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BPB/ma/17xii07

DECISION

In the Matter of:

Latrach Turismo

Encomenderos 260-0722

Las Condes

Santiago

Chile

(IATA Numeric Code: 76-6 0672 0)

Applicant,

vs.

Agency Administrator

IATA

International Air Transport Association

703 Waterford Way

(NW 62nd Avenue)

Suite 600

Miami, Florida 33126

U.S.A.

Respondent.

Introduction

1. The Review giving rise to this decision has been made on the authority of IATA Resolution 820e, in which the powers and duties of the Travel Agency Commissioner are set out. The undersigned is the acting Agency Commissioner for Area One, appointed in accordance with the provisions of Resolution 820d.

Parties

2. The Applicant is Latrach Turismo, an IATA Accredited Agent with registered office in Santiago, Chile. The Applicant, a partnership, has been on the IATA Agency List since 1990. At the hearing of 14th December 2007, the Applicant was represented by the joint owners: Mrs Silvia Latrach and Ms Victoria Latrach, with Mr Jaime Latorre, commercial manager.

3. The Respondent is the Agency Administrator of the International Air Transport Association ('IATA'), acting for Member airlines which have delegated certain functions to IATA. IATA exists by virtue of a Canadian Act of Parliament (Statutes of Canada 1945, Chap. 51, as amended in 1975) and is the worldwide association of airlines that operate internationally. It performs common services for its 265, or so, Members that include administering the Agency Programme and managing the Billing and Settlement Plan ('BSP') in Chile. The BSP is an industry centralised sales reporting and settlement system. The Agency Administrator has particular responsibility for the management of these activities.

4. IATA divides the world into Areas One, Two and Three. The Agency Administrator's main base in Area One, the Americas, is Miami, Florida. The country field office for Chile, which exercises management responsibility for the BSP Chile, is situated in Santiago.

5. The Agency Programme consists principally of resolutions adopted by the IATA Passenger Agency Conference which lay down the rules and regulations governing business relations between IATA Accredited Agents and IATA Members.

6. At the hearing, the Respondent was represented by Ms Diana Larrañaga, Assistant Director, Agency Services – Area I and by Ms Heather MacDonald, IATA Country Manager, Chile. Also participating were Ms Valeria Sepulveda, Finance Manager and Ms Tamara Smoje, Passenger Services Coordinator.

Contractual Considerations

7. The Passenger Agency Conference is composed of all those IATA Members who appoint a delegate to it. Per the IATA Articles of Association, it is a sovereign body within IATA and its Resolutions are binding on all Members that operate passenger services, whether or not they have appointed a delegate to the Conference. All IATA Accredited Agents are similarly bound. The IATA Secretariat is not empowered to alter or overrule a Conference Resolution.

8. The contractual instrument in this matter is the Passenger Sales Agency Agreement (Resolution 824), signed by the Applicant. Under that agreement, IATA acts for those of its Members that appoint the travel agent signatory as their sales agent. Incorporated into that agreement is Resolution 808 – Passenger Sales Agency Rules and the BSP Manual for Agents (Attachment 'I' to Resolution 850). The Agreement and Rules mentioned above are published in the Travel Agent's Handbook, a progressively updated publication, furnished by IATA annually to all IATA Accredited Agents, using an electronic medium. Also included in that publication is Resolution 832 – Reporting and Remitting Procedures. The January 2007 edition of that publication applies to the review proceeding giving rise to this decision.

9. The provisions of Resolution 820e, - Reviews by the Travel Agency Commissioner, at § 1.1.10, allow an Accredited Agent to seek review by the Travel Agency Commissioner on grounds that the Agency Administrator has allegedly not followed correct procedure as delegated by the Passenger Agency Conference, to that Agent's direct and serious detriment. The Applicant has relied on that provision to bring its request for review and the undersigned has accepted to conduct a review.

Facts

10. As an IATA Accredited Agent the Applicant reports and routinely remits its airline sales through the BSP Chile. Under that BSP, remittances are made weekly to a designated bank, against a BSP Billing sent electronically via *BSPLink* to each Accredited Agent.

11. For the fourth BSP Billing Period of October 2007, the Applicant was electronically invoiced CLP33,775,516 (USD66,750.03). On 7th November, the Applicant caused to be remitted to BSP Clearing Bank the amount of CLP33,755,516 (USD66,710.50), which represented a short payment of CLP20,000 (USD39.53).

