

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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**THE PEOPLE OF THE STATE OF NEW YORK,
by LETITIA JAMES, Attorney General of the
State of New York,**

Petitioner,

-against-

**Vantage Travel Services, Inc. and
Henry R. Lewis, individually and as an officer of
Vantage Travel Services, Inc.**

VERIFIED PETITION

**Index No. _____
IAS Part _____**

Hon. _____

Respondents.

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Petitioner, the People of the State of New York, by their attorney, LETITIA JAMES, Attorney General of the State of New York ("NYAG"), brings this proceeding against Respondents Vantage Travel Services, Inc. d/b/a Vantage Deluxe World Travel ("Vantage Travel") and Henry R. Lewis (collectively, "Respondents") and alleges as follows:

NATURE OF THE ACTION

1. The NYAG brings this proceeding on behalf of the People of the State of New York pursuant to Executive Law § 63(12) and GBL § 349 for injunctive relief, restitution, disgorgement, civil penalties and other remedies for Respondents' failure to pay refunds for trips that were cancelled or not provided.

PARTIES AND JURISDICTION

2. Petitioner is the People of the State of New York, by their attorney Letitia James, Attorney General of the State of New York.

3. Petitioner brings this proceeding pursuant to: (a) Executive Law § 63(12), which authorizes the Attorney General to bring a special proceeding for injunctive relief, restitution, damages, disgorgement and costs against any person or business that has engaged in repeated or persistent fraud or illegality in the conduct of its business and (b) General Business Law (“GBL”) Article 22-A, which prohibits deceptive acts or practices and false advertising in the conduct of any business and authorizes the Attorney General to seek injunctive relief, restitution, penalties and costs.

4. Respondent Vantage Travel is a Massachusetts corporation with headquarters at 90 Canal Street, Boston, MA, 02114.

5. On June 29, 2023, Respondent Vantage Travel filed a Chapter 11 Bankruptcy Petition in the United States Bankruptcy Court for the District of Massachusetts (Eastern Division) (“Bankruptcy Court”) In re: VANTAGE TRAVEL SERVICE, INC. Case No. 23-11060-JEB. Because the NYAG brings this government enforcement proceeding pursuant to the exercise of its police powers, it is exempt from the automatic stay. 11 U.S.C. § 362(b)(4).¹

6. Henry R. Lewis is the Founder, sole owner of Vantage Travel, and its President, CEO, CFO, Treasurer, Secretary and sole board member. Lewis resides at 101 E. Camino Real Apt 921, Boca Raton, FL 33432.

7. The NYAG has provided pre-litigation notice pursuant to GBL §§ 349 (c) and 350-c.

¹ 11 U.S.C. provides an exemption from the automatic stay of “the commencement or continuation of an action or proceeding by a governmental unit... to enforce such governmental unit’s... police and regulatory powers, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit’s...police or regulatory power.”

FACTS

8. Vantage Travel was in the business of offering trips to consumers, including New York consumers, through its website at www.vantravel.com and also through direct mail advertisements. On August 18, 2023, Pacific Travel Partners, a subsidiary of Aurora Expeditions, acquired the business and operating assets of Vantage Travel that was approved by the United States Bankruptcy Court. See <https://www.aurora-expeditions.com/vantagexplorations/>

9. Vantage Travel arranged ocean and river cruises around the world as well as land tours in Africa, Asia and North and South America.

10. During the last three years, the Better Business Bureau of Eastern MA, ME, RI & VT (“BBB”) has received over 500 complaints from consumers concerning Vantage Travel, including 40 complaints from New York consumers. See Affirmation of Assistant Attorney General Melvin Goldberg (“Goldberg Aff.”) Exs. 1.A – 1.F. The NYAG has separately received 122 complaints. See Goldberg Aff. Exs. 2.A – 2.AB (28 consumer Affidavits); Ex. 3 (Affirmation of Assistant Attorney General Andre Lugo (“Lugo Aff.”)). The majority of these complaints state that consumers were waiting months, and in some cases over a year or more, to receive refunds from Vantage Travel, often for amounts in excess of \$10,000, for trips that either they had to cancel for health reasons or were cancelled or “postponed” by Vantage Travel. Consumers also repeatedly complain that they were unable to reach anyone at Vantage Travel or that they were promised refunds that never came.

