



Civil Resolution Tribunal

Date Issued: September 19, 2018

File: SC-2018-001143

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Qin v. Luxury Hotels International of Canada, ULC doing business as
Marriott Hotels of Canada, 2018 BCCRT 535*

BETWEEN:

Hongxu Qin

APPLICANT

AND:

Luxury Hotels International of Canada, ULC doing business as Marriott
Hotels of Canada

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a hotel rate. The applicant, hongxu qin, is a gold member of a Starwood (SPG) loyalty program offered by the respondent, Luxury Hotels International of Canada, ULC doing business as Marriott Hotels of Canada. The applicant filed for 2 separate hotel stays under the SPG “Best Rate Guarantee” (Guarantee), which provides that SPG will match a competitor’s rate if a member can find a better rate elsewhere. His claims were denied because the respondent says the applicant violated SPG’s Terms and Conditions (Terms). The applicant alleges the respondent breached its “SPG best rate guarantee”.
2. The applicant claims damages of \$1,800, based on the difference between the SPG price and the competing price the applicant says he found, plus an additional 20% off the competing price. The applicant also claims \$3,200 in punitive damages. The parties are self-represented.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find I can fairly resolve it based on the documentary evidence and submissions before me.

6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
8. I note the Guarantee's Terms include a provision that any disputes arising out of the Guarantee or the Terms are governed by the laws of the State of New York. I have no jurisdiction to apply those laws. However, neither party relied on that term, and therefore I have proceeded on the basis that the tribunal has jurisdiction under the laws of British Columbia.

ISSUE

9. The issues in this dispute are to what extent, if any, the respondent owes the applicant a) compensation for a hotel rate difference, and b) punitive damages.

EVIDENCE AND ANALYSIS

10. In a civil dispute such as this, the applicant bears the burden of proof on a balance of probabilities. The applicant is incorrect in his submission that the respondent bears the burden of proving that its rejection of his claims was justified. I have only commented upon the evidence and submissions to the extent necessary to give context to these reasons.
11. The applicant made 2 reservations, #1 (862378315) and #2 (972378914). On February 12 and 10, 2018 respectively, the applicant made claims under the Guarantee, as the applicant says he found better rates on hotwire and stayvancouverhotels.com, respectively. As discussed further below, the respondent denied both claims on the basis that rates and availability are subject

to change and that when it investigated it could not find a rate lower than the reservation rate.

12. The relevant portions of the January 22, 2018 Guarantee's Terms include the following:
 - a. For the competing rate to be valid, it must be a currently available lower published room rate available online for the same dates and room size.
 - b. Further, "for purposes of comparing the Competing Rate and the rate available on the Starwood Websites, only the Competing Rate and the rate available on the Starwood Websites that are each available at the time the applicable claim is processed will be considered ...".
 - c. The Guarantee does not apply to rates that include other components or amenities such as travel, entertainment, "tickets, gas coupons, etc. **The total rate on the Comparison Site will be compared to the total rate available on the Starwood Website**" (my bold emphasis added).
 - d. Starwood has the "**sole right and discretion to determine the validity of any claim and will not review documentation provided by the individual submitting a claim**" as part of its validation process. Starwood reserves the right to deny a claim, if it cannot independently verify the availability of a Competing Rate at the time it processes the claim" (my bold emphasis added).
13. According to the applicant's searches, reservation #2 resulted in a lower than the reserved rate because the hotel offered a \$100 Amex gift card on check-in. I agree with the respondent that this sort of reduction is excluded by the Terms, summarized above. I disagree with the applicant that the respondent had any obligation to provide reasons more detailed than given. The Terms clearly state that the respondent has the sole right and discretion to determine the validity of any claim and will not review documentation provided by customers like the applicant. This disposes of the applicant's claim about reservation #2.

14. More generally, the respondent notes hotel rates are subject to change. I agree, which is shown by the difference in rates found by the applicant on different days within a 2 or 3 day span. I find the applicant has not proved that at the time the respondent conducted its searches that the lower room rate was available for reservation #1.
15. The applicant says the respondent unreasonably refused to try and locate the better rate together, given that he says he found it. I disagree, because the Terms expressly state the respondent will not do that.
16. The applicant alleges the respondent acted in bad faith, because it allegedly has shown a consistent pattern of being secretive and evasive in handling the Guarantee requests. The applicant's evidence simply does not support this serious allegation. I accept the respondent's detailed submission about when its particular agents responded to the applicant's communications. The applicant also says the respondent employed unfair tactics such as making unsubstantiated claims about availability, refusing to disclose when its search was completed or speak on the phone, refusing to follow the applicant's instructions on how to find the better rate, and claiming to have destroyed critical evidence.
17. Given the Terms that govern the Guarantee, I find the respondent had no obligation to disclose its search records, although it has produced its search printouts along with a detailed summary for this dispute, which I accept. I find the respondent's agents spoke to the applicant on the phone more than once, including after he threatened litigation. As for the destruction of evidence, I accept the respondent's explanation that after 45 days, as a routine practice its customer service agents destroy audio recordings to free up space. There is no evidence before me that at the time those agents did so they had proper notice to preserve evidence. In any event, I find the Terms govern this dispute and find the applicant's claims cannot succeed. The applicant has not proved bad faith and has not proved any breach of the Guarantee.

18. Given my conclusions above, I do not need to address the applicant's request for punitive damages, although I will say that the evidence before me would not support such a claim. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful I find he is not entitled to reimbursement of tribunal fees.

ORDER

19. I order the applicant's claims, and therefore this dispute, dismissed.

Shelley Lopez, Vice Chair