

TRAVEL AGENCY COMMISSIONER
AREA 1 – DEPUTY TAC2
VERÓNICA PACHECO-SANFUENTES
110 – 3083 West 4th Avenue
Vancouver, British Columbia V6K 1R5
CANADA

DECISION 2014 - # 6

In the matter of:

Tourgeness Voyages SARL

IATA Code 87-2 1065

rue Taha Houssein Houmt-Souk

4128 Djerba

Tunisia

Represented by its General Manager, Mr. Anane Barkallah

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 Agency Manager Africa & Middle East, Mr. Cornelius Hattingh

The Respondent

I. The Case

On July 3, 2014 the Applicant has contacted this Office in order to get the review of the Respondent’s decision, dated June 6, 2014 (referred hereinafter to as “NoT”), by which the Applicant’s Sales Agency Agreement was terminated, allegedly due to the Applicant’s failure of having <<effected settlement of amounts due in accordance>> with the options set out in the Notice of Default (“NoD”) dated April 23, 2014.

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In the NoD the Applicant was requested to either pay the total outstanding monies due to BSP Member Airlines or to sign a repayment agreement with the Respondent. Either option was to be executed by the Applicant **before May 31, 2014** in order to avoid the termination effects that had been announced.

The Applicant claimed –and proved- that it had indeed complied with the conditions set out in the NoD before the due date. In fact, on May 29, 2014 it sent to the Respondent: (i) proof of payment of March 2014 BSP Sales’ Report; (ii) proof of payment of April 2014 BSP Sales’ Report; and, (iii) a Bank letter demonstrating the approval of the Bank Guarantee (“BG”) increase from 40 Thousand Dinars to 100 Thousand Dinars, indicating that the original BG document for the amount of 60 Thousand Dinar (as requested) was going to be sent by expedite courier.

On Friday May 30, 2014 the Respondent acknowledged receipt of the referred documents and reminded the Applicant to send the original BG to their Amman Office.

Despite these facts the Applicant was terminated on June 6, 2014 without any previous notice.

During the course of this review process, the Applicant sent (again)¹ to the Respondent’s Office in Amman the original of the BG as well as a filled out Agency Status Form, as instructed by the Respondent through a Reinstatement Requirements’ Notice sent on April 25, and by a reminder sent on July 10, 2014. Upon receipt of these documents, on July 11, 2014 the Respondent *motu proprio* withdrew the NoT and reinstated the Applicant in to the BSP system.

¹ For some reason, unexplained to this Commissioner by either Party, the Applicant had sent twice the above mentioned documents, having been the first time on June 26, 2014. However, the Respondent only seemed to have received them the second time –and hence acted accordingly-, once this review process had being initiated by the Applicant.

The Applicant has expressly requested this Office to render a formal decision even if its ticketing capacities had been reinstated by the Respondent, once it was able to locate the documents that had been sent earlier by the Applicant.

II. Oral Hearing

Pursuant Paragraph 2.3 of Resolution 820e this Commissioner has judged that no oral hearing was necessary in this case, since both Parties have made their arguments clear enough and have provided important and complete evidence in support of their allegations as to allow this Commissioner to render a formal decision based on the written documents submitted by the Parties.

VI. Considerations leading to Decision

Having carefully analysed the evidence provided by the Parties, it seems that a miscommunication issue affected the regular way the reinstatement procedure should had been unfolded in this case.

In fact, as it has been proved by the Applicant and confirmed by the Respondent, the Applicant had indeed paid in due time, meaning within the time frame given to it to comply, the funds that were outstanding and that had caused the Default declaration. Therefore, the NoT and the termination action undertaken against the Applicant were unlawfully done by the Respondent.

This Commissioner praises IATA's diligent response, acting on its own initiative once been made aware of the circumstances of the case, of reverting the actions taken against the Applicant and reinstating its BSP capabilities.

VII. Decision

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

Having analysed the applicable Resolutions,

It is hereby confirmed the Respondent's actions of voiding and expunging from the Applicant's records the Notice of Termination dated June 6, 2014.

Decided in Vancouver, the 12th day of August, 2014

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 the Party 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 above mentioned period for interpretation/corrections would have expired.