

SOUTH AFRICA / JUDGMENT

Incorrect Subscription (201505-0125)

[2015] ZACGSO 8 (21 September 2015)

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COURT

Consumer Goods and Services Ombud

CASE / FILE NUMBER

201505-0125

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Our ref: 201505-0125

ASSESSMENT: INCORRECT SUBSCRIPTION

Summary of your complaint

In December 2012 the complainant purchased a Decoder along with a Premium Subscription and an extra view for one year. This was a Christmas gift for a friend.

The complainant paid everything upfront and thought, based on the complainant's conversation with the consultant, that everything

was settled.

The complainant later discovered that she was erroneously billed for two subscriptions from December 2012 to August 2013. The complainant

reported it to the supplier who discovered that it made an error and requested that the complainant do a change of ownership and put the agreement in the complainant's friend's name.

Due to the complainant's busy schedule she was only able to submit the documents 5 months after the complainant reported the problem.

Even though the supplier was aware of the problem it continued to debit more than what it was supposed to.

The complainant believes that because the supplier was aware of the error it should have taken action to prevent the wrong billing.

The supplier did not communicate clearly that it would continue with the incorrect billing unless the change of ownership was affected. The complainant was refunded for the period from December 2012 to August 2013 but not for the five months after the complainant reported the matter.

The complainant would like to receive a refund for the 5 months she was still being wrongly billed after the complainant reported the matter.

Summary of the supplier's response

The supplier allows its subscribers to view two channels at the same time using two decoders and two television sets with one subscription.

This option is referred to as XtraView. Subscribers are only permitted to have one XtraView option active on their accounts.

The complainant purchased an XtraView Decoder along with a premium subscription in December 2012 and paid upfront for a period of one year. The complainant bought this package for a friend.

The complainant already has XtraView which is active on her own account. As already mentioned the complainant can only have one XtraView: she should have been advised that she was not entitled to have a second XtraView on her account.

The complainant phoned in August 2013 to query the amount deducted on her DSTV statement. The complainant was advised that she had 5 active smart cards with 2 decoders linked to XtraView. The complainant confirmed that the other 2 decoders are her friend's that she paid the full subscription for. The supplier then explained to the complainant that she cannot have another XtraView under her name and should she want her friend to also have XtraView she would have to approach it and do a change of ownership.

The complainant confirmed that she would approach the branch with her friend to do the change of ownership.

In January 2014 the complainant eventually effected the change of ownership. A refund was effected for the period of December 2012 to August 2013. The complainant was refused a further refund because she has been advised that the change of ownership or disconnection of the additional services had to be done to prevent double charges.

Steps taken to resolve the matter

Our office made numerous contacts with the supplier to see if they can refund the 5 months double subscription.

The supplier, as an offer of goodwill, offered to refund one month's subscription.

The complainant is not happy with the offer and not willing to accept it.

Assessment

We have considered all the evidence presented by both parties and advise as follows:

The Complainant entered into a legally binding agreement with the supplier. In terms of this agreement she agreed to pay a specified

amount to the supplier in exchange for services for a specified period.

It is common cause that when the contract was concluded the supplier failed to inform her that she could not have another XtraView on her account and failed to disclose that she would be billed extra for this.

In August 2013 the complainant contacted the supplier to complain about the large debits deducted from her account.

The call agent explained to her that she could only have one XtraView on her account and that she was therefore billed extra for her friend's decoder. When the complainant enquired what she should do to fix this, the call agent explained that she would have to do a change of ownership in order to have the XtraView available on her friend's account free of charge. The complainant agreed to go in and sort it out.

In this regard when someone is entitled to something in terms of an agreement an offer may be tendered to compromise the claim[1]. One is not obligated to accept the compromise but once it is accepted the acceptor is bound by the terms of this tender. One can therefore not accept the compromise and later request for a refund of the balance of the complainant's claim.

In this instance the supplier admitted its error but advised that in order to rectify the matter and not charge the complainant more, she needed to go in and do a change of ownership. It must be noted that the terms of an agreement cannot merely be changed or altered. If the complainant was not satisfied with the proposal offered, it should have been refused and the complainant should have insisted on getting what was agreed upon as per the initial agreement. She however agreed to change the details, thereby accepting the compromised proposed by the supplier. We can therefore not instruct the supplier to refund the complainant for the 5 months which it took for her to effect the change of ownership.

Conclusion

Prior to the complainant accepting the offer to change the details the agreement was still binding and enforceable based on what was signed and agreed to. Therefore the supplier was correct in refunding for the months prior to the complainant reporting the matter.

The supplier's offer to refund one month's subscription is therefore more than fair and reasonable and we can therefore only suggest that the complainant consider same.

Based on the facts of this case, the information and evidence furnished to this office and on the principles of reasonableness and fairness, there is no reasonable prospect of this office making a recommendation in the consumer's favour.

We regret that we cannot be of assistance and confirm that our file has been closed.

Yours faithfully

Bonita Hughes

Complaints Office

[1] ABSA Bank v Van der Vyver NO 2002 (4) SA 397 (SCA)

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