11. Some consumers received refunds only after waiting in some cases more than a year. Other consumers are still waiting lengthy periods of time and have yet to receive refunds

or even a timeframe for when the refunds will be made. Some of the consumers who complained they were waiting lengthy periods received refunds subsequent to filing their complaints with the NYAG during the course of the NYAG investigation.

12. For more than the last three years, Vantage Travel has repeatedly cancelled scheduled trips, calling them “postponements” instead. Typically, these so-called “postponements” were a year later than the original departure date of the scheduled trip. Vantage Travel postponed some trips multiple times.

13. For example, one 92-year-old New York consumer fully pre-paid over \$20,000 for a trip with Vantage Travel for a cruise around Iberia scheduled to depart in August 2022. Vantage Travel cancelled the trip, claiming that it had merely been “postponed” until a year later, August 2023, at which point the consumer would have been one month away from turning 94. Vantage Travel told this consumer that she could not get a refund because the trip was not cancelled. When she told Vantage Travel that at her age, she could not plan trips one year in advance, they offered her a travel credit for another trip, scheduled to depart in July 2022. But then five weeks before that departure, Vantage Travel again supposedly “postponed” that trip to August 2023. Vantage Travel offered the consumer another travel credit but refused to provide a refund. *See Goldberg Aff. Ex. 2.O.*

14. Vantage Travel concedes that it owes refunds to scores of New York consumers, in many cases amounting to thousands of dollars per consumer. In response to an NYAG subpoena duces tecum dated October 4, 2022 for information regarding refunds to New York consumers, Respondents produced a spreadsheet for a representative sample of New York consumers acknowledging that it still owed thousands of dollars to New York consumers. *See Goldberg Aff. Ex. 4 (Spreadsheet Column M and Notes, Column N).* Respondents also

produced another spreadsheet in response to the NYAG's subpoena acknowledging that it still owed thousands of dollars to scores of additional New York consumers. *See* Goldberg Aff. Exs. 5.A. – 5.E and in particular, Exs. 5.C,CN, page 8, Row 1245, Columns R and S and Ex. 5 E. Explanatory Note. Nevertheless, many of these refunds owed to New York consumers have, upon information and belief, to date not been paid.²

15. In addition to these consumers, Vantage also owes refunds to New York consumers who do not appear on the spreadsheets as cancelled but whose trips were in fact cancelled by Vantage Travel but deceptively called “postponed.”

16. Even when Vantage Travel admits that it cancelled a trip, it routinely delays making a refund for a year or more. For example, Vantage Travel concedes that it has owed one New York consumer whose trip it cancelled in March 2020 a refund of over \$7,000 but on information and belief has not yet made the refund. *See* Goldberg Aff. Ex. 4 at Row 23, Columns M and N.

17. And when New York consumers cancel a trip because of health reasons, which Vantage Travel represents that they may do for a refund, they also fail to provide a refund.

18. For example, in March 2021 a New York couple booked a trip to Brazil and the Amazon with Vantage Travel for a total cost of \$18,736. When the husband was diagnosed with a serious heart condition his doctor advised them to cancel their trip. They were told by Vantage to submit a claim with all necessary documentation. They had purchased trip insurance through Vantage Travel. After four weeks the claim was approved by the insurance company.

² The NYAG is aware of only one New York consumer who received a refund from Vantage Travel since it produced Exs. 4 and 5 in response to the NYAG's subpoena, It may have made other refunds to New York consumers since they were produced that the NYAG is unaware of.

