

TRAVEL AGENCY COMMISSIONER - AREA 1 (DEPUTY TAC3)

VERÓNICA PACHECO-SANFUENTES

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

DECISION 2013 - # 64

In the matter of:

American Travel International (PVT) Ltd

IATA Code 27-3 0271 5
Shop No. 1 Mahmood Plaza
Fazal-Ul-Haq Road
79-W Blue Area, Islamabad
Pakistan

Represented by its Managing Director Ms. Maher Noor Hayat

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 Notice of Default (“NoD”) dated 5 August 2013, supposedly served due to non-payment of the Billing Statement for the period of 09 July to 15 July. The NoD was preceded by a Notice of Irregularity (“NoI”), dated August 1, 2013, which the Applicant had contested upon receipt, but at no avail, since no agreement was reached between the Parties.

The referred Billing Statement had 46 Turkish Airlines’ (“THY”) Traffic Documents that had been issued by the Applicant during the period of February 2012 and March 2013.

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They were issued against credit cards and, according to the Applicant, <<the sales were reported to THY in a timely manner as per Res. 890>> and <<the approval for the amount to be billed had been obtained through the established procedure via the GDS>>.

THY has indicated to the Applicant that those credit card payments had been rejected by the credit card's companies, however despite the Applicant's request, THY had refused to provide evidence supporting its allegation and had insisted for the Applicant to make the payment through the BSP.

No ADMs¹ were issued by the Airline to the Applicant prior to the issuance of the BSP Billing Statement. Without the ADMs the Applicant claimed being unable to <<raise the dispute>>.

The Applicant requested IATA to allow it to deal this matter directly with THY, outside the BSP, but its request was denied. The Applicant did not settle the disputed amount through the BSP and it was suspended by the Respondent as a consequence of that.

II. The Applicant's arguments in summary

- <<By not following IATA Res. 890 procedure of the Credit Card Sales handling and for not issuing the ADM (IATA Res. 850m), THY's right to get the traffic documents into the BSP Billing Statement has elapsed. It may be treated as a commercial matter between the airline and the travel agent>> and <<we will make every effort to resolve it>>;

- <<The THY claim should not have been included in the Billing Statement. THY did not followed Res. 850m procedure ... Apparently BSP has favoured the Member/Airline by including the traffic documents in the Billing Statement>>;

¹ Stands for Agency Debit Memos

- <<There were major discrepancies in the Billing Statement that have been highlighted to THY and IATA, but both have refused to take note of it>>, some of them are:

- <<In the absence of the ADM from the airline, is it correct to include amounts in the Billing Statement by BSP?
 - Is it correct to include the amount for the tickets issued (and travel performed) more than 9 months that do not qualify to be part of an ADM?
 - The Billing Statement included the amount of at least 3 tickets, twice. Is it incorrect to assume that IATA has become a party in the matter to increase the penalty for the travel agent?
 - Why IATA has not allowed the travel agent to appeal against the declaration of default in the letter dated 01 August 2013²? >>
- <<We have suffered without being guilty of violation of any IATA Rules>>;
- <<By the same token, the “Reinstatement Charges” may be waived off>>.
- As mandated in Res. 890, Paragraph 3.2, the Applicant had advised THY that <<they would help them>> in the process of getting the settlement due to them.

III. The Respondent’s arguments in summary

<<01-Aug.: 13 NoI sent to Agent due to non-payment of Billing 20130701;
01-Aug. 13: IATA replied that dispute can’t be entertained as this is related to CC sales.
Ref. to Res. 890 attachment Sec. 2.2.2 (b) and Res. 818 Attachment A Sec. 1.10.5(a);
05-Aug. 13: Default action taken due to non-payment by end of grace period>>.

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.

² This was actually the Notice of Irregularity not the Default Notice

V. Considerations leading to conclusion

For clarity sake, I will present my reasoning by dividing it in three points, the first one (A) being the procedure that was supposed to be followed by the Member Airline in light of the facts that were presented in the case; the second one (B) would be the procedure that the Respondent had to follow given those factual circumstances; and, lastly (C) a final consideration. The reason why I have deemed necessary to analyse the procedure that was supposed to be followed by the Member Airline is simply because it has had a direct impact on both: the Applicant's situation and in the Respondent's behaviour in this case.

