Case Reference ABTA: [XXAATTPP]

IN THE MATTER OF THE ARBITRATION ACT 1996

IN THE MATTER OF AN ARBITRATION UNDER THE ABTA ARBITRATION SCHEME

B E T W E E N :-

DAVID DRAGON — Claimant

- AND -

LAST CHOICE HOLIDAYS & FLIGHTS LIMITED
Trading as LAST CHOICE

Respondent

_____

A W A R D

_____

1. Pursuant to my appointment by the President of the Chartered Institute of Arbitrators ("the Chartered Institute"), which I accepted on [ ] 2000, I have been appointed Arbitrator in this dispute between the Claimant and the Respondent under the Arbitration Scheme for the Association of British Travel Agents ("the ABTA Arbitration Scheme") as administered by the Chartered Institute. Accordingly I conduct this arbitration pursuant to the Rules of the ABTA Arbitration Scheme (1994 Edition) ("the ABTA Arbitration Rules").

2. The Claimant, David Dragon, in completing the Application for Arbitration form stated that he was bringing this claim on behalf of his nine year old daughter,

Charley Dragon, on the basis, as I understand it, that the Claimant had to pay for her the full adult price which (including the flight supplement of £20) came to £649 per adult, when he should have only paid for this daughter at the child's price which (including the flight supplement of £20) came to £239 per child. It is plain, however, that the Claimant is bringing this claim on behalf of himself and all members of his family who went on this holiday. Since, therefore, all members of his family were named in the Respondent's customer invoice dated 21st July 1999 and in the Booking Authorisation Form, which the Respondent signed on 23rd July 1999, I hold that this claim has properly been made under Rule 1 of the ABTA Arbitration Rules, which stipulates that claims can be made under the ABTA arbitration scheme "by or on behalf of any person named in the booking form or other contractual documents".

3. This claim arises out of a 14-day holiday which the Claimant took with his wife and two daughters aged 13 years old and 8 or 9 years old. (The Claimant gives to me two different ages for his youngest daughter!) The holiday was booked on 21st July 1999 through the agency of Holiday Joys in Croydon and took place at the Hotel Blue Bay in Lalyssos on the Island of Rhodes in Greece between 18th August 1999 and 1st September 1999. The holiday was booked on a 'half board' basis and was costed at the adult rate of £649.00 per person. Thus the whole holiday cost £2,596.00.

4. The Claimant has limited his claim to £410 based, as identified above, on the difference between the full adult price of £649 per person and the child price of £239 per person.

5. There has been put before me, for the conduct of this arbitration, the Claimant's Application for Arbitration, which was signed by the Claimant on 12th December 1999, and the Claimant's Claim Form dated 17th April 2000 to which the Claimant attached copies of correspondence between himself and the Respondent and various booking forms and invoices which were provided to him either by Holiday Joys or the Respondent. I have, therefore, treated the Claimant's Claim Form together with the accompanying documents as the Claimant's Statement of Claim. On its side, the Respondent has put before me its Defence to Claim dated 9th May 2000 together with a duplicate copy of the original invoice, which it issued to the Claimant, excerpts from its brochure, upon which it asserts this holiday was booked, and copies of a couple of letters which it sent to the Claimant. Finally I have, in a letter dated 19th May 2000, the Claimant's comments on the Respondent's Defence to Claim.

6. Having examined these documents I am satisfied that I have got before me sufficient evidence upon which I can properly make my award.

7. Therefore, having considered with care the submissions of the parties and all the documents put before me, **I have concluded for the Reasons annexed hereto**, **that the Claimant should succeed in his claim to the total sum of £410.00.**

8. Since this Award of £410.00 exceeds any offer made by the Respondent, I exercise my discretion under Rule 13 of the ABTA Arbitration Rules, and direct that the Respondent reimburses the Claimant his share of the registration fee in the sum of £64.63.

