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

DECISION 2013 - # 56

In the matter of:

Voyages La Méditerranée
IATA Codes No. 5421101 and 54200930
14 Av. Mohamed V
Nador, Morocco
Represented by its Managing Director Mr. Mohamed Ezzafouti

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 and Risk Assessment Manager Africa & Middle East, Ms. Ruba Al-Sharif and Ms. Diala Halaseh

The Respondent

I. The Case

The Applicant sought a Travel Agency Commissioner's review of the Respondent's Notice of Termination ("NoT") dated July 2, 2013, giving August 31, 2013 as a termination deadline. The reason behind the termination action was the Applicant's non-compliance with the deadline provided to upload its Financial Statements ("FS").

The Applicant was requested to upload its FS before May 31, 2013. However, it claims (i) having had technical difficulties in uploading the FS, situation that was timely notified to the Respondent; and, (ii) not having received the previous Notice of Irregularity ("NoI") dated June 3, 2013 nor the NoT, since they were both supposedly sent to an inoperative email address.

The Applicant became aware of both IATA's notices in September 30, 2013, when its IATA Codes were terminated.

II. Chronology of Events

In order to bring clarity to the situation, this Commissioner has found useful to refer, as a previous point in her decision, to a chronology of events taken from the documentary evidence that has been submitted by the Parties. The dates and facts that will be narrated in the next paragraphs have not been contradicted by either Party hence the decision will be based on them.

- On March 10, 2013 the Applicant received by its email address: mdt.voyages@menara.ma a communication from the Respondent requesting the uploading of its FS through a particular IATA portal, instructing it that <<**Your Username is the email address through which this email has been received**[1]>>. In other words, the Respondent instructed the Applicant to use mdt.voyages@menara.ma as the Applicant's username when entering IATA's portal;

- The Applicant's FS were prepared in advance (they appear to be dated and signed on March 25, 2013), as proved by the certification note stamped and signed on April 22, 2013, a copy of which was sent to this Office and forwarded to the Respondent;

- On May 21, 2013 (the due date being May 31, 2013), the Applicant tried to upload its FS following the Respondent's instructions, however, at no avail. The system did not accept the email address that was used by the Applicant as instructed to;

- In light of that impossibility, that same day, the Applicant sent a complaint message to IATA's Client Support, as indicated in IATA's portal, explaining the situation and requesting for a solution in order to comply before the deadline of May 31, 2013;

- The next day, May 22, 2013, an automatic response was received by the Applicant instructing it to contact http://www.iata.org/customer-portal/pages/contactus.aspx. The Applicant did so and after explaining the problem encountered when uploading the FS in the requested IATA's portal, **the Applicant uploaded there its FS**

[1] Please note that this has been a free translation done by this Commissioner. The proper text of IATA's notice being in French stated as follows: <<Votre Username est l'adresse email de réception de cet email>>.

<<considering the impossibility of finding any other means to submit them, but we **did not receive any answer**>> from the system;

- Since no response was received by the Applicant, when on Sept. 30, 2013, it was requested by IATA to present a “claim number” (supposedly obtained after sending the above mentioned communication), the Applicant could not provide any since it had not received any response from IATA’s portal;

- On September 30, when the Applicant was terminated, it contacted IATA and was then that it became aware of the communications that had been sent by the Respondent before terminating the Applicant, meaning the NoI (June 3) and the NoT (July 2). Neither one of those notices were ever received by the Applicant. No proof was received by this Office from The Respondent demonstrating the contrary;

- The email address that the Respondent used to send to the Applicant the request to upload the FS, which was the one that the Applicant used when it tried to upload its FS as instructed by the Respondent (mdt.voyages@menara.ma), <u>was not</u> the same that IATA had registered in its portal. IATA had in its portal an old email address as contact for the Applicant;

- That explains why the Applicant was able to finally upload its FS on Oct. 2, 2013, once the email situation came to light with the Respondent, by using its old email address: vgsmdtndr1@menara.ma.

