

Brian P. Barrow

A2/2008/02

TRAVEL AGENCY COMMISSIONER, AREA TWO

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BPB/ma/09vi08

DECISION

In the Matter of:

Editravel Viagens e Turismo lda

Parque Industrial, no. 115 Silvares

4620-665 Lousada

Portugal

(IATA Numeric Code: 64-2 1149 0)

Applicant,

vs.

Agency Administrator

IATA

International Air Transport Association

Route de l'Aéroport 33

P.O. Box 416

1215 Geneva 15 Airport

Switzerland

Respondent.

Introduction

1. The Review giving rise to this decision has been made on the authority of IATA Resolution 820e, in which the powers and duties of the Travel Agency Commissioner are set out. The undersigned is the Agency Commissioner for Area Two, appointed in accordance with the provisions of Resolution 820d.

Parties

2. The Applicant is Editravel Viagens e Turismo lda, an IATA Accredited Agent with registered office in Lousada, Portugal. Editravel has been an IATA Accredited Agent since the beginning of 2001.

3. The Respondent is the Agency Administrator of the International Air Transport Association ('IATA'), acting for Member airlines which have delegated certain functions to IATA. IATA exists by virtue of a Canadian Act of Parliament (Statutes of Canada 1945, Chap. 51, as amended in 1975) and is the worldwide association of airlines that operate internationally. It performs common services for its 230, or so, Members that include administering the Agency Programme and managing the Billing and Settlement Plan ('BSP') in Portugal. The BSP is an industry centralised sales reporting and settlement system. The Agency Administrator has particular responsibility for the management of these activities.

4. IATA divides the world into Areas One, Two and Three. The Agency Administrator's main base in Area Two, Europe/Africa/Middle East, is Geneva, Switzerland. The management of the Agency Programme and the BSP in Portugal is split between the Lisbon and the Madrid offices of the Respondent.

5. The Agency Programme consists principally of resolutions adopted by the IATA Passenger Agency Conference which lay down the rules and regulations governing business relations between IATA Accredited Agents and IATA Members. They also provide the regulatory framework within which the Respondent works with IATA Accredited Agents, including the Applicant.

Contractual Considerations

6. The Passenger Agency Conference is composed of all those IATA Members (i.e. airlines) who appoint a delegate to it. Per the IATA Articles of Association, it is a sovereign entity within IATA and its Resolutions are binding on all Members that operate passenger services, whether or not they have appointed a delegate to the Conference. The IATA Secretariat is not empowered to alter, overrule or ignore a Conference Resolution.

7. The contractual instrument in this matter is the Passenger Sales Agency Agreement (Resolution 824), signed by the Applicant. Under that agreement, IATA acts for those of its Members that appoint the travel agent signatory as their sales agent. Incorporated into that agreement is Resolution 818 – Passenger Sales Agency Rules and the BSP Manual for Agents (Attachment 'I' to Resolution 850). The Agreement and Rules mentioned above are published in the Travel Agent's Handbook, a progressively updated publication, furnished by IATA annually to all IATA Accredited Agents, using an electronic medium. The January 2008 edition of that publication applies to the review proceeding giving rise to this decision.

8. The provisions of Resolution 820e, - Reviews by the Travel Agency Commissioner, at §1.1.10, allow an Accredited Agent to seek review by the Travel Agency Commissioner on grounds that the Agency Administrator has allegedly not followed correct procedure, as delegated by the Passenger Agency Conference, to that Agent's direct and serious detriment. Those of Resolution 818, Attachment 'A', §2.5 permit an Agent who has received notice of impending termination of accreditation to invoke the procedures of Resolution 820e for review of its situation. The present review has thus been brought under Resolution 820e.

Facts

9. As an IATA Accredited Agent the Applicant reports and routinely remits its airline passenger transportation sales through the BSP Portugal. Under that BSP, remittances are made monthly to the Settlement Bank, against a BSP Billing sent to each Accredited Agent. In the Applicant's case, payment is effected typically by cheque drawn on its own bank which it presents to the BSP Clearing Bank.

10. The April 2008 BSP Billing fell due on 15th May. In it the Applicant was invoiced for the amount of €195,409.01. On the Remittance Date, the Applicant passed to the BSP Clearing Bank its cheque in settlement of the BSP Billing. The following day, the BSP Clearing Bank advised BSP Management that the Applicant's cheque had been rejected for payment. The Respondent's written notice of the non payment containing its summons to the Applicant to settle immediately was sent electronically on 21st May, whereas the Applicant's

bank had on 19th May informed the BSP Clearing Bank, also electronically, that the cheque was good for presentation.

11. The Respondent's procedures preclude the possibility of re-presenting a dishonoured cheque. This state of affairs was confirmed to the Applicant by the Respondent on or around 24th May. Although the funds to pay were on the account, the Applicant's bank would not release them because the cheque dated 15th May was by then subject to Central Bank oversight and thus could not be presented.