ACCORDINGLY

(1) I AWARD THE SUM OF £410 TO THE CLAIMANT IN FULL AND FINAL SETTLEMENT OF HIS DISPUTE WITH THE RESPONDENT;

(2) I DIRECT THE RESPONDENT TO REIMBURSE THE CLAIMANT HIS SHARE OF THE REGISTRATION FEE IN THE SUM OF £64.63; AND

(3) I ORDER THE RESPONDENT TO PAY THE SUM OF £410 (TOGETHER WITH THE SUM OF £64.63) TO THE CLAIMANT WITHIN 21 DAYS OF THE PUBLICATION OF MY AWARD.

SIGNED

DAVID HACKING
ARBITRATOR

December 2000.

Case Reference ABTA: 110000499

IN THE MATTER OF THE ARBITRATION ACT 1996

IN THE MATTER OF AN ARBITRATION UNDER THE ABTA ARBITRATION SCHEME

B E T W E E N :-

DAVID DRAGON — Claimant

- AND -

LAST CHOICE HOLIDAYS & FLIGHTS LIMITED
Trading as LAST CHOICE

Respondent

REASONS FOR AWARD

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1. As stated in my Award, this claim has been made by the Claimant, on behalf of himself and his family, arising out of a 14 day holiday which he and his family took from 18th August to 1st September 1999 at the Blue Bay Hotel, in Lalyssos, on the Island of Rhodes in Greece. As also stated in my Award, this holiday was booked on 21st July 1999 through the agency of Holiday Joys in Croydon.

2. The original plan was for the Claimant and his wife to bring their three daughters with them. However, the eldest daughter, a 17 year old, decided not to come on

the holiday. When, therefore, the holiday was priced, it was originally done so on the basis of four adults at £649.00 per person plus one child at £239.00. As the Claimant explains to me he was entitled, under the booking arrangements with the Respondent, to take his youngest daughter at the child price, when she would have been sharing a bedroom (presumably with the Claimant and his wife) with two adults. However, when the eldest daughter withdrew from the holiday, the Claimant states that the Respondent told him he had to pay the full price for his youngest daughter because she would be sharing a bedroom with her other sister and hence no longer would be in a bedroom with two full paying adults.

3. In putting his case to me, the Claimant makes one complaint. He states that, when he booked his holiday with the Respondent, he booked two separate twin bedrooms which he asked to be located close to one another. However, on arrival at the Blue Bay Hotel, he was told that the two separate twin bedrooms were not available and that his family had to share a suite consisting of one bedroom with three single beds and another room which only contained, for sleeping purposes, a sofa. In the result, as I understand it, all four members of the family were having to use the bedroom for keeping their clothes and changing although the Claimant himself then slept on the sofa in the other room of the suite.

4. In support of his claim, the Claimant has put before me both booking forms and invoices, including one from the Respondent, which clearly shows that he had booked two twin bedrooms which were to be adjacent rooms.

5. In its defence the Respondent admits that the Claimant booked two twin bedrooms and that, because the hotel was overbooked, these rooms were not available for the Claimant and his family when they arrived at the hotel. Although conceding, in this suite, the bedroom arrangements were different and one bedroom had three single beds and the other 'single bedroom' a sofa bed, the Respondent asserts that the Claimant and his family were given superior accommodation including an 'upgrade' to a room with a sea view.

6. In helpfully putting before me the Booking Conditions which were contained in the brochure, upon which this holiday was booked, the Respondent also concedes (in relation to the Claimant and his family) under the paragraph headed 'CONFIRMATION' that it had, in providing this holiday to the Claimant and his family, the "responsibility ... to provide the holiday [which it had] confirmed to" the Claimant. Further the Respondent, under the paragraph headed 'OUR RESPONSIBILITY' concedes (as this paragraph applies to the Claimant and his family) that it accepted the "responsibility for ensuring that [the Claimant received] the holiday [he had] booked regardless of whether any of the

component parts of the holiday [were] provided directly by [it] or by other suppliers".