III. The Applicant’s arguments in summary

- Our correspondence email is not the same one that IATA has registered in its portal as being our contact/username and instructed us to use when uploading our FS. IATA has sent us correspondence to mdt.voyages@menara.ma, but had registered us in its portal under an old email address (vgsmdtndr1@menara.ma);

- The date of our FS clearly demonstrate that we have prepared them well in advance (March 25, 2013), the certification date and stamp give faith of this affirmation (April 22, 2013);

- Our complaint dated May 21, 2013 demonstrates <<that we were desperate to send our FS within the time limit, honouring that way our commitments towards IATA, particularly considering that we have been partners since our foundation>> back in 1971, so more than 41 years <<without having ever known any incident nor dispute>>. Our commitments have always been honoured vis à vis all of our partners;

- <<the correspondences of 03/06/2013 and of 02/07/2013 that have been sent to us on 30/09/2013 to our email address mdt.voyages@menara.ma as proof that IATA has invited us to regularise our situation were never received in our inbox before, I invite you to make all the inspections judged necessary in our email in order to prove our declarations>>, and <<to contact our telecom service provider in Morocco>> since we did not receive those emails either through <<our old email address vgsmdtndr1@menara.ma>> as stated by the Respondent.

IV. The Respondent's arguments in summary

The Agent was requested on March 8, 2013 to upload his FS to their email address vgsmdtndr1@menara.ma and was given a deadline until 31 May 2013.

<<IATA sent reminders on the 4/8/2013, 5/3/2013 and 5/9/2013 (to the same email address). On 5/3/2013 we have sent another reminder>>

<<On 5/12/2013 and internal case was created to Customer Service to contact the Agent to remind them to upload their FS (no answer from the Agent)>>

The FS was not provided by the deadline. A NoI was issued on 3 Jun 2013 and the Agent was given 30 days to upload the FS as per Resolution 818g section2.

<<After 30 days, the Agent still did not upload the FS, so the Agent was put under Review on 2 Jul 2013 and was given a termination deadline of 31 Aug 2013.

On Sept. 26, 2013 the Agent was terminated.

The Agent uploaded the FS on 30 Sep. and only after the codes were terminated>>.

IV. 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' agreement on waiving 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 conclusion

From this Commissioner's perspective, this is a clear case of miscommunication where both Parties have acted in good faith while trying to reach the other Party.

On the Agent's side, it has been demonstrated that it did in fact had its FS made on time and it did upload them on time as well, but due to the technical difficulty encountered to upload them in the instructed portal (because of the erroneous email address that was instructed by the Respondent for the Applicant to use as Username), it uploaded in a different IATA site that never reached the Respondent, without the Applicant been aware of this circumstance.

On the Respondent's side, in several occasions prior to rendering the NoI and prior to terminate the Applicant, the Respondent sent various email communications to the Applicant, and even though this Commissioner has no grounds to doubt of that word and actually takes it for valid, no evidence was provided to this Office.

Notwithstanding the fact that this Commissioner deeply praises the Respondent's attempts to reach the Applicant, it is important for it to have the latest updated contact information from Agents and for Agents to provide the latest contact details to the Respondent, in order for the communication between the two to run smoothly.

In any event, it is obvious that unfortunately those communications did not reach the Applicant in this situation; otherwise, this case would not have reached this Office.
This Commissioner observes that no hard copy of the Notice of Termination was mailed to the Applicant to its physical Head Office address or at least neither Party brought proof of that to this proceeding.

Considering the above mentioned facts, in accordance with the *Balance of Probabilities*, also known as the *Preponderance of the Evidence* (where the standard is met if the proposition is more likely to be true than not true), this Commissioner is satisfied with the argument that it was not in the Applicant's interest to purposely delay the submission of its FS when they were completed way before the deadline; in addition to the fact that no gains were obtained by the Applicant from this action/omission nor seem to have been any Member Airline's funds at risk;

Considering the lack of evidence submitted by the Respondent on whom relied the burden of proof in this situation;

It is this Commissioner's view that the Applicant's failure to upload its FS in the correct IATA's portal was not attributable to his intention or control nor can it be considered as an act of negligence or lack of diligence, but rather to an erroneous instruction received from the Respondent that impeded him to fulfil its obligation in a proper manner and, therefore, it is considered excusable (Resolution 818g, Section 13.9).

VI. Decision

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

Having looked at the applicable Resolutions;

It is hereby decided:

- The Notice of Irregularity and the Notice of Termination must be expunged and removed from the Applicant's records;
- The Applicant's reinstatement in to the BSP system must be implemented at no delay.

Decided in Vancouver, the 22nd day of October 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.