

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

Commonwealth of Massachusetts

Plaintiff,

v.

BookIt Operating, LLC and Arthur Paul Finlaw

Defendants.

Civil Action No. \_\_\_\_\_

**COMPLAINT**

1. The Commonwealth of Massachusetts, by and through Attorney General Maura Healey, brings this action against BookIt Operating, LLC (“BookIt”) and Arthur Paul Finlaw (“Finlaw”) for engaging in unfair and deceptive acts and practices in violations of the Massachusetts Consumer Protection Act, G.L. c. 93A.

2. BookIt is an online travel agency that sold travel services, such as travel packages, lodging and transportation, through its website, [www.bookit.com](http://www.bookit.com).

3. As Chief Executive Officer and Director of BookIt, Finlaw oversaw, directed and controlled BookIt’s business operations.

4. In the ordinary course of its business, Bookit collected payments for travel services from consumers and forwarded these funds to hotels and other service providers, while retaining a portion of those payments as its fee.

5. Many consumers made partial or complete payment for travel services to BookIt well in advance of their planned travel.

6. On March 17, 2020, without any advance warning to consumers, BookIt “paused normal operations.”

7. By no later than March 17, 2020, BookIt stopped forwarding consumers’ payments to hotels, even when consumers were presently staying at or imminently arriving at those hotels. As a result, these hotels demanded payment directly from consumers, even though they had already paid BookIt for their hotel stay. Many consumers were thereby forced to pay twice for their hotel stays – once to BookIt and a second time to the hotel.

8. BookIt continued to collect payments from consumers as late as March 20, 2020.

9. On or about March 21, 2020, BookIt informed consumers that the company had cancelled all upcoming hotel and resort reservations. BookIt closed all of its customer service call centers and claimed to be “unable to process refunds.”

10. BookIt has failed to make refunds to consumers for cancelled trips.

11. Indeed, after “pausing” its operations on March 17, 2020, BookIt has received refunds from travel service providers for cancelled consumer trips. BookIt has failed to pass these refunds along to consumers, and instead apparently retained consumer refunds for its own benefit.

12. BookIt’s continued collection of payments after it ceased normal operations, its failure to forward consumers’ payments to hotels and other providers for services actually provided, its failure to make refunds, and its retention of funds owed to consumers, constituted unfair and deceptive conduct in violation of G.L. c. 93A, § 2, and 940 C.M.R. 15.00 *et seq.* The Commonwealth seeks restitution for consumers, the imposition of penalties, the payment of the costs of this action, including attorneys’ fees, appropriate injunctive relief and any other relief the Court deems proper.

## I. JURISDICTION AND VENUE

13. The Attorney General is authorized to bring this action, in this Court, pursuant to G.L. c. 93A, § 4.

14. This Court has jurisdiction over the subject matter of this action by virtue, *inter alia*, of G.L. c. 93A, § 4.

15. This Court has personal jurisdiction over BookIt under G.L. c. 223A, § 3, because, among other things, BookIt has engaged in business with Massachusetts by selling travel services to Massachusetts consumers, and because BookIt's actions and inactions have harmed Massachusetts residents.

16. This Court has personal jurisdiction over Arthur Paul Finlaw under G.L. c. 223A, § 3, because, among other things, Finlaw knowingly directed BookIt's unfair and deceptive conduct towards consumers in Massachusetts causing tortious injury in the Commonwealth; acted to cause tortious injury in Massachusetts and derived substantial revenue from services rendered by BookIt in the Commonwealth; and acted to transact business in the Commonwealth that is the basis for this cause of action. G.L. c. 223A, § 3 (a); G.L. c. 223A, § 3 (c); G.L. c. 223A, § 3 (d).

17. Venue is proper in Suffolk County under G.L. c. 93A, § 4, and G.L. c. 223, § 5, as the Commonwealth is the plaintiff.

18. The Attorney General notified BookIt and Finlaw of her intent to bring this action at least five days prior to the commencement of this action, as required by G.L. c. 93A, § 4.

## II. PARTIES

19. The Plaintiff is the Commonwealth of Massachusetts, represented by its Attorney General, who brings this action in the public interest pursuant to G.L. c. 93A, § 4.

20. Defendant BookIt Operations, LLC is a corporation organized under the laws of Florida with its principal place of business at 14251 Panama City Beach Parkway, Panama City, Florida 32413. BookIt is a “person” within the meaning of the Consumer Protection Act because it is a “corporation[], trust[], partnership[], incorporated or unincorporated association[], [or] any other legal entity.” G.L. c. 93A, § 1. BookIt is engaged in “trade” or “commerce” within the meaning of the Consumer Protection Act because it engages in “the advertising, the offering for sale...of any services and any property...directly or indirectly affecting the people of this commonwealth.” G.L. c. 93A, § 1.

21. Defendant Arthur Paul Finlaw is a natural person with a principal address of 14251 Panama City Beach Parkway, Panama City Beach, Florida, 32413. Finlaw is a “person” engaged in “trade” or “commerce” within the meaning of the Consumer Protection Act because as Chief Executive Officer and Director of BookIt, he oversaw, directed, controlled or directly engaged in “the advertising, the offering for sale...of any services and any property...directly or indirectly affecting the people of this commonwealth.” G.L. c. 93A, § 1.

