



My rights when cancelling a reservation, booking or order:

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At this point of time where the Disaster Management Act's Regulations are amended regularly to combat the COVID-19 spread, no gathering or "get away"-plans are certain anymore. Planning ahead and booking services becomes more challenging. For some, it's just not worth the risk and they prefer to cancel their booking instead.

When considering the cancellation of an advance booking, reservation or order, the first question that crosses one's mind is, "will I receive a refund of my deposit made towards the booking and what is my legal rights?".

Where a consumer made an advance booking, paid a deposit to the supplier and wishes to cancel the said booking, the Consumer Protection Act (CPA)¹ apply and dictate what is allowed and what not.

The CPA² confers certain rights and obligations on both the consumer and supplier. On the one hand the consumer has the right to cancel any advance booking subject to certain requirements,³ and on the other hand a supplier has the right to demand a deposit and a reasonable charge for cancellation. Both parties' rights are placed on a scale when considering the four (4) factors⁴ set out in section 17(4) hereinbelow, that determine the "reasonable cancellation price".

¹ Act 68 of 2008.

² Section 17 of the CPA.

³ Section 17(2) of the CPA.

⁴ Section 17(4) - For the purposes of this section, a charge is unreasonable if it exceeds a fair amount in the circumstances, having regard to a) the nature of the goods or services that were reserved or booked; b) the length of notice of cancellation provided by the consumer; c) the reasonable potential for the service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice and the time of the cancelled reservation; and d) the general practice of the relevant industry.

By applying above mentioned four (4) factors objectively, the consumer can determine with reasonable certainty what portion of his/her deposit can be reclaimed. There are however circumstances where no refund could be seen as reasonable. In the *Cancellation of wedding due to rain: Supplier not liable to refund (201311211256) matter*⁵, the complainant planned to host a wedding in an open garden, but due to bad weather it necessitated a relocation of the function to the Chapel of the venue. Some of the outdoor décor was not used and the complainant requested a full refund for that portion of the décor. The Consumer Goods and Services Ombud person (the Ombud) applied the factors listed in section 17(4) of the CPA to determine what a reasonable refund would be. The Ombud concluded that the supplier did not act unreasonable when it claimed the full amount paid as cancellation fee. The main reason therefore was that the supplier was unable, due to the short notice, to rent out its equipment to anyone else.

One of the main purposes of the CPA is to promote and protect the economic interests of consumers and prevent suppliers from abusing consumers.⁶ It is clear that the above mentioned section 17 of the CPA aims to balance the interest between both the consumer and the supplier and to level the playing field. Although the CPA is aimed to protect consumers, it is not done one-eyed.

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⁵ [2014] ZACGSO 5.

⁶ Preamble of CPA.