

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

DECISION - October 31st, 2017

In the matter of:

SCTL Riverain Tours

IATA Code 81-5 0015 6

17 Allée James Watt

BP 30112 - 33 704 Mérignac Cedex

Guadeloupe, France

Represented by its General Manager, Mr. Amédée Adelaïde

The Applicant

vs.

International Air Transport Association (“IATA”)

Torre Europa

Paseo de la Castellana, número 95

28046 Madrid, Spain

Represented by the Accreditation Manager (Global Delivery Center),

Ms. Olena Dovgan

The Respondent

I. The Case

The Applicant sought the cancellation of the Notice of Irregularity (“NoI”) that had been served against him by the Respondent, due to an alleged belated payment of a BSP Billing Report.

The Applicant claimed that it had made the complete and timely transfer of the required full remittance amount, despite the fact that the Respondent received those funds a day after Remittance Date. The Applicant argued that such delay was not attributable to him but rather to its Bank.

It was also subject to analysis by this Commissioner the fact that the Applicant reached out to this Office after the 30-days time frame established in Resolution 820e, s. 1.2.2.1.

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II. Considerations – Decision

As of the admission of this review procedure:

Before deciding the core of the matter at bar, I looked at the file and the evidence submitted by the Parties in order to determine whether or not this request for review could be admitted, despite the time elapsed between the date when the NoI was issued against the Applicant and the time when the Applicant sought a Travel Agency Commissioner's ("TAC") review.

The evidence shows that the Applicant had contested this NoI since its notification. Indeed, a chain of emails exchanged between the Respondent's representatives and the Applicant shows that, prior contacting this Office, the Applicant tried within the Respondent to have the referred NoI voided. Once it realized that such an action was not going to be undertaken by the Respondent's own initiative, it contacted this Office. Therefore, I hereby allow the review, since the time frame that elapsed between such NoI and having contacted the TAC should not be considered neither as a lack of diligence from the Applicant's side, nor an acceptance of such a NoI; but, rather as a time during which the Applicant actively engaged in a thoughtful discussion (providing proofs of his allegations) with the Respondent, aiming at finding a solution to a situation that he deemed unfair, and, hence, falling under one of the hypothesis mentioned in Rule # 2.A.2(ii) of the Rules of Practice and Procedure at the TAC's Office.

As of the core of the matter:

I have reviewed the totality of the evidence that has been provided by both Parties, and specifically the one issued by the Applicant's institution, the *Banque Populaire Aquitaine Centre Atlantique* ("BPACA"), in regards to the remittance made by April 18, 2017, as instructed by the Applicant.

Such evidence is considered by this Office to be enough proof of the fact that the delay that seemingly occurred in the Respondent's bank, when receiving the remitted funds, could **not** be attributed to the Applicant's control nor lack of diligence. On the contrary, the evidence proves that the Bank did indeed transfer the funds by Due Date (18 April 2017), as instructed by the Applicant and that such funds were intended to be accredited in to the Respondent's account that same day.

The exact reasons as of why those funds did not reach the Respondent's Bank on April 18 but the next day, are unknown. BPACA is not providing further details nor explanations, nor such explanations were submitted to this Office by the Respondent's Bank. The only clear fact in front of me is what the evidence has shown (not contested by either Party), which is that the funds were transferred and such transfer was executed on April 18, 2017, therefore, based on s. 13.8 of Resolution 818g, I deem such delay being <<excusable>>, since it was beyond the Applicant's reasonable control and the

Applicant acted diligently within his scope of manoeuvre to comply with his BSP obligations:

- Consequently, the NoI served against the Applicant is hereby voided and, thus, it must be expunged from the Applicant's records.

This Decision is effective as of today.

Decided in Vancouver the 31st day of October 2017



Verónica Pacheco-Sanfuentes
Travel Agency Commissioner Area 1
Deputy TAC 2

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 this document (meaning no later than **November 15th, 2017**).

Please also be 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, any Party still considers aggrieved by this decision, the Party has the right to seek review by arbitration in accordance with the provisions of Resolution 820e § 4 and Resolution 824 §14.