7. I have, therefore, no difficulty in concluding that the Respondent was under a contractual obligation to the Claimant and his family to provide two twin bedded rooms and that they failed to do so. Insofar as the Respondent asserts that the Claimant and his family were provided with suitable alternative, if not better, accommodation, I have to state that this assertion fails. The fact is that the bedroom configuration, provided to the Claimant and his family at the Blue Bay Hotel, was radically different from the bedroom configuration that the Respondent had contracted to provide to them. In the first place the Claimant and his family could not use the bedrooms, as provided by the Blue Bay Hotel, as two separate bedrooms so that the Claimant and his wife could sleep in one and their two children in the other. Secondly, as I understand it, the Claimant and his family were not actually being provided with a second bedroom with a sofa bed, but with another room with, for sleeping purposes, just a sofa in it. In this regard I have no reason to believe that the Claimant is inaccurate when he says that the other room did not have a sofa bed but just a sofa.

8. The Respondent also makes the point that the Claimant did not make a complaint, at the time, to their representative at the resort and also did not complete a

customer service report in which he recorded his complaint about the accommodation provided to him and his family.

9. While it is quite true that the Respondent has set up (under a paragraph headed 'IF YOU HAVE A COMPLAINT') a complaints' procedure in the Booking Conditions and while it is quite true, as the Respondent asserts, if its customers make their complaints at the time when they are the holiday, it has an opportunity of getting matters right for that customer who hopefully will then be able to put the complaint behind and enjoy the holiday.

10. Laying aside the dispute between the Claimant and the Respondent over whether the Claimant did raise the issue of the wrong accommodation with the Respondent's representative at the Welcome Meeting on the first full day of their holiday (which the Claimant asserts he did and which the Respondent denies) it is no answer to the Claimant's claim that no, or no sufficient, notice was given during the holiday by the Claimant to the Respondent. The test is simply whether the Respondent provided to the Claimant what it had contracted to provide to him. Since I find that it did not, then sensible though the Respondent's complaints procedure is, this does not absolve the Respondent from its breach of contract with the Claimant.

11. The next question is what is the appropriate level of compensation. Although the Claimant does state that all the family, but most particularly his teenage daughter, were uncomfortable with the bedroom arrangements and that these generally made the holiday less happier than it would have been, the Claimant seeks no more compensation than the difference between the adult and the child's price for the holiday. No documents have been put before me which set out the policy of the Respondent relating to when a customer is entitled, for an accompanying child, to the 'child price'. However the Respondent has not contested the facts put forward by the Claimant and, since I see no reason why the Claimant is wrong in his description on this to me, I am satisfied that, in the sleeping arrangements as provided to the Claimant, a child price should have been given for the Claimant's youngest daughter. I note also in the costings for self catering accommodation, which the Respondent puts before me, that the children of two adults in these costings were both allocated a child price, albeit at different levels.

12. It does not, in fact, matter whether the Claimant's calculation has been correctly applied. The fact is that the Claimant and his family are entitled to *some compensation* for the wrong accommodation being provided to them and, in my view, it would have been fair to have calculated this compensation on the basis that the accommodation provided to the Claimant and his family devalued their holiday by 20%. Apart from the difficulties of having to share one room for clothing and dressing, it cannot have been very pleasant for the Claimant, as I

accept he did, having to sleep for the entire holiday alone on a sofa in a separate room. If, therefore, I had calculated the compensation to be given to the Claimant at 20% of the value of the holiday, that compensation would have calculated out at £519.20. I therefore conclude that, whether or not the Claimant's process of calculation is correct, compensation in the sum of £410 is wholly reasonable.

13. In concluding that the Respondent should pay compensation to the Claimant in the sum of £410.00, I am conscious that the fault lay with the Blue Bay Hotel over which the Respondent had no direct control. While, therefore, I have sympathy towards the Respondent I have to hold it to the contract in which it entered with the Claimant and his family.

DAVID HACKING

ARBITRATOR

December 2000