

Brian P. Barrow

A1/2008/02

TRAVEL AGENCY COMMISSIONER, AREAS ONE & TWO

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BPB/ma/17xii07

DECISION

In the Matter of:

Fidanque Travel S.A.

Calle 50 y Calle 59/

Urbanización Obarrio

Post box: 0831-00975

Panama

Republic of Panama

(IATA Numeric Code: 89-65027-1)

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 Agency Commissioner for Areas One & Two, appointed in accordance with the provisions of Resolution 820d.

Parties

2. The Applicant is Fidanque Travel SA, an IATA Accredited Agent with registered office in Panama City, Panama. The Applicant, a limited liability company, has been on the IATA Agency List since 1949 and has operated continuously as a family owned firm since the time of construction of the Panama Canal. Its range of activities in service industries is diverse, employing 2000 persons. At the hearing of 7th February 2008, the Applicant was represented by its President, Mr Joseph Fidanque, Jr.

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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 Panama. 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 Panama is situated in Panama.

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 1 and by Mr Cesar Barragan, the responsible IATA Country Manager, Panama.

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 Panama. 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 second BSP Billing Period of December 2007, the Applicant was invoiced USD21,340.38. On 3rd January 2008 the Applicant caused to be remitted to BSP Clearing Bank the amount of USD17,535.83, which represented a short payment of USD3,804.55.
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. At 09.00 hours on 3rd January, realizing it had made a mistake, the Applicant promptly made good the short payment by depositing USD 3,804.55 with the BSP Clearing Bank. Settlement was thus effected in cash that same day.
14. When it became aware of the 03 January short payments, the Respondent notified the Applicant of two instances of irregularity being recorded for failure to pay on time (in Panama, 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 ???,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 simple error. The Agent's employee inadvertently initially paid the amount set out in the billing of the previous Reporting Period. The Applicant corrected its error before being asked to do so by the Respondent. At all times, there were sufficient funds on the Applicant's bank account to meet the BSP Billing in full. A copy of the Applicant's bank statement for 2nd January was produced. It confirmed that at the material time, the Applicant's bank account was adequately garnished to meet its BSP commitment.
17. The Applicant argued that the Respondent's requirement of furnishing a bank guarantee, were disproportionate to the small amount of harm, if any, which might have been done. No airline's monies were put at risk by the incident.

Review Approach Taken

18. By agreement with the parties, the hearing was conducted by teleconference, on 7th February 2008, linking up Geneva, Miami and Panama. Before 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 disputed by the Respondent that the underpayment was erroneous, which could not have and did not bring any advantage to the Applicant.

21. The Applicant enjoys a sound financial record and standing with no previous incidence of remittance discrepancy in 58 years of IATA accreditation. The Applicant's last annual financial review, completed a few months previously, gave a clean bill of financial health. Nothing in the matter under review reflects adversely on or places in doubt that good financial 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. Because errors happen from time to time, the Travel Agency Commissioner review machinery can help serve to identify their cause and to assess the gravity of their consequences, actual and potential. It also permits the parties to draw lessons from the experience, in order to diminish risk of recurrence.

Findings

24. An error made by an experienced and reliable staff member was committed by the Applicant which led to an insufficient remittance being made in the first instance. The same bill was paid twice. Had the earlier bill been for a greater and not a lesser, no disciplinary action would have ensued. The error was immediately corrected, before receipt of notice from the Respondent.

25. The Respondent's actions were the correct ones to take in the circumstances, taken in strict conformity with the rules, as required by the Respondent's senior management. The requisite precautions were taken by it expeditiously.

26. This review confirms that the Applicant's error was attributable to temporary clerical inadvertence which was auto-corrected, and not to any financial problem. Once again, here is a case that points to 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 Applicant's financial standing and spotless 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

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

29. The request by the Respondent for a bank guarantee in favour of the Respondent is not upheld and is to be immediately withdrawn.

30. 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.

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

32. 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 11th Day of February 2008, 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 11th February 2008, with the original signed copy being sent by registered post.