

Consumer Protection in Oaxaca, Mexico - A Case Study

Procuraduría Federal del Consumidor (PROFECO), Mexico's Federal Office of Fair Trading, is the closest you can get to an American or Canadian style government administered consumer protection bureau and mediation facility. Its Oaxaca regional office is run in a relatively swift and efficient manner, meaning that it is extremely user friendly from the perspective of an expat seeking recourse against trades and businesses located both in the state and further abroad. Naturally, though, it's subject to limitations, and to idiosyncrasies to which we are not accustomed. I purchased a hot water heater made by Hidro Electrica, SA de CV (HESA), which to my amazement came with an eight-year limited warranty. Usually in Oaxaca one buys domestically produced or assembled goods with a 30 day guarantee. In the odd case it's for three months (extended warranties are rarely available, since manufacturers and insurers are aware of the lack of adequate quality control in Mexican production). Typically your widget stops widgeting within a week after expiry date ... be it a washing machine, microwave, TV, or long-life bulb.

After about a year one side of the dual-tank HESA boiler sprang a leak, and then a couple of months later the other side followed suit. After six months and several phone calls to my retailer, Tubos y Conexiones, the HESA authorized repairman arrived with two pairs of replacement tanks, neither of which matched the tanks which came with the unit I had purchased. "Don't worry," Roberto assured. "I'll bring you the right tanks when they're in stock, so just choose one of these two sets for the time being so your heater will at least function." Whenever you sign anything, if you're not entirely satisfied with the service provided or product received, qualify your acknowledgment. Doing so assists when availing yourself of the resources of PROFECO. "Temporary solution pending the arrival of the elite stainless steel tanks," I noted on the work order. Anything in writing appears to be taken as gospel in Oaxaca, therefore regarded as almost irrefutable evidence. Just ask anyone who's been held in jail for two years pending trial, based on little more than newspaper clippings alleging criminal activity.

Over the course of the next year I periodically attended at Tubos y Conexiones, each time pleading with my contact person, Boneque the branch manager, to help me get the proper tanks before the replacements went awry. Boneque was in fact cooperative, so much so that he admitted to me that the HESA service department had become a real pain, with complaints and lack of their resolution mounting. Hilda, HESA's Oaxaca representative, had left the company, and serviceman Roberto was no longer accepting work from the manufacturer.

Three or four emails to the HESA service department went unanswered, as did the message left at HESA for its chief technician. Hearing "Mr. Levin will return your call in 15 minutes," by this time did not instill the confidence in the company I had been seeking. With my bill of sale and warranty booklet, copies of emails, the qualified work order acknowledgement, and notes of every communication or attempt at

reaching a resolution all in hand, I attended at the offices of a friend, litigator Lic. Edna Franco: "Don't worry about my fee Alvin. My concern is that on a claim worth less than 15,000 pesos, the out-of-pockets will kill you. Go to PROFECO ... that's what I tell all my clients to do before they retain me."

Oaxaca doesn't have a small claims court system, which means that regardless of the peso value of your claim your costs will be the same, subject to working out a deal with your lawyer for a reduced fee. Edna advised me that proceeding through the court system on your own, even for a former Canadian litigation lawyer, is an almost insurmountable task. Hence, PROFECO is the way to go, subject to your fact situation meeting its mandate and guidelines, and your willingness to use a government-run mediation facility.

The Oaxaca PROFECO offices are well staffed, yet used by a relatively modest percentage of the populace, meaning that compared to government offices of transportation, immigration and taxation for example, they are a welcomed and expedient breath of fresh air. Intake reviews your documentation and advises what if anything is lacking, and how many copies are required. Your primary advisor then reviews your paperwork, asks for clarification, and prepares a claim package. Feel free to supplement the information she selects to append to your claim, by suggesting the inclusion of any additional documentation you might have. Remember that as competent and seemingly helpful as she might appear, she is nevertheless a Oaxacan civil servant: "Is it okay if we also attach copies of these notes I made over the past year?," I queried. More hard evidence.

My initial September 11, 2008, attendance terminated with a hearing date I negotiated to meet my schedule, October 10, 2008. "You know," advised Aurea Guzman Palacios, "you should also name your retailer, Tubos y Conexiones, as a respondent, even though it seems like it didn't do anything wrong." I wouldn't have advised a client with a legal dispute any differently!

"We'll look after serving them, but remember to make sure you're here at 10 am sharp on the October 10th." Even in Toronto we're accustomed to giving 15 minutes grace, so how could it possibly be that Oaxaca, government to boot, could possibly adhere to a more stringent and exacting timetable?

Service of the proceeding and notice of the date is effected by the regional PROFECO office where the company carries on business. In the case of HESA, this meant in the State of Mexico.

