

TRAVEL AGENCY COMMISSIONER, AREA TWO

29, Route de l'Aéroport, P.O. Box 833

CH-1215 Geneva 15 Airport, Switzerland

Office phone: +41 22 799 3900, office fax: +41 22 799 3902

E-mail: agency.commissioner@bluewin.ch

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DECISION

In the Matter of:

Cgtt Voyages

3, rue de Gramont

F-75002 Paris

France

(IATA Numeric Code: 20-2 1058 4)

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 the Compagnie générale de Tourisme et de Transport Cgtt – “Lepertours” (t/a Cgtt Voyages) is an IATA Accredited Agent of long standing with registered head office in Paris, France.

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 228 or so Members that include administering the Agency Programme and managing the Billing and Settlement Plan (‘BSP’) in France. 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 country field office for France, which exercises management responsibility for the BSP France, is situated in Paris.

5. The Agency Programme consists principally of resolutions adopted by the IATA Passenger Agency Conference. They lay down the rules, regulations and procedures governing business relations between IATA Accredited Agents and IATA Members. The programme is administered by the Agency Administrator, an IATA official or his authorized representative, as defined in Resolution 866 – Definitions of Terms used in Passenger Agency Programme Resolutions.

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 required to apply and abide by Conference Resolution requirements.

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. The Applicant has relied on that provision to bring its request for review and the undersigned has accepted to conduct a review.

Facts

9. As an IATA Accredited Agent the Applicant reports and routinely remits its airline passenger transportation sales through the BSP France. Under that BSP, remittances are made monthly to the Settlement Bank, against a BSP Billing sent to each Accredited Agent.

10. In the BSP Billing for May 2008, for which payment fell due on 17th June, the Applicant was invoiced for the amount of €456,421.14. Settlement was effected by bank transfer made on 18th June.

11. By letter sent on 23rd June, the Respondent served a Notice of Irregularity on the Applicant stating that two instances of irregularity had been recorded against it. Under the BSP France rules, if four instances of irregularity are accumulated by an Agent within a

period of twelve consecutive months, that Agent is placed in default under the provisions of Resolution 818, Attachment 'A', §1.7.8.

12. By a separate letter of 23rd June, the Respondent reminded the Applicant of a late payment in respect of its March 2008 BSP sales which had also given rise to two instances of irregularity being recorded against the Applicant. In consequence, four instances of irregularity had been incurred within twelve consecutive months, triggering off default action.

Hearing

13. A hearing was conducted before the undersigned in the IATA Paris offices on 8th July 2008. The Applicant was represented by Mme Isabelle Haas, managing director. The Respondent was represented by Mr Patrick Xavier, Manager Operations, IATA France.

Considerations

14. It was recognized at the outset by the parties that the efficient and economical operation of the BSP necessitates strict compliance with fiduciary discipline on the part of Agents reporting and remitting through it. It also necessitates rapid response action on the part of the BSP Management whenever an irregularity occurs.

15. The Applicant furnished extracts from its bank statements evidencing its assertion that on the Remittance Date there were more than enough funds on its account to meet the BSP Billing requirement. The Applicant also furnished a letter from its bankers stating that due to an error of communication, its back office had effected the transfer one day late and that error should not be ascribed to the Applicant.

16. The Respondent's field management had no choice but to comply with strict orders, emanating from IATA senior management, with respect to reporting and remitting discrepancies, and to apply the IATA Resolutions immediately and to the letter. The prime function of the BSP is to safeguard the BSP Airlines' monies. In case of doubt, protective action is triggered immediately following the reasoning of being better safe than sorry.

Findings

17. The Applicant's explanation, confirmed by the documentary evidence supplied by its bank, is accepted by the undersigned. It is important to note that BSP Airlines' monies were at no time put at risk and the remittance was made without the Respondent having to intervene. It is accordingly found that a *bona fide* bank error within the meaning of Resolution 818, Attachment 'A', §1.7.7 was committed.

18. The Respondent's actions, taken as a consequence of becoming aware the short payment, were procedurally correct, based on a strict interpretation of Resolution 818, Attachment 'A', §1.7.5 and pursuant to the directive of its head office. The Applicant has in the meantime arranged that its BSP Billings will henceforth be settled by automatic direct debit of its bank account, thereby obviating further risk of internal bank communication failure.

Decision

19. The recording of two instances of irregularity by the Respondent, published by the Respondent in accordance with the requirements of Resolution 818, Attachment 'A', §1.7.5, is hereby annulled and the consequent default action is cancelled.

20. It is decided that the Applicant shall nevertheless undergo a financial review, in accordance with the Respondent's standard procedures and that the cost associated with such review shall be entirely for the Applicant's account.

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

22. 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, §12.

Decided this 9th day of July 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 July 2008, with the original signed copy being sent by registered post.