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**Fit-Tribunal tal-Konsumatur**

Shahlokh Waqar Gill

vs

Alban Thika - Novaric Ltd

CCT 199/23/MS

27th March, 2024

The Tribunal

Having seen plaintiff's claim filed on the 3rd November 2023 requesting this Tribunal to order defendant/ defendant company to refund him the sum of two thousand euro (€2,000.00) representing the amount paid to defendant company for a work permit application, which application was refused.

Having seen that defendant/ defendant company was notified with the claim on the 16th November 2023.

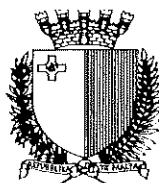
Having seen the reply filed by defendant/ defendant company on 23 January 2024 disputing plaintiff's claim as unfounded both in fact and at law.

Having seen the acts of the case and heard the evidence under oath.

Considers

That from the evidence presented it transpires that on 29th September 2021 Plaintiff, a Pakistani national, contacted defendant company via email ([contact@novaric.co](mailto:contact@novaric.co)) thanking them for 'the information provided' and enquiring about the possibility of applying for a work permit.

On the 30th September 2021 Plaintiff received a reply from the Novaric Team informing him that the first payment / instalment was to be made into Novaric's official bank account and once received the application process would commence. In the same email, Plaintiff



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was also informed that due to Covid, Identity Malta was not accepting applications from high risk countries such as Pakistan assuring him that when things become operational again, they will inform him.

That plaintiff testified to the effect that on March 22, 2022 he paid defendant company the sum of €2,000.00 to apply for a work VISA on behalf of his brother who was still in Pakistan. Plaintiff states that according to the agreement with defendant company, following the initial sum of €2,000 and, after permit approval, the remaining balance of €2,000 would become due. He was also informed that in case of refusal, defendant company would refund him 75% of the amount paid, since the rest, he was told, were administrative fees that would pass on to Identity Malta. Plaintiff contends that he visited the company several times after effecting the initial payment, but he was never officially informed that his brother's permit had been refused until a certain 'Christine/ Kristina' (who worked with defendant company) provided him with a link, which is how he found out about the refusal. After the refusal, he visited defendant company several times requesting a refund but on every occasion he would get a different story. He even managed to speak to the director Alban Thika who assured plaintiff that he would either reapply for his brother's permit or else give Plaintiff a refund, but after that he never met him again and never found him at the office. Plaintiff confirmed that although he was in contact with his brother, his brother was not in contact with defendant company. He also stated that he went to the Police in Msida to file a report about the matter and was told to contact MCCA.

That defendant Alba Thika also testified virtually and explained that the company had 'walk in' and 'online' clients and that to his knowledge, Plaintiff was a walk-in client. To this end, Plaintiff would have been seen to by administrative staff who would have understood his requirements and compiled all documentation, which is vetted and then forwarded to Identity Malta. He explained that the payment process was also explained to the Plaintiff and that if the application was within the parameters, the payment process is then divided into two stages - 50% of which is paid upfront to kick-start the process and the remaining 50% on completion of the service. Plaintiff explained that despite the 8 - 12 week time-frame indicated in the guidelines, clients are advised that the process sometimes takes longer as it is subject to approval by Identity Malta and other stakeholders such as Jobs Plus and the Police.

He also pointed out that defendant company's services are not limited to the application but also include a follow-up procedure and given the overwhelming number of applications received by Identity Malta, sometimes a standard refusal letter issued which is more of a template. After that, once the company establishes where the refusal is coming from (eg. JobsPlus) it carries out an internal procedure where the application is sent to Jobs Plus for review. If Jobs Plus finds that there was an oversight on their part, this is communicated to Identity Malta who will then approve the application. With regard to the case in question,



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defendant conceded that although Plaintiff's brother's application and work permit was refused, defendant company informed him that the decision could be appealed and this at no cost to Plaintiff. He was however required to pay a further €280.00 to Identity Malta.

Considers

That the information given to Plaintiff in September 2021 forms part of the documentation exhibited in the acts of the case, where an explanation of the services offered by Novaric Ltd are outlined. The following is being lifted directly from the information/ guidelines provided, which Plaintiff refers to in his email dated 29th September 2021 and which defendant also refers to in his evidence.