12. Per Resolution 832, the BSP Clearing Bank is required to report on the Remittance Date to the BSP Management all travel agent payment discrepancies in the current settlement.

13. On 8th November, the Applicant received the Respondent's alert and letter notifying it of the short payment and calling for immediate settlement of it. Settlement was effected in cash that same day.

14. The Respondent's letter notified the Applicant of two instances of irregularity being recorded for failure to pay on time (in Chile, six instances of irregularity in a consecutive 12 months period would give rise to the Agent being declared in default).

15. The Respondent also requested the Applicant to furnish immediately a bank guarantee in favour of the Respondent, in the amount of USD 300,000.00. That request was held in abeyance pending the outcome of the Travel Agency Commissioner's review.

16. The Applicant contests the Respondent's actions, on the grounds that the short payment was the consequence of a typing error resulting in transpositioning 5 instead of 7 being recorded in the payment order. A copy of the Applicant's bank statement for 7th November was produced. It showed that at the material time, the Applicant's bank account was adequately garnished to meet its BSP commitment.

17. The Applicant considered the Respondent's requirements, particularly that of furnishing a bank guarantee, were disproportionate to the small amount of harm which might have been done. No airline lost anything from the incident.

Review Approach Taken

18. By agreement with the parties, the hearing was conducted by teleconference, on 14th December 2007, linking up Geneva, Miami and Santiago. In the run up to that teleconference, an exchange of written communications between the parties and the undersigned took place. Those communications established that there was no disagreement on the facts, as set out above. It followed that the outcome of the review would turn on the applicable IATA regulations.

Considerations

19. The efficient and economical operation of the BSP implies strict fiduciary discipline on the part of Agents reporting and remitting through it. The Applicant acknowledges this.

20. It is not in dispute that the underpayment was an act of dyslexia, which could not have and did not bring any advantage to the Applicant.

21. The Applicant enjoys a sound financial record and standing. The Applicant's last annual financial review, completed a few months previously, resulted in a clean bill of financial health. Nothing in the matter under review reflects adversely on or places in doubt that standing.

22. The Respondent's staff are under strict orders with respect to reporting and remitting discrepancies to apply the IATA Resolutions immediately and to the letter. Experience has demonstrated that with regard to protecting the BSP Airlines' monies, it is better to be safe than sorry.

23. Errors will happen from time to time and the Travel Agency Commissioner review machinery helps serve to identify their cause and to assess the gravity of their consequences. It also permits the parties to draw lessons from the experience, in order to diminish risk of recurrence.

Findings

24. An error of transcription was committed by the Applicant which led to an insufficient remittance being made in the first instance. It was immediately corrected, upon receipt of notice from the Respondent.

25. The Respondent's actions were the correct ones to take in the circumstances. Requisite precautions were taken by it expeditiously.

26. As a result of this review it emerges that the Applicant's error was due to clerical inadvertence and not to any financial cause. That finding underlines the need to examine possible preventive measures that might be taken by BSP Management, in the wisdom of hindsight, with a view to being able to apply a remedy proportionate to the shortcoming committed.

27. The Respondent's notice of the under remittance discrepancy, although conveying the essential message, could have been more explicit in citing the relevant authorities for that action. It is understood that this procedural aspect will be reviewed and adjusted.

28. The Applicant's financial standing and clean record with regard to its BSP fiduciary obligations do not warrant requiring it to put up a financial guarantee as a result of this minor incident.

Decision

29. The recording of two instances of irregularity was procedurally correct. That action of the Respondent in that respect is confirmed.

30. The request by the Respondent for a bank guarantee in favour of the Respondent is not upheld.

31. This decision is made without prejudice to the outcome of the Respondent's periodic financial review of the Applicant's audited accounts. Should that review ever show that grounds exist for imposing a financial guarantee under the Applicant's published rules for that practice, that conclusion will supersede and replace the ruling in the preceding paragraph.

32. The parties are not liable to pay any fee or costs to the undersigned in respect of the present decision.

33. Per Resolution 820e, § 4.1, the Applicant may, if it considers itself aggrieved of this decision, seek review by arbitration in accordance with the provisions of Resolution 808, § 12.

Decided this 17th Day of December 2007, in Geneva.

Brian Barrow
Acting Agency Commissioner, Area One

NOTE: to ensure timely receipt by the parties, an electronic copy of this Decision is sent on 17th December 2007, with the original signed copy being sent by registered post.