
MASSACHUSETTS Lawyers Weekly



Lincoln litigator notches win for European river tour operator in 93A case

By Pat Murphy | September 30, 2021

For Rodney E. Gould, the stakes couldn't have been much higher in the recent federal trial of a consumer class action that tested the limits of a travel company's obligation to make amends when the breakdown of a cruise ship forced a change in plans for a European river tour.

According to the Lincoln travel and recreation attorney, a loss for his client in *Hebert v. Vantage Travel Service, Inc.* would have had the effect of driving tour operators out of the Massachusetts market because of an obscure state regulation governing travel services.

"If [the regulation at issue] was to be interpreted the way the plaintiff wished it to be interpreted, I don't think anybody would sell trips to Massachusetts residents," Gould says.

Gould's client, Vantage Travel Service, had been sued by a class of 168 passengers who had booked passage on one of two cruises scheduled in July 2016: the 17-day/16-night

"Majestic Rivers of Europe" tour and the 11-day/10-night "Highlights of the Danube River" tour.

Both cruises took place on the same ship, the MS River Voyager. According to court records, the trip began as scheduled on July 8, but on July 14 the River Voyager's bow thruster broke down and the ship was stuck in Kitzingen, Germany, for four nights.

Defendant Vantage Travel adjusted to the malfunction by substituting motor coach transportation to certain attractions and cities. Passengers were finally bussed to Vienna, where they stayed at a Hilton hotel located close to the city's historic district. After a four-night stay in Vienna, the cruise resumed aboard the repaired River Voyager.

"The company had to make all these substitute arrangements in real-time during the peak of the travel season," Gould says. "Vantage took a bath making those arrangements."

Passengers paid Vantage Travel a total of approximately \$950,000 for the trip. To make amends for the disruption to their cruises, the defendant offered passengers a future trip credit of \$500 and a complimentary cruise during the 2016 holiday season.

“The value of the alternative services provided by [the] defendant exceeded the price paid by the plaintiffs,” Gould says. “The court had previously rejected plaintiffs’ claim that the court should include ‘emotional damages’ in its calculations.”

The named plaintiffs, Ronald Hebert and Aime Denault, were unhappy with both the alternate travel arrangements made by Vantage Travel as well as the compensation offered by the company afterward. So they filed a consumer class action in U.S. District Court in Boston.

The original complaint included common law claims for breach of contract, breach of warranties, breach of the implied covenant of good faith and fair dealing, and unjust enrichment.

But a summary judgment obtained by the defendant left only one claim for trial: whether Vantage Travel was liable for unfair or deceptive acts under Chapter 93A based on an alleged violation of 940 C.M.R. §15.06.

First promulgated by the Attorney General’s Office in 1996, §15.06 provides that when a tour operator fails to provide any purchased travel services it “must” offer: (1) a cash refund in an amount equal to the fair market value of the undelivered travel service; (2) a “specifically identified substitution travel service” of equal or greater value; or (3) a substitute travel service of lower fair market value plus a refund to make up the difference.

Judge Denise J. Casper heard evidence on the plaintiff’s 93A claim during a four-day bench trial that began on July 26.

Casper issued her decision on Sept. 24, first finding that the plaintiffs’ demand letters failed to sufficiently describe the unfair or deceptive act underlying their Chapter 93A claim, namely, a violation of regulation §15.06.

While concluding that that failure alone warranted judgment for the defendant, Casper further concluded that the plaintiffs failed to establish specific harm resulting from the defendant’s alleged noncompliance with §15.06.



Rodney E.
Gould

“The Court does not doubt the disappointment of Plaintiffs in not cruising according to the original itinerary, or their frustration with the changed circumstances of the Ship not being able to sail because of the bow thruster malfunction,” Casper writes. “Such an injury, however, is not legally cognizable for recovery under Chapter 93A, particularly in light of Vantage Travel’s efforts, which conferred value on Plaintiffs, to modify the trip in real-time so that it could move forward.”

According to Gould, the plaintiffs suffered no actual harm whatsoever.

“The value of the alternative services provided by [the] defendant exceeded the price paid by the plaintiffs,” Gould says. “The court had previously rejected plaintiffs’ claim that the court should include ‘emotional damages’ in its calculations.”

The defendant was also represented by fellow Smith, Duggan, Buell & Rufo lawyers Melissa B. Paradis, Robert C. Mueller and Christopher A. Duggan.

The plaintiffs were represented by James L. O’Connor Jr. of Nickless & Phillips in Fitchburg. O’Connor declined to comment on the matter.