Case Brief – Christine Graham

Casavant v. Norwegian Cruise Line, LTD.

952 N.E. 2d 908, 460 Mass. 500 (2011)

**Facts:** The Casavants had planned a cruise on the Norwegian Cruise Line, LTD., but had second thoughts on going after the 9/11 terrorist attacks, that instilled safety concerns. The couple initially wanted to reschedule but the cruise line refused, claiming that the couple cancelled. The couple also claimed that the cruise failed to disclose a refund policy, for which was not included in their “contract of passage provision”. The Superior Court granted a full refund on the price of the tickets plus interest but not for damages of unfair practices. The court reversed and remanded upon the cruise’s motion to dismiss the Casavants on the grounds of forum selection clause in the “contract of passage”. The Casavants appeal to the SJC for further review.

**Procedural History:** The case started at the Superior Court Department, Worcester County where plaintiffs brought action against the cruise ship for failure to honor their request due to terrorists scare of 9/11, to reschedule, refund them and to statutory damages for deceptive practices. The defendants motion to dismiss based on contractual forum selection clause was granted. The case then moved for appeals to the Mass. Appeals Court where the judge granted plaintiffs full refund but no damages for claims of unfair practices. The plaintiffs appealed to the Supreme Judicial Court for additional review.

**Issue:** Did the Norwegian Cruise Lines, LTD commit a violation of 940 Code Mass. Regs. 15.04(2)(e), which requires the seller of such services to disclose “the complete terms of any cancellation or refund policy” before accepting payment from them, as well as causing injury to the couple, violating G.L. c. 93A?

**Rationale:** Under G.L. c. 93A, there must be a causal connection between the seller’s deceptive act and the buyer’s injury or loss. The plaintiffs need not show reliance on a misrepresentation in order to recover damages. Norwegian Cruise Line, LTD., with knowledge of its obligations of disclosure of its refund policy, did not entitle the customer a right for relief of refund. The cruise line argued that the plaintiffs’ demand letter lacked a specific claim against them. The court disagreed stating the letter satisfied the requirements of complaint and of timely notice. The court explains that G.L. C. 93A does not require claimants to set forth every specific statutory or regulatory violation alleged so long as it notifies the respondent of their damage within 30 days before plaintiff files a complaint. The plaintiff’s demand letter included notification to the cruise line of its failure to disclose the refund policy, which was received by them within the timeframe.

940 Code of Mass. Regs. 15.04(2)(e), which is the Attorney General’s regulation concerning the sale of travel services, entitles the consumer to cancel its purchase of travel services where a seller of travel services has violated the refund policy disclosure requirements and makes it a further unfair trade practice not to refund all payments within 30 days to the consumer. The Norwegian Cruise Line, LTD. failed to disclose the refund policy and after violating the disclosure policy, failed to refund payment to the customers within 30 days.

**Holding:** Yes, the Norwegian Cruise Lines, LTD did commit a violation of 940 Code Mass. Regs. 15.04(2)(e), requiring the seller of services to disclose “the complete terms of any cancellation or refund policy” before accepting payment from them, that caused injury to the couple, violating G.L. c. 93A.

**Disposition:** Judgment in regard to G.L. c. 93A for Norwegian Cruise Line LTD. is reversed and remanded for entry of judgment for the Casavants, for a determination of their damages, reasonable attorney fees and costs.