Ankenævnet for Forsikring

926/13

Den 23. oktober 2013 blev i sag nr. 84.567:

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mod

Europæiske Rejseforsikring A/S
Frederiksberg Alle 3
1790 København V

afsagt

k e n d e l s e :

Forsikringstageren har tegnet en international sygeforsikring med graviditets- og fødselsdækning i Europæiske Rejseforsikring A/S (Nordic Health Care). Han klager over, at selskabet har opsagt forsikringen.

Selskabet henviser til, at opsigelsen af klagerens forsikring er sket med hjemmel i forsikringsaftalen.

Af klageskemaet, der er underskrevet af klageren den 29/5 2013, fremgår:

> "1. Statement of claim, a brief outline of the case. A Supplementary statement may be enclosed.
> MY NAME IS … MARRIED WITH … AND OUR SON … ALL COVERED BY NHC. I HAVE BEEN USING NHC FOR THE PAST 5 YEARS AND LAST MONTH I RECEIVED AN EMAIL FROM THEM STATING THAT THEY WERE UNABLE TO OFFER ME RENEWAL DUE TO CHANGES ON THEIR GUIDELINES REGARDING LOCAL LEGISLATION ON COUNTRY RESIDENCE.
> WE WERE CAUGHT BY SURPRISE SINCE MY WIFE IS PREGNANT AND CURRENTLY COVERED WITH MATERNITY PLAN.
> I REALLY WONDER IF IT IS LEGAL TO TERMINATE A POLICY WHEN YOUR CLIENT HAS PAYED CORRECTLY, BEING COVERED WITH MATERNITY PLAN.
> WE ALL KNOW THAT ALL COMPANIES REQUIRE A MINIMUM 12 MONTHS WAITING PERIOD TO ACCEPT MATERNITY PLAN.
> WHEN THEY GAVE ME THE NOTICE, MY WIFE WAS ALREADY WITH 12 WEEKS, WITH EXPECTED DUE DATE 20 OCTOBER 2013.

MY POLICY FINISHES ON 10 JULY 2013 AND I FOUND IT EXTREMELY LATE AND UNACCEPTABLE THIS CANCELLATION NOTICE.
IT IS IMPOSSIBLE TO FIND ANOTHER COMPANY THAT COVERS MY WIFE AND FUTURE BABY NOW, AND SINCE I PAID FOR MY WIFE MATERNITY PLAN I AM AFRAID THEY CANNOT KICK US OUT LIKE THIS.

WHEN I SIGNED UP WITH THEM THEY OFFERED ME CORPORATE RATE SINCE I WORK WITH AIR ... I WAS THE FIRST AND ONLY PILOT HERE WITH NHC AND I DON'T KNOW ANYONE WITH THIS PLAN.

2. What specifically is it you want the insurance company to do? (Must be filled in).

I WANT MY WIFE AND MY BABY TO BE COVERED UNTIL THE FIRST MONTH AFTER BIRTH AS PER COMPANY POLICY.
I AGREE TO PAY THE PRO RATA VALUE ON THE REMAINING PERIOD."

Heroverfor har selskabet i brev modtaget af nævnet den 18/7 2013 nærmere redegjort for hændelsesforløbet og sin afgørelse således:

"**Background:**
On July 11th 2009 the complainant signs up for an international health insurance, "NHC Global Corporate". The insurance is valid till July 10th 2013.

The terms and conditions of the insurance are attached as Appendix ...

Below NHC will briefly outline the points in the proceedings, which, according to the perception of NHC, are significant in regards to the appeal of the complainant.

April 8th 2013:
The claims handler at NHC (hereinafter called "CH"), communicates per letter to the complainant that the insurance will be terminated as of July 10th 2013 (Appendix …).

CH specifies that the reason for the termination is that due to regulations of laws (compliance) it is no longer possible for NHC to offer renewal of insurance in the complainant's area of residence.
The increased requirement for compliance has had the effect NHC was forced to make changes in the company's internal guidelines.

CH states that the laws in the country of residence of the complainant do not allow NHC to offer insurance; hence the insurance contract will be terminated.

The insurance of complainant is terminated with two months' notice.

April 24th 2013:
Complainant sends an email to CH, in which complainant inform that he fails to understand termination of the insurance, and informs that his wife is pregnant at 14th week and wants to make use of the pregnancy coverage in the insurance (Appendix …).

Complainant informs further that he does not accept the termination, since he does not accept the reasons for termination.

April 25th 2013:
CH sends an email to complainant, stating that the insurance is terminated in accordance with the terms and conditions of the insurance (Appendix …).

April 26th 2013:
Complainant sends an email to CH. Complainant finds it unreasonable that the insurance is terminated with two months' notice, as his wife is pregnant and he will not be able to take out a new insurance with coverage for the pregnancy of his wife.

Complainant asks for possibilities of appeal (Appendix …).

April 29th 2013:
CH sends an email to the complainant with retention of termination, and a reference to the Insurance Appeals Board (Appendix …).

The claim of the complainant:
Complainant wishes to make use of the pregnancy coverage of the insurance until one month after the termination date of the insurance.

