



Claim Number CCT 188/14/GB

Charlene Borg

vs

John Xuereb

Today 29th October 2014

The Tribunal

After taking into consideration the claim in the above-cited names presented on the 21st August 2014, whereby the applicant asked for a refund in the amount of four hundred ninety eight Euro (€498.00), in representation of the amount which she paid the respondent for a healthy eating programme, which programme was not what the applicant had in mind.

The respondent presented a reply in writing to the claim at hand, and attended the sitting.

That after having heard the testimony on oath of the applicant, who testified in person, and after having heard the testimony on oath of the respondent, and after having taken into consideration all the facts and circumstances pertaining to the case;

Considered the following:

The applicant submitted in writing that:-

She is a 29 year old woman who has been battling an eating disorder for the last eight years, going from anorexic to bulimic to binge eating and depression.

She has been seeking help from professionals for the past four years and although she has made progress in her recovery, she still has a long way to go.

The applicant had visited the respondent in May 2014, after hearing him on various TV advertisements, stating how he is against diets and that through his company 'Bodies 'N Motion'

he can help people achieve a healthy lifestyle and make a difference to their health and well-being by creating an individually tailored plan for each, based on their needs. Therefore, together with her fiancé, the applicant attended the respondent's consultation, where he emphasised the importance of exercise and the importance of fuelling the body with food. After the consultation, the applicant spoke to respondent privately regarding her obsession with food and informed him in detail about her eight years of eating disorders. She also told him that at present, she was on medication and that the main reason she had gone to him was because he was against diets. She was clear that due to the fact that she was still in recovery of her eating disorder, she could not go on a diet which would entail her having to weigh food or restrict herself so much, as this would only result in her obsessing about food even more and bingeing.

The respondent promised her that he could help and stated that he was also helping other people in her situation.

The applicant thus attended her first assessment with a member of staff from 'Bodies 'N Motion' where the first thing she did was to explain everything to her which she had already told the respondent about. The applicant was then asked to pay the amount of four hundred ninety eight Euro (€498.00) for a six month programme, which she paid for in cash and signed a contract which stated that the programme was not cash refundable. The applicant's measurements were then taken and after being inputted in the computer programme, she was provided with an eating plan/diet of 1400 calories per day, with every meal stating the amount of calories, protein, carbohydrates and fats. The plan also entailed her weighing every single item of food and not to have any carbohydrates in her evening meal. This was the complete opposite to what the applicant had been promised.

The applicant was also given a booklet of general information in which there was stated: *"The Bodies 'N Motion program is intended for healthy adults, age 18 and over. This program is not recommended for individuals with medical conditions or concerns. Please consult a medical Professional before you begin any new exercise, nutrition or supplementation program, or if you have questions about your health."*

The applicant tried to reason with the member of staff, but it was futile, and she also discovered that she was not even a qualified nutritionist. Therefore, the following morning, the applicant called the office informing them of the situation and how what they had provided her with was not what was promised to her by the respondent. They were not able to give her any kind of refund, but set up a meeting for her with the respondent.

In the meeting, they could not come to an agreement and the respondent just kept telling her to be more open minded and give his diet/plan a try.

The applicant exhibited accompanying documentation.

The respondent submitted in writing that:-

The applicant attended the consultation on the 19th May 2014, which consisted of an educational talk about health, nutrition, exercise and the importance of a healthy lifestyle. At the end of the consultation, the programmes on offer were presented in order to help people achieve a healthy lifestyle and explain in detail what each programme included, methods of payment and prices.

The applicant also spoke with respondent personally after the consultation to give him details of her eating disorder, whereby the respondent's reply was that which is given to all potential clients who have particular issues, being that he could help, as what the programme does is provide people with the opportunity to put themselves in a position of strength rather than continuing to be in a position of weakness. In a position of strength, the body has more of a chance to overcome obstacles whereas in a position of weakness the body usually fails when trying to overcome obstacles. The respondent also shared with applicant that 'Bodies 'N Motion' had had many individuals come in with eating disorders and had made considerable changes due to implementing certain structures from a mental, physical and nutritional point of view.

On the 27th May 2014, the applicant started her six month programme, whereby she accepted responsibility of all terms and conditions and signed the contract voluntarily with no pressure or coercion. She then paid the programme in the amount due of four hundred ninety eight Euro (€498.00) in cash.

The applicant is asking for a full refund as she is claiming that she was misled about the service offered by the respondent and that she was given incorrect information regarding the service she paid for. However the applicant was given all that the programme was designed to give, but she was unhappy with it only after her doctor told her it was not good for her.

The Tribunal notes that:-

After hearing the parties, the Tribunal takes into consideration that in her testimony under oath, the applicant confirmed her written claim.

The Tribunal also takes into consideration, that the respondent confirmed his written reply whilst testifying under oath.

The respondent exhibited a copy of an email sent to him by applicant, marked as Doc.JX1; a copy of the contract as signed by the applicant, marked as Doc.JX2; and a copy of applicant's receipt, marked as Doc.JX3.

Christopher Dalli, Gaynor Farrugia and Ritienne Zahra, as summoned by the respondent, all testified under oath.

The Tribunal takes into consideration that the respondent had offered to refund half the amount being claimed by the respondent, however respondent did not accept this offer.

For the above reasons:

The Tribunal, after taking into consideration all of the above, and with particular reference to Doc.JX2, exhibited in the acts of the case, concludes that the applicant signed said contract dated 27th May 2014 willingly and after being completely informed of the service she was paying for. More importantly, the applicant signed the said contract, including a waiver of liability, to the tune of: *"I understand that the information given to me, with respect to nutrition, exercise, emotional or otherwise is subjective, and that I am responsible for the decisions I make based on this information..."*. On examination of the evidence at hand, it is sufficiently clear that the respondent was prepared to deliver that which he had promised, and for which the respondent had signed up, however he was never given the chance to put his services to the test. The Tribunal concludes that the respondent in no way lacked the applicant in the provision of his services, rather it was the applicant who was seeking the impossible, by requesting a healthy eating plan but refusing to confine to the plan provided. The Tribunal is thus rejecting the applicant's claim, with the expenses of the case to be borne by said applicant.

A handwritten signature in black ink, appearing to be 'G Buttigieg', written over a horizontal line.

Avv. Gabrielle Buttigieg
Arbiter