

Brian P. Barrow
TRAVEL AGENCY COMMISSIONER

A3/2009/02

29, Route de l'Aéroport, P.O. Box 833

CH-1215 Geneva 15 Airport, Switzerland

Office hours telephone number: +41 22 799 3900, Office hours fax # +41 22 799 3902

E-mail: agency.commissioner@bluewin.ch

bpb/29i09

DECISION

In the Matter of:

Pan Asian Holidays
7/8 Poddar Nagar
Kolkata 700068
West Bengal
India
(IATA Numeric Code: 14-3 6704 3)

Applicant

vs

Agency Administrator IATA
IATA Regional Office for Asia/Pacific
111 Somerset Road, #14-05 Somerset Wing
Singapore Power Building
Singapore - 238164
Singapore

Respondent

Introduction

1. The Review giving rise to this decision has been made on the authority of IATA Resolution 820e, in which the powers and duties of the Travel Agency Commissioner are set out. The undersigned is the acting Agency Commissioner for Area Three, per the provisions of Resolution 820d.

Parties

2. The Applicant is Pan Asian Holidays, an IATA Accredited Agent since mid-2007, with one Approved Location, at the above stated address.

3. The Respondent is the Agency Administrator of the International Air Transport Association ('IATA'), acting for Member airlines of that association which have delegated certain functions to IATA. IATA exists by virtue of a Canadian Act of Parliament (Statutes of Canada 1945, Chap. 51, as amended in 1975) and is the worldwide association of airlines that operate internationally. It performs common services for its 233 or so Members that include administering the Agency Programme and managing the Billing and Settlement Plan ('BSP') in India. The BSP is an industry centralised sales

reporting and settlement system linking Accredited Agents to BSP Airlines. The Agency Administrator has particular responsibility for the management of these activities. In parallel with the standard IATA BSP the Respondent also administers an almost identical settlement system covering Indian domestic air transportation sales.

4. IATA divides the world into Areas One, Two and Three. The Agency Administrator's main base in Area Three, Asia & South Pacific, is Singapore. The country field office for India, which exercises management responsibility for the BSP India, is in Mumbai.

5. The Agency Programme consists principally of resolutions adopted by the IATA Passenger Agency Conference. They lay down the rules, regulations and procedures governing business relations between IATA Accredited Agents and IATA Members. The programme is directed by the Agency Administrator, an IATA official, or his recognized representative, as defined in Resolution 866 - Definitions of Terms used in Passenger Agency Programme Resolutions.

Contract

6. The Passenger Agency Conference is composed of those IATA Members (i.e. airlines) who appoint a delegate to it. Per the IATA Articles of Association, it is an autonomous entity within IATA, created on the authority of the Annual General Meeting. The Provisions for the Conduct of the Traffic Conferences lay down that Conference Resolutions, and only such resolutions, are binding on all Members that operate passenger services, whether or not they have appointed a delegate to the Conference. The IATA Secretariat is also required to apply and abide by Conference Resolution requirements. The Travel Agency Commissioner is similarly bound to apply those resolutions and to limit findings of fact and conclusions in accordance with them.

7. The contractual instrument in this matter is the Passenger Sales Agency Agreement (Resolution 824), signed by the Applicant. Under that agreement, IATA signs and acts for those of its Members that thereafter appoint the travel agent signatory as their sales agent. Incorporated into that agreement are Resolution 810i – Passenger Sales Agency Rules – India, Resolution 832 – Reporting and Remitting Procedures and the BSP Manual for Agents (Attachment 'I' to Resolution 850). Per §2.1(a) of the Passenger Sales Agency Agreement, the above resolutions are reproduced in the Travel Agent's Handbook, periodically published by the Agency Administrator and made accessible to Accredited Agents via an IATA website.

8. In the above-mentioned BSP Manual for Agents, there are thirteen core chapters common to all IATA BSPs, that contain standard material approved by the Passenger Agency Conference. There is also for each individual BSP a dedicated Chapter 14 for "Local Procedures/Information". That local material complements the core text but, not being approved by the Passenger Agency Conference, it cannot replace, amend or in any way change what has been laid down by the Conference. The entire current edition of BSP Manual for Agents, per the Passenger Sales Agency Agreement, §2.1(a) and §2.2, is to be published to Accredited Agents. This was formerly done using printed publications but is now done by electronic medium.

