

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 - # 3

In the matter of:

Bolivie Tur Pasajes S.R.L.

Ex-IATA code 55-7 7478 4 (located in Argentina)
Lavalle 1772 – PB – Local 6
Código Postal 1048
Buenos Aires, Argentina
and

Ex-IATA code 56-5 3806 4 (located in Bolivia)
Ladislao Cabrera E-151 – PB
Código Postal 00000
Zona Central, Cochabamba, Bolivia
Both of them represented by their authorized shareholder, Mr. Tito Germán
Oroza

The Applicants

vs.

International Air Transport Association (IATA)

703 Waterford Way, Suite 600
Miami, Florida 33126
United States of America
Represented by the Accreditation Manager, Agency Management – The
Americas, Mr. Carlos Bendjouya Fernández

The Respondent

I. THE CASE

On April 3, 2013 the Travel Agencies Bolivie Tur Pasajes SRL, located in Cochabamba, Bolivia (former holder of the IATA numeric code 56-53806 4) and located in Buenos Aires, Argentina (former holder of the IATA numeric code 55-77478 4), jointly represented by Mr. Tito Germán Oroza (referred to herein after as “The Applicants”), sought a Travel Agency Commissioner’s review of IATA’s decision, issued on March 25, 2013, according to which the termination of their Sales Agency Agreement remains, supposedly because the reasons for the belated payment explained by The Applicants

<<cannot be considered as events beyond the Agent's control>>, and, therefore Paragraph 14.3.2 of Resolution 818g is not applicable.

II. CHRONOLOGY OF EVENTS

As the evidence on file shows, the chronology of events in this case unfolded as follows:

- Once The Applicants' lack of payment of the annual fee was confirmed by The Respondent, on Jan. 2, 2013, IATA sent to The Applicants a letter of termination of their Passenger Sales Agency Agreement;
- On Feb. 25, 2013 The Applicants paid the annual fees for the two locations;
- On Feb. 28, 2013 The Applicants sent a reconsideration request to The Respondent's office in Miami, pursuant the terms of Paragraph 14.3.2 of Res. 818g, explaining the reasons why the above mentioned payment was not made on time and requesting the reestablishment of their Passenger Sales Agency Agreement;
- On March 25 the reconsideration request was decided against The Applicants, thus, on April 3 The Applicants sought this Office's review of the Respondent's decision.

III. The Applicants' submissions in summary

- We never received the reminder letter of the annual fee's payment dated December 2, 2012, that was supposed to be sent by The Respondent in accordance with Paragraph 14.3.1 of Res. 818g, as they have wrongly affirmed;
- We were given oral instructions from IATA-Argentina's office in regards to suspending the fulfilment of our <<obligations until everything gets solved>>. Based on these instructions we not only did not pay the annual fees, but we did not submit either our Financial Statements for the annual review;
- The Applicants have been paying on time and without any interruption their respective annual fees, since 1985 for the Argentinian location and since 1996 for the Bolivian one;

- This entire situation is due to <<events that have been out of our control and out of our regular behaviour, demonstrated over all these years as Accredited Agents>>. Out of our control because:
 - o The Applicants could not control the fact of not having received the reminder letter of the annual fee payment from The Respondent, as mandated in Paragraph 14.3.1 of Res. 818g;
 - o It is not under our control either the fact that we received extraordinary instructions from IATA demanding us to <<suspend our obligations until the final decision of the previous case would had been rendered¹>>;
 - o It is extraordinary in <<the sense that IATA had never issued in the past any order requesting The Applicants to suspend the compliance of their obligations>>.

Based on the above mentioned arguments The Applicants are seeking an order from this Office by which IATA should accept the late payment and subsequently re-establish their Passenger Sales Agency Agreement.

IV. The Respondent's submissions in summary

Once The Applicants' request was carefully pondered we concluded that <<the reasons explained cannot be considered as events beyond the Agent's control>>, <<we are not facing a force majeure situation here>>, therefore, we do not consider that the belated annual fee payment could be treated as the hypothesis stated in Paragraph 14.3.2 of Res. 818g; consequently, the decision by which their Sales Passenger Agency Agreement was terminated stands. The Applicants are eligible to request a refund of their 2013 annual fee that was received in IATA-Miami's office on Feb. 25, 2013.

The Respondent based its decision in the affirmation stated by The Applicants in an email addressed to this Commissioner's Office (where The Respondent was copied), dated Jan. 17, 2013, where The Applicants declared: <<we did not pay because the Agency was suspended and may be terminated ... To avoid loss of annual fee payment, in case of termination...>>. From this statement The Respondent understands that The Applicants <<were in complete knowledge and awareness of their lack of payment and, furthermore, had freely decided not to settle the annual fee>>.

¹ Reference is made here to the suspension stage that both Agencies were placed after a Prejudiced Collection of Funds' procedure that took place against them.

