

VERÓNICA PACHECO-SANFUENTES

TRAVEL AGENCY COMMISSIONER, AREA ONE – DEPUTY TAC 2
110 – 3083 West 4th Avenue
Vancouver, British Columbia V6K 1R5
CANADA

DECISION 2013 - # 31

In the matter of:

Ethio-Arab Tour & Travel Agency P.L.C.

IATA Code 18210555
Habteghiorgis Road
Wereda 01 House No. 245
Addis Ababa, Ethiopia
P.O. Box 13203
Represented by its Managing Director, Mr. Abdu Wahabrebi

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 the Passenger Agency Manager
Africa & Middle East, Ms. Ruba Al-Sharif

The Respondent

I. The Case

The Applicant (also called hereinafter as “the Agent”), sought a Travel Agency Commissioner’s review of IATA's (also called "The Respondent") Notice of Termination dated April 9th, 2013, due to a late payment of the 2013 Agency annual fees. The referred payment was made by the Applicant on January 23, 2013 before the termination date.

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II. The Applicant's arguments in summary

- The Applicant argues that the cause for the termination <<was failure to pay the 2013 annual agency fee BUT our agency had already paid the 2013 annual fee together with additional charge of CHF 70¹ on January 23, 2013>>;
- The Respondent acted <<before looking its account and assuring whether payment for the said period was affected or not>>, since the Applicant **had indeed paid those fees**, <<we paid about one month after the due date due to a shortage of foreign currency in all the banks in Ethiopia, which is beyond our control (Pls see resolution 818g, section 14.3.2)>>;
- In fact, <<the annual fee for 2013 asked by invoice No. AP21166289 and a reminder sent on 17th Feb. 2013>>, for CHF 220 was <<**deposited in cash** in the current account of the Respondent A/C 772 at Abyssinian Bank on January 23, 2013 about a month before the reminder was sent and about 2 months before the termination letter reached the Applicant>>²;
- Upon termination, proof of this payment was promptly sent to the Respondent requesting an immediate reinstatement. As a response, the Applicant was told <<in order for us to reconsider the termination, **pls send us proof of payment for the years 2010, 2011 and 2012**>>;
- <<Because of such unreasonable respond we had to search for copies of payments made for 2010, 2011 & 2012 in our office and with the banks. After a long search we managed to get copies of 2010 and 2011 and sent them to the Respondent³. We, at the same time, asked them to be kind enough to co-operate to make the search on their part from the accounts of IATA for the year 2012.

¹ For late payment

² Copy of the said proof of payment was sent to this Office, copying the other Party.

³ Proofs of those payments were also sent to this Office during this review proceeding, copying the other Party.

Leave aside the cooperation, they didn't even respond it. Just ignored the enquiry>>;

- <<Even though the copy of payment for the year 2012 is not for the time being available, we are definitely sure that the annual agency fee for that year is paid, because:
 - o We are always aware and ready to pay, for such fees are supposed to be paid on December 01 of every year and we usually pay it after we receive the payment invoice;
 - o The agency administration in accordance to resolution 818g section 14.3.1 has not notified us to pay...>> <<Had IATA sent us the warning notification on Dec. 2011 to effect the payment for the year 2012 we would have made the necessary correction and save ourselves from the loss and trouble we are now facing due to the termination;
 - o The copy of the "Revenue and Expense Report", prepared for tax payment purpose, forwarded to the Ethiopian Revenue and Customs Authority, clearly indicates that the annual agency fee paid for the fiscal year 2012 is paid shown on the expense items;
 - o Even if the accreditation office, before investigating and following the right procedure, thinks payment for the year 2012 is not effected. The action taken for the termination is against the email that was circulated to all travel agencies in Ethiopia on Nov 19, 2013 stating **IATA will not take action of termination due to non-payment of Annual fees for the years 2011 and 2012.** So the action taken is against its own circulation>>;
- Despite having sent several emails to the Respondent <<especially to the customer service representative>> and having made various phone calls looking for solutions and ways of better understanding <<our calls were always ignored>> and the communications <<not considered>>;
- The Applicant has always paid on time, has never been in default nor has had any outstanding debts towards the Respondent. <<It has a history of regular payments since 29 Dec. 2004, this also should be noted>>;
- <<Because of the action taken by the Respondent, the Applicant, which was one of the highest selling agents, has lost almost all its permanent clients and passengers, and the Commission income it used to get from the sales and many

other rights as well>>; <<without getting any income the Applicant is still paying employees' salaries, office rents, telephone, water, electric charges etc since April 09, 2013>>;

- Based on the above damages and losses, the Applicant considers that it should be <<compensated by the Respondent, so the Applicant with great respect kindly put its claims for this important point to be included in the decision>>. Moreover, <<we are punished for fault not made by us, and the punishment doesn't fit the fault. The damage and the loss incurred on us due to the unfair decision ought to be compensated>>;
- <<Since the review of a Bank guarantee of all agencies by the Respondent at any time is honored, the Respondent can conduct a review of the bank guarantee of the Applicant any time after reestablishment of its ticketing capacity. And ask for additional bank guarantee if need be there>>;
- Finally, the Applicant requests <<to reverse the decision of the termination and reinstate the accreditation of the Applicant>>.