A Tubos y Conexiones representative attended, arriving shortly before the appointed hour. HESA was a no show. The PROFECO mediator, Javier, called the Estado de México PROFECO process server, and was advised that HESA was not served because company employees were on strike and the factory was shut down. The mediator was skeptical, indicating to me that sometimes federal government employees forget to do their jobs, or simply can't be bothered and make up stories. But in this case we should give them the benefit of the doubt and simply ask them to once again try to serve the documentation with a fresh return date, a month down the road. November 10th was set for the new

appointment, with more documentation drafted, the preamble including the circumstances of the adjournment.

Before conceding that PROFECO was unable to serve HESA, in the presence of Javier the conciliator and Engineer Octavio the Tubos representative, I called the HESA offices. Lorena Torres, receptionist, advised me that the employees were not on strike, nor had they been in the recent past, and that the company was functioning as normal. So much for the veracity of the State of Mexico PROFECO process server. PROFECO levies a fine against a company for each missed appointment, the amount increasing with each failed attendance. Should HESA fail to attend the next date, after having received notice, the fine would be 172.79 pesos, making it hardly a compelling reason for the company to send someone from head office.

By the time November 10th had arrived, my hot water heater, wrong new tanks still in place, had once again sprung a leak, albeit a small one. The main implication is that the dripping water puts out the pilot from time to time, so unless you're constantly checking, you never know when your shower will be hot or cold. Neither HESA nor Tubos attended on the new date for the proceeding. The PROFECO mediator checked on his computer, and with the State of Mexico regional office, once again being led to believe that HESA was on strike. And once again I called HESA and confirmed that business was operating as normal, without strike. "Don Alvin," Javier assured, "we'll try to serve HESA once more, and hopefully this time the process server's supervisor will have a word with him and tell him that there is no strike." More importantly, the conciliator decided to levy a 3,000 peso fine against Tubos for not sending its representative to this second meeting. I didn't ask why the fine for Tubos was so steep, simply stunned that my ally was being dinged with a sizeable stipend while the scoundrel was getting off unscathed because it ostensibly had no notice of the proceeding. "I think we should be trying to convince Tubos that it should share responsibility, and maybe this fine will be what it needs to convince it to come to the table and acknowledge that you were relying on the judgment of its salesperson when you decided to buy a HESA product." Javier was treating me with the utmost respect (i.e. "Don Alvin"), giving me advice, and being pro-active in his approach to the matter. "Let's give them a bit more than a month to be served, just to be safe. How about December 15th?"

On December 15th, Engineer Octavio once again attended, but no one from HESA. This time PROFECO had a statement from its process server stating that indeed HESA was on strike, all very strange since there has not been any such indication on the internet. "It could be that some company employees are striking, and HESA is able to use this as a way to avoid service of legal documents for the entire company," Javier surmised. Only PROFECO is permitted to effect service of PROFECO documents, so my offer to have a friend in Mexico City attend at HESA with the papers was rejected.

I decided enough was enough, and if I could exact upwards of the 3,000 peso fine from Tubos, and buy a new, alternate brand product, that would be the best, at least in terms of finishing my business with PROFECO. I could continue to pursue HESA, but only in court since the PROFECO proceeding would be closed out. We adjourned until the 17th, the plan being that in the interim I would attend at Tubos, select a comparable product of another manufacturer, and be given a 2,500 peso credit.

As long as PROFECO does not register a fine with a companion governmental branch, presumably finance or collections, the amount or any portion thereof can be applied to a comprehensive resolution as part of a negotiated settlement. PROFECO doesn't otherwise receive the fine amount, nor does the consumer. The paperwork which reflects the levying of a fine can be redrafted with no mention of a fine. Literally, one branch of government does not know what the other branch has done.

I selected an alternate brand, Delta, with equivalent specifications and a six-year warranty, for a net cost to me of 9,800.25 pesos. Three years earlier I had paid 11,736 pesos for the HESA hot water heater. Given Mexico's rate of inflation, I didn't do too badly. Although I have released Tubos y Conexiones from any further obligation to me, I have preserved the right to proceed in court against HESA, for all losses including the cost of my new Delta boiler. Economically feasible or not, that's the way I intend to go. PROFECO has its limitations, especially since its power to force and enforce resolutions in this type of consumer dispute are restricted. However, it does provide an important and valuable alternate means of dispute resolution, attractive for a number of reasons:

- 1) The system works fast, much more so than that to which we are accustomed in Canada and the US;
- 2) There is no cost to the consumer;
- 3) The staff are helpful, obviously well trained, and willing to render legal or quasi-legal advice ... although not necessarily correct advice, it's nevertheless helpful for foreigners, often with limited networks otherwise able to provide counsel;
- 4) Its mediators appear to have good mediation skills and be sincerely motivated to bring parties together with a view to achieving resolutions in a cost-effective and sensible fashion.

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