Finally, The Respondent requests from this Office to review whether or not a “force majeure cause” or “event out of the control of the Agent” happened in this situation, and, in case it did not, The Respondent requests the confirmation of its decision.

V. Oral Hearing

Both Parties have agreed to waive their right to an oral hearing and to allow this Office to reach a decision based on the written information submitted by and communicated to both Parties, so no oral hearing would be necessary (Res. 820e §2.3).

VI. Considerations leading to decision

A. - According to the previous statements, the case for review consists in determining whether or not the lack of timely payment of the Agency annual fee by The Applicants was caused <>by events beyond the Agent’s control>> as stated in Paragraph 14.3.2 of Res. 818g, in order for the reinstatement of the accreditation to be possible as well as The Applicants’ name being re-entered on the Agency List and the execution of a new Sales Agency Agreement.

In order to determine whether or not extraneous factors occurred in this case, non-attributable to The Applicants’ will, and therefore, out of its control, as mandated by the above mentioned rule, the undersigned deems essential to evaluate the evidence that is on file and that has been submitted by both Parties, rather than limiting her analysis to the Parties’ submissions.

In that regard, this Commissioner finds illustrative of The Applicants’ real intentions, which led them to decide not to pay the annual fee, the affirmation made by The Applicants in an email sent to this Office on Jan. 17, 2013, titled “New Review – Bolivie Tur Pasajes s.r.l.”, where The Applicants when referring to the said lack of payment literally indicated as follows, I quote:

<<We did not pay because the agency was suspended and it might even be terminated.

We did not pay in order to avoid the loss of the annual fee in case of termination.

And we are not going to pay for something that we are not going to use; considering that, generally, IATA does not refund the monies settled.

On top, it is thanks to IATA that we have been seriously economically damaged as to continue giving the money away>>.

Therefore, even if The Applicants did not receive the reminder letter of the annual fee payment, pursuant Paragraph 14.3.1 of Res. 818g, The Applicants were fully aware that they owed that sum of money, considering that not only they had timely received the invoices that The Respondent had sent them, but also considering the fact that The Applicants have been Accredited Agents since 1985 and 1996, respectively, and had paid that fee since their accreditation. The Applicants knew fairly well about this annual obligation. The fact of non-having received a payment reminder (it is herein stressed that the invoices were timely sent by The Respondent and timely received by The Applicants), does not constitute enough proof to support The Applicants' argument, hence, that submission is dismissed.

For the undersigned it is clear that The Applicants freely and spontaneously decided not to pay the annual fees for the reasons that they provided to this Office, and thus, no "out of the Agent's control" cause can be validly invoked in this case.

B. – In addition, The Applicants had declared having received oral instructions from IATA-Argentina office' staff concerning the "suspension" of their obligations as Accredited Agents; consequently, The Applicants decided not only not to submit their financial statements for the annual review, but also not to pay the annual fees. This Commissioner observes that other than The Applicants' affirmations, no proof had been submitted to this Office in connection with neither this matter nor any other of the affirmations made by The Applicants that would support their allegations, even though the burden of proof lied on The Applicants.

Furthermore this Commissioner finds hard to believe that these type of instructions, meaning not to pay the annual fee, would have been given orally by an IATA member staff, and even more hard to believe that an instruction of the like would have been followed by an Accredited Agent for more than 20 years (we are not facing a “new” or “novice” Agent): (i) knowingly the drastic consequences that such a non-payment would imply for that Agent; and, (ii) without having, at any moment in time, requested for a written support of such an extraordinary instruction. The Respondent has denied having given such an instruction.

In any case, the undersigned could have accepted as valid the instruction given in regards to the financial statements, considering that the consequences for the Agent due to a late presentation of such statements are not particularly dramatic, especially if we consider, as it has been affirmed by The Applicants (and again without providing any proof of it), that the request itself for those financial statements did not provide any timeframe for its compliance. Nevertheless, considering that this argument is completely out of topic, since it does not have any bearing over the matter under review, it is herein dismissed.-

Consequently, neither the non-receipt of a payment reminder nor the supposedly oral instruction to suspend compliance of pre-existent obligations are credible arguments for this Commissioner neither to consider nor to make her reasonably believe that The Applicants’ situation can be submerged in to the hypothesis stated in Paragraph 14.3.2 of Res. 818g, therefore, both arguments are dismissed.-

VII. Decision

Having carefully reviewed all the evidence and arguments submitted by the Parties in connection with this case,

Having looked at the applicable Resolutions, particularly to Section 14.3 of Res. 818g, as well as to The Applicants’ own unquestionable affirmations,

It is hereby decided:

- Considering the absence of “events out of the control” of The Applicants in this case, the decision rendered by The Respondent on March 25, 2013, of not accepting the late annual fee payment and thus reinstate The Applicants’ accreditation and execute a new Sales Agency Agreement, stands.-
- The Applicants should apply for the refund of their 2013 annual Agency fee.

Decided in Vancouver, the 25th day of April, 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.