III. The Respondent's arguments in summary

<<- Agent IATA Accreditation code: 1821055

- Agent did not pay annual fees for 2013
 - Invoice was sent by Mail and email
 - Reminder was sent to the email address IATA had on file: ethioarab@telecom.net.et and ethioarabtourandtravel@gmail.com (email currently used by the agency) on 17th Feb 2013 (attached)⁴.

§ It is the agents' responsibility to ensure that they communicate any changes to contact details in advance to IATA

- Agent was terminated on 09 Apr. 2013
- As per the latest ageing report, the agent still has two open invoices:

⁴ Copy of these Feb. 2013 emails were sent to this Office, copying the other Party

AP21166289	2013 fees	CHF 220
AP21004722 (partially open)	2012 fees	CHF 185.43

- In accordance to the due process that we have been following with such cases;
 - Should the agency have made payment of the 2013 invoice in advance of the termination however the payment amount was not allocated; on identification and matching of the payment, the agency would be immediately re-instated.
 - However should payment have only been made after the termination, the agency would have to re-apply for accreditation>>.

IV. Oral Hearing

Pursuant Paragraph 2.3 of Resolution 820e and Rule #14 of the Rules of Practice and Procedure for Area 2, this Commissioner, acting upon both Parties' consent on waiving their right for an oral hearing, had decided to base her decision only on the written submissions that have been filed by both of them.

V. Considerations leading to Decision

According to the evidence and arguments submitted by both Parties, it seems that the core of the matter in this case is somehow dual; on one hand, (1) it would be to determine whether or not proper procedure was followed by the Respondent when collecting from the Applicant the Agency annual fee for the year 2013; and, on the other hand, (2) it will be to determine whether or not the Respondent is allowed, according to the applicable Resolutions, to start a procedure having for cause the collection of one particular year annual fees and suddenly, after its own investigation, demand the payment for previous years and impose the sanction for alleged non-payment for those past years' fees.

(1) Procedure for the 2013 agency annual fees

It appears from the evidence on file, undisputed by either Party, that a communication (invoice No. AP21166289, as indicated by the Applicant) was timely sent by the

Respondent to the Applicant **requesting the 2013 annual fees**, in accordance with Res. 818g Section 14.2. It also appears from the evidence on file that reminders of this pending obligation were sent on 17th Feb. 2013 by the Respondent to the Applicant, through the various email addresses that the Respondent keeps on its records. According to the bank deposit sent to this Office by the Applicant, copying the Respondent, the annual fee for 2013 was <<**deposited in cash** in the current account of the Respondent A/C 772 at Abyssinian Bank on **January 23, 2013** about a month before the reminder was sent and about 2 months before the termination letter reached the Applicant>>. Therefore, according to that evidence, it seems that not only the Respondent followed correct procedure, as outlined in Res. 818g, Sections 14.2 and 14.3, when demanding the 2013 agency annual fees, but also that the Applicant fulfilled its obligation of paying the fees that were due for its accreditation, even though late.

Notwithstanding the above mentioned facts, particularly the 2013 annual fees' payment done by the Applicant on January 23, 2013; on April 9, 2013 the Respondent issued a termination letter against the Applicant indicating that it was <<due to non-payment of IATA 2013 Annual Fees>>. Based on the answers to the questions that this Commissioner posed to the Parties, she was able to establish the reason behind this unidentified payment. It was due to the fact that the deposit made by the Applicant was done at the local IATA bank account, instead of at the Respondent's bank account in Geneva, Switzerland, as it was clearly indicated in the invoice and in the 3 reminder-emails that were timely sent to the Applicant. Due to Ethiopian banking regulations and foreign currency policies, the Applicant was unable to get from its local bank the transfer of the Suisse Francs done on time, so in order to avoid major delays the Applicant ended up making a cash deposit at the local bank of the Respondent.

In any event, this Commissioner assumes that during the course of this review process the belated 2013 annual fee payment was identified by the Respondent and no other annual fees are pending, since on June 16, 2013 the Applicant was temporarily reinstated.

