

VERÓNICA PACHECO-SANFUENTES

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

DECISION 2013 - # 34

In the matter of:

Coralis Tabarka Voyages

IATA Code 87-2 1122 4
28 Rue du Caire
Tunis, Tunisia

Represented by its Director General, Mr. Jenhani Mohamed Fadhel
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 15th, 2013, due to an alleged late payment of the 2013 Agency annual fees. The settlement was made by the Applicant on February 28, 2013¹; however, at the time the Respondent did not allocate the payment to the year 2013 resulting in the referred termination action.

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¹ The funds were received in the Respondent’s bank account on March 4, 2013

Interlocutory relief was requested by the Applicant and since no airline credit risk was at stake, according to the Respondent's assessment, and no outstanding annual Agency fees were pending, the relief was granted by this Office and the Applicant was temporarily reinstated pending this review process.

II. Chronology of Events

- Even though it was stated by the Respondent that an Invoice for the 2013 Agency annual fees was sent to the Applicant on December 1, 2012, no proof was provided to this Office substantiating that affirmation. The Applicant claims not having received any correspondence from IATA in that regard. It is worth to note that the burden of proof lied on the Respondent;
- On Feb. 17, 2013 a "reminder" email was sent by the Respondent to the Applicant, giving as due date for settlement of the 2013 fees until Feb. 28, 2013²;
- On Feb. 28, 2013 the payment was done by the Applicant; however, due to bank formalities, the money was not accredited in to the Respondent's account until March 4, 2013³;
- Dated 15 April 2013 a Termination Notice was sent to the Applicant;
- On April 16, 2013 upon the Applicant's request to the Respondent for an explanation of this termination action despite the payment, the Respondent demanded proof of payment for the years 2010 and 2011;
- To this sudden request the Applicant explained to the Respondent the difficulties in retrieving those former payments, considering that they were kept at its accountant's office;
- Nevertheless, by April 26, the Applicant found and sent to this Office, copying the Respondent, proof of payment of the 2012 Agency annual fees, which had actually been made on Dec. 16, 2011;
- On May 1, after having verified with its finances department, the Respondent was able to identify the Applicant's payments for the years 2012 and 2013. However, in its views <<the conclusion is that the agent is still short by CHF 200 unless he can provide a proof of payment for 2010 annual fees>>.
- That conclusion derives from applying the system that the Respondent uses to allocate the different payments received from Agents. In its own terms: <<the payment done February 2013 ... has closed 2011 invoice. 2012 invoice is still shown

² A copy of this email was sent to this Office by the Respondent.

³ Proof of this payment was sent to the Respondent and to this Office by the Applicant

as unpaid. The payment received by this customer in 2011 has closed 2010 invoice, so if the customer has paid 2010 invoice in year 2010 he should send us this proof of payment as it's this one we are missing>>⁴.

- In an effort to clarify the situation, once verification with the finance team had taken place, on May 26, the Respondent provided the following information:
 - <<In total we have received 3 payments from this agent.
 - 1st payment received 25/11/2009 CHF 208 used to close ANF 2010 AP20936234
 - 2nd payment received 16/12/2011 CHF 200 used to close ANF 2011 AP20965811
 - 3rd payment received 04/03/2013 CHF 200 used to close ANF 2012 AP21007769
 - As such from IATA Geneva Finance point of view, the invoice for Annual fees 2013 AP21166096 is still open.
 - We have still not been able to allocate the payment made reference to in the communication below. We require the 4th proof of payment (the one concerning the payment not mentioned above) that will help us to retrieve the payment in our books>>.
- Considering the damaging effects that being disconnected from the BSP system imply for an Agent, the Applicant not being an exemption of this fact, in order to get its ticketing capacity back, the Applicant paid the outstanding Agency annual fees (supposedly the one corresponding the year 2011) on May 30, 2013 as requested by the Respondent.

III. The Applicant's arguments in summary

- The Applicant has argued that no communication whatsoever was received from the Respondent concerning the annual Agency fees for the year 2013, prior to the remainder-email dated Feb. 17, 2013 for the fees of that year;
- There was no reason for the termination action since payment for the 2013 fees was made, as requested by the said reminder;
- In case the Applicant had forgotten to pay the 2010 annual Agency fees, the Respondent had also forgotten about it during all these years, since payment was never requested. It would had suffice to simply send the Applicant a reminder for those fees and it would had settled them immediately, avoiding all the damages that the sudden termination has caused to its Agency and without the need to reach a termination status;
- The Applicant has always honoured its payments on time.

⁴ Email dated May 1, 2013 sent by the Respondent to this Office.