12. Upon being informed of the Respondent's policy not to re-present a cheque, the Agent's bank effected a direct transfer to the BSP Clearing Bank, on 26th May.

13. In the meantime, the Respondent's Lisbon office had sent by registered post its letter of default dated 23rd May which was delivered on 28th May. (A similar but more detailed letter from the Respondent's Madrid office, which included notice of impending cancellation of IATA accreditation, was put in the registered post on 28th May and was delivered to the Applicant on 3rd June).

Review Approach Taken

14. A hearing of the parties took place in Lisbon on 5th June 2008. At that proceeding the Applicant was represented by its Managing director Mr A. Eduardo M. Moreira da Silva, Eng^o. The Respondent was represented by Mr Jean Charles Odele Gruau, Country Manager Spain & Portugal and Ms Constança Marques, Manager Passenger Services, Portugal.

Considerations

15. It is recognized that the efficient and economical operation of the BSP necessitates strict fiduciary discipline on the part of Agents reporting and remitting through it. The Respondent's field staff are under strict orders with respect to reporting and remitting discrepancies to apply the IATA Resolutions immediately and to the letter. The prime function of the BSP is to safeguard the BSP Airlines' monies.

16. The Applicant has and had in place at the time of the incident under review a line of credit with its bank to cover BSP Billings, to a ceiling of €400,000. The documentary evidence points to the fact that on 13th May, in invoking part of that credit line, the Agent erroneously gave 16th instead of 15th May as being the day on which the funds should be on its account to meet its BSP Billing liability. As a result, the value date then applied by the bank was the following day, 17th May and in the absence of the branch bank manager on 16th May, the cheque for the BSP Billing settlement was refused that day. Had he been on duty, the anomaly would have been rectified immediately.

17. There were delays in communications between the parties. They were attributable to a combination of vagaries of telecommunication, interspersed with non-working days and the fact that separate services of the Respondent handle different aspects of notification and collection in the default process.

Findings

18. The Applicant's explanation of how its bank come to fail to honour the cheque on its 16th May presentation when it should have done so is supported by documentation submitted and is not disputed.

19. The Respondent's actions taken as a consequence of becoming aware of non payment were both prudent and procedurally correct, according to the requirements of Resolution 818, Attachment 'A', §1.7.5. The rules require that precautionary measures be taken promptly, and they were.

Decision

20. There was a default per the terms of the Resolution but it was not, entirely ascribable to the Applicant's conduct. Had the Applicant's bank been more alert on 16th May the incident would not have blown up out of all proportion. Had the Respondent's policy of cheque non re-presentation been known sooner, alternative prompt settlement would have ensued after the cheque was rejected.

21. The recording of two instances of irregularity by the Respondent made per Resolution 818, Attachment 'A', §1.7.5.1(a) is, however, in accordance with correct procedure and stands. The record also stands of an instance of default, by reason of a technicality. The Applicant's responsibility for it is shared by its bank.

22. The requisite post-default financial review of the Applicant will proceed with all due dispatch, as agreed between the parties at the close of the hearing when the Applicant undertook immediately to pass its latest accounts, as filed with the government authorities, to the Respondent for referral to an independent specialist.

23. In the event that financial review establishes that the Applicant continues to meet all the published financial criteria per the Travel Agent's Handbook, the Applicant will thereupon be reinstated on the IATA Agency List, without conditions being imposed.

24. In the event the financial review establishes the Respondent will apply its judgment, according to its promulgated rules, as to any requirement for additional financial guarantee as a prior condition to the Applicant's reinstatement.

25. To obviate the risk of recurrence the Applicant should give serious consideration to arranging with its bank for the routine transfer of funds to the BSP Settlement Bank in respect of its BSP Billings. Absent such an arrangement being in place a future payment irregularity could have even more grave consequence for the Applicant.

26. Bearing in mind the confusion on the part of the Applicant and its bank sprang from their own bilateral arrangements, the period on which the Applicant should be called upon to pay interest on the late paid BSP Billing shall be the time elapsed between the Remittance Date and the value date of the remittance made. The Respondent may also make a reasonable charge to the Applicant for the additional work caused to BSP Portugal in correcting matters.

27. The parties are not liable to pay any fee or costs to the undersigned in respect of the present decision.

28. For good order's sake and per Resolution 820e, §4.1, it is noted that the Applicant may, if it considers itself aggrieved of this decision, seek review by arbitration in accordance with the provisions of Resolution 818, §11.

Decided this 9th Day of June 2008, in Geneva.

Brian Barrow
Travel Agency Commissioner, Area Two

NOTE: to ensure timely receipt by the parties, an electronic copy of this Decision is sent on 9th June 2008, with the original signed copy being sent by registered post.