

**VERÓNICA PACHECO-SANFUENTES**  
**TRAVEL AGENCY COMMISSIONER, AREA ONE**  
4047 Del Ray Road  
Sechelt, British Columbia V0N 3A1  
Canada

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**DECISION 2009 - # 5**

**In the matter of:**

**Viajes Dumbo S.A.**  
IATA numeric code: 92-9172-6  
Calle Máximo Avilés Blonda No. 5,  
Sector Evaristo Morales  
Santo Domingo, Dominican Republic

**Applicant**

vs.

**American Airlines Inc.**  
Calle Winston Churchill,  
Esquina Max Henríquez Ureña  
P.O. Box 1295  
Santo Domingo, Dominican Republic

**Respondent**

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**I. The Case**

Review, upon American Airlines' request, of the decision taken by the undersigned, in regards to Viajes Dumbo, S.A.'s initial submissions to this Office on August 7<sup>th</sup>, 2009. The request for review submitted by Viajes Dumbo S.A. was admitted, *prima facie*, on August 17<sup>th</sup>, 2009.

American Airlines is alleging that the Applicant did not follow the required prior procedure contemplated in Section 4.1.5.2 of Resolution 818g, before seeking the Travel Agency Commissioner's (referred to herein after as "TAC") intervention.

On August 17<sup>th</sup>, 2009 the undersigned based on Resolution 820e, Paragraph 1.1.8, admitted the request for review initially submitted by Viajes Dumbo S.A. The Applicant alleged that its

commercial survival was threatened by American Airlines Inc's individual decision terminating their contract, preventing the Agent from issuing traffic documents on behalf of such airline.

## **II. The Parties**

The Applicant is Viajes Dumbo, S.A. (called herein after "Viajes Dumbo"), an IATA Accredited Agent, with registered office in Santo Domingo, Dominican Republic, represented by its owner, Mrs. Evelyn Duboq de Vicente, and her lawyer, Mr. Marcos Troncoso.

The Respondent is American Airlines Inc. (referred to herein after as "AA"), an IATA's Member BSP Airline, represented by its Senior Attorney, Mr. William Hopping.

## **III. Background and Formalities**

After receiving the said request for review from Viajes Dumbo, on August 16<sup>th</sup>, 2009, the undersigned requested some more information from the Applicant in order to assess the case in terms of her own jurisdiction to rule the matter and to be able to determine whether or not a credible case was made, in accordance with Section 1.2.3 of Resolution 820e. During that same period of time, the undersigned was contacted by the Respondent, who provided, as well, pertinent information to the case.

On August 21<sup>st</sup>, 2009, the Respondent submitted a motion to dismiss the Applicant's request due to a failure of the Agent in submitting <<its request within 30 calendar days of first becoming "aware of the decision/action" by American for which the Commissioner's review is sought>>, according to Paragraph 1.2.2.3 of Resolution 820e. From the Respondent's perspective, those thirty (30) days started to count the 14<sup>th</sup> of February, the day that a Debit Memo was issued and sent to the Agent by AA. According to the Respondent's submissions at that time, the decision which review was requested by the Agent was the said Debit Memo.

On August 28<sup>th</sup>, 2009, the undersigned, considering that the main cause for this review, according to the terms of the Applicant's request, was the fact that its commercial survival would be at risk if AA made effective –at that time- the termination of their contract, preventing the Agent from issuing traffic documents on behalf of that airline, decided to uphold the decision taken on August 17<sup>th</sup>, 2009 by which she admitted, *prima facie*, the current request for review, considering that it was not about the review of a Debit Memo<sup>1</sup>, but was in accordance with Paragraph 1.1.8 of Resolution 820e.

On September 1<sup>st</sup>, 2009, attending a Respondent's request for an extended period of time to present its submissions (related to the merits of the case), the undersigned conceded the extra

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<sup>1</sup> For which Travel Agency Commissioners have no jurisdiction, unless expressly agreed by both parties (Resolution 850m, Paragraph 4.10), which was not the case.

time requested and determined a potential time frame for the hearing, as requested by the Applicant since the beginning of this procedure.

