

TRAVEL AGENCY COMMISSIONER - AREA 1 (DEPUTY TAC3)

VERÓNICA PACHECO-SANFUENTES

110 – 3083 West 4th Avenue,

Vancouver, BC V6K 1R5

CANADA

DECISION 2013 - # 76

In the matter of:

Aqsa Travels

IATA Code 27-3 07442

Jinnah Stadium, Shop No. 53-C

Kutchry Chowk

Gujranwala, Pakistan

Represented by its Chief Executive Mr. Gulzar Ahmed

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 (“TAC”) review of the Respondent’s Notice of Termination (“NoT”) dated September 3, 2013, due to non-payment of the second instalment of the Repayment Agreement signed by both Parties on August 12, 2013. The payment was due on Sept. 2, 2013.

On Sept. 17, 2013 the Applicant contacted the Respondent asking for a reconsideration of its Passenger Sales Agency Agreement’s termination arguing having had a car accident and having been hospitalised as a consequence of it, circumstances that impeded him from honouring the referred instalment on time.

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The Applicant did not receive any answer to this request.

The Applicant did pay the second instalment three days late, on Sept. 5, 2013, and provided proof of it to the Respondent at the time of his reconsideration's request and to this Office during the course of this review process.

Upon this Office's request, the Applicant provided further proof of its impediment to comply with its payments' obligations due to the injury suffered as a result of a car accident.

Pursuant the Repayment Agreement, as it has been substantiated by the evidence on file, the Applicant has almost entirely paid the amounts due, remaining one (1) sole instalment of PKR 610,982 due on Dec. 31, 2013. The penultimate instalment was paid by the Applicant even before the due date. It was paid on Nov. 28, 2013 when the due date was Dec. 2, 2013 in accordance with the Agreement.

II. The Applicant's arguments in summary

Quoting the Applicant:

<<- Unfortunately, the last payment of Rs. 610,982 – being 2nd instalment was not cleared on due date as I personally suffered in a road accident resulting I was hospitalized for few days, however the amount was deposited vide cheque No. 7281971 on 5th September, 2013 and delay in submission of appeal to TAC for which I apologize and request favourable consideration;

- The only remaining two instalments, each of Rs. 610,982/- due on 2nd