*"In case of a Still Abroad Application, hereunder find the process and administrative fees:*

*Novaric Administrative Fee: €3,500.00*

*Identify Malta free: €280.50*

*Insurance: €200.00*

*Health Screening: 300*

***First Stage:***

*Once you provide us with the required documentation below, and the first instalment of payment (€2,000) to our bank account, we immediately proceed with the submission of your application to Identity Malta ....*

*After submitting the application to Identity Malta, it usually takes 8 - 12 weeks for approval. In case of refusal from Identity Malta, we refund back to the candidate €1,420. The remaining amount, Identity Malta fee (€280.50) and Administrative paper works fee (€300) are not re-fundable. (Sic)*

Considers

That after the initial payment of €2,000.00 effected by Plaintiff to defendant company in March 2022, Plaintiff heard nothing back from defendant company until September 2022.

On the 18th August 2022, Plaintiff sent an email to the director, Alban Thika ([Alban.thika@novaric.co](mailto:Alban.thika@novaric.co)), querying his brother's work permit and the fact that four months had passed without any updates from defendant/ defendant company. On the same day, Plaintiff also sent an email to 'Kristina', who worked for defendant company, asking her



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whether she had sent justification of her brother's work permit as requested by jobs plus and informing her that he could not his brother's details in the email sent to jobs by Dr. Alban.

On 12 September 2022 Plaintiff sent two separate emails to defendant company ([alban.thika@novaric.co](mailto:alban.thika@novaric.co)) ([contact@novaric.al](mailto:contact@novaric.al)) informing them that he had applied for a work permit for his brother and months later, had not heard anything. He therefore requested a refund of the money paid for the process, or an update.

Plaintiff sent a 'reminder' email on the 13 September 2022.

On the 14 September 2022, Plaintiff received an email from Fjoralba Hysaj ([fjoralba.hysaj@novaric.edu.al](mailto:fjoralba.hysaj@novaric.edu.al)) asking Plaintiff to send his passport and any proof of transactions made to defendant company.

On the 15th September 2022 Plaintiff replied attaching proof of payment for his brother's work permit.

On the 16 September 2022 Fjoralba Hysaj sent another email to Plaintiff informing him that his brother's application was in process and noting that according to one of their policies, if the application is rejected (or self-withdrawn) due to candidate's personal issues, no money is refunded since the documentation process would have been done correctly from their end.

Considers

That from further documentation presented, it appears that the Single Permit Application for Plaintiff's brother was submitted by defendant company to Identity Malta via email on 28 April 2022 for the employment period 10th May 2022 - 10th May 2022.

On the 16th November 2022, Identity Malta sent a refusal letter to Novaric Ltd, addressed to Plaintiff's brother Shumail Arslan Gill, informing him that the application dated 4 May 2022 was not recommended for approval by Jobsplus because the prospective employer failed to justify the need for the services in Malta and failed to provide adequate justification of work contracts.

On the 17th November 2022, Plaintiff sent an email to defendant company ([contact@novaric.co](mailto:contact@novaric.co)), informing them that after checking online, he had discovered that his brother's work permit had been refused and that nobody from defendant company had told him about it. He also requested a copy of the refusal letter, asking about the way forward and whether defendant company would provide him with a refund.



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On the 23 November 2022, Plaintiff received an email from defendant company informing him that the decision could be appealed and the application resubmitted.

On the same day, Plaintiff replied to the email asking how long the process would take, whether he would need to pay more money and asking how much money he would get back should he not wish to proceed.

Plaintiff received a follow-up email informing him that he would only need to pay a fee of €280.50 to Identity Malta for the application to be resubmitted to Identity Malta and asking whether he was in agreement with the appeal. In the same email Plaintiff is informed that he would be duly informed about the refund following communication with the financial office. The email also contains an italicised caveat which is being reproduced here:

*Note: In the case of refusal from Identity Malta, we refund back to the candidate 75% of the amount paid (in case of refusal due to candidate's personal issues, we do not refund back any amount as from our side the documentation process would have been done correctly.). The remaining amount, Identity Malta fee (€280.50) and Administrative paper works fee (€300) are not re-fundable. (sic)*

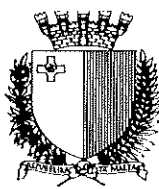
Plaintiff sent a follow-up reply to the email stating that he could not afford to pay the Identity Malta fee since he had already paid €2,000 for the application.

