

VERÓNICA PACHECO-SANFUENTES
TRAVEL AGENCY COMMISSIONER, AREA ONE
(The Americas and the Caribbean)
110 – 3083 West 4th Avenue,
Vancouver, British Columbia V6K 1R5
CANADA

Decision 2013 - # 1

In the matter of:

Bolivie Tur Pasajes S.R.L.

IATA numeric code 55-7 7478 4 (Agency located in Argentina)

Lavalle 1772 – PB – Local 6

Código Postal 1048

Buenos Aires, Argentina

and

IATA numeric code 56-5 3806 4 (Agency located in Bolivia)

Ladislao Cabrera E-151 – PB

Código Postal 00000

Zona Central, Cochabamba, Bolivia

Both represented by an authorized shareholder, Mr. Tito Germán Oroza

The Applicant

vs.

International Air Transport Association (IATA)

703 Waterford Way, Suite 600

Miami, Florida 33126

Estados Unidos de América

Represented by the Accreditation Manager, Mr. Carlos Bendjouya Fernández and

IATA/Argentina Country Manager, Ms. María José Taveira

The Respondent

I. THE CASE

On January 17, 2013 the Travel Agencies Bolivie Tur Pasajes SRL, located in Cochabamba, Bolivia (identified with IATA's numeric Code 56-5 3806 4) and located in Buenos Aires, Argentina (identified with IATA's numeric code 55-7 7478 4), both being represented by Mr. Tito Germán Oroza (referred to herein after as "The Applicant" or "The Agent"), sought a Travel

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Agency Commissioner's review of IATA's decision dated January 2, 2013 by which their Passenger Sales Agency Agreement was terminated.

The reason behind this decision was The Applicant's lack of payment of the annual fee corresponding the year 2013.

II. The Applicant's arguments in summary

The grounds for this request for review, from The Applicant's perspective, do not only refer to the inappropriate alleged reason for it, meaning the non-payment of the annual fee, but most importantly, The Applicant requests to this Office to examine the fact that it was terminated when it was still pending a decision in regards to both Agencies' suspension, based on the Prejudiced Collection of Funds¹ actions that The Respondent had previously undertaken against The Applicant. Those actions were followed by a review initiated by The Respondent at this Office on April 11, 2012.

That suspension stage in which both Agencies were placed by The Respondent since April 2012 should have been solved first, in order for The Applicant to take care of the rest of its obligations as an IATA Accredited Agent in accordance with the applicable Resolutions (*id est*, the payment of the annual fees, the submission of the Financial Statements for the annual review, etc). In regards to this last obligation, The Applicant has stated that it received verbal instructions from IATA-Argentina as of to wait for the results of the suspension review process before submitting any financial statement.

The Applicant vehemently affirmed in connection with the referred lack of payment that they <<did not pay because our Agencies were suspended and perhaps they would even end up being terminated>>. The Applicant based its action by indicating, I quote: <<we will not pay for something that we will not use>>.

The Applicant indicates that it did receive the invoices requesting the annual fee, as well as the Notice of Termination dated January 2, 2013; however, it declares not having received the "payment reminder" allegedly sent by The Respondent on December 2, 2012.

¹ Actions that were based on Resolution 818g, Attachment "A", Section 1.8

III. The Respondent's arguments in summary

<<The suspension of an Agency cannot be reviewed>> when <<its Passenger Sales Agency Agreement has been terminated pursuant Resolution 818g, Section 14.3. The suspension is linked, tied to the Agency Agreement, thus when this has been terminated, the suspension concludes>>.

The Respondent mentions the various benefits that derive from having an IATA Accreditation (a numeric code), which are not solely referred to the Agency's participation in to the BSP system (privilege that the Agent loses when it is suspended, as it was The Applicant's case). Among those benefits, it mentioned: the possibility of <<booking through the distribution systems/GDS such as Sabre, Amadeus, etc; the use of the code in the hospitality industry including but not limited to worldwide hotel chains as well as any other type of accommodation; rent a car businesses; cruise-ships enterprises, theme parks or entertainment parks, etc>>.

The Respondent affirms having sent the original invoice to The Applicant requesting the annual fee payment, as well as a first notice in connection with this matter back in October 2012, and after that a reminder of it during the month of December 2012, as mandated by Res. 818g, Section 14.3.

IV. Considerations leading to decision

Having given both Parties the possibility to present their submissions and evidence in support of their views in order for her to grant or not the requested review, this Commissioner pursuant Res. 820e, Paragraph 1.2.3 has pondered the following aspects:

- Considering that the mere existence of the Passenger Sales Agency Agreement is a *sine qua non* condition to do any evaluation in regards to the suspension of the ticketing capacity imposed to any Accredited Agent (who has a valid signed contract);
- Considering therefore that it was necessary to have a valid contract in effect in order for The Respondent to analyse the suspended condition on which The Applicant had been placed;

- Considering that The Applicant, based on the reasons provided by him, voluntarily decided not to pay the referred annual fee, in accordance with Res. 818g, Paragraph 14.2, resulting in the termination of its Passenger Sales Agency Agreement, pursuant Paragraph 14.3.1 of the said Resolution;
- Considering that the suspended stage of an Accredited Agent (removal of its ticketing capacities and, thus, the use of the BSP system), in light of the applicable Resolutions, in no manner exempts that Agent from its obligation of paying the annual fee;

It is mandatory to conclude that The Applicant cannot be excused from its duty to pay the annual fee as an IATA Accredited Agent, even in the suspension stage in which it was previously placed by The Respondent. The reason provided by The Applicant of waiting for the suspension to be finally decided by The Respondent as a preliminary condition for it to honour the annual fee has no grounds on the applicable Resolutions and, therefore, is has to be dismissed. One fact does not depend on the other.

For this Commissioner it is a notorious fact the use of IATA's logo and name that The Applicant has being doing not only during its suspension period but since the very beginning it contacted this Office back in February 2012. Both are considered a privilege that Accredited Agents have the right to enjoy. It would just suffice to see IATA's logo displayed not only in its email address, in its signature and on its official web site, just to name a few.

V. Decision

Based on the above mentioned facts, having carefully looked at the applicable rules, particularly at Section 14.3 of Res. 818g,

- The request for Review submitted by The Applicant has no grounds on the applicable Resolutions and therefore is dismissed;
- In case The Applicant would like to be reinstated on the IATA Accredited Agency List, it could explore the possibility stated in Res. 818g, Paragraph 14.3.2.

Decided in Vancouver, the 13th of February, 2013

Verónica Pacheco-Sanfuentes
Travel Agency Commissioner Area 1

In accordance with Res 820e, §2.10, any Party may ask for an interpretation or correction of any error which the Party may find appropriate to this decision. The timeframe for these types of requests will be 15 days after receipt of the electronic version of this document.

As per Resolution 820e, Section 4 any Party has the right, if it considers aggrieved by this decision, to seek review by Arbitration, in accordance with the provisions of Resolution 824, Section 14, once the above mentioned time frame would have elapsed.

Note: The original signed version of this decision will be sent to the Parties by regular mail, once the above mentioned timeframe for interpretation/corrections would have expired.