IV. The Respondent's arguments in summary

- <<- Annual fees Invoice was issued for IATA Code 87-2 1122 4 with due date of 1 Dec 2012;
- The agent received a final reminder to pay the outstanding balance in Feb 2013;
- The agent was terminated on 15 Apr 2013 for non-payment;
- Despite the agent confirmation that he made the payment on 28 Feb 2013 (and the proof of payment dated 03/04/2013 submitted to confirm that the payment was paid), the amount is not reflected in our account until date>> (April 28, 2013)
- <<We usually ask agents to provide proof of payments for previous years to try to identify the short payment (in case the payment for current year has closed a previous invoice). Our request was to help the agent and try to investigate the case>>.

V. Oral Hearing

Pursuant Paragraph 2.3 of Resolution 820e and Rule #14 of the Rules of Practice and Procedure, 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.

VI. Considerations leading to Decision

From the narrated facts it is clear to this Commissioner that two different scenarios need to be analysed in this review: (1) One pertains to the collection and settlement of the 2013 Agency annual fees; and, the other (2) refers to previous years' Agency annual fees.

(1) 2013 Agency annual fees

The procedure to be followed for the collection and settlement of these fees is stated in Res. 818g, Sections 14.2 and 14.3.

It appears from the evidence on file, despite the allegations made by the Parties, that the sole communication actually received by the Applicant from the Respondent concerning the 2013 Agency annual fees was a reminder email dated Feb. 17, 2013. Those 2013 fees were paid by the Applicant upon receipt of the reminder, but were allocated by the Respondent to previous years' fees that were outstanding or in any case which payment could not be proved by the Applicant before the termination date.

No proof was provided to this Office by the Respondent concerning neither the invoice nor the notice for collecting the 2013 Agency annual fees, referred to in Sections 14.2 and 14.3 of Res. 818g. Therefore,

- As of the procedure, it was not followed by the Respondent in light of the terms prescribed by the above mentioned rules (a);
- As of the payment done by the Applicant, considering that the reminder-email received from the Respondent clearly stated that payment was requested for the **2013** annual Agency fees, when the Applicant paid the amount indicated in that reminder, the Respondent had no other option than to allocate that amount to the concept that it had originally being requested for: that was **to the 2013 fees**;
- As of the allocation system used by the Respondent according to which even though it demands and collects fees for one concept, but once the funds are received it allocates them to another concept (to other alleged outstanding debt), there is no rule in the applicable Resolutions that would allow such behaviour.

Considering the above mentioned facts in light of the applicable rules stated in Res. 818g, Sections 14.2 and 14.3, when the Applicant settled the 2013 fees, as mandated by the Respondent in the reminder-email, those funds had to be attributed to **–and only to–** the payment of the 2013 Agency annual fees.

- (a) This Commissioner notes that even though the literal terms of Sections 14.2 and 14.3.1 were not followed by the Respondent, it is worth to point out and actually to praise the Respondent's action of sending a "reminder-email" to the Agent in

February 2013, as a last attempt to reach the Applicant before the termination action. It was actually this last attempt the most effective one that brought to light all the Agency annual fees matter (not only for the year 2013 but for previous ones as well), for the benefit and clarification of both Parties.

(2) Agency annual fees for the years 2010, 2011 and 2012

It was not proved during the course of this procedure (the burden of proof lied on the Respondent) that the Respondent had timely requested the payment of the Applicant's former years' annual fees, in particular to the years 2010 and 2011, thus no valid sanction could be imposed to the Applicant, since as indicated in previous case solved by this Office:

<<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>>⁵.

On the contrary, according to the facts of the case, while the Respondent attempted to collect the **2013** Agency annual fees, it seems that it 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.

As indicated in previous cases⁶ by this Office, 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

⁵ Page 7 Network Travel vs. IATA (decision dated 5 July 2013)

⁶ Network Travel vs. IATA and Ethio-Arab Travel & Tours (decision dated 21 June 2013)

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.

When the Respondent opens 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 Agent⁷ 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.

In conclusion, from this Commissioner's perspective, the Applicant has not been observant enough of its obligations as Accredited Agent in regards to the annual fees, but the same can be said about The Respondent who did not request the payment on time for those years (2010, 2011 and 2012), in accordance with the procedure stated in Res. 818g, Section 14.2 and 14.3.

⁷ 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.

VII. Decision

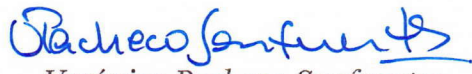
Having carefully reviewed all the evidence and arguments submitted by the Parties in connection with this case,

Having looked at the applicable Resolution,

It is hereby decided:

- Concerning the collection of the Agency annual fees for 2013 the Respondent had not followed correct procedure, and the Applicant had complied with its obligation by settling those fees once reminded by the Respondent;
- Concerning the collection of former years Agency annual fees, proper and timely communication had to be undertaken by the Respondent to the Applicant before imposing any sanction to the Applicant;
- Considering that the Applicant has settled all outstanding annual fees its temporarily reinstatement should become permanent without any further delay.

Decided in Vancouver, the 19th day of July, 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.