

TRAVEL AGENCY COMMISSIONER - AREA 1
VERÓNICA PACHECO-SANFUENTES
110 – 3083 West 4th Avenue
Vancouver, British Columbia V6K 1R5
CANADA

DECISION 2014 - # 2

In the matter of:

Interline Turismo e Representacoes Ltda.

IATA Code No. 57-5 2702

SCN Quadra 02, Bloco D, Entrada B, Salas 921-923-925-927

928-929-930-931E-933 Asa Norte

70712-903 Brasilia, Distrito Federal

Brazil

Represented by its Director, Mr. Gilberto Chaves

The Applicant

vs.

International Air Transport Association (“IATA”)

703 Waterford Way, Suite 600

Miami, Florida 33126

United States of America

Represented by the acting Agency Administrator-The Americas, Ms.

Diana Larrañaga

The Respondent

I. The Case

On February 7, 2014 the Applicant requested a review of IATA's (also called "The Respondent") decision of suspending the Applicant from the BSP system. The said Notice of Suspension ("NoS") was dated February 4, 2014. By that same NoS the Applicant was served with a sixth Notice of Irregularity ("NoI"), due to failure to pay the proper amount of the remitting period corresponding 2014-01-02D for the sum of BRL 34,710.01 by the due date which was Feb. 3, 2014.

As a consequence of the above, the Applicant was requested to provide a Bank

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5)

Guarantee (“BG”) by March 31, 2014.

II. Background

The Applicant claimed that the first NoI was served due to a short payment of the October 2013’s BSP remittance, having settled the full amount the next day of the due date.

The Applicant alleges that the second and third NoI were due to payments done through an incorrect IATA-Bank account, however timely and fully made¹. The Applicant argues that it was not aware that a deposit in a mistaken IATA-Bank account would entail an irregularity.

Notwithstanding the above mentioned statement, looking at the evidence submitted by the Applicant, this Office noticed that the Applicant was indeed informed, through an IATA’s communication dated **August 26, 2013**, about the need to pay attention to the new IATA accounts in which BSP remittances would had to be paid in order to avoid belated payments or incorrect payments and, hence, the issuance of irregularities.

In Brazil coexists a *dual calendar*, one monthly and one weekly, and for each type of calendar it has been set by IATA a different Bank account for Agents to do the proper deposits according to the calendar in place.

It was stated by the Respondent, and not contradicted by the Applicant, that:

- <<IATA changed its Clearing Bank to the new bank in June 2013;
- A communication was dispatched to the entire market providing detailed information of the new sub-accounts in which to deposit remittances for each of the two calendars in BSP-Brazil;

¹ Proof of these payments was provided to this Office, copying IATA at all times.

- A three-month irregularity waiver period was granted to all Agents in the market. Between 1June-31August 2013, no irregularities were assessed to any Agent depositing in the incorrect sub-account;
- During this period, each Agent who paid into the wrong sub-account was personally contacted by IATA's Regional Office and reminded of the new sub-account deposit instructions;
- In August 2013, there was still a number of Agents who continued to deposit into the wrong sub-accounts, and thus IATA issued a reminder communication dated August 26, 2013, copy of which was provided to you² by the Agent;
- IATA then also decided to extend the irregularity waiver period an additional month and up to September 30th, 2013;
- As of October 1st, 2013 IATA resumed to apply the Agency Rules of the Resolution to any Agent remitting into the incorrect sub-account>>.

Both Parties agree on the fact that <<the Agent's records show regular payments into the appropriate sub-accounts during the period of 1June2013 to 30 Sep2013>>. Furthermore, the Respondent has expressly indicated, I quote: <<We do understand Interline Turismo has had an impeccable record, however as Agency Administrator, we are unable to remove the irregularities that took place after the period in which the market was allowed to adjust to the new bank>>.

III. Oral Hearing

Pursuant Paragraph 2.3 of Resolution 820e and Rule 14 of the Rules of Practice and Procedure, this Commissioner, acting upon both Parties' agreement on waiving their right to an oral hearing, had decided to base her decision only on the written submissions that have been filed by both of them.

IV. Considerations leading to conclusion

² To this Office

From the evidence on file, this Commissioner was able to determine the following facts:

- (i) IATA did follow correct procedure, by timely informing the Agent about the new scheme to follow when depositing according to the weekly or the monthly calendar;
- (ii) Moreover, this Commissioner appreciates the fact that the Respondent conferred a “grace period” during which no irregularities were imposed, acknowledging the time needed for the market to adjust and adapt to the changes;
- (iii) The Applicant had made a mistake and had paid twice at the wrong IATA-Bank account; however, it was also proved that, despite the mistaken bank account deposits, no BSP Member Airlines’ monies were at risk; no monies are outstanding nor have they been retained in any manner or way in the Applicant's own Bank account. The Applicant has paid to IATA-BSP but it has done so in to the wrong account, therefore, it had not paid proper attention to IATA's instructions, clearly stated in the above mentioned Notice dated August 26, 2013.-

V. Decision

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

Having looked at the applicable Resolutions;

It is hereby decided:

- The NoIs that were served against the Applicant shall stand;
- The Applicant is to provide the requested BG;
- As soon as the Applicant provides the referred BG, its BSP reinstatement should be undertaken by the Respondent at no delay.

Decided in Vancouver, the 2nd day of February 2014



Verónica Pacheco-Sanfuentes
Travel Agency Commissioner Area 1

Right to ask for interpretation or correction

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

Right to seek review by arbitration

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 referred period for interpretation/corrections would have expired.