On September 8<sup>th</sup>, 2009, the Respondent submitted a request related to <<procedural and due process considerations>>, bringing to this proceeding facts and arguments that weren't stated before. Noting the nature of those allegations, the undersigned not only gave time for the Applicant to rebut and proof against them, but advised the parties of a potential final decision on this case, if those allegations were to be sustained by this Commissioner.

On September 10<sup>th</sup> and 15<sup>th</sup>, 2009, the Applicant submitted its response.

#### **IV. Authority for Review**

Resolution 820e determines the scope of the TAC's review proceedings, and as so provides for Accredited Agents, for the Agency Administrator, for a Member Airline or a group of them, and, for the Agency Services Manager to seek review by the Commissioner in circumstances described therein. In this case, the most pertinent Paragraph as seen from both parties' perspective is Section 1.1.8 which states:

<<**1.1.8** an Agent who considers that its commercial survival is threatened by a Member's individual decision preventing it from acting as Agent for, or from issuing Traffic Documents on behalf of, such Member>>.

Further more, in this particular situation, the Respondent has requested a second review by the TAC of the proceeding that she previously allowed under the Applicant's request, invoking the Agent's violation of a prior process that should have taken place before seeking a TAC review, according to Paragraph 4.1.5.2 of Resolution 818g, located in Section 4.1.5 related to the "Reviews of a BSP Airline's Individual Decision", which states as follows:

##### <<**4.1.5 Review of a BSP Airline's Individual Decision**

4.1.5.1 notwithstanding the provisions of Paragraph 4.1.1 of this Section and of Paragraphs 3.4 and 3.5 of Section 3 of these Rules, an Agent which considers itself aggrieved by the decision of a BSP Airline:

...

4.1.5.1(b) to withdraw its appointment of such Agent, or

...

...

**4.1.5.2.** with the result that such Agent's commercial interests are adversely affected to the point of placing its business in jeopardy, shall have the right to obtain such BSP Airline's criteria for appointing Agents or reasons for refusal, withdrawal or removal. *If the Agent believes such justification is unreasonable then the Agent shall in the first instance seek clarification and satisfaction from the BSP Airline. If the issue is not*

thereby resolved, then the Agent shall have the right to have the BSP Airline's decision reviewed by the Travel Agency Commissioner; provided that when the BSP Airline's decision to withdraw its appointment or to remove its CIP from an Agent was made in application of the collective provisions of these Rules, the Agent's right for review shall not be exercised against the BSP Airline individually but as set forth in the particular provision concerned and in Resolution 820e>>.

(Emphasis mine)

## V. The Applicant's Arguments in Summary

### A. Arguments

The Applicant argues that they did comply with the proceeding established in Paragraph 4.1.5.2 of Resolution 818g before seeking the TAC review. From their point of view, two facts demonstrate their compliance with the cited rule: (i) The Applicant contacted American Airlines upon reception of the Debit Memo # 6000106893, dated February 11, 2009, in order to obtain the reasons for that fine, and had several meetings and discussions with the BSP Airline, even with AA's Country Manager, aiming to reach an agreement;; and, (ii) on June 25<sup>th</sup>, 2009 the Applicant got a written answer from AA<sup>2</sup> stating the reason for the cancellation as Appointed Agent in the following terms: <<I would very much appreciate your written answer explaining us how would you pay us the Debit Memo for US \$ 27,250, before July 6<sup>th</sup>, 2009, in order to avoid the termination of your commercial contract with American Airlines, Inc>><sup>3</sup>.

The Applicant's submissions had also arguments related to the contract signed between the Agent and AA, as well as some arguments and evidence related to the ADM-conflict that was at the origin of the dispute between AA and the Agent. Whereas this decision will only analyze whether or not the Agent complied with the due prior process contemplated in Resolution 818g, Section 4.1.5, before had sought the TAC review, those arguments and evidence will not be considered in this decision.