## III. FACTS

### A. BookIt’s Business

22. BookIt is an online travel agency.

23. BookIt operated a website, [www.bookit.com](http://www.bookit.com), through which the company sold travel services to consumers.

24. BookIt sales representatives also sold travel services to consumers over the phone.

25. BookIt offered consumers hotel accommodations; travel packages, including but not limited to all-inclusive resorts, and excursions such as snorkeling, and rental cars; and cruises. BookIt offers travel services domestically in the U.S. and also to international destinations.

26. Finlaw is the Chief Executive Officer and Director of BookIt. Finlaw oversaw, directed and controlled the business operations of BookIt.

27. Consumers paid BookIt at the time they make their travel reservations for their travel services either in full or in installments through BookIt's "Paydelay" feature.

28. In order to make payment using the "Paydelay" feature, BookIt required consumers to provide a credit card at the time of booking, which BookIt proceeded to charge in regular installments over time.

29. BookIt's service fees were included in the rates the company advertised to consumers for hotels and resorts.

30. BookIt was responsible for securing and paying for the reservations made by consumers with travel service providers, including but not limited to hotels and resorts.

31. BookIt did not forward consumers' payments to hotels or resorts at the time consumers booked their trips, and instead forwarded only after a consumer had begun their stay at a hotel or even after a consumer completed their stay.

## **B. BookIt's "Pause" of Operations**

32. On or about March 17, 2020, BookIt "paused" its "normal operations."

33. BookIt claims that it paused its operations as a result of the Coronavirus pandemic.

34. Finlaw approved, directed and controlled BookIt's operational changes that took effect on or about March 17, 2020. On or about March 17, 2020, BookIt informed hotels and resorts that BookIt would not be forwarding consumers' payments for reservations, including reservations for some consumers who were staying already at those hotels and resorts or would arrive imminently.

35. Finlaw approved of, directed and controlled the implementation of BookIt's decision to stop remitting payments to travel service providers.

36. Finlaw himself informed hotels and resorts that BookIt would not be forwarding consumers' payments including for reservations for consumers who were staying already at those hotels and resorts or would arrive imminently.

37. On or about March 17, 2020, BookIt stopped remitting consumer payments to travel service providers, including resorts and hotels.

38. On or about March 18, 2020, BookIt informed consumers that the company had "suspended regular operations due to the impact of Coronavirus, effective March 17, 2020."

39. BookIt also informed consumers that "it is possible that you are arriving or departing without payment to the resort from our company. The resort may be asking to collect the money for your stay directly from you at this time, despite that you have paid in full directly with us."

40. Consumers staying in resorts with reservations they completed and paid for through BookIt were suddenly asked by the resorts to pay directly for their stays because BookIt never forwarded consumer payments to the resorts. Consumers were forced to pay twice for their reservations to continue with their stays.

41. Until at least March 18, 2020, consumers could still book travel services through BookIt's website and BookIt was accepting payment for these reservations.

42. While BookIt was planning to cancel all travel reservations, Finlaw knew or should have known that BookIt's website was still accepting travel reservations and payment for these reservations.

43. As late as March 20, 2020, BookIt was still receiving and processing PayDelay payments from consumers for upcoming trips.

44. While BookIt was planning to cancel all travel reservations, Finlaw knew or should have known that BookIt was still receiving and processing PayDelay payments from consumers for upcoming trips.

45. On or about March 21, 2020, BookIt cancelled all future bookings at resorts and hotels in non-U.S. locations.

46. On or about March 21, 2020, BookIt sent consumers an email message with the subject "Your BookIt.com Cancellation." The communication informed consumers that BookIt was cancelling all upcoming bookings for travel services such as hotels and flights and that no refunds could be processed.

47. Finlaw approved of, implemented and controlled BookIt's policy not process refunds to consumers who made payments to BookIt for travel services, and whose travel plans BookIt cancelled.

48. On or about March 21, 2020, BookIt posted a notice on its website that the company had “paused normal operations” in response to Coronavirus.

49. On or about March 21, 2020, BookIt closed its customer service call centers and stopped receiving or responding to incoming customer calls.

50. BookIt has not provided consumer refunds for trip services cancelled by the company since the company announced the suspension of operations on or about March 17, 2020.

51. BookIt has solicited and received refunds for cancelled travel reservations from travel services providers, but the company has not forwarded these refunds to the consumers to whom they are owed.

52. Finlaw knew or should have known that BookIt has solicited and received funds for cancelled travel reservations from travel services providers, but has not forwarded these refunds to the consumers to whom they are owed.

#### **IV. CAUSES OF ACTION**

##### **COUNT ONE**

##### **Violation of G.L. c. 93A**

53. The Commonwealth repeats and realleges the foregoing paragraphs and incorporates them herein by reference.

54. The Consumer Protection Act, G. L. c. 93A, § 2, prohibits unfair or deceptive acts or practices by any person in the conduct of any trade or commerce.