They were then told to call Vantage Travel to receive the reimbursement. When they called Vantage Travel they were told that there was a new government policy to protect struggling travel companies which stated that they are not obliged to offer cash reimbursements - only vouchers to future travel. In fact, there was no such government policy, and when the consumers asked for the government name and policy, Vantage Travel was not able to provide that information. Only after the couple filed a complaint with the NYAG in March 2022 and the NYAG contacted Vantage Travel did it finally provide a refund. *See Goldberg Aff. Ex. 2.V.*

19. Vantage Travel also acknowledges that it owes refunds to other New York consumers who cancelled their trips for health reasons in 2020. For example, it concedes that it has owed one New York consumer who cancelled for health reasons more than \$15,000 since 2020 and another over \$6,000. *See Goldberg Aff. Ex. 4 at Rows 19 and 31, Columns M and N.*

20. Despite conceding that it owes refunds to numerous consumers, Vantage Travel claims that it has a backlog of refund requests. In response to numerous recent consumer complaints filed with the BBB, it said, “Vantage understands that you are awaiting a refund for reservation *****. Vantage has had an enormous number of customer inquiries to respond to, as well as trips to reschedule and adjust, and has endeavored to do so in a timely and efficient manner. However, due to the backlog of refunds, we are unable to provide a timeframe for refunds at this moment. We understand it is not the anticipated response; please know accounting is moving as quickly and efficiently as possible.” *See Goldberg Aff. Ex. 6.*

21. Recently, the BBB posted on its Vantage Travel profile page that the company had a rating of 1.04 out of a perfect 5.0. It also posted two Alerts on its Vantage Travel profile page, one informing consumers that the company had filed for bankruptcy on June 29, 2023, and the other announcing that the BBB Board of Directors on July 5, 2023 revoked Vantage Travel’s

BBB Accreditation stating that it was due to Vantage Travel's failure to adhere to the BBB requirement that Accredited Businesses meet and abide by the BBB's standards to fulfill all contracts, commitments and representations, provide a response to each complaint that is professional, addresses all significant issues raised by the complainant, includes appropriate evidence and documents supporting the business' position, and explains why any relief sought by the complainant cannot or should not be granted. *See* Ex. 7 to Goldberg Aff. (BBB Vantage Travel profile page).

22. Vantage Travel's handling of cancellations and refunds, including its failure to provide refunds to consumers whose trips were cancelled for health reasons or whose trips were cancelled or postponed by Vantage Travel, constitutes deceptive practices. These practices also violate the terms and conditions contained in its "Tour Participation Agreement."

23. The Tour Participation Agreements, attached hereto and incorporated by reference herein and at Goldberg Aff. Exs. 8.A – 8.C, provide that consumers may cancel their trips and request a refund, which, depending on when they cancel before the date of departure, will be subject to varying penalties for cancellation. The schedule of cancellation fees is prominently featured in the Tour Participation Agreements and some important sections of the cancellation policy are bolded and appear under the heading "Cancellations and Refunds." *See* Goldberg Aff. Exs. 8A., 8.B., and 8.C. at page 2 of each

24. Notwithstanding these provisions, Vantage Travel repeatedly failed to provide refunds for many months to New York consumers who cancelled their trips as set out in its Tour Participation Agreements.

25. Further, the Tour Participation Agreements provide that if Vantage Travel cancels a trip, it will provide a "prompt refund" to consumers of all amounts paid to the date of the

cancellation. *See* Goldberg Aff. Ex. 8.A – 8.C, Alterations and Modifications, at page 3 of each.

26. Notwithstanding these provisions, as set out above, Vantage Travel repeatedly failed to promptly provide a refund in accord with its Terms and Conditions when it cancelled a trip. Instead, if any refund was provided to those New York consumers, it was only after many months of delays, or in some cases over a year. Consumers repeatedly contacted Vantage Travel as to the status of their awaited refunds and were given various explanations for the delays. In some cases, New York consumers waited more than a year for refunds in amounts of more than \$10,000. *See* Goldberg Aff. Exs. 2.W; 2-X and Ex. 4, Row 18, Columns H, I, and J .