### B. Evidence

The Applicant provided copy of the following documents:

- Letter sent by AA-Dominican Republic's Director of Finance, Ms. María Venecia Pascual, dated June 25<sup>th</sup>, 2009, where AA lets the Applicant know about the reasons for the potential cancellation as Appointed Agent;
- Letter sent by Viajes Dumbo to AA's Country Manager, Mr. Oliver Bojos, dated July 2<sup>nd</sup>, 2009. Through this letter the Applicant demands for evidence that would demonstrate the alleged tariffs' violations by the Agent;

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<sup>2</sup> AA-Dominican Republic's Director of Finance, Ms. María Venecia Pascual

<sup>3</sup> Free translation from Spanish. The original letter text states as follows: <<Agradezco mucho su respuesta en escrito explicándonos cómo van a compensar nuestra Nota de Débito por \$ 27.250 antes del 6 de Julio de 2009 para evitar la cancelación de su contrato comercial con American Airlines Inc.>>.

- Letter sent by Viajes Dumbo to AA, dated July 8<sup>th</sup>, 2009, insisting in the previous request and leaving the way open for discussion and eventual agreement;
- Letter sent by Viajes Dumbo to AA's Country Manager, Mr. Oliver Bojos, dated August 7<sup>th</sup>, 2009, informing the Respondent about the initiation of this TAC review; and,
- A print-out from the following web site: [http://eportal.travelport.com/Pages/AmericanAirlines\(AA\)torestrictPartialCancelofMarriedSegments.aspx](http://eportal.travelport.com/Pages/AmericanAirlines(AA)torestrictPartialCancelofMarriedSegments.aspx), titled "American Airlines (AA) to Restrict Partial Cancel of Married Segments", effective August 11, 2009.

## **VI. The Respondent's Arguments in Summary**

### **A. Arguments**

From the Respondent's point of view, the Applicant didn't fulfill any of the steps mentioned in Paragraph 4.1.5.2 of Resolution 818g.

Furthermore, even in the event that (i) the Agent had exhausted the procedure of Section 4.1.5.2 of Resolution 818g; (ii) had done a proper and specific petition to the TAC, according to Paragraph 1.2.1 of Resolution 820e; and, (iii) had demonstrated that its commercial survival was threatened by the Airline's decision under Paragraph 1.1.8 of Resolution 820e; the Agent still had to comply with the thirty (30) calendar days time limit set by Paragraph 1.2.2.1 of Resolution 820e, so considering that Viajes Dumbo was notified on July 31<sup>st</sup>, 2009 of AA's decision to withdraw its ticketing authority, the Applicant had until August 30<sup>th</sup>, 2009 to have sought the TAC's review, provided the said process had been previously followed.

### **B. Evidence**

As supporting documents the Respondent attached to its submission two exhibits. Exhibit A: some IATA Resolution's Excerpts; and, Exhibit B: Viajes Dumbo's submission, marked by the Respondent's Attorney, as he considered pertinent.

## **VII. Chronology of Events**

In order to determine whether or not the procedure referred to in Paragraph 4.1.5.2 of Resolution 818g was fulfilled by the Applicant, it is necessary to take a close look at the steps taken by the Applicant and the information that it had in its hands before (a) and after (b) July 31<sup>st</sup>, 2009. On that date, AA-Dominican Republic notified the Agent, through written notice, about its decision of withdrawing the ticketing authority and informed the Applicant that the said termination was to be effective on August 31<sup>st</sup>, 2009, according to the time frame stated in Paragraph 13.2 of Resolution 824.

### **A. Steps taken by the Applicant before July 31<sup>st</sup>, 2009**

According to Paragraph 4.1.5.2 of Resolution 818g, the Applicant *had the right* to obtain the BSP Airline's *reasons* that originated the refusal, withdrawal or removal of the Agent's appointment. It is important to note that the rule creates a right in the Agent's head.