The decision of NHC:
NHC has terminated the insurance of the complainant, with regard to the rights to terminate the insurance in the terms and conditions of the insurance.

In the terms and conditions of the insurance, chapter 1, section 1. 13 *"Duration and cancellation of the insurance"* it is stated that:

'a) The insurance can be cancelled by the Policyholder as well as the Company with 1 months' notice annually from the anniversary date of the insurance. The insurance expires when the Insured attains the age of 70 years, unless otherwise has been agreed by the Company in writing.'

Based on the above excerpt from the terms and conditions of the insurance, NHC believes that the rights to terminate the insurance are part of the contractual basis between NHC and complainant, and must therefore be regarded as an original term of the contract.

It is further stated that complainant has been aware of the rights of termination of the company, prior to the conclusion of the insurance contract, which was subsequently approved and signed by the complainant.

Hence the termination of the insurance by NHC with one month's notice is in accordance with the terms and conditions of the insurance.
In the letter dated April 8th 2013 NHC made use of the right of termination and terminated the complainant's insurance with 2 months' notice.

NHC based the termination with the increased compliance requirements in the insurance market, and as a consequence NHC felt obliged to act in accordance with international agreements and local laws when issuing insurance policies.

Thus the development in the market resulted in changes in NHC's internal guidelines, amongst these a greater focus on compliance, which means that NHC when issuing insurances in the future must ensure that the company acts in accordance with the local laws in the country of residence of the customer.

Hence NHC is able to meet future risks, which could otherwise be applied to both complainant and the company.

This means that NHC in the future only will be able to offer insurance to customers residing in countries with laws that allow NHC to offer insurance.

It was further stated that the insurance of existing customers holding terminable insurance will be terminated by the renewal date, if the customer's country of residence does not allow NHC to offer insurance. Complainants' country of residence was one of several countries in which this was the case. Hence NHC was obliged to cancel the insurance.

Complainant has subsequently stated that the termination of the insurance is not justified and has filed a complaint in which complainant does not accept the termination of the insurance.

As the insurance, with reference to the terms and conditions, is not interminable, nor is renewal of the insurance guaranteed, and furthermore the right of termination for both parties is explicitly specified, the insurance may be terminated by submitting a reasonable notice in accordance with the insurance contract and the general rules.

The termination of the complainant's insurance is done on the basis of the insurance contract and the NHC does not find that the company can be ordered not to make use of the right of terminating the insurance.

Conclusion:
In conjunction with the fact that interminability has not been agreed on, the opinion of NHC is that the above statement regarding the rights to terminate the insurance can only lead to the result, that in the case at hand, is an insurance contract with agreed rights to terminate the insurance for both parties.

Thus the claim of the complainant cannot be accepted; hence the initial decision of NHC is maintained."

Af klagerens police fremgår, at forsikringens "Anniversary date" er den 11/7.

Af forsikringsbetingelserne fremgår bl.a.:

CHAPTER 1 - PRELIMINARY PROVISIONS
…
1.13 Duration and cancellation of the insurance
a) The insurance can be cancelled by the Policyholder as well as the Company with 1 month's notice annually from the *anniversary date of the insurance.* The insurance expires when the Insured attains the age of 70 years, unless otherwise has been agreed by the Company in writing.
…
CHAPTER 2 - IN- AND OUTPATIENT BENEFITS
…
12.4 PREGNANCY AND BIRTH
2.4.0 Sum insured per pregnancy - Please see the table of benefits
2.4.1 Which expenses are covered by the insurance?

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The insurance covers *usual, customary and reasonable expenses* - at the earliest 12 months after the Insured's insurance cover has commenced - for

a) *outpatient* pregnancy check-ups and childbirths, both normal delivery and caesarean,

b)treatment of illness or injury, which is not related to pregnancy/birth complications, of the child/children under the mother's insurance policy and under her insured sums during the first month after the birth.

…

CHAPTER 7 - GENERAL CONDITIONS

…

7.5 Legal venue and choice of law

Actions against the Company shall be tried at a legal venue in Denmark. The choice of law is Danish.

7.6 Definitions

For the purposes of this insurance the following definitions shall be used in any interpretation of its wording.

…

· **outpatient.** Treatment, which does not include hospitalization over night.

Nævnet udtaler:

Det fremgår af forsikringsbetingelsernes punkt 1.13, at forsikringen kan opsiges af begge parter med 1 måneds varsel til hovedforfaldsdagen, som ifølge klagerens police er den 11/7 2013.

Efter sin gennemgang af sagen finder nævnet at måtte lægge til grund, at selskabet ved skriftlig henvendelse til klageren den 8/4 2013 har opsagt forsikringen til ophør den 10/7 2013.

Klagerens forsikring findes herefter at være opsagt i overensstemmelse med de gældende forsikringsbetingelser, og nævnet kan derfor ikke kritisere selskabets afgørelse.

Nævnet har forståelse for, at situationen er uheldig for klageren og hans familie, men dette kan dog ikke føre til et andet resultat.

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Som følge heraf

b e s t e m m e s :

Klageren får ikke medhold.

Marianne Højgaard Pedersen

udskriften bekræftes

Kim Sparlund