(2) Due process for past years' annual fees

As indicated in the precedent numeral:

- The Respondent sent to the Applicant the invoice on time in addition to the reminders (on Feb. 17) for the agency annual fees corresponding the year **2013**;
- The Applicant paid the said fees plus the charge for late payment on Jan. 23, 2013;
- The Respondent terminated the Applicant <<due to non-payment of IATA **2013** Annual Fees>>.

As it appears from the evidence on file, while a procedure for collecting the **2013** agency annual fees was opened by the Respondent pursuant Res. 818g, Sections 14.2 and 14.3, it seems that the Respondent came to the realization that some annual fees from previous years had not been paid by the Applicant, and thus, upon termination, requested for either its payment or proof of it in case it had already been done. Concretely it asked for proof of settlement for the years 2010, 2011 and 2012 and was to apply or maintain the termination status until those proofs of payment would have been provided by the Applicant.

Sections 14.2 and 14.3 of Resolution 818g state the due process to be followed when collecting the annual fees from Accredited Agents during one particular year. Those rules are silent –as well as the rest of the applicable Resolutions- in regards to situations where former years' fees have not been settled by Agents. Therefore, pursuant the Law principle according to which analogy cannot be applied when imposing sanctions, the termination that is stated in the above mentioned rules **cannot** be applied when former years' annual fees have not been paid by Agents nor have them been duly and timely communicated to them.

In simple words, when opening up a procedure having “A” for cause, a sanction for not having fulfilled “B” cannot be applied. The reason for opening a procedure and eventually for applying a punishment within that procedure has to be the exact same and it has to be fully communicated to the Party subject to the investigation.

Nevertheless, by the above set criteria it is not to say that Agents are in any way exempt of fulfilling neither their annual fee payment obligation, nor that the Respondent cannot

pursue the collection of an unsettled due fee at any time. It simply means that considering that no precise procedure has been established in the applicable Resolutions for this purpose, the Respondent would have to ensure that proper communication is delivered to the Agent⁵ indicating:

- The year for which payment does not seem to have been received,
- The expected time for the Agent to comply; and,
- By clearly mentioning the eventual sanction that non-compliance with this obligation would entail for the Agent in question.

OBSERVATIONS:

1.- This Commissioner notes that the letter of termination issued by the Respondent to the Applicant refers to it as a “Cargo Agency”. However, upon request for clarification from this Office, the undersigned was informed that the Applicant is a Passenger Sales Agent and not a Cargo one. Based on that information, this Commissioner respectfully encourages the Respondent to amend that mistake in the Applicant’s denomination in order to reflect its true nature.

2.- Considering that its analysis will not have any bearings on this decision, this Office will not consider nor elaborate on the argument concerning the alleged letter sent by the Respondent to another Accredited Agent in regards to a supposed payment exemption of the Agency annual fees for the year 2011-2012.

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,

⁵ In accordance with the general rule set out in Res. 824, Section 16 or via a valid electronic email addressed to “management” that the Agent would have provided to the Respondent, as stated in Paragraph 1.9.1 of Res. 818g, Attachment “A” and in the BSP Manual for Agents.

It is hereby decided:

- Concerning the collection of the agency annual fees for 2013 the Respondent had followed correct procedure;
- Concerning the collection of 2010, 2011 and 2012 agency annual fees, proper and timely communication had to be undertaken by the Respondent before imposing any sanction to the Applicant;
- Considering that the Applicant seems to have paid the alleged outstanding annual fees (*id est*, the ones for the years 2010, 2011, 2012 and 2013), its temporarily reinstatement should become permanent;
- In regards to the request for damages' compensation derived from the Respondent's actions, the Applicant would have to address this complaint to local Courts since this type of matters are out of the Travel Agency Commissioner's purview, or submit a request for Arbitration under the rules of the International Chamber of Commerce.

Decided in Vancouver, the 21st day of June, 2013

Verónica Pacheco-Sanfuentes
Travel Agency Commissioner Area 1
acting as Deputy TAC2

Right to ask for interpretation or correction

In accordance with Res 820e, § 2.10, any Party may ask for an interpretation or correction of any error which it may find relevant to this decision. The timeframe for these types of requests will be 15 days after receipt of the electronic version of this document.

Right to seek review by arbitration

As per Resolution 820e, Section 4 any Party has the right, if it considers aggrieved by this decision, to seek review by Arbitration, in accordance with the provisions of Resolution 824, Section 14, once the above mentioned time frame would have elapsed.

Note: The original signed version of this decision will be sent to the Parties by regular mail, once the referred period for interpretation/corrections would have expired.