Authority for Review

9. The provisions of §1 of Resolution 820e, - Reviews by the Travel Agency Commissioner, allow an Accredited Agent to seek review by the Agency Commissioner in circumstances described in the body of that paragraph. Specifically, per §1.1.10, 'an Agent who considers that the Agency Administrator has not followed correct procedure, as delegated by the Passenger Agency Conference, to that Agent's direct and serious detriment' may seek a review. The Applicant has relied on that provision to bring its request and the undersigned has accepted to conduct a review.

Review Approach Taken

10. The facts having been adequately set out by the parties in advance, it was agreed that the matter could be dealt with by the undersigned without conducting a hearing of the parties.

Facts

11. Under the rules of Domestic BSP India, four instances of irregularity in a 12 months period automatically give rise to 'technical'¹ default. Per an informal arrangement in place in India, default under the Domestic BSP rules automatically triggers default under the International BSP, even if no monies are owed and the provisions of Resolution 832 which set the remittance rules for the International BSP have not been infringed. The Applicant incurred two instances of irregularity in July 2008, for late payment of a June Domestic BSP Billing. In December 2008, it incurred a further two instances in respect of a November Domestic BSP Billing.

12. In the event, after the default action was taken, all monies due to BSP Airlines were paid by the Applicant, without recourse to its financial guarantee. The 'technical' default accordingly remained just that, with no monies outstanding.

13. The Applicant has thus been deprived of access to GDS and BSP ticketing for several months, although it remains an Accredited Agent.

14. When the Applicant received a letter of notice of termination of accreditation in the course of the above described proceeding, it sought review of the matter by the undersigned.

15. This review has been conducted on the basis of the above agreed facts, in consultation with the Respondent and applying the wisdom of hindsight.

Findings

16. The conflict arising from imputing instances of irregularity under Domestic BSP India to International BSP India has been described elsewhere and until the Passenger Agency Conference has taken corrective action, constitutes a barrier to the Respondent following correct procedure.

¹ The term 'technical' is used here, informally, to distinguish a default stemming from accumulated instances of irregularity, for whatever reason, from defalcation as such, where monies have not been paid and remain outstanding.

17. The Respondent, whilst taking all due care to protect BSP Airlines' monies, has acted in the spirit of the Agency Programme resolutions in causing a financial review of the Applicant to be conducted, the outcome of which is the finding that the Applicant's financial situation is satisfactory. The Applicant has, however, been asked for and has provided a satisfactory financial guarantee in the amount of INR150K.

18. At no time in the course of this technical default were BSP Airlines monies considered to be at risk. The experience of being deprived of access to GDS and ticket issuing capability since the declaration of default has served as a sharp reminder to the Applicant, a relatively recent newcomer to the Agency Programme, as to the consequences of not abiding strictly by the requirements of Resolution 832.

19. The Respondent's BSP India Management adhered to the procedure transmitted to it by its hierarchy. The issue of whether that delegated procedure is itself correct is moot, insofar as this particular review is concerned.

Decision

20. The Applicant is hereby reinstated, with immediate effect, subject to continuing to satisfy the Respondent's financial criteria, including assuring the specified quantum of financial guarantee, per the laid down industry formula.

21. The Applicant's Industry Capping entitlements upon reinstatement shall be those in effect immediately before the technical default action was taken by the Respondent.

22. Neither the Applicant nor the Respondent is liable to pay any fee or costs to the undersigned in respect of the present decision.

23. If the Applicant is aggrieved by the present decision, it is entitled under Resolution 820e, 4.1 to seek review of it by arbitration.

24. Although, as it presently stands, Resolution 820e does not provide for recourse to arbitration on a Travel Agency Commissioner decision by the Agency Administrator, that is about to change, by virtue of an amendment adopted several months ago by the Passenger Agency Conference. In anticipation of the requisite government approvals being granted for that change and in application of the discontinuing powers vested in the Travel Agency Commissioner, per Resolution 820e, 3.2, the Respondent, if aggrieved by the present decision is hereby afforded by the right to seek review of it by arbitration, should it so elect, in writing to the undersigned, within 30 days of the date of publication of the present decision.

Decided this 29th day of January 2009, in Geneva.

Brian Barrow
Travel Agency Commissioner

Note: To ensure timely receipt by the Parties, an electronic copy of this decision has been sent in advance, with the original signed copy following in the post.