

TRAVEL AGENCY COMMISSIONER, AREA TWO

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BPB/ma/16.vii.08

DECISION

In the Matter of:

Take Off

4, rue d'Alésia

F-75014 Paris

France

(IATA Numeric Code: 20-2 2114 3)

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 S.A. Take Off (t/a Take Off) with registered head office in Paris, France and has been an IATA Accredited Agent for 15 years, without incident.

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 €86,597.55. The Applicant's bank at the time (hereinafter called the 'old bank') was instructed but did not to effect the requisite transfer.

11. By letter sent on 26th June, the Respondent informed the Applicant of the position and invited immediate correction. The overdue amount, as well as remittance on the Applicant's sales for the period following the Settlement Date up until the moment in June when access

to GDS ticketing had been cut off by the Respondent, were both subsequently paid in full by the Applicant's new bank.

Hearing

12. A hearing was conducted before the undersigned in the IATA Paris offices on 8th July 2008. The Applicant was represented by Mme Céline Maréchal-Gouée, general manager. The Respondent was represented by Mr Patrick Xavier, Manager Operations, IATA France.

Considerations

13. 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.

14. The Applicant furnished extracts from its bank statements from its old bank evidencing its assertion that on the Remittance Date there were sufficient funds on its account to meet the BSP Billing requirement. The comportment of the Applicant's old bank in this matter is not perceived as constructive. Funds were on the Applicant's account on the Remittance Date but were not transmitted, contrary to the Applicant's repeated instructions. In consequence, the Applicant transferred those funds to its other bank, which immediately effected both remittances to the Respondent.

15. The action of the old bank of cancelling the Applicant's financial guarantee arbitrarily, without informing the Applicant, and of apprising the concerned government authority of the cancellation without the courtesy of informing the Applicant, temporarily imperilled the Applicant's licence to trade. A combination of inactions and of actions smacking of *mala fides* is discernible. In the event, upon being notified by the Prefecture of that cancellation action, the Applicant immediately furnished a replacement financial guarantee via its other bank.

16. Not knowing at the time of the above happenings, the Respondent took prudent precautionary measures. In doing so, it 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 banking and prefectorial documents, is accepted by the undersigned. BSP Airlines' monies were at no time put at risk and remittance has been made in full, right up to the ticketing cut-off date. Resolution 818, Attachment 'A', §1.7.7 describes the kind of error on the part of the bank that is admissible by the Respondent to attenuate or cancel the degree of fault attributable to an Accredited Agent. The failure to effect remittance on time by the old bank falls into that category, whatever motivation drove its behaviour.

18. The Respondent's conduct consequent on becoming aware the short payment, was prudent and 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 competent government authority has immediately corrected its initial suspension action and reinstated the Applicant's licence to trade as a travel agent, without attaching new conditions.

Decision

19. The Applicant is to be restored to normal credit standing with immediate effect.

20. For good order's sake, it is decided that the Applicant shall undergo a financial review, in accordance with the Respondent's standard procedures and that the cost associated with such review shall be 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 16th 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 16th July 2008, with the original signed copy being sent by registered post.