Ankenævnet for Forsikring

925/13

Den 9. oktober 2013 blev i sag nr. 84.651:

xxxx xxxxxxxxxxx
xx xxxx xxxx
xxxxx
xxxxxxxxx
xxx xxx
xxxxxx xxxxxxx

mod

Alpha Insurance A/S
Sundkrogsgade 21
2100 København Ø

afsagt

k e n d e l s e :

_____

Forsikringstageren angiver at have tegnet autoforsikring i Alpha Insurance A/S. Han klager over, at selskabet har afvist at yde dækning i anledning af en skade på sin bil.

Selskabet har afvist dækning med henvisning til, at forsikringsaftalen er ugyldig, idet den britiske bilforhandler ikke har haft fuldmagt til at indgå forsikringsaftaler på selskabets vegne.

Det fremgår af sagen, at klageren den 14/7 2010 købte en brugt bil til en værdi af 5,795 £, og at han samtidig tegnede en såkaldt "life time warranty" for 399 £. Den 18/3 2013 fik han en skade på bilen, og i henhold til faktura af 13/4 2013 androg reparationen 1,360 £.

Selskabet har i brev af 8/4 2013 til agenten protesteret over udstedelsen af "Life of Ownership cover", idet selskabet aldrig tegner sådanne forsikringer, ligesom præmien ikke stemmer overens mellem bilsælger og agent.

Uden reaktion fra agenten har selskabet i brev af 1/5 2013 på ny rettet henvendelse til agenten, idet selskabet kræver, at agenter underskriver en tro-og-love-erklæring [Statutory Declaration].

Selskabet har fastholdt ikke at ville være bundet af aftalen, hvorefter klageren klagede til Financial Ombudsman Service [FOS] den 17/4 2013. FOS har i brev af 13/6 2013 afvist at behandle sagen, idet det er anført:

> "After reviewing the information that you have provided and information from Autoprotect it appears that this policy is underwritten by Alpha Insurance. As your complaint relates to a claim we would need to look at a complaint against the underwriters.
>
> Alpha Insurance are not regulated by the Financial Conduct Authority but another regulator. Their letter to you dated the 8th of April confirms this. They also say they have given you the details of our Danish equivalent.
>
> With this in mind we would not be able to look at your complaint."

Klageren indbragte efterfølgende sagen for nævnet den 26/6 2013 med krav om, at selskabet bliver pålagt at betale for reparationen, eller at præmien tilbagebetales.

Selskabet har i brev til nævnet af 30/7 2013 fastholdt sin afgørelse og har til støtte herfor anført:

> "**Background**
>
> Alpha Insurance A/S has now seen many examples of situations within the conduct of business by Motorcare Elite (2008) Limited that give us cause for serious concern and 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.
>
> **We must therefore explain that:**
>
> Within our protocol we have, alter much investigation and effort (which continues), established what we consider to be 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 advices 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' (as in this case) 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;

3. 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 name 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.

4. 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.

5. 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.

6. 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 [klageren] his 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.

However:

We do accept that there will be cases where we do not hold proofs that we are the insurer of record but the policyholder and/or dealer state that we are. In such cases we will require all proofs to be supplied as follows by;

The policyholder;

1. A copy of the policy booklet

2. A copy of the policy schedule

3. A copy of the receipt given for payment of the premium

and

The Dealer;

1. A copy of their return to Motorcare Elite (2008) Limited showing the policy settlement

2. A copy of their payment proofs confirming payment of the premium to Motorcare

If the above documentation is provided and indicates a possible Alpha involvement we will then require the Dealer to;

3. Swear a Statutory Declaration confirming that it was their intent and knowledge that the evidenced policy was to be attached to the account of Alpha Insurance A/S.

On receipt of such a declaration we will accept the policy and adjust its coverage and any claim with our established treating customers fairly (TCF) process.

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 there 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.

This complaint

Turning to the specific matter of [klageren]; the position is as per the attached copy correspondence, in summary:

1. [Klageren] contacted Alpha following the breakdown of his vehicle - resulting in our letter to him of 8th April 2013 (copy supplied with the complaint)

2. Alpha wrote to the dealer through which [klageren] purchased his policy specifically on this claim also on 8th April 2013 (Attachment … hereto).

3. Alpha wrote again to [klageren] on 20th June 2013 (copy supplied with the complaint).

4. Alpha wrote again to the dealer on 1st May 2013 and yet again on 20th June 2013 (Attachments … and … hereto respectively).

Conclusion

It follows from the above that at this point in time we do not consider [klageren] to hold a valid Alpha policy and as such we have no position in the resolution of the claim.

This places the matter in the position where we are willing to act as per our established protocol detailed above and in the correspondence supplied. It is only if [klageren] ensures that the Dealer supplies the relevant proofs requested from them and that they are prepared to swear a Statutory Declaration as indicated, that we will be able to accept the policy and consider the claim. Without this, we believe that [klageren] must seek compensation elsewhere and we have already described the various alternative avenues available to him."

Af forsikringsbetingelserne fremgår bl.a.:

"Understanding Your Policy

This **policy** is underwritten by Kay International plc, Holland House, 1-4 Bury Street, London, EC3A 5AW in association with Alpha Insurance A/S, Copenhagen, Denmark. Kay International plc is authorised and regulated by the Financial Services Authority.

This **policy** is administered by Motorcare Elite (2008) Ltd on behalf of Kay International plc, Motorcare is authorised and regulated by the Financial Services Authority. This can be checked on the FSA's register by visiting the FSA's website at www.fsa.gov.uk/register."

6. 84.651

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

En afgørelse heraf afhænger af, om Motorcare Elite 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 det foreliggende grundlag kan afgøre disse spørgsmål på skriftligt grundlag. Det vil kræve en bevisførelse, der ikke kan ske for nævnet. I givet fald må bevisførelsen ske ved domstolene.

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 :

Nævnet kan ikke afgøre sagen.

Poul Sørensen

udskriften bekræftes

Kim Sparlund