(A)

In accordance with the evidence on file, non contradicted by either Party, the Member Airline did not comply with the terms of Res. 890, in particular in regards to the following two points:

- (i) It rejected the Applicant's request to have access to the evidence supporting the allegation that the credit card's companies have denied payment to the Member Airline, and thus, supporting the charge that the Member Airline was demanding from the Applicant, violating Paragraph 22.2.2(e) in the Applicant's detriment. The referred provision expressly mandates, I quote:
<<2.2.2(e) the Member/Airline must make all reasonable efforts to ensure that only valid chargebacks are transacted, and **must provide all reasonable documentation in support of them**...>>.
- (ii) It also unfulfilled its obligation of issuing an ADM against the Applicant for the disputed amount derived from those credit card transactions, as mandated in Paragraphs 2.2.2(b)³ and more specifically in Paragraph 3.3 which clearly indicates:
<<3.3 ... the Member/Airline shall charge the loss to the Agent that issued the Traffic Document **by means of an Agency Debit Memo**>>.

³ Interestingly enough this provision was expressly quoted by the Respondent in its submissions, but unfortunately it was not given the proper weight.

By not issuing the ADMs, *ergo* the valid tool available for Member Airlines to substantiate their monetary claims against Accredited Agents, an unlawful harm was caused to the Applicant. The Applicant was left in a “limbo” stage at the mercy of the Member Airline who did not want to issue the mandated ADM in order to force the Applicant to pay the disputed amount through the BSP, most likely in the belief that the Applicant would had paid up-front the "due" amount just to avoid the suspension/termination consequence.

(B)

Despite the narrated circumstances, which were known by the Respondent but ignored by it, IATA proceeded to include the disputed amount in the BSP Billing Statement. However, pursuant Resolution 818g, Attachment “A”, paragraph 1.10.5(b) the course of action that the Respondent had to follow, based on the facts that it had at hand, was to <<***withdraw the declaration of Default***>> and, in case the Member Airline would have not admitted the existence of such a dispute, the Respondent should have asked the Applicant to <<submit documented evidence demonstrating the existence of the dispute or, to pay the amount of the short payment to the BSP>>, and <<provided that either of those conditions is met>>, the Respondent <<***shall withdraw the declaration of Default***>>. Neither of those actions were undertaken by the Respondent.

Moreover, in accordance with Res. 818g, Attachment “A”, Section 1.7.9 and Res. 850m, Section 3, the Parties, including the Member Airline, had to follow the procedure set out in those rules; and, as such and judging from the evidence on file, where no agreement was reached between the Member Airline and the Applicant in regards to the disputed amount, *the ADM had no longer to be suspended from the BSP, but it had to be <<withdrawn from the BSP process>> altogether* (Paragraph 1.7.9.6 of Res. 818g Attachment “A”), being the <<ADM dispute ... now for ***bilateral resolution between the Airline and the Agent***>> (Paragraph 1.7.9.7 *eiusdem*).

(C)

From the evidence on file, and again non-contradicted by either Party, the objected credit card transactions happened between February 2012 and March 2013, hence, it seems from this Commissioner's perspective, that the Member Airline did not issue the mandated ADMs simply because it was already too late for it to do it. Clearly, at least some of those transactions, if not all of them, were out of the time frame of ninety (90) days prescribed in Res. 850m, Paragraph 3.1 to have been the object of an ADM. If that was the case, then again, this conflict would had to be dealt with **bilaterally between the Member Airline and the Applicant, outside the BSP**, and I quote the *supra* mentioned provision: <<Any debit action initiated beyond this period shall be handled *directly between the BSP Airline and the Agent*>>.

It is worth to note that it was the Respondent role to ensure that proper procedure was followed by both: its Member Airline and its Accredited Agent, for the Respondent to act in accordance with its own applicable rules.

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 Respondent did not follow correct procedure, therefore,
- The Notice of Irregularity and the Notice of Default served to the Applicant on 1 and 5 August, 2013, respectively, must be expunged from the Applicant's record;
- Considering that the Applicant has provided the requested Financial Security to the Respondent's satisfaction, in accordance with the Local Financial Criteria, its **immediate** reinstatement in to the BSP system must be implemented at no delay;

2)

- No administrative charges whatsoever should be imposed on the Applicant as a consequence of this action.

Decided in Vancouver, the 30th 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.