In its response, the Applicant states that Viajes Dumbo was duly informed by the Respondent about the reasons that actually triggered AA's decision of removing the ticketing authority from the Agent's hands. Furthermore, the Applicant indicates that it was informed even before the commented decision was taken by the Respondent. In fact, the Applicant cites a letter dated June 25<sup>th</sup>, 2009 received from AA, specifically from AA-Dominican Republic's Director of Finance, Ms. María Venecia Pascual, where she expressly says: <<I would very much appreciate your written answer explaining us how would you pay us the Debit Memo for US \$ 27,250, before July 6<sup>th</sup>, 2009, in order to avoid the termination of your commercial contract with American Airlines, Inc>>. In other words, for the Applicant wasn't necessary to obtain from the BSP Airline the reason for the withdrawal, since it was the BSP Airline itself, through its Director of Finance in Dominican Republic, who communicated to the Applicant the reason behind the appealed decision.

#### B. Steps taken by the Applicant after July 31<sup>st</sup>, 2009

Considering that the reason behind the Respondent's decision had already been exposed by the Respondent's Director of Finance in writing, the Applicant, according to Paragraph 4.1.5.2 of Resolution 818g, if believed that such justification was unreasonable, had to, <<in the first instance seek clarification and satisfaction from the BSP Airline>>.

According to the documents that have been sent to this Office by the parties, the only contact that took place between the parties after the Respondent's terminating decision, was a letter sent by Viajes Dumbo to AA, dated August 7<sup>th</sup>, 2009, through which the Applicant simply informs the Respondent about the Agent's decision of seeking the TAC's intervention in this case. In fact, as indicated earlier, on that same day, August 7<sup>th</sup>, 2009, the Applicant sent its Request for Review to this Office.

### **VIII. Considerations Leading to Conclusions**

#### A. Applicable Rules and Process

The determination of the steps taken by the Applicant before and after the BSP Airline's individual decision, as well as the information that the Applicant received from the Respondent in regards to that individual decision are relevant because according to Paragraph 4.1.5.2 of Resolution 818g, there were a couple of phases that the Agent had to fulfil before seeking the TAC's review.

In fact, pursuant to the said rule, once an Agent's appointment has been withdrawn or removed, and if the Agent's commercial interests are adversely affected by that situation:

(i) the Agent has the right to obtain such Airline's criteria for appointing Agents or the reasons for a refusal, withdrawal or removal;

(ii) once having obtained such information, if the Agent believes that such justification is unreasonable, then,

(iii) the Agent has to seek clarification and satisfaction from that Airline; and if

(iv) the issue is not solved, then the Agent has the right to have the Airline's decision reviewed by the TAC.

Those would be the necessary steps that the Agent had to take in order to validly have sought the TAC's review.

Looking at this particular case and the evidences submitted by the parties, we have that the Respondent, when contacted by the Agent, expressly indicated the cause for a potential withdrawal of the Agent's appointment. From the Respondent's correspondence, dated June 25<sup>th</sup>, 2009, the undersigned concludes that the reason for the withdrawal of the Agent's appointment was, as stated by the Respondent, the lack of payment <<of the Debit Memo for US \$ 27,250, before July 6<sup>th</sup>, 2009>> by Viajes Dumbo. The said Debit Memo was previously issued by AA to the Applicant on February 11<sup>th</sup>, 2009.

However, the Applicant still had some other steps to follow before have sought the TAC review.

According to the evidence and submissions presented by the Applicant, it was clear that the Agent believed that such justification was unreasonable, since by the time the appealed decision was taken by the BSP Airline, as the Applicant had explained, the parties were in the middle of discussions aiming to reach an agreement in regards to the commented Debit Memo note. Therefore, pursuant to Paragraph 4.1.5.2 of Resolution 818g, the Applicant had, <<in the first place>>, to <<seek clarification and satisfaction from the BSP Airline>> (emphasis mine), only after what the Applicant could have validly sought the review of the said decision by this Office. By not doing so, the Applicant skipped an important part of the due process for reviewing BSP Airlines' unilateral decisions like the one adopted by AA in this case.