27. Moreover, despite these provisions for prompt refunds in the event Vantage Travel cancels a trip, the Tour Participation Agreements reserve Vantage Travel’s right to “modify tour itineraries” and “substitute hotels and accommodations in [their] discretion.”

28. Vantage Travel claims these sections allow it to postpone trips to a future date, and to provide a travel credit to consumers when Vantage Travel postponed trips when it says no such thing. *See* Goldberg Aff., Ex. 9, Memo from Vantage Travel’s General Counsel, dated January 10, 2021 at page 2. These sections do not even mention either postponement or travel vouchers. If New York consumers did not wish to take the postponed trips, Vantage Travel only offered them a travel credit of at least the amount of the original trip. In some cases, Vantage Travel postponed trips for a year or more after the original scheduled date, for example from August 2022 to August 2023. *See* paragraph 13, above. Many consumers did not want the travel credit and requested a refund instead. One New York consumer booked a trip to depart in July 2022 and was rebooked for a different trip scheduled for June 2023. The consumer was denied a refund. Another New York consumer booked a trip that was rescheduled for April 2023, more than a year later than the original departure date. She was denied a refund. *See* Goldberg Aff.

Exs. 2.R and 2.G.

29. In numerous cases, Vantage Travel failed to provide refunds to New York consumers who requested cancellation instead of the travel credit for a postponed trip even if the requests for cancellation were sufficiently before the departure date of the postponed trip to obtain a refund per the cancellation terms of its Tour Participation Agreement. *See Goldberg Aff. Ex. 4, Rows 7, 11, 23, and 25, Columns K, M and N.*

Henry Lewis's Knowledge and Participation

30. Lewis has knowledge of and participated in the deceptive practices described above and is therefore liable for the acts and practices set forth above.

31. From March 2020 through July 2021, Lewis, in a series of "Dear Travelers" communications that he signed as the Founder and Chairman of Vantage Travel, repeatedly communicated with consumers about Vantage's delays to their travel plans. *See Goldberg Aff. Ex. 10.*

32. In many of these communications, Lewis referred to Vantage Travel's decision to "postpone" trips due to Covid-19. *See Ex. 10* ("we've made the difficult decision to extend the postponement of all journeys through December 31, 2020", at bottom of page 6; ("we've made another difficult decision to postpone our journeys through March 28th 2021), at middle of page 6; ("we've made the difficult decision to postpone our journeys through May 1, 2021"), at page 5; ("with the exception of [certain trips], we've made the difficult decision to postpone all journeys through June 1 [2021], along with some additional departures beyond June 2021."), at bottom of page 4.

33. These communications did not provide a date by which the "postponed" trip would take place nor offer consumers the ability to receive a refund.

34. In almost every communication, Lewis mentioned the high call volume to Vantage Travel’s customer service line and often added that this was “resulting in unusually long wait times.” *Id.* at Goldberg Aff. Ex. 10. Despite Lewis’ awareness that consumers could not timely reach customer service to discuss “postponed” trips, this problem was not rectified. Indeed, it was one of the issues that caused the BBB to recently revoke Vantage Travel’s BBB accreditation.

35. In emails to consumers who cancelled their trips due to Covid-19, Lewis repeatedly mentioned a “risk-free cancellation policy” for future trips and offered credits or other incentives for consumers to book new trips, which Lewis knew or should have known could not be fulfilled. *See* Goldberg Aff. Ex. 11.

36. In addition, Lewis, as the sole director of Vantage Travel, submitted to the Bankruptcy Court on June 29, 2023, the Consent of the Sole Director to a number of resolutions to be presented to Bankruptcy Court. *See* Goldberg Aff. Ex. 12 (Consent of the Sole Director).

