

**TRAVEL AGENCY COMMISSIONER, AREAS ONE & TWO**

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BPB/ma/27x.08

**DECISION**

**In the Matter of:**

**VIAJES PROVIAS S.A.**

Paseo de la Habana 42

28036 Madrid

Spain

(IATA Numeric Code: 78-2/6387)

Applicant,

vs.

**Agency Administrator**

**IATA**

International Air Transport Association

33, route de l'Aéroport

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 acting Agency Commissioner for Area One, appointed in accordance with the provisions of Resolution 820d.

**Parties**

2. The Applicant is Viajes Provias S.A., an IATA Accredited Agent since March 1986, incorporated in Spain.

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 Panama. 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, which exercises management responsibility for the BSP Spain, is situated in Madrid.

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 managed 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, made available by IATA annually to all IATA Accredited Agents, via 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.

#### Review Approach Taken

9. The parties agreed, per Resolution 820e, §2.3, to waive hearing in favour of the undersigned acting on the documentary evidence and submissions presented by the parties. That documentation demonstrates that there is essentially no disagreement on the facts, as outlined below.

#### Facts

10. As an IATA Accredited Agent, the Applicant reports and routinely remits its airline passenger transportation sales through the BSP Spain. Remittances are made monthly to the Settlement Bank, against a BSP Billing sent to each Accredited Agent. It is the practice of the Applicant to effect remittance by inter-bank transfer.

11. The BSP Billing of August 2008 amounted to €13,845.52 and the Remittance Date was 15<sup>th</sup> September. On that date, the Applicant instructed its banks to make the requisite transfers, adding up to the above total. That was done immediately, with the result that the full amount due was credited to the Respondent the following day, i.e. one day late. Because of a one day late remittance made nine months previously in almost identical circumstances had given rise to the recording of two instances of irregularity, the Applicant was immediately placed in default on the second occasion, by the Respondent for reason of four instances of irregularity incurred within twelve consecutive months.

12. The Respondent also called upon the Applicant to pay all monies due to BSP Spain, as at the date of the default notice, and to furnish a bank guarantee in the amount of €308,000. The Applicant promptly complied with both requests.

### Considerations

13. It is recognized by the parties that the efficient and economical operation of the BSP necessitates strict compliance with fiduciary discipline on the part of each Agent reporting and remitting through it. The system also necessitates rapid response action on the part of the BSP Management whenever an irregularity occurs.

14. It is not in dispute that the one day late payment was erroneous. The Applicant actually remitted the full amount due on the BSP Remittance Date which was a Monday, in the belief that was in order, whereas the instruction to transfer should have been given on the previous bank working day to ensure full payment was actually accomplished not later than the Remittance Date. The incident of the previous December occurred in the run-up to the end of year holidays and there is now reasonable ground for believing that it did not come to the Applicant's notice before the second incident brought it to the surface. The Applicant apologizes for its error. It enjoys a satisfactory financial record and standing and the matter under review should not be regarded as reflecting adversely on or placing in doubt that standing.

15. As the prime function of the BSP is to safeguard the BSP Airlines' monies, it is prudent for the BSP Management to take precaution measures immediately and to adjust matters later, if warranted. This is what was done by the Respondent's field management.

16. Subsequent checking reveals that there were adequate funds on hand in the Applicant's bank accounts at all material times. Moreover, the Applicant's recently audited accounts for 2007 show that it conforms to all the laid down qualifying financial criteria.

### Findings

17. As revealed by the evidence offered, this incident does not constitute a financial irregularity in the sense envisaged in Resolution 832. BSP Airlines' monies were at no time put at risk and the one day delay in remittance was both accidental and self-correcting. It is reasonable to suppose, now that the lesson has been pressed home, that there will be no recurrence of misconstruing the procedure for payment when the Remittance Date falls on a Monday.

18. The Respondent's actions, taken as a consequence of becoming aware the short payment, were procedurally correct, per Resolution 832, §1.7.5.

Decision

19. In view of the confusion surrounding the communication of the recording of two instances of irregularity in respect of the December 2007 incident by the Respondent, that incident is deemed to be non-operative and, in consequence, the default action is stayed. However, there is no similar doubt attaching to the Respondent's September 2008 communication of incurred irregularities to the Applicant. The second pair of instances of irregularity therefore stand. At no point, either in December 2007 or in September 2008 were BSP Airlines' monies at risk and the BSP Billings were paid automatically on the Tuesday, without need for reminder.

20. In reaching his decision, the Travel Agency Commissioner is permitted discretion on authority of Resolution 820e, §3.2, to set such conditions as are consistent with and may be reasonably applied under the Passenger Agency Programme of the Respondent. In view of the fact that the Applicant's latest audited accounts evidence a satisfactory financial standing, it is decided that the request to the Applicant to provide a bank guarantee is no longer warranted on the facts, as discovered by the present proceeding and is hereby cancelled, without prejudice to the outcome of any future financial review of the Applicant by the Respondent which may indicate a different course of action being decided by the Respondent.

21. The Respondent is entitled to bill the Applicant for reasonable additional administrative costs occasioned by this incident.

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

23. 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 27<sup>th</sup> day of October 2008, in Geneva.

Brian Barrow  
Travel Agency Commissioner, Areas One & Two

**NOTE:** to ensure timely receipt by the parties, an electronic copy of this Decision is sent on 27<sup>th</sup> October 2008, with the original signed copy being sent by registered post.