

VERÓNICA PACHECO-SANFUENTES

TRAVEL AGENCY COMMISSIONER, AREA ONE – DEPUTY TAC 2

(The Americas and the Caribbean)

110 – 3083 West 4th Avenue,
Vancouver, British Columbia V6K 1R5
CANADA

DECISION 2011 - # 6

In the matter of:

Bin Sagar Al Falahi Holidays

IATA Code: 86 2 0252 4

Armed Forces Officers Club

Mussafah Road

Abu Dhabi, United Arab Emirates

Represented by its General Manager, Mr. Mohamed Salehi

The Applicant

vs.

International Air Transport Association (“IATA”)

King Abdallah II Street, Al Shaab roundabout

Business Park, Building GH8

P.O Box 940587

Amman 11194, Jordan

Represented by its Regional Accreditation Manager

Middle East and Africa, Mr. Murad Al-Khatib

The Respondent

I. The Case

The Applicant (also called herein after as “the Agent”), sought a Travel Agency Commissioner’s (referred to also as “TAC”) review of the Default Actions taken by the Respondent (also referred to as “IATA”), on November 2, 2011, in respect to all of the Agent’s approved locations for Accumulation of Irregularities Notice at one branch location.

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II. Background - Chronology of events

On November 29th, this Office received the Applicant's request for review of the Respondent's action. According to the Agent's exposure of the facts, not contradicted by the Respondent, the chronology of events was as follows:

- The Applicant is the owner of ten (10) IATA Approved Locations in Abu Dhabi and in Al Ain in the United Arab Emirates;
- On October 31st, 2011 the Applicant transferred in to IATA's account the undisputed amount for nine (9) of its Approved Locations, corresponding to the Oct. 1 – Oct. 15 BSP sales' reports (evidence provided as Appendix 1);
- For the Branch Location identified with the IATA code # 86 2 0252 4 no transfer was made, therefore, a Notice of Irregularity for Overdue Remittance (enclosed as Appendix 2) was received from IATA, dated November 1st, 2011. In the said Notice it was stated a demand for immediate payment of AED 7,065,759.72 to be made on or before Nov. 2nd, 2011. On that same date, the Branch Location received a Notice of Default, due to an accumulation of irregularities incurred during the last 12 consecutive months (Appendix 3) by that location. However, it is stated in the said decision that Default Action will be taken <<with respect to all your IATA Approved Locations and codes>>;
- On Nov. 2nd, 2011 the transfer of AED 7,065,759.72 towards the overdue payment, corresponding the Branch location code # 86 2 0252 4, was made (evidence enclosed as Appendix 4);
- Despite the several requests made by the Applicant for the other 9 IATA Approved Locations to be reinstated, considering that none of them had any overdue nor any default, the Respondent refused and instead insisted <<for immediate settlement of the subsequent billings for the fortnight 16-31Oct. 2011, by quoting "compliance with Section 1.7.5.2 and 1.10.2(ii) of IATA Resolution 818g">>;
- On Nov. 15th, 2011 not having received any reply from the Respondent, the Applicant was <<forced to settle the subsequent billings ie. AED 11,937,070.63 for the fortnight of 16-31Oct.>> (evidence of the payment was enclosed as Appendix 6).
- On Nov. 2nd, 2011 as a consequence of the Default declaration, and against the Applicant several attempts to avoid this, all nine (9) Approved Locations¹ were deactivated from the BSP system (abundant evidence was sent to this Office by the Applicant in regards to the correspondence between the parties concerning this issue, marked as Appendix 7 and 8). The "actual" defaulted Branch Location was deactivated on Nov. 8th, 2011.

¹ Identified with the IATA codes # 86-2 0252 4; 86-2 0253 5; 86-2 0279 3; 86-2 0280 4; 82-2 0281 5; 86-2 0282 6; 86-2 0283 0; 86-2 0288 5; 86-2 0296 6.

- On Nov.17th, 2011, the ten (10) locations were reactivated in to the system (evidence marked as Appendix 10).

III. Authority for Review

Resolution 820e determines the scope of the TAC's review proceedings, and as so provides for Accredited Agents, for the Agency Administrator, for a group of Member Airlines and for the Agency Services Manager to seek review by the Commissioner in circumstances described therein. In this case, the most pertinent Paragraph as seen from the Applicant's perspective is 1.1.10 which states as follows:

<<1.1.10 an Agent who considers that the Agency Administrator (...) has not followed correct procedure as delegated by the Passenger Agency Conference, to that Agent's direct and serious detriment in order to determine whether the decision under review was made in accordance with applicable Resolutions and based on credible fact>>.

Having received the Request for Review within the time frame limit, as indicated above, pursuant Paragraph 1.2.2.1 of Resolution 820e, the undersigned decided to allow the proceeding in compliance with Paragraph 1.2.3 of the said rule.

IV. The Applicant's Arguments in Summary

The Applicant's main argument consists in interpreting Resolution 818g, Attachment A, Paragraphs 1.7.5.2 and 1.10.1, as if those rules allow the Agency Administrator to discern, in cases of several Approved Locations, whether one or various Locations had incurred in default and, therefore, apply the default actions, [meaning the (i) immediate removal of the ticketing capacity and, among others, (ii) the demand for immediate accounting and remittance of all amounts owing by the Agent], only to the Location involved in the irregularity instead of applying it to all of them.

V. The Respondent's Arguments in Summary

On the contrary, from the Respondent's perspective the said rules do not allow the Agency Administrator, in case of several Approved Locations, to differentiate among them in order to determine which one had incurred in default and, therefore, apply only to that Location the consequences of a default declaration. From the Respondent's point of view, those rules mandate that once a Location is declared in default, default actions should be applied to that Location in particular and to all other Approved Locations that the Agent might have with IATA.

