

DECISION 2010-07-05

Travel Agency Commissioner Area 2

Helene Cedertorn
Nybohovsbacken 34B, 117 63 Stockholm
Sweden

The Case:

Request for Review of Notice of Irregularity by the Agency Administrator dated the 4th of May 2010; now question of granting TAC Review or not

Applicant:

Jamadvice Travel Ltd
10 Asen Zlatarov str.
1504 Sofia, Bulgaria
Represented by: R.M. Thomas, Managing Director HRG Bulgaria

Respondent:

The Agency Administrator
International Air Transportation Association (referred to as "IATA")
128, Vitisha Blvd, 1st floor
Sofia – 14 63
Bulgaria
Represented by: Jordan Karamalakov, Country Manager Bulgaria, Kazakhstan, Azerbaijan and Kyrgyzstan

Background, arguments etc:

By a letter contained in an e-mail the 3rd of June 2010 the Applicant brought forward complaints regarding the services and the provision of accurate and timely information from the bank utilized by the Applicant (the same bank utilized by IATA as BSP Clearing Bank). According to the letter (as summarized by the undersigned) the problems with the bank ultimately led to that the BSP remittance due 30th of April 2010 (reporting period 1-15 April) was not fully paid in time. The Applicant was expecting several transfers to its account with a value date of 30th of April. International transfers with due dates of the 30th had still not appeared long after they should have. At the end of the day the bank credited some of the missing funds and the core amount of the BSP bill was paid, leaving a nominal amount of 11,000.00 Euro. This amount the Applicant claims that it would easily have covered through pending transfers - or could have been covered by transfer of funds from an alternative bank account - if adequate notice of current account balances had been provided to the Applicant.

The undersigned asked for some clarifications in an e-mail the 4th of June. The Applicant clarified in an e-mail the same date that it wished to request a Travel Agency Commissioner Review of the Notice of Irregularity dated the 4th of May. A copy of the notice from IATA, a

copy of a bank document in Bulgarian and a copy of the letter of 3rd of June were also sent by e-mail.

The Respondent replied in an e-mail dated the 9th of June 2010 and stated that there is no dispute that the funds reached the BSP Hinge Account the 3rd of May instead of the 30th of April as per BSP – Bulgaria calendar. The Respondent did not want to comment on the complaint relating to the bank service of the bank used by IATA (as well as by the Applicant). The Respondent found no reason to withdraw the Notice of Irregularity.

The Applicant sent an additional e-mail the 10th of June, as well as a copy of a letter from Mr Aria Shkaki dated the same date, and claimed in essence that the problems with the service level of the bank were well known in the travel community of Bulgaria, including by IATA.

In an e-mail dated the 14th of June the undersigned asked the Applicant if it had evidence that the full amount was deducted a certain time from its accounts.

In a letter delivered by courier the 28th of June the Applicant provide a copy (in Bulgarian and in English) showing debits made from its account by the bank the 3rd of May 2010.

The undersigned asked the Respondent to provide its comments and by e-mail the 29th of June the Respondent stated in summary that the copy of the bank document show that money was debited from the of the Applicant the on the 3rd of May. There is no evidence that the necessary amount was available on the Agent's account before COB of remittance date. The bank may process some payments from customers to agent's account on 30th of April with some delay. This might be considered as bad performance of the bank, but it happened in its capacity as commercial bank for the Agent, not in capacity of BSP Clearing bank.

In a final comment by e-mail the 1st of July the Applicant in short summary further explains that as Bulgaria is a cash based society. As Agent the Applicant it is depending on that the cash from the clients hit the account of the Applicant in time and to be accounted and credited by the bank in an efficient, timely but above all else, reliable and consistent manner.

Rules of interest

To become an accredited agent an agent signs a Passenger Sales Agency Agreement (hereafter referred to as the PSAA) in accordance with IATA Resolution 824. In this contractual relationship the Director General of IATA represents the IATA Members (or in other words the IATA airlines) and acts for and behalf of these.