On the 23 January 2023, Plaintiff sent two separate emails to defendant company ([alban.thika@novaric.co](mailto:alban.thika@novaric.co)) ([contact@novaric.co](mailto:contact@novaric.co)) attaching proof of payment for his brother's work permit and referring to the company promise of a refund in case of refusal. In the same email Plaintiff also refers to a conversation he had with Dr. Alban who asked him to speak to Sara, who had assured him that he would be receiving a refund as soon as it was approved by Dr. Alban.

On February 10, 2023 sent a final email to defendant company and to Alban Thika expressing his disappointment at the service received and the fact that his email requesting a refund was never replied to although he had been promised a 75 percent refund.

Considers

That from the evidence presented, this Tribunal is satisfied that although Plaintiff paid €2,000 up front for a service touted as 'the best professional service that you deserve' this service fell hopelessly short of what was promised. After paying the first instalment of €2,000 to defendant company, Plaintiff heard nothing more from the company for six months and it was only after he sent several emails to the company that he received a reply from Fjoralba Hsaj in September 2022, where he was asked to send proof of any



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transactions made to defendant company. It was only on the 16 September 2022 that Plaintiff was finally informed that his brother's application was in process and in the same email, he was informed of a new Policy, not previously indicated to Plaintiff, that if the application was rejected (or self-withdrawn) due to candidate's personal issues, no amount would be refunded since defendant company would have carried out the documentation process correctly.

The Tribunal notes that in March 2022, the information provided to Plaintiff in the guidelines exhibited made no mention of any policy envisaging 'personal issues' or otherwise. The Plaintiff concluded the contract and chose to purchase defendant company's service on the basis of the information/ guidelines provided at the time. On the basis of these, he could legitimately expect to receive the minimum amount of €1,420.00 in the event of refusal from Identity Malta. There is absolutely nothing in the guidelines/ explanation of services that suggests that in case of refusal, the company would carry out an internal review or proceed to appeal the decision, or of any other amounts that may be due to Identity Malta.

The Tribunal will not go into the merits of the appeal process or of any internal procedures ostensibly carried out by defendant company. Neither will it delve into cryptic and vague 'company policy' introduced at the eleventh hour citing 'personal issues', which is precisely the sort of 'unfair term' that the Consumer Affairs Act seeks to protect consumers against, calculated to limit or exclude liability of the trader or service provider.

Suffice to say, that the Tribunal is satisfied that application was not rejected or refused by Identity Malta because of Plaintiff's personal issues but rather because of defendant company's failure to fulfil an obligation - namely the prospective employer's failure to provide justification of the position to Jobs Plus. Whether or not the refusal was 'standard' is moot. The Tribunal is not entirely convinced that this was indeed the case, given that Plaintiff himself seems to have flagged this precise concern months before, in an email he sent to defendant company employee 'Kristina' on August 18, 2022, asking her whether she had sent justification of her brother's work permit as requested by jobs plus and informing her that he could not his brother's details in the email sent to jobs by Dr. Alban. This was a red flag which was ignored by defendant company and this was the principle (and only) reason cited in the refusal letter as to why the application was rejected.

Considers

By means of this action, Plaintiff is requesting the entire sum he paid to defendant company - i.e. €2,000.00. According to the guidelines exhibited, in case of a refusal by Identity



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Malta, defendant company is to refund the amount of €1,420.00. The remaining amount of €580.00: - €280.50 of which is the sum paid to Identity Malta and €300.00 for administrative services is retained by defendant company.

Given the manifest lack of service and the fact that the Tribunal is satisfied that defendant company was remiss in its contractual obligations, the Tribunal feels that Plaintiff should not be made to suffer the costs for administrative services/Identity Malta costs and that he should be refunded the entire sum he paid. From the timeline of the emails exhibited, significantly the email sent by Plaintiff to 'Kristina' on 18 August 2022 (which was ignored) and the email sent by Fjoralba Hysaj on 14th September 2022 asking for proof of payment, it is clear that the Plaintiff was left in the lurch and ignored.

For these reasons, the Tribunal is hereby acceding to Plaintiff's request and orders defendant company to pay him the sum of €2000.00. With costs which are to be borne by defendant company.

A handwritten signature in blue ink, appearing to read 'M. Spiteri'.

**Dr Michela Spiteri LL.D.**

**Arbiter**