VI. Considerations leading to conclusion

The case for review consists in whether or not the Respondent had followed correct procedure when decided to apply default actions to all of the Applicant's Approved Locations, when only one of them had actually incurred in irregularities and, consequently, defaulted IATA.

Before looking at the applicable rules (A) and its interpretation (B), it is important to establish that both parties have agreed on various facts, namely: (i) that one of the Approved Locations (identified with IATA code # 86 2 0252 4) had actually incurred in irregularities and, consequently, proper default actions (commonly called "technical default") had to be declared by IATA, pursuant Paragraph 1.7.5.2 of Resolution 818g, Attachment "A"; (ii) that the amounts that were transferred by the Applicant to the Respondent concerning not only the defaulting Location but all of them were correct and a true representation of the concerned BSP report; and (iii) that the applicable rules are the ones stated in Resolution 818g, Attachment "A", Paragraph 1.7.5.2 and Section 1.10, particularly Paragraph 1.10.1.

(A) Applicable Rules

The aforementioned applicable rules of Resolution 818g, Attachment "A", state as follows:

<<**Paragraph 1.7.5.2:** immediately upon a fourth instance of Irregularity being recorded, six instances in the case of Nepal and countries on weekly remittance in Area 1, on such list in respect of a Location during any 12 consecutive months the Agency Administrator shall take Default Action with respect to all Locations in accordance with Paragraph 1.10.

1.10 Default Action

The provisions of this Paragraph govern the procedures if Default Action is required to be taken in accordance with any of the provisions of Paragraph 1.7, when the procedures prescribed below shall be followed:

1.10.1: the Agency Administrator shall immediately advise al BSP Airlines that the Agent is in Default at all Locations or at the Location concerned (BSP Airlines which have appointed the Agent shall be notified by email or similar fast method of communication)>>.

(Commissioner's emphasis)

(B) Rules' interpretation

When interpreting rules, one should look not only at the mere norm, but also at the context of where it is located, the meaning of the words, the rationale behind the rule, its purpose and its goal and contrast them with the facts in a given case.

In regards to the words' meaning or definition, Resolution 818g establishes in its very first introductory Paragraph that <<the use of words and expressions in the singular shall, where the context so permits, be taken to include their use in the plural and vice versa>>.

Looking at the context where both of the quoted norms are included the undersigned notes that both are located under the Irregularities and Default Sections of Attachment "A", so in Sections where most of the rules concerning Agent's financial risks and measures intended to correct those situations are mentioned.

On the other hand, according to the evidence on file, in this particular situation, we have one (1) sole Agent, one (1) sole owner, one (1) sole legal entity called Bin Sagar al Falahi Holidays that has ten (10) IATA Approved Locations. In other words, despite the fact of having many different operation centres (called "approved locations"), at the end there is only one legal entity responsible for the entire business, one sole responsible of honouring all BSP sales' reports. Therefore, even though the rule is not sufficiently clear because it refers in one part (Paragraph 1.7.5.2) to all Locations, using the plural and meaning all the different approved centres where the Agent might have operations, and then in Section 1.10, Paragraph 1.10.1 makes an apparent differentiation between all Locations or the concerned one, the undersigned considers that

- It is perfectly understandable the interpretation that the Agent has had about these rules and hence its frustration seeing IATA's actions going in to a completely opposite direction;
- However, considering that there is only one (1) legal entity responsible for the business, and as so only one (1) legal entity signatory of the Passenger Sales Agency Agreement with IATA, the undersigned deems that correct procedure was applied by IATA when decided to affect by its decision of removing the ticketing capacity from all Agent's Approved Locations and the rest of the default actions, regardless the fact that only one of them had technically defaulted its payments.

The rationale behind these rules is to protect airlines' monies and particularly to control or diminish the risks involved in the tickets' sales business, having in consideration that Agents receive and temporary keep the airlines funds until final remittance. That is the reason why those rules not only call for a cautious action but also have to be interpreted in a rather cautious and restrictive manner, because that was precisely the intention that motivated their creation. Consequently, default actions have to be applied to all Approved Locations, and not only to the one in particular that could have defaulted, because the legal reality of the situation is that there is only one legal responsible behind the entire operation, only one legal entity signed the Passenger Sales Agency Agreement with IATA. Following this line of thought, when Paragraph 1.10.1 indicates that default actions are to be applied <<or at the Location concerned>>, it refers only to the cases where Agents have just one Approved Location so there is no other Location to be involved in those procedures, because no other operation centre would represent any risk at all, it is simply nonexistent.

VII. Decision

Having carefully reviewed all the evidence and arguments submitted by the parties in connection with this case,

Having looked at the applicable Resolutions,

This Commissioner decides:

The decision taken by IATA of applying default actions with respect to the Applicant's all Approved Locations was in accordance with Resolution 818g, Attachment "A", Paragraphs 1.7.5.2 and 1.10.1, and therefore is upheld.

Per Resolution 820e, Section 4.1, the Applicant has the right, if he considers himself aggrieved by this decision, to seek review by Arbitration, in accordance with the provisions of Resolution 824, Section 14.

Decided in Vancouver, BC, the 15th day of December, 2011

Verónica Pacheco-Sanfuentes
Travel Agency Commissioner Area 1

Note: The original signed version of this decision will be sent to the parties by regular mail. In the meantime, in order to ensure timely receipt by the parties, an electronic version of it is sent on Dec. 15th, 2011.