

TRAVEL AGENCY COMMISSIONER
AREA 1 – DEPUTY TAC 2
VERÓNICA PACHECO-SANFUENTES
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Vancouver, British Columbia V6K 1R5
CANADA

DECISION – 6 June 2017

In the matter of:

Aria Voyages SARL
IATA Code 20-2 5963
Route du Stiletto
20090 Ajaccio, France
Represented by its Director, M. Thierry Deledda
The Applicant

vs.

International Air Transport Association (“IATA”)
Torre Europa
Paseo de la Castellana, número 95
28046 Madrid, Spain
Represented by Ms. Olena Dovgan, Europe Manager
Accreditation
The Respondent

I. The Case

The Applicant sought a review of the Respondent’s Notice of Irregularity (“NoI”) served on May 5, 2017, due to a non-payment of the BSP Sales Report for the amount of EUR 220,069.55. The Applicant also sought the review of the Notice of Default (“NoD”) that followed, since it allegedly failed to pay on time again, once being made aware by the Respondent of the remittance failure that triggered the NoI.

As a consequence of the NoD, the Respondent suspended the Applicant from the BSP, being its ticketing capacity removed. The Applicant sought a temporary reinstatement from this Office, before paying the BSP Sales Report in full. Considering that no monies were dues to Member Airlines, and, hence that no Member Airlines’ funds were at risk, this Office granted interim relief, until this review process comes to an end. The Respondent acted accordingly.

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III. Facts and Background

Two different situations demand attention in this case. The first one pertains the NoI and its merits, and, the second one relates to the NoD and its accuracy.

- **The NoI**

The Respondent has argued (not refuted by the Applicant) that it received a note from the Applicant's bank, when the settlement of the BSP Report was rejected, indicating that the transfer could not be made due to an <<*insufficient funds*>> situation in the Applicant's account. The Applicant, on its turn, has insistently claimed that it had the funds to cover the remittance in full, proof of what, from his view, is the fact that his bank did the transfer in full on May 9, 2017, and has done all the previous transfers as well.

The Applicant displayed laudable efforts trying to obtain an explanatory letter from his bank stating this simple fact: having enough funds available by Remittance Date in order to cover the BSP Sales Report in full. However, its bank was reluctant to provide in clear and plain language such a statement, nor to engage in any telephone conversation (as requested by the Applicant) with any IATA member staff in order to provide IATA with a clearer picture of what had happened and the reason behind the none receipt of funds by Due Date on May 2.

The evidence (reference is made to the Applicant's bank statements) showed that funds, meaning, "liquid funds" seated in the Applicant's account by May 2, were certainly NOT available; they were actually far below the amount that needed to be covered by the Applicant (EUR 220,069.55).

However, the evidence also shows that the Applicant has some, as he puts it, I quote: "*comfortable arrangements*" with its bank in order for it to cover the Applicant's remittances whenever Due Dates arrive.

- **The NoD**

The Applicant, as soon as made aware by the Respondent about the non-receipt of the remittance, and the obligation for the funds to be, I quote, <<... in the Clearing Bank before its close of business on the **first working day following the date of this demand i.e. 8 May 2017**>> (emphasis mine), immediately took steps to remedy the situation, returned to Ajaccio, since he was out of town, and went to his bank upon arrival that same day (Friday May 5, 2017).

After waiting to be helped, the Applicant was finally able to meet with its Bank's representatives and the Remittance was done, but, since by the end of the meeting the bank's cut off time had already passed, the transaction was processed the next business day, which was not Monday 8 May 2017 (as indicated in the NoD), but on **Tuesday May 9, 2017**, since the 8th was a Bank holiday in France.

IV. Considerations and Decision

Based on the above mentioned facts and having carefully looked at the applicable rules, particularly Resolution 818g “A”, s. 2.2.1(i), it is hereby decided as follows:

- As of the NoI

Pursuant Resolution 818g “A”, s. 1.7.4.1, despite any “comfortable” arrangements that the Applicant might have agreed with its Bank, <<**sufficient funds should have been available** in the account>> from which the BSP payments were to be executed **by Remittance Date**, not a “couple of days after” as declared by the Applicant himself. The evidence shows that they were not, consequently, the NoI served by the Respondent against the Applicant stands.

- As of the NoD

In accord with Resolution 818g “A”, s. 1.6.2.1(g), the Applicant had to do the Remittance for the funds to reach the Respondent’s account <<before its close of business **on the first subsequent day** when the Clearing Bank is open for business>>;

As the evidence shows, considering that May 8 was a statutory holiday in France, the **first subsequent day** after May 5 (NoI’s date) was NOT May 8, as erroneously indicated in the NoI, but, in fact, it was **May 9**; therefore, since the funds actually reached the Respondent’s account by May 9, 2017, the Applicant’s obligation was fulfilled on time and, thus, the NoD has to be removed and expunged from the Applicant’s records.

Termination action will not be undertaken against this Agent and its temporary reinstatement in to the BSP system shall become permanent as of tomorrow.

Considering the time difference between this Office and the Parties’ places of business, this decision will become effective as of tomorrow, **June 7, 2017**.

Decided in Vancouver, the 6th day of June 2017.



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

Right to ask for interpretation or correction

In accordance with Resolution 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 (meaning no later than **June 21, 2017**)

Both Parties are also hereby advised that, unless I receive written notice from either one of you **before** the above mentioned date this decision will be published in the Travel Agency Commissioner's secure web site, provided no requests for clarification, interpretation or corrections have been granted by this Commissioner, in which case the final decision will be posted right after that.

Right to seek review by Arbitration

If after having asked for and obtained clarification or correction of this decision, any Party still considers aggrieved by it, as per Resolution 820e § 4, the Party has the right to seek review by Arbitration in accordance with the provisions of Resolution 824 § 14, once the above-mentioned time frame would have elapsed.