limited.

3. We have serious concerns as to the correct settlement and accounting to us of the premiums, coverage and, claims made against, our polices and; that we have been

presented and so resolved claims that relate to policies we now consider on the balance of current evidence and probabilities are not correctly Alpha policies and so are not true Alpha liabilities and represent evidence of a wholescale fraud against Alpha Insurance A/S by Motorcare Elite (2008) Limited.

4. We therefore fully reserve all rights and actions available to us in respect of such matters. All of the aforementioned has been related to each dealer we contact and to each Motorcare policyholder who contacts us and provides full evidence of a Motorcare Policy.

Therefore, in circumstances where a policy falls into one or more of the above categories and :

1. The agent who sold that policy holds responsibility for record keeping as to the detail of the business conducted by them and;

2. Are not our agent and are not in contract with us;

3. Arranged such policies as we describe and;

4. The persons who purchased such policies for which we hold no valid record are the customers of that agent and Motorcare and not customers of Alpha Insurance A/S and;

5. It falls to that agent (i.e. the dealer who sold you the policy) and their principal (Motorcare) to ensure that the demands and needs of their customers are satisfied and that such customers are correctly advised as to the validity of the policy sold to them.

The above action is considered by Alpha Insurance A/S and their retained legal advisors as a responsible and pro-active response to the situation faced.

This process is forced upon us by the apparent fraudulent nature of Motorcare Elite (2008) Limited conduct and the overarching need to preserve our position and rights of action and recovery within the UK legal process.

Beyond the above we can only advise that each policyholder holds a line of redress via the dealer who supplied the vehicle and issued the warranty and through that dealer to Motorcare; be it Motorcare Warranties or Motorcare Elite (2008) Ltd who were both UK registered insurance intermediary and as such their activities fall within the control of the FSA and the Financial Services Ombudsman and can complain to both of these regulatory authorities in respect of the conduct of the selling dealer (as they acted in a regulated capacity an Appointed Representative of Motorcare)

As Motorcare are now in liquidation, such policyholders may also have a claim against the United Kingdom Financial Services Compensation fund.

Turning to the specific matter of [klageren];

We have made investigations with AutoProtect, the claims services provider with whom we contracted for the ongoing administration of claims following the closure of Motorcare Elite (2008) Limited and our termination of our facility with Kay International Limited. AutoProtect have advised us that their contact history with [klageren] was as follows:

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- 20th May 2011 first contact from with the customer - as no record of a policy held, a temporary record was opened
- 23rd May 2011 the customer called to advise he had a gearbox fitted in France. He was told to send policy details and invoice for adjudication
- 24th June 2011 customer was again advised to send in the policy details which, to this day, AutoProtect have no trace of receiving
- 4th Jury 2011 customer was advised that type vehicle is excluded from cover
- 4th Jan 2012 received letter from UK Financial Ombudsman (FOS)
- 13th Jan 2012 FOS confirmed matter was outside their jurisdiction

The first involvement of Alpha Insurance A/S and our first knowledge of this matter was the Ankenævnet for Forsikring letter of 22nd May 2012. Since receiving this letter Alpha has made enquires and we must advise that:

1. There is no trace of any policy or payment in the returns made by Motorcare Elite (2008) Limited and/or Kay International Limited as their contract principal during the currency of the Alpha Motorcare facility.

2. The vehicle now witnessed by [klageren] is a commercial vehicle and would have been excluded from coverage under that facility granted to Kay International Limited, and via Kay International Limited's delegation to Motorcare Elite (2008) Limited.

3. We have written to the Motorcare agent who is recorded as selling the policy to [klageren] as per the attached letter (Attachment 1). At this time we have received no reply from them.

4. With regard to the facts and our overarching position as explained higher in this letter:

    a. The policy was never recorded and reported to us
    b. A premium has never passed to us
    c. The vehicle is of a model that is specifically excluded from inclusion under the facility that existed
    d. Whilst we have not seen the schedule of insurance held by [klageren] our total experience is that schedules of insurance issued to policyholders by Motorcare - both Warranties and Elite (2008) Ltd, and their agents, in evidence of insurance do not name or otherwise identify the underwriting insurer and we have clear evidence that;
        i. Policies have been issued for levels and types of insurance that we have never agreed to underwrite.
        ii. Pre-printed policy booklets naming various insurers were circulated by Motorcare and distributed to policyholders attached to such schedules by Motorcare agents, without such agents having knowledge or surety as to the standing or validity of such booklets.
        iii. Policies and premiums for policies that were purportedly attached to our account were severally: attached without authority and agreement, not declared to us as insurer, and/or correctly; rated, priced, and specified by Motorcare Elite (2008) Limited or their agents or Kay International Limited.

It follows;

1. That we, Alpha Insurance A/S, are not the insurer of any policy which we hold no record or; is not recorded in the returns of written and bound business submitted to us by Kay International Limited as contract principal of Motorcare Elite (2008) Limited and holder of the facility granted by us.

2. The probability is that such policies as were not returned to us were either placed with other insurer(s) or not insured at all through Motorcare Elite (2008) Limited.

Per the copy letter attached (Attachment 1) all of the aforementioned has been related to the agent identified as having sold the policy to [klageren], Roundstone Van Centre Limited.

In conclusion and for the reasons stated above we hold that;

1. The agent who sold the policy holds responsibility for record keeping as to the detail of the business conducted by them and;

2. Are not our agent and are not in contract with us and;

3. The persons who purchased such policies for which we hold no valid record are the customers of that agent and Motorcare and not customers of Alpha Insurance A/S and;

4. It falls to that agent (i.e. the dealer who sold [klageren] the policy) and their principal (Motorcare) to ensure that the demands and needs of their customers are satisfied and that such customers are correctly advised as to the validity of the policy sold to them.

Therefore our position with regard to this complaint is that:

The policy you have witnessed to us is not a valid Alpha Insurance A/S contract.

[Klagerens] correct line of redress is against the sales agent who sold the policy to him (Roundstone Van Centre) and/or; their principal (Motorcare) and/or; their principal (Kay International Limited.

All of these companies are subject to regulation by the United Kingdom authorities.

We further believe that as Motorcare Elite (2008) Limited is now in liquidation the complainant holds a right to claim against the United Kingdom Financial Services Compensation Scheme on the basis that he was mis-sold insurance by an Authorised Representative of a United Kingdom based and regulated intermediary - Motorcare Elite (2008) Limited.

The claim against Alpha Insurance A/S is therefore rejected."

Selskabet gør endvidere i brev af 2/7 2012 til nævnet gældende, at det ligger uden for nævnets kompetence at behandle sagen.

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Nævnet udtaler:
Selskabet og klageren er uenige om, hvorvidt der er indgået en for selskabet bindende aftale.

En afgørelse heraf afhænger af, om Motorcare Elite (2008) Limited har haft fuldmagt til at indgå forsikringsaftaler på selskabets vegne og i så fald, om det ved tegningen af forsikringen kan anses for at have handlet uden for sin legitimation, samt om klageren i bekræftende fald har været i ond tro herom.

Nævnet finder, at det ikke på foreliggende grundlag kan afgøre disse spørgsmål. Det vil kræve en bevisførelse, der ikke kan ske for nævnet. I givet fald må bevisførelsen ske ved domstolene. Hvis forsikringen er solgt til klageren af en person uden fuldmagt, må klageren rette sit krav mod denne person/selskab.

Det følger af vedtægternes § 4, stk. 1, at nævnet derfor må afvise at afgøre sagen.

Som følge heraf

b e s t e m m e s :

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Nævnet kan ikke afgøre sagen.

Marianne Højgaard Pedersen
formand