

**TRAVEL AGENCY COMMISSIONER, AREAS ONE & TWO**

29, Route de l'Aéroport, P.O. Box 833

CH-1215 Geneva 15 Airport, Switzerland

Daytime office phone: +41 22 799 3900, daytime office fax: +41 22 799 3902

E-mail: [agency.commissioner@bluewin.ch](mailto:agency.commissioner@bluewin.ch)

---

BPB/ma/07v08

**DECISION**

**In the Matter of:**

**Paraiso Tours**

Avenida Reforma 8-95 Zona 10

Edificio Avenida, Local 17 y 18

01010 Guatemala, C.A.

(IATA Numeric Code: 82-5 1969 5)

Applicant,

vs.

**Agency Administrator**

**IATA**

International Air Transport Association

703 Waterford Way

(NW 62<sup>nd</sup> 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 Paraiso Tours, has been an IATA Accredited Agent for 14 years, with registered head office in Guatemala City.

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 231, 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 serving Guatemala, which exercises management responsibility for the BSP there, is situated in El Salvador.

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.

#### Contractual Considerations

6. The Passenger Agency Conference is composed of all those IATA Members (i.e. airlines) who appoint a delegate to it. Per the IATA Articles of Association, it is a sovereign entity 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. The IATA Secretariat is not empowered to alter, overrule or ignore a Conference Resolution.

7. 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 2008 edition of that publication applies to the review proceeding giving rise to this decision.

8. 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

9. The Applicant paid its 24<sup>th</sup> – 30<sup>th</sup> March 2008 BSP Billing on the Settlement Date by certified cheque issued by its bank. The cheque erroneously named the Applicant and not the Respondent as the payee. It was accordingly rejected by the BSP Settlement Bank. The defective transaction was notified to the Applicant the following day when it was immediately rectified.

10. The Applicant's bank has formally recognized in writing that it was at fault in failing to execute the Applicant's instructions and that it committed a *bona fide* error.

11. The Respondent took the requisite precautions immediately it was apprised of the rejected cheque and dispatched the standard notice of irregularity to the Applicant.

12. The Applicant relies on the provisions of Resolution 832, §1.7.8. in seeking relief from the Respondent's disciplinary action. It asserts that its bank's admission of *bona fide* error exonerates the Applicant entirely.

13. The Respondent advises that it does not doubt the veracity of the bank's admission made in writing and sent in the wake of the above incident.

#### Review Approach Taken

14. There being agreement between the Parties on the facts, they agreed, per Resolution 820e, §2.3, to waive hearing in favour of the undersigned acting on the documentary evidence and submissions presented by them.

#### Considerations

15. It is recognized that the efficient and economical operation of the BSP necessitates strict fiduciary discipline on the part of Agents reporting and remitting through it.

16. There is no dispute that the involuntary late payment is attributable entirely to the error of the Applicant's bank when issuing the certified cheque.

17. The Respondent's field staff are, however, under strict orders with respect to reporting and remitting discrepancies to apply the IATA Resolutions immediately and to the letter. The prime function of the BSP is to safeguard the BSP Airlines' monies.

#### Findings

18. The Applicant's explanation authenticated by the bank's letter assuming full responsibility for the incident is not disputed and is accepted by the undersigned.

19. The Respondent's actions taken as a consequence of becoming aware the short payment were procedurally correct, based on a strict interpretation of Resolution 832, §1.7.5. The rules require that precautionary measures be taken promptly, and they were.

20. The fact that a certified cheque was issued in the first place evidences the Applicant's capacity on the Remittance Date to meet its BSP obligations. The Applicant's bank accepts responsibility of the error which disculpates the Applicant.

#### Decision

21. The action initiated by the Respondent ceased to have justification when the written admission of the Applicant's bank was accepted. The disciplinary action taken by the Respondent is hereby nullified and the Applicant's and Respondent's records are to be amended to reflect the corrective action stemming from the present decision.

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

23. For good order's sake and per Resolution 820e, §4.1, it is noted that 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 7<sup>th</sup> day of May 2008, in Geneva.

Brian Barrow  
Travel Agency Commissioner, Areas One & Two

**NOTE:** to ensure timely receipt by the parties, an electronic copy of this Decision is sent on 7<sup>th</sup> May 2008, with the original signed copy being sent by registered post.