

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

DECISION 2015

In the matter of: Société Delmas Guinée SARL

IATA Code 29-2 0002
Rue du Commerce
Conakry, République de Guinée
Represented by its Managing Director, Mr. Assane Sock

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 Assistant Manager & Deputy Manager
Agency Management Africa & Middle East, Ms. Christine
Hazboun

The Respondent

I. The Case

The Applicant sought a review of the Respondent’s Notice of Termination (“NoT”), dated July 13, 2015, allegedly served due to non-payment of the 2015 Agency Annual Fees. The Applicant provided a belated proof of payment of the referred fee that was made on March 4, 2015.

During a significant period of time, the Applicant experienced serious communication problems with one of its email addresses, which impeded the Applicant to receive and monitor the Respondent’s notices.

Telephone: + 1 (604) 742 9854
Fax: + 1 (604) 742 9953
e-mail: Area1@tacommissioner.com / website: travel-agency-commissioner.aero

II. The Applicants' arguments in summary

In the Applicant's words:

- The Agency Annual Fees' invoice was sent to our generic address only, which unfortunately was not working properly and, thus, we could not get hold of the invoice in due time. The Respondent had other two email addresses, but they were not used;
- The payment was made when the Applicant received the Notice of Irregularity ("NoI"), which was sent by the Respondent not only to the generic address but also to the other two contact emails that were on file;
- The Applicant had paid in Euros instead of in Swiss Francs as invoiced because it has always done so, since it does not have a Bank account in this last currency;
- As a consequence of the exchange of currencies, the Applicant was short by 26.95 CHF. The Applicant only knew about it when the Respondent notified the Applicant with the NoT. As soon as the Applicant was explained the cause behind this balance, it declared its commitment to settle that amount¹;
- As of submitting the Applicant's financial statements as requested by the Respondent, the Applicant explained that since it is part of a bigger organization that deals with other type of businesses at the same time, it needed some additional time to somehow get a separate version of financial statements corresponding only to the travel agency sector. The Applicant also committed itself to do the needful to provide this essential information to the Respondent.

III. The Respondent's arguments in summary

¹ Which occurred during this review process

Chronology of events according to the Respondent²:

- <<On 2 March 2015, the Agent was issued a NoI for non-payment of Agency Annual Fees for the year 2015;
- The Agent got into technical Default on 2 March 2015 and was served with a Termination Notice of 30 Apr 2015;
- The Agent was asked on 4 March to provide the latest financial statements in order to conduct a financial review and determine the Bank Guarantee (“BG”) required as part of the Agent’s reinstatement requirements;
- The Agent on 5 March 2015 provided a proof of payment with value date 4 March 2015. IATA on 7 April 2015 sent an email where it was clarified that we were still checking reception of the Agent’s payment for Annual Fees and reminded the Agent of the need to bring a financial statement and the last 12 months sales in order to determine the BG amount and to fill the Agency status form;
- On 13 July 2015, the Agent was still short in the Annual Fee Payment by 26 .95 CHF and Agent still did not provide IATA with the 12 months' sales and the financial statement in order to determine the reinstatement requirements;
- Subsequently, Agent was terminated for failing to comply with the reinstatement requirements after technical default>>

IV. Oral Hearing

Pursuant Paragraph 2.3 of Resolution 820e, this Commissioner has decided to base her decision on the written submissions that have been filed by both Parties only, since both of them have presented their arguments and evidence deeply enough as to render unnecessary any oral hearing without jeopardizing their procedural rights. Both Parties have agreed.

² Not contradicted by the Applicant

III. Considerations leading to Decision

In light of both Parties' submissions and evidence, the undersigned concludes the following:

- The NoI served to the Agent on March 2, 2015 was rightfully served and in accordance with the applicable Resolutions. The fact that one of the email addresses provided by the Agent was not working properly cannot be attributable to the Respondent. On the contrary, it is an Agent's responsibility to notify IATA of any change or alteration in the email options provided, either due to change of them or to a malfunction - as in this case- or due to any other reason. The Respondent complied with its obligation of sending timely notice to, at least, one (1) of the email addresses that had been provided by the Applicant as a valid one. Therefore, the NoI stands;
- On the other hand, considering that the Applicant certainly paid the Agency Annual Fees on March 4, 2015, upon receipt of the NoI, and even though due to a currency exchange difference there was a missing remainder about which the Applicant was not made aware but months later with the NoT, dated July 13, 2015, it is clear for this Commissioner the Applicant's intention of paying it in full, hence, the NoT should be removed from the Agent's records and the remainder of the Annual Fee must be paid by the Applicant at no delay.

In order to avoid these types of incidents in the future, I strongly encourage the Applicant to verify with its bank, before doing the payment in Euros, that the amount to be paid corresponds exactly to the amount of Swiss Francs that are required. Not having an account in Swiss Francs is not a valid excuse for not paying the exact amount that is due.

Considering the miscommunication problem that occurred in this case, it is hereby requested to the Respondent to send any notice/communication to the Applicant using ALL the email addresses that have been provided by it.

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 decided as follows:

- The NoI was rightfully served by the Respondent, therefore, it stands;
- However, based on the above described reasons, the NoT must be removed from the Applicant's records;
- In order for the Applicant to be reinstated in to the BSP system, once the remainder of the Annual Fee would have been paid (*id est*, the referred **26.95 CHF**):
 1. Based on the 12 months' sales Report provided by the Applicant, the Respondent must indicate to the Applicant the exact amount in BG that it should submit;
 2. Once the referred BG would have been submitted by the Applicant, its **full reinstatement in to the BSP system** should be undertaken by the Respondent without the need of any additional requirement
- As of the Financial Statements, the Applicant must undertake the needful steps in order to obtain them and submit them to the Respondent in accordance with the Local Financial Criteria applicable to the République de Guinée (document to be found in the following link: http://www.iata.org/Sites/FMC/Files/tah818g_fr_2015.pdf). It is

hereby given **30 calendar days** for the Applicant to submit the Financial Statements or what the Applicant called in its submissions "*le compte de résultat opérationnel*".

The Applicant must be aware that once the Financial Statements will be evaluated by the Respondent, the BG originally provided might require some adjustments, depending on the results of such evaluation. In due time, the Respondent will inform the Applicant accordingly and it will give the Applicant copy of the evaluation report made by the Respondent's external assessors for the Applicant to know how it was assessed.

Decided in Vancouver, the 21st day of July of 2015

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.