FIRST CAUSE OF ACTION
Executive Law § 63(12) Fraud

37. The NYAG re-alleges and incorporates Paragraphs 1 - 36.

38. Executive Law § 63(12) authorizes the NYAG to bring an action or proceeding for injunctive or other relief when any individual or business engages in repeated or persistent fraudulent conduct.

39. By virtue of the conduct alleged above, Respondents have engaged in repeated and persistent fraudulent conduct.

40. Respondents therefore engaged in repeated and persistent fraud in violation of Executive Law § 63(12).

SECOND CAUSE OF ACTION
Executive Law § 63(12) Illegality – Violation of GBL § 349

41. The NYAG re-alleges and incorporates Paragraphs 1 - 36.

42. Executive Law § 63(12) authorizes the NYAG to bring an action or proceeding for injunctive or other relief when any individual or business engages in repeated or persistent illegal conduct.

43. GBL § 349 prohibits deceptive practices in the conduct of any business, trade or commerce in the state of New York.

44. By virtue of the conduct alleged above, Respondents have engaged in deceptive acts and practices in violation of GBL § 349.

45. Respondents therefore have engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

DEMAND FOR RELIEF

WHEREFORE, Petitioner requests an order and judgment pursuant to Executive Law § 63(12) and GBL § 349:

- a. Declaring that Vantage Travel and Henry R. Lewis have violated Executive Law § 63(12) and GBL § 349;
- b. Permanently enjoining Vantage Travel and Henry R. Lewis from engaging in the deceptive acts and practices alleged herein and from committing future violations of Executive Law § 63(12) and GBL § 349;
- c. Ordering Respondents to perform an accounting of revenues obtained from and refunds, if any, made to New York consumers;
- d. Ordering Respondents to pay restitution and damages to New York consumers whose trips were cancelled, postponed or otherwise not provided;

- e. Ordering disgorgement of ill-gotten profits by Respondents;
- f. Imposing civil penalties of \$5,000 for each violation of GBL § 349 pursuant to GBL § 350-d for each trip that was cancelled, postponed or otherwise not provided where the consumer did not receive a prompt refund;
- g. Imposing civil penalties of \$10,000 for violation of GBL § 349-c for conduct that was perpetrated against one or more elderly persons;
- h. Ordering Vantage Travel and Henry R. Lewis each to pay to the State of New York costs of \$2,000 pursuant to CPLR § 8303(a)(6);
- i. Granting such additional relief as the Court may determine to be just and proper.

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York


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LAURA J. LEVINE
Deputy Bureau Chief
Bureau of Consumer Frauds and Protection

VERIFICATION

STATE OF NEW YORK)
) **SS:**
COUNTY OF NEW YORK)

MELVIN L. GOLDBERG, being duly sworn, deposes and says:

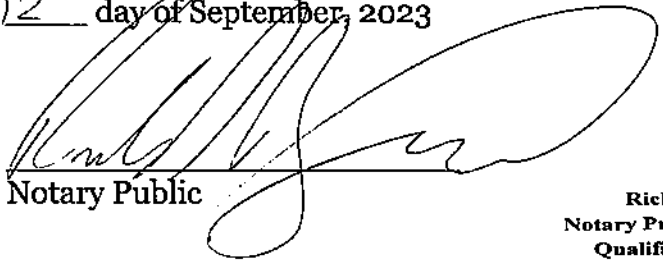
1. I am an Assistant Attorney General in the office of Letitia James, Attorney General of the State of New York, and duly authorized to make this verification.

2. I have read the foregoing petition and know the contents thereof. The same is true to my knowledge, except as to matters stated to be alleged on information and belief, and as to those matters I believe them to be true.

3. The reason this verification is not made by Petitioner is that Petitioner is a body politic. The Attorney General is their statutory representative.


MELVIN L. GOLDBERG

Sworn to before me this
12 day of September, 2023


Notary Public

Richard D. Borgia Jr.
Notary Public State Of New York
Qualified In ~~New York~~ County suffolk County
Lic. 01B06070720
Commission Expires ~~20~~ March 6, 2026