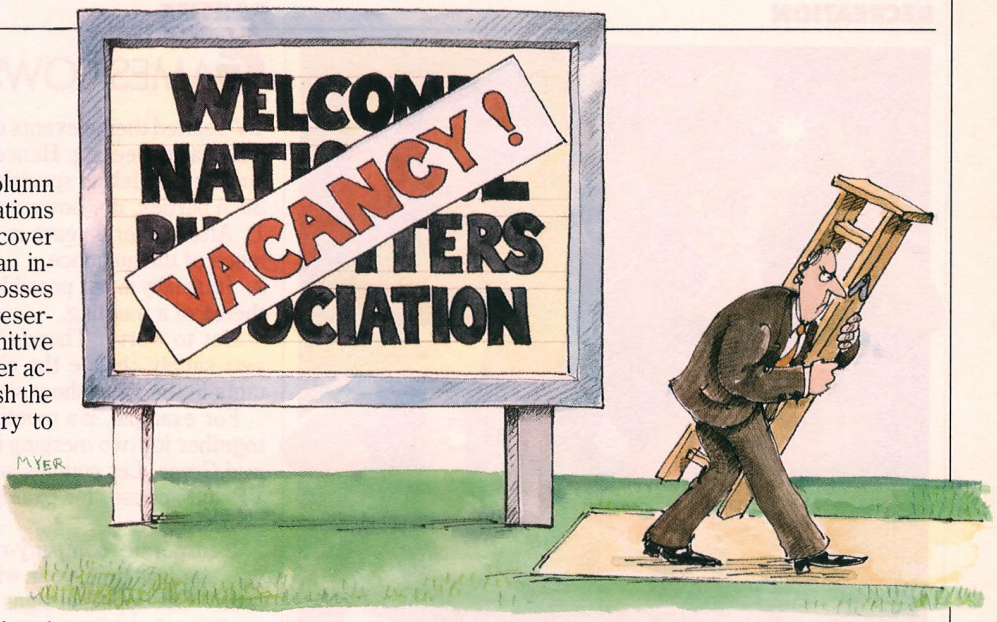
EDITED BY DINA ELIASH ROBINSON

CANCELLATION CLAUSES

BY RICHARD HARTZMAN



As I discussed in a previous column (Nov. '85), parties whose reservations are not honored by a hotel can recover their losses. Legal recompense can include consequential damages (for losses that flow indirectly from a broken reservation) and, in some cases, punitive damages (damages that do not cover actual losses but are assessed to punish the wrongdoer for the intentional injury to feelings and reputation). Punitive damages can be of particular significance to a planner whose reputation has been damaged.

But what recompense does the hotelier have against the no-show guest?

With an individual guest, the hotel usually will just keep the deposit, as the revenue loss is too small to warrant legal action. However, with a large group, the damages from a cancellation can be large and thus worth suing for.

Obviously, the penalties for cancellation should be dealt with in advance in the convention or meeting contract. Payment schedules, penalties and interest rates can be negotiated and spelled out in writing. The terms can be worked out so that the risks cut both ways and settlement, if necessary, is not left to the vagaries of the judicial process.

A CASE IN POINT

The importance of clear, contractual terms for cancellation is demonstrated by the 1978 federal court decision in *King of Prussia Enterprises, Inc. v. Greyhound Lines, Inc.* Although, in this case, the defendant was a travel agency, the principles embodied in the decision could apply equally in a hotel's suit against a corporate or association planner.

In the *King of Prussia* case, a hotel brought suit against a travel agency to recover damages for 200 guest rooms engaged but not occupied.

The hotel, located near Philadelphia, was expecting millions of visitors to the area in 1976, the U.S. bicentennial year. In addition, a Eucharistic congress scheduled for early August was expected to attract more than a million visitors. The defendant travel agency had been designated exclusive agent to provide travel services to members of a church group from Chicago that was attending the congress.

Following discussions, the hotel agreed to commit all of its 200 rooms if the travel agency put down a ten percent, non-refundable deposit. The hotel asked that the balance be paid 60 days before arrival of the guests. The deposit was to be forfeited in the event of cancellation.

The hotel outlined the understanding in a letter, and the travel agency submitted a $10,000 deposit. Despite several reassurances in May and early June, the agency subsequently—within 60 days of the congress—cancelled all its reservations and asked for a refund of the deposit. The hotel then filed suit.

Central to the outcome of the lawsuit was the failure of the parties to reach an explicit agreement regarding additional amounts owed in case of cancellation within the 60-day period.

At the trial, the agency manager, seeking to avoid *any* financial liability for his company, denied that he had agreed: (1) to pay for any rooms not used; (2) that the ten percent deposit was non-refundable, and (3) that the rooms would not be subject to cancellation.

BIG DAMAGE AWARD

Nevertheless, the jury concluded that there was a valid contract between the hotel and travel agency and that it had been breached by the agency. The hotel was awarded $58,900, the jury finding that the damages awarded were "such as would naturally and ordinarily follow from the breach of contract," and "reasonably foreseeable and within the contemplation of the parties at the time the contract was entered into."

The court noted the absence of any agreement for liquidated damages in the event of cancellation within the 60 day period: "There was no evidence from any witness that if the rooms were not utilized, plaintiff's recovery was to be limited to defendant's deposit. . . .*It is axiomatic in the law that provisions for the limitation of damages must be clear and unequivocal—the language here is non-existent. . .*"

The lesson is clear: without an explicit cancellation clause apportioning the risks, a jury is free to award the reasonably foreseeable damages that naturally and ordinarily would follow from a last-minute cancellation. These often can be greater than the penalties stipulated in a cancellation clause.

Yes, wrangle over the details of cancellation clauses—but *don't* do business without them.

Richard Hartzman is a member of the bar in New York and Colorado. He practices law in New York City and writes for *M&C* on a variety of subjects.

M&C urges planners to send in questions and experiences that relate to the law and their jobs.