The Agreement stipulates that terms and conditions governing the relationship between the Carrier and the Agent are set forth in the Resolutions contained in the Travel Agent's Handbook (hereafter referred to as the Handbook) as published from time to time under the authority of the Agency Administrator. The Handbook is local and varies by country and incorporates, amongst other things, Passenger Sales Agency Rules. For Bulgaria these rules are incorporated by IATA Resolution 818g (from the 1st of June 2010).

The Passenger Sales Agency Rules are consequently to be considered as part of the contractual relationship between the individual Agent and the IATA Members. The rules of primary interest here are related to Bona Fide Bank Error (see Res 818g Attachment A Section 1.7.3. – same wording as Res 818 Attachment A Section 1.7.7. in effect prior to 1st of June 2010).

“1.7.3 Bona Fide Bank Error

a bona fide bank error is one of the following circumstances substantiated by evidence acceptable to the Agency Administrator:

1.7.3.1 Credit Arrangement or Automatic Transfer of Funds

when on the date the cheque or other method of payment was presented to the Bank for payment, sufficient funds should have been available in the account on which the cheque or other method of payment was drawn by virtue of a valid written line of credit or other written arrangement, dated and executed between the bank and the Agent prior to the Reporting Period involved, and the bank erroneously fails to honour such line of credit or other arrangement, or

1.7.3.2 Sufficient Funds

if the bank erroneously fails to honour a valid cheque or other method of payment when sufficient collected funds are in the Agent's account on which the cheque or other method of payment was drawn and available for immediate withdrawal at the time the cheque or other method of payment was presented to the bank for payment;”

Travel Agency Commissioner Review – rules and conclusions

The procedures under which the Travel Agency Commissioner (hereafter referred to as TAC) operates are contained in IATA Resolution 820e. The Commissioner shall initially decide whether or not a credible case for review has been made, according to section 1.2.3 of this Resolution. - The first initial assessment by the TAC is therefore if the matter is a credible case for review or not. It is important to note that the Travel Agency Commissioner does not have authority to overrule resolutions, or change the material content of any rules. The Passenger Agency Conference has the power to implement any rules or procedures it wishes.

In this matter there is no dispute with regards to the fact that the payment due was not paid fully in time. The question here is therefore if the failure to pay the full amount in time for some reason was excusable under the IATA Resolutions. The Applicant claims that money transfers from its clients were not handled correctly by its bank, and this together with lack of information from the bank, caused the failure to pay in time.

- The general principle, as reflected in the IATA Resolutions and in my opinion, must be that the risk of transfers from clients not appearing on an operating account in time for a remittance normally rests with the Agent. The Agent is the only party able to control its cash flow and lack of such control (even if caused by a third party contracted by the Agent) could not in general terms be at the risk of IATA.

However there are certain rules for Bona Fide Bank Error (quoted above) to limit the effects of certain circumstances related to failures by the bank utilized by the Agent. The rules require that there is evidence presented that a) sufficient funds either should have been available by some sort of credit arrangement between the bank and the Agent (dated and executed prior to the reporting period involved), b) or that sufficient were actually in the Agent's account when payment was initiated by the Agent. – In this matter I cannot find that evidence is presented that shows that sufficient funds should have been available due to any

such arrangement as mentioned in a), or that sufficient funds were actually available at the accounts of the Agent at the date of the remittance as required under b). Potentially other situations may be seen as excusable, on general contractual grounds, such as for example if the effects of a failure are totally unreasonable in proportion to the failure by one party to perform, but I do not find that there are evidence for any such circumstances presented in this matter. Therefore I cannot find that there is any potential possibility for success for the Applicant in a Travel Agency Review on any of the grounds for review as laid out in Resolution 820e, based on the claimed circumstances. In light of the need to ensure the resources of the TAC Office are handled with care, and my obligation to initially decide whether a credible case for review has been made, I therefore dismiss this request for review in accordance with resolution 820e section 1.2.3.

Decision

The request for Travel Agency Review is dismissed. The Notice of Irregularity dated the 4th of May 2010 by IATA stands.

Decided in Stockholm 2010-07-05

The decision is sent this date by e-mail to the parties. Original signed copies will be sent by postal mail.

Helene Cedertorn

Note:

The parties may, if considered aggrieved by this decision, seek review by arbitration in accordance with the provisions of Resolution 818g, section 12.