Furthermore, the written communication that the Applicant sent to the Respondent on August 7<sup>th</sup>, 2009, the only one sent right after the Respondent's letter withdrawing its ticketing capacity from the Agent<sup>4</sup>, informing the BSP Airline about the Applicant's decision of having sought TAC's review, does not comply as to have sought <<clarification and satisfaction from the BSP Airline>> as mandates Paragraph 4.1.5.2 of Resolution 818g.

Having read the Applicant's submissions, the undersigned deems important to clarify the applicable rules and processes that the Agent was to follow in this situation, since it appears to

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<sup>4</sup> As stated before, AA's letter was dated and received by the Applicant on July 31<sup>st</sup>, 2009.

the undersigned that a misunderstanding of the applicable rules must have been at the origin of this case:

- In situations of Debit Memo's disputes or disagreements between Agents and BSP Airlines, parties are to follow Section 4 of Resolution 850m and its proceeding. TAC intervention in those cases is only possible if both parties agree to submit their differences to the TAC's Office (Paragraph 4.10<sup>5</sup>).

- In situation where a BSP Airline takes a unilateral decision, in respect to (i) a refusal of appointing an Agent; (ii) a withdrawal of an Agent's appointment; (iii) a refusal of supplying its CIP to an Agent's location; or (iv) a withdrawal of its CIP from an Agent's location, regardless the reasons underneath that decision, whether those reasons are known or unknown by the Agent, the aggrieved Agent has to follow the process indicated in Paragraph 4.1.5 of Resolution 818g.

So in this case, once the Respondent took the unilateral decision against the Agent, withdrawing its ticketing capacity, the only possible way that the Agent had was to follow the process indicated in the above mentioned rule<sup>6</sup>. The Debit Memo issue had to be left behind<sup>7</sup>, since a new scenario had been presented to the Applicant.

#### B. Time Limit

Finally, pursuant to Resolution 820e, Section 1.2.2.3 the Applicant had thirty (30) calendar days to request a TAC's review of the unilateral decision taken by the BSP Airline that aggrieved the Agent. Having looked at the evidence submitted by the parties, as stated in the precedent Part A of this decision, the Applicant was unable to demonstrate that it had contacted the BSP Airline and had sought its <<clarification and satisfaction>> before have contacted this Office. The Applicant had thirty (30) calendar days, from July 31<sup>st</sup>, 2009 until August 31<sup>st</sup>, 2009, for doing so. Therefore, the time limit for a TAC review, under Section 4.1.5 of Resolution 818g, and Paragraph 1.2.2.3 of Resolution 820e, had expired.

### IX. **Decision**

Based on the above indicated reasons, having carefully looked at the applicable Resolutions and at the submissions and evidence provided by both parties, the undersigned decides:

The request for review submitted by Viajes Dumbo S.A., against the unilateral decision taken by American Airlines, Inc., on July 31<sup>st</sup>, 2009, has to be dismissed.

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<sup>5</sup> Resolution 850m

<sup>6</sup> Paragraph 4.1.5 of Resolution 818g

<sup>7</sup> or discussed in another forum, since, as stated before, Debit Memo's affairs are out of the scope of the Travel Agency Commissioner, except with both parties consent.

Per Resolution 820e, Section 4.1, the Applicant has the right, if she considers herself aggrieved by this decision, to seek review by Arbitration, in accordance with the provisions of Resolution 818g, Section 12.

Decided in Sechelt, BC, the 29<sup>th</sup> day of September, 2009

*Verónica Pacheco-Sanfuentes*  
Travel Agency Commissioner Area 1

**Note:** The original signed version of this decision will be sent to the parties by regular mail. In the mean time, in order to ensure timely receipt by the parties, an electronic version of it is sent on September 29<sup>th</sup>, 2009.