

TRAVEL AGENCY COMMISSIONER - AREA 1 (DEPUTY TAC3)

VERÓNICA PACHECO-SANFUENTES

110 – 3083 West 4th Avenue,
Vancouver, British Columbia V6K 1R5
CANADA

DECISION 2013 - # 61

In the matter of:

Maniar Tours & Travel (Pvt) Limited

Karachi Marriott Hotel, Abdullah Haroon Road
Karachi-75530
Pakistan

Represented by its Chief Executive Ms. Sadiqa Sagheer

The Applicant

vs.

International Air Transport Association (“IATA”)

111 Somerset Road, #14-05
TripleOne Somerset

Singapore 238164

Represented by its Manager, Agency Management, Asia Pacific,
Mrs. Hwa Ooi Tham

The Respondent

I. The Case

The Applicant sought a Travel Agency Commissioner’s review of the Respondent’s termination action and Notice of Termination (“NoT”) dated September 2, 2013, allegedly being imposed (i) despite having paid 50% of the outstanding amount due to the BSP; and, (ii) despite having submitted the requested Bank Guarantee (“BG”) before the due date, as per the Agreement reached between the Parties. The payment was made through the Travel Agent Association of Pakistan on August 30, 2013.

Prior of reaching the referred Agreement, the Applicant had defaulted its BSP payments corresponding the periods of 1-15 June 2013 and 16-30 June 2013 for the total amount of RS 1,100,649, which was to be settled before August 31, 2013.

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II. The Applicant's arguments in summary

- Considering that <<we had defaulted on two BSP payments, we received from Mr. Tony/IATA two emails (dated Aug. 19 and 21, 2013) indicating us the amount due of Rs. 1,100,649.00 to be settled before 31 Aug. 2013>>;
- On Aug. 27, 2013 we sent a communication to Nandya Widjaja/IATA-Pakistan stating our intention of paying 50% of the outstanding debt <<by 31st August and remaining in six months installments with BSP Pakistan>>;
- On Aug. 29, 2013 we informed <<Mr. Tony/IATA that we have already paid 50% Rs. 550,325.00 through Travel Agent Association Pakistan... with financial bank guarantee>>;
- <<We have submitted the Financial Security valid till 30 August 2014 to IATA/BSP Pakistan on 30 Aug. 2013>>;
- <<We were astonished to receive termination letter on 2 Sept.2013 for not paying all outstanding dues to airlines, as we had already cleared 50% down payment and financial bank guarantee before due date>>;
- At that time <<we were waiting for the "repayment Agreement" from IATA (as per khics@iata.org email of 19 & 21 August 2013) and the dates of payment of the 6 installments for the balance amount>>.

The Applicant during the course of this proceeding submitted the following additional argument supported by written evidence:

<<On inquiry, BSP/Karachi office advised us that apparently the letter of termination has been issued due to non-payment of the ADM amount since we were de-linked by BSP the ADM was not received. That has caused the issuance of the letter of Termination;

We have made the payment of the ADM amount, plus the monthly charge of BSP (PKR 18,617 = USD 186) today>> (Sept. 23, 2013)

On its final submissions, based on IATA's correction of its first statement to this Office concerning the cause for termination (stated in email dated Sept. 28, 2013), the

Applicant did the following precision¹: In order to contradict <<that the IATA Agent has not given repayment schedule for remaining 50%, we are enclosing copy of email received by IATA dated 21 August 2013 *that once 50% is cleared IATA will send schedule for remaining payments*>>.

III. The Respondent's arguments in summary

<<16-Jul-13: Notice of Default for Accumulated IRR (2nd IRR due to non-payment);
17-Aug-13: Agent was defaulted due to Accumulative Irregularities (Termination date: 31 Aug 2013);
19-Aug-13: Advise Agent on the settlement of 50% for the outstanding amount;
20-Aug-13: 2nd communication on the 50% of the outstanding amount;
21-Aug-13: 3rd communication on the 50% of the outstanding amount;
27-Aug-13: 4th communication on the 50% of the outstanding amount and repayment plan;
29-Aug-13: Agent advised they make 50% (*payment*)² of the outstanding amount to the Travel Agent Association. *IATA has received the 50% of the amount on 29-Aug.-13;*
02-Sep-13: *IATA has not received the repayment schedule for the balance of the 50% from the Agent.* Thus, IATA initiated Termination action on the Agent>>.

IV. Oral Hearing

Pursuant Paragraph 2.3 of Resolution 820e and Rule 14 of the Rules of Practice and Procedure, this Commissioner, acting upon both Parties' agreement on waiving an oral hearing, had decided to base her decision only on the written submissions that have been filed by both of them.

¹ All the emails correspondence mentioned by the Parties during the course of this review process was duly submitted by both of them and as such is being considered as evidence.

² This Commissioner's editorial addition for clarity sake

V. Considerations leading to conclusion

Based on the evidence on file and the submissions that have been provided by both Parties, the following facts have been established without any objection:

- The Applicant defaulted BSP Pakistan,
- The Applicant accepted a proposed payment scheme by IATA, in settling 50% of the amount owed up front and entering in to an Agreement with IATA for the remainder 50%, which is to be paid in six monthly installments;
- The amount owed and the terms of the repayment schedule were at all times agreed by the Parties;
- The Applicant settled the first 50% of the outstanding debt and provided the requested bank guarantee on time, and even though it paid through a Travel Agency Association, which in fact should not have been the case, since it should have paid directly to IATA, the Respondent did receive the funds on 29 August 2013;
- The Applicant, hence, complied with the terms and times that were instructed by the Respondent.

The discording factor in this case seems to be the Repayment Schedule, since (i) from the Applicant's perspective, it was waiting to receive it from IATA to proceed, as it had been instructed from the Respondent; and (ii) from the Respondent's perspective, it initiated the termination action considering that it had not received from the Applicant the said document where the settlement of the remainder 50% of the debt was supposed to be established.

The evidence on file demonstrates that it was IATA's responsibility to send to the Applicant the Repayment Schedule once it had settled the 50% of the debt in addition of having provided the requested bank guarantee. These were the instructions that were expressly given to the Applicant by the Respondent, through the emails dated August 20 and 21, 2013, and I quote:

Aug. 20: <<Once 50% outstanding paid, please let us know and ***we will draft the agreement.*** Do not prepare post-dates cheques just yet. ***Do wait for our advice***>>.

Aug. 21: <<*You are requested to settle 50% first **before we send you the repayment agreement***>>.

Nevertheless, the advice never came, but instead a termination action was undertaken and a NoT was served to the Applicant on Sept. 2, 2013. Furthermore, on Aug. 29, 2013 the Applicant sent an email to the Respondent informing it about the payment done and expressly stating <<we would be grateful if you could kindly send us agreement for remaining payment in six equal installments>>.

VI. Decision

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

Having looked at the applicable Resolutions;

It is hereby decided:

- The Notice of Termination is to be expunged from the Applicant's records and the Applicant's *status quo* before termination action was undertaken against him should be re-established;
- IATA should send to the Applicant, as soon as possible, the Repayment Schedule as instructed back in August 2013.

Decided in Vancouver, the 25th day of October 2013

Verónica Pacheco-Sanfuentes
Travel Agency Commissioner Area 1
acting as Deputy TAC3

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 it 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 referred period for interpretation/corrections would have expired.