

TRAVEL AGENCY COMMISSIONER - AREA 1 (DEPUTY TAC3)

VERÓNICA PACHECO-SANFUENTES

110 – 3083 West 4th Avenue,

Vancouver, BC V6K 1R5

CANADA

DECISION 2013 - # 67

In the matter of:

Balaka Travels & Tours

IATA Code 42-3 0616 5

Eastern view (5th Floor)

50 Nyapaltan

DIT Extension Road

Dhaka, Bangladesh

Represented by its Proprietor Mr. Amimul Ahsan Khan

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 Termination (“NoT”) of the Applicant’s Passenger Sales Agency Agreement (“PSAA”) dated 3 October 2013, supposedly due to an unauthorised change of ownership.

The Applicant claims not having undertaken any change of ownership and has provided documented proof of that situation. While being away in a pilgrimage trip, the person with whom the Applicant had planned to change ownership with had contacted IATA,

Telephone: + 1 – 604 - 742 9854

Fax: + 1 – 604 - 742 9953

e-mail: Area1@tacommissioner.com - website: travel-agency-commissioner.aero

on the Applicant's back, and had made various misrepresentations concerning this matter leading the Respondent to believe that such a change has taken place without being previously authorised. This person used to be an Applicant's employee, who due to these facts was dismissed.

The Applicant had also claimed and had provided evidence of not having been in good health, but rather ill, at the point of being hospitalized and under treatment from May 24, 2013 until July 5, 2013. Circumstances that (i) have contributed to the general misunderstanding of the real ownership situation of the Agency; and, (ii) have given the opportunity for the ex-employee to act freely and unsupervised.

II. The Applicant's arguments in summary

In the Applicant's words:

<<- I am the only proprietor of my agency "Balaka Travels & Tours" and there have never been made any change of ownership of my agency. I was just planning to change the ownership as I was too sick and could not concentrate in my business because of my sickness;

-One of my employees was interested to purchase the agency ownership and he just gave me a proposal to sell my agency to him. It was just in "initial stage" and didn't make any verbal or written commitment with him;

-In the meantime, I went to Saudi Arabia to accomplish the Holy Hajj and then when I reached Bangladesh after accomplishing my Holy Hajj I found -IATA's- e-mail mentioning that my agency's IATA accreditation has been terminated because of unauthorized change of ownership which was really shocking news for me as I was totally unaware of the fact;

- I made some investigations and found that the employee who was interested to purchase my agency did all the mess up and he is the one that had sent a letter with different agency letterhead pad, created fake documents and communicated through unauthorized email address i.e. balakatravels2012@gmail.com to IATA;

- IATA authorized e-mail address of my agency is **balakatousbd@gmail.com** and I always communicate with IATA through this e-mail but it is my concern that IATA has treated with unauthorized e-mail balakatravels2012@gmail.com and by using unauthorized e-mail they have sent all fake documents;

- IATA already have mentioned you that they have noticed a letter that the proprietor differs from IATA record on 27th May 2013, and requested us to provide Ownership details on 29th May, 2013; but on that mentioned time period I was admitted into hospital and I was totally unaware of the fact;

- Moreover, my employee who was the in charge of my office in my absence, he was the person who was cheated with my agency and he had sent the letter with unauthorized letterhead pad via unauthorized e-mail address. As he was the responsible for the total mess up, he didn't notice me about all the e-mail sent by IATA, and I was totally unaware of that fact. His main target was to take over my agency and he had also e-mailed to IATA that he is the new proprietor, which was totally fake and false;

- So, in this circumstance, I would like to request you to consider the facts and please cancel the termination of my agency's IATA accreditation and help me to continue business>>.

III. The Respondent's arguments in summary

<<27-May-13: Agent sent letter to IATA and we noticed that the proprietor differed from our record;

29-May-13: IATA sent email to the Agent to seek clarification (to provide ownership details) but there is no response from the Agent;

6-Jun-13: IATA sent another email reminder to the Agent;

17-Jun-13: IATA mailed official letter to the Agent;

19- Jun-13: IATA sent a registered letter to the Agent;

19-Jul-13: Issue Notice of Termination giving Agent until 31-Aug-13;

16-Aug-13: IATA sent another Notice of Termination giving Agent until 30-Sep-13;

31-Aug.-13: Agent sent notification that there is a change in ownership;

1-Oct-13: Agent did not submit the required documents. Agent was terminated on 1Oct. 2013>>.

<<Based on the above events, you will notice that IATA have communicated with the agent as early as 29-May-13 and Termination only happens on 01-Oct-13. This is a span of 4 months. We are puzzled that the Agency owner did not take any action to respond to our emails or letters.

At this moment, we are not convinced that the Agent can be relied upon to comply with the terms of the Sales Agency Agreement and Agency rules>>.

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.

V. Considerations leading to conclusion

Based on the evidence provided by both Parties, none contradicted by neither one of them, it is clear to this Commissioner that:

- No change of ownership has being undertaken by the Applicant; therefore, the requirements stated in Resolution 818g, Section 10 does not apply to this case;
- The Applicant is still a sole proprietorship, owned by Mr. Aminul Ahsan Khan;
- IATA has acted in accordance with the applicable Resolutions based on the information received by the employee who misrepresented the Applicant;
- IATA has made several attempts, since back in May 2013, to reach the Applicant and have the situation clarified in case a clarification would be needed and after that, assuming that the change of ownership was a *fait accompli*, made several attempts to get the Applicant to comply with the requirements in order to have the approval of the said change before proceeding to the Applicant's termination in light of its lack of response;
- The Applicant was seriously ill, situation that indeed contributed to the general "confusion" of the ownership situation and also to his lack of attentiveness in to its business.

Despite those unquestionable facts, it is important to point out that it is an Accredited Agent's responsibility, derived from its PSAA and the applicable Resolutions, to take care of all aspects of its business, one of them being to keep track of the communications received from IATA and to be on top of the matters related to its PSAA. Having being sick and hospitalised for more than 2 months and after that having gone on a pilgrimage trip are not reasonable excuses for leaving the business unattended (not even checking

emails!¹) and having fully trusted in one employee to handle everything. This Commissioner agrees with the Respondent's comment as to <<we are puzzled that the Agency owner did not take any action to respond to our emails or letters>>.

Having stated the above, this Commissioner is satisfied with the truthfulness of the Applicant's submissions in the sense that: (i) no change of ownership was undertaken by him; and, (ii) the Applicant intensely wishes to recuperate its IATA Accreditation in order to be allowed to fully operate as an Accredited Agent again being completely aware of the obligations and attentiveness that that Accreditation entails.

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 has followed proper procedure based on the information that it had at hand when the events of the case unfolded;
- Considering that during the course of this review process it was revealed and proved that no change of ownership was undertaken by the Applicant: the Letter of Legal Document Requirement (dated June 19, 2013); the Letter of Non Submission of Legal Document (dated July 19, 2013); the Notice of Termination (dated August 16, 2013); and, the Termination itself due to an unauthorized change of ownership (dated October 3, 2013) must be considered as null and void documents, since the subject matter of all of them was proved to be non-existent;
- The Applicant's IATA Accreditation and its reinstatement in to the BSP system must be undertaken at no delay;

¹ At least emails should have been checked once released from hospital.

- The Applicant is to pay any administrative fee that this diligence might entail for the Respondent.

Decided in Vancouver, the 28th day of November 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.