

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

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**DECISION – June 10, 2017**

**In the matter of:**

***A & A TRAVEL LIMITED***

IATA Code 93-5 0072 4  
86 Dundonald Street  
Port of Spain  
Trinidad & Tobago  
Represented by its General Manager, Mr. Geoffrey Wilcox

**The Applicant**

*vs.*

**International Air Transport Association (“IATA”)**

703 Waterford Way, Suite 600  
Miami, Florida 33126  
United States of America  
Represented by the Agency Manager – The Americas, Ms. Carolina  
Montoya Jaramillo

**The Respondent**

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**I. THE CASE**

The Applicant claimed and proved having refunded its clients, once the refunds had been duly processed and approved through the BSP system, but prior receiving a communication from the Respondent, instructing him about a different procedure, in light of a BSP Participating Airline’s suspension (*Insel Airlines*).

The Applicant had been diligently arguing this matter within the Respondent, proving accordingly, since March 2017, at no avail. In fact, the Applicant received a Notice of Termination (“NoT”) today with its BSP suspension. The Applicant is seeking a review of the Respondent’s actions.

## II. BACKGROUND

BSP Participating Airlines' suspensions are quite an extraordinary event and, as such, they generally trigger very peculiar situations that Agents have to deal with during a highly sensitive period.

It is worth noting that, as in this case, the Respondent's communications pertaining the "unusual" instructions that Agents have to follow, often reach them once refunds have been already approved and even done in the passenger's benefit, who ultimately is the one demanding the cancellation of tickets. In other words, the instructions reach Agents once the refund is already a *fait accompli*, that the Agent has done as part of a "business decision", which, as in this case, has entailed undesired consequences for the Applicant.

From the detailed chronology of events submitted by the Parties, it is clear that:

1. The Agent requested the refund through BSP on March 9, 2017, based on its customers' demand;
2. Between March 13 and 17 those refunds were approved, through BSP by the Participating Airline, when still active, and the Agent paid the money back to its customers **before** Remittance Date;
3. Later on, on March 21, meaning **ex-post** those acts and transactions had occurred, the Respondent communicated to all Agents in Trinidad & Tobago about this Airline's situation and gave the instructions how to deal with it (Resolution 850 "F", s. 2);
4. Seeing that the Agent did not exclude in its BSP settlement the previously authorized refunds to its customers, the Respondent informed several times the Agent about the need for it to amend its payment and include such sum in its settlement;
5. On its turn, the Agent insistently explained his position in order to avoid any penalty, since he considers having committed no wrong whatsoever, but rather having lawfully acted at all times. The Agent has objected this charge since its inception, back in March 2017, at no avail, since no agreement was reached. The Agent was terminated on June 1, 2017.

## III. ANALYSIS OF THE FACTS

- The Applicant's actions

As the evidence shows, the Applicant's customers demanded from it the cancellation of those tickets and, thus, their refund. The Applicant had, legally speaking, no right to refuse such request, since it had received the money from the customers when they purchased the tickets and had paid *Insel Air* those sales through BSP, so he followed the procedure to get them refunded in light of its customers orders. Those refunds were approved by the Airline and reflected in the BSP. However, the Applicant **before** actually receiving the funds from the Airline, took the unilateral decision to pay

its customers, out of his own pocket, once the refunds were approved, trusting that the Airline would honour its part and pay the Applicant back.

I find no legal grounds to condemn in any way the Applicant's actions, since (i) he acted upon the request of the tickets' owners (its customers); (ii) he followed the correct procedure through BSP to get those refunds approved; and, (iii) out of good faith and trust in the suspended BSP Participating Airline, he reimbursed its customers once the refunds were approved by *Insel Air* prior its suspension.

However, this Applicant's unilateral business decision should not entail a detrimental situation for other BSP Participating Airlines that were not suspended and from whom the Applicant had actually made sales. The money received by the Applicant as a result of those sales **had to be paid, in its totality, by the Applicant** to those BSP Participating Airlines (as reflected in the *Billing Report*), since they had nothing to do with the fact that *Insel Air* had being suspended nor with the fact that the Applicant had paid its customers before being actually refunded by *Insel Air*.

The Applicant certainly has a case against *Insel Air* from the approved refunds that were never received by the Applicant, but this valid claim is only valid against the Applicant's debtor, and that debtor is NOT the BSP as a whole nor the Respondent as the administrator, but SOLE and ONLY against the concerned suspended BSP Participating Airline (*id est*, against *Insel Air*).

It appears from the Applicant's several submissions that he really does not grasp how this process and the way the BSP/Clearing Bank work, reason why he finds himself today in the regrettable situation of being suspended, and, at the brink of loosing its IATA accreditation altogether.

It is clear for this Commissioner, and has never been questioned by the Respondent either, that the Applicant acted at all times in good faith. Nonetheless, that does not make his actions, from the Resolutions' perspective and the way the BSP works, valid nor sustainable.

- The Respondent's actions

As the evidence shows, the Respondent acted in accordance with Resolution 850 "F" s. 2, and actively tried to get the Applicant to comply with these provisions in a timely fashion.

#### IV. CONSIDERATIONS/DECISION

BSP Participating Airlines' suspensions and the way the applicable provisions have been drafted are not always clear enough for Agents to understand and to comply with; worldwide situations confirm this fact. This Applicant's case is not an isolated one.

Having said that, this Office did notice the Respondent's multiple efforts in getting across the instructions to this Applicant in a clearer manner.

As the evidence shows, the Respondent did comply with the procedure stated in the applicable rules (*supra* referred). It also shows that the Applicant had no ill intention to disregard the applicable provisions, it simply did not fully grasp them and was unable to realize that its debtor is *Insel Air*, **not** the rest of BSP Participating Airlines, nor the Respondent itself.

Having thoroughly analyzed the applicable Resolutions, in light of the preponderance of the evidence on file, I hereby decide as follows:

(i) Provided the Applicant pays the Respondent the corresponding amount of the refunds that he mistakenly deducted from its last Billing Report before June 30, 2017, its Passenger Sales Agency Agreement will not be terminated;

(ii) Once that payment would have been made, the Applicant is to be reinstated in to the BSP system at no further delay and without the need of fulfilling any reinstatement requirement, other than paying the US\$ 150.00 reinstatement fee.

- This decision is effective as of today.

Decided in Vancouver, the 10<sup>th</sup> day of June 2017.



*Verónica Pacheco-Sanfuentes*  
Travel Agency Commissioner Area 1

**Right to ask for interpretation or correction**

In accordance with Resolution 820e § 2.10, any Party may ask for an interpretation or correction of any error, which the Party may find relevant to this decision. The timeframe for these types of requests will be 15 days after receipt of this document (meaning no later than **June 25, 2017**).

Please also be advised that, unless I receive written notice from either one of you before the above mentioned date, this decision will be published in the Travel Agency Commissioner's secure web site, provided no requests for clarification, interpretation or corrections have been granted by this Commissioner, in which case the final decision will be posted right after that.

**Right to seek review by arbitration**

If after having asked for and obtained clarification or correction, any Party still considers aggrieved by this decision, the Party has the right to seek review by arbitration in accordance with the provisions of Resolution 820e § 4 and Resolution 824 § 14.