55. BookIt and Finlaw have willfully, knowingly, and repeatedly violated the Consumer Protection Act, G.L. c. 93A by engaging in the following practices:



- a. Failing to forward consumers' payments to places of travel accommodation such as hotels and resorts for stays in progress or after completion of such stays;
- b. Obtaining refunds from travel service providers for cancelled services and not forwarding these payments to consumers and instead retaining those payments for its own benefit;
- c. Taking or accepting payments from consumers for upcoming travel while the company was planning to suspend operations and cancel all future travel reservations;
- d. Taking or accepting payments from consumers for upcoming travel after the company announced the suspension of operations and knew or should have known the travel reservations would be cancelled;
- e. Accepting new reservations from consumers for travel while the company was planning to suspend operations and cancel all future travel reservations;
- f. Accepting new reservations from consumers for travel after the company announced the suspension of operations and knew or should have known the travel reservations would be cancelled;
- g. Failing to offer consumers refunds for travel reservations cancelled by BookIt or otherwise not provided to consumers.

## COUNT TWO

### **Violation of G.L. c. 93A and 940 C.M.R. 15.00 *et seq.***

56. The Commonwealth repeats and realleges the foregoing paragraphs and incorporates them herein by reference.

57. Pursuant to the authority provided by G.L. c. 93A, § 2(c), the Attorney General has promulgated regulations defining unfair and deceptive practices in the sale of travel services to the public. See 940 C.M.R. 15.00 *et. seq.*

58. 940 CMR 15.00 applies to a “Seller of Travel Services,” defined as “a person, business entity, or other legal entity that sells, provides, contracts for, or arranges travel services, or that represents that it sells, provides, contracts for, or arranges travel services.” 940 CMR 15.02. “Travel Services” include “the provision of transportation by air, sea, or land, or the provision of other goods or services related to recreational, cultural or educational travel, including but not limited to lodging, food, guided tours, or instruction.” *Id.*

59. BookIt is a “Seller of Travel Services” as defined by 940 C.M.R. 15.00 because it is a business entity that sells, contracts for, and arranges travel services including but not limited to hotel and resort reservations.

60. 940 C.M.R. 15.03 prohibits Sellers of Travel Services from misrepresenting “in any manner that it can sell, provide, contract for, or arrange any particular travel service to consumers where the seller knows or has reason to know that: a) the particular travel service is not available, or b) the seller is not in a position to sell, provide, contract for or arrange the travel service as represented.”

61. BookIt violated 940 C.M.R. 15.03 by:
- a. Accepting new reservations from consumers for travel while the company was planning to suspend operations and cancel all future travel reservations;
  - b. Accepting new reservations from consumers for travel after the company announced the suspension of operations and knew or should have known the travel reservations would be cancelled;
  - c. Obtaining or accepting payments from consumers for upcoming travel while the company was planning to suspend operations and cancel all future travel reservations;
  - d. Obtaining or accepting payments from consumers for upcoming travel after the company announced the suspension of operations and knew or should have known the travel reservations would be cancelled;

62. For the purposes of 940 CMR 15.00 *et seq.*, “Sellers of Travel Services” include “Tour Operators.” A “Tour Operator” is “a seller of travel services that creates and sells travel packages, either directly to the public or indirectly to the public through any other seller of travel services.” 940 CMR 15.02. A “Travel Package” is “any combination of travel services offered for sale as a unit, including ocean cruise services.” *Id.*

63. BookIt is a “Tour Operator” as defined by 940 C.M.R. 15.00 because the company sells combinations of travel services as units to consumers through its website and sales representatives.

64. When a Tour Operator fails to provide any of the travel services that the consumer has purchased directly or indirectly from the Tour Operator, it must offer the consumer his or her choice of the following three options: 1) a refund equal to the fair market retail value of the

undelivered service; 2) a specifically identified substitution travel service of equal or greater fair market retail value; and 3) a specifically identified substitution travel service of lower fair market retail value and a refund equal to the difference in the fair market retail prices of the services.

940 CMR 15.06.

65. BookIt violated 940 C.M.R. 15.06 by:

- a. Failing to offer consumers whose travel services BookIt cancelled or otherwise failed to provide with their choice of the following: 1) a refund equal to the fair market retail value of the undelivered service; 2) a specifically identified substitution travel service of equal or greater fair market retail value; and 3) a specifically identified substitution travel service of lower fair market retail value and a refund equal to the difference in the fair market retail prices of the services.

## **VI. PRAYER FOR RELIEF**

WHEREFORE, pursuant to G.L. c. 93A, § 4, the Commonwealth requests that this Court enter judgment in its favor and grant the following relief after trial on the merits:

6. Award restitution to consumers injured by Defendants' unfair or deceptive acts or practices;
7. Award civil penalties of \$5,000 for each violation of G.L. c. 93A;
8. Award attorneys' fees, costs and other relief available under G.L. c. 93A;
9. Enter injunctive relief preventing BookIt from continuing to engage in the unfair and deceptive practices set forth herein;
10. Grant such other relief as permitted by law and as the Court deems appropriate.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS  
MAURA HEALEY  
ATTORNEY GENERAL

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