

DECISION 2010-12-03

A2-2010-10

Travel Agency Commissioner Area 2

Helene Cedertorn
Nybohovsbacken 34 B Stockholm
Sweden

The Matter:

Request for Review by the Agency Administrator

Review initiated by:

The Agency Administrator
International Air Transportation Association, IATA
Represented by: Ms. Anke Bushell, Assistant Manager Risk Management
Poststrasse 2-4, 60329 Frankfurt am Main, Germany

Agents:

1. Ahlener Reisebuero GmbH (referred to as Ahlener)
2. Lippstaedter Resiebuero GmbH (referred to as Lippstaedter)
(1. and 2. are jointly referred to as the Agents)
Represented by: Mr. Klaus Daccache, Managing Director
Lufthansa City Center
Markstrasse 4, 59555 Lippstadt, Germany

Background and communications:

IATA declared the Agents under financial review under the provisions of Resolution 818g Attachment A, section 1, para 1.8ff (Prejudiced Collection of Funds) with effective date 29 Oct 2010, as IATA found the Agents' ability to pay monies to the airlines to be in doubt.

By e-mail the 1st of Nov 2010 IATA requested review by the Travel Agency Commissioner (TAC) according to Resolution 820e section 1 para 1.3. IATA also submitted a chart describing the group of companies to which the Agents belong, and a credit bureau report dated the 28th of Sept 2010 regarding Lippstaedter.

In an e-mail the 2nd of Nov 2010 IATA provided additional arguments. The same date the undersigned described the TAC Proceeding to the parties via e-mail, and asked for comments from the Agents and some additional information from IATA relating to guarantees necessary to cover sales at risk.

IATA provided the requested information concerning the guarantees in an e-mail the 2nd of Nov.

The 3rd of Nov the Agents provided their comments on what had been stated by IATA.

1(4)

The 4th of Nov 2010 the undersigned ordered interlocutory relief, ordering that the Agents should be temporarily re-instated with ticketing authority during the TAC proceeding, subject to certain conditions for the purpose of limiting potential increase of cash sales.

The same date IATA provided response to what had been stated by the Agents. In addition a credit bureau report dated the 2nd of Nov 2010 concerning Ahlener was provided.

The parties had some further correspondence via e-mails the 4th of Nov 2010. The 5th of Nov the undersigned provided some clarifying notes to her Interlocutory Relief Order.

The 8th of Nov 2010 the undersigned summarized the matter so far, and asked the parties to comment on a potential solution to the matter. IATA responded the 10th of Nov and the Agents provided their response the 15th of Nov. The undersigned asked for confirmation on that the matter could be handled on the written documentation only (already confirmed by IATA), and this was provided by the Agents the 26th of Nov 2010. The parties have thereby agreed to that an oral hearing is not necessary and that the matter could be reviewed on the written submissions of the parties. Therefore, as the arguments from both parties are clear and the submitted evidence is all in writing, the undersigned finds that a decision could be based on the written submissions, without jeopardizing the procedure.

The Arguments by the Parties

IATA has stated that its main concern is that the group of agencies, to which the two agencies under review belongs, will shift cash ticketing from one defaulted agency within the group, to the two agencies here under review. This would have the consequence that the guarantees under which the two agencies operate will not cover monies at risk. IATA has provided a description of the group of companies and also credit bureau information relating to the two agencies under review. IATA has also stated that one of the agencies under review has substantial debts to an airline with whom the agent has agreed on a re-payment scheme, but still there are concerns that the installment plan will not be followed. IATA has confirmed that the two Agents under review have provided guarantees at the required amounts to cover its sales, in accordance with the German local financial criteria. IATA has further confirmed that if the defaulted agency (not under review here) provides the required guarantee, the ticketing and refund facilities of the Agents could be re-instated.

The Agents have stated that they will not shift cash sales from the defaulted agency. The default was due to two IATA invoices being paid with the delay of one day. Furthermore the defaulted agency will provide guarantee covering its sales shortly, after the annual accounts have been checked by the bankers. The Agents under review have no open invoices and have provided bank guarantees with the amounts asked for. The Agents ensure that the required guarantee will be provided to IATA the latest the 10th of Dec 2010.

The Review

The IATA Agency Administrator has taken certain actions and requested TAC Review under the rules of Resolution 818g Attachment A section 1.8. This means that IATA needs to have written information that could be substantiated, leading to the belief that BSP Airlines' ability to collect monies for STDs may be prejudiced.

It is my interpretation of the above rule that it is not enough to claim in general that cash sales may be shifted from one defaulted agency within a group of companies, to others within the same group, for IATA to initiate proceedings towards an agency within the group under Resolution 818g Attachment A section 1.8. - There must be some sort of additional substantiated information concerning the particular agency, leading to the belief that BSP Airline's ability to collect monies may be prejudiced.

– With this interpretation as background the undersigned finds that IATA had cause to initiate review of Lippstaedter, based on the regulations as laid out above, due to the unsatisfactory credit rating report of the agency in combination with the general risk of shifting of sales as described above. Furthermore the credit rating of Ahlener has been provided during the proceeding, and also this agency has a credit rating that is not satisfactory. Altogether this means that – at least based on the documents now at hand – that the actions by IATA had sufficient grounds in the IATA Resolutions.

However the parties are in agreement that the Agencies may be re-instated if the defaulted agency within their group of companies (not here under review) provides the guarantee as requested by IATA, in accordance with the local financial criteria for Germany.

Based on this I find that the Agents shall be reinstated as IATA Accredited Agents with ticketing authority, subject to that the defaulted agency provides the required guarantee no later than the 10th of Dec 2010.

Decision

The decision by IATA to remove ticketing and refund capabilities of Lippstaedter Reisebuero GmbH and Ahlener Resiebuero GmbH, in accordance with Resolution 818g Attachment A section 1.8.1., stands.

Should however a guarantee, in accordance with what is requested by IATA, be provided by Reisebuero Soest GmbH (company within the same group of companies as the Agents) no later than the 10th of Dec 2010, the Agents shall be re-instated with full ticketing and refund capabilities as IATA Accredited Agents and with immediate effect.

The Interlocutory Relief Order dated the 4th of Nov 2010 is hereby changed with regards to the dates it will be in effect. The Order will be in effect no longer than until the 10th of Dec, meaning that the Agents under review will still be temporarily re-instated until this date, if the conditions under that Order are still met.

From the date the requested guarantee is provided to IATA, but no later than the 11th of Dec 2010, this decision will replace the Interlocutory Relief Order, and that Order will consequently no longer be in effect.

Decided in Stockholm 2010-12-03

Helene Cedertorn

Signed original copies of this decision will be sent by postal mail to the parties.
Sent this date by e-mail to Ms Bushell, Mr Jakobi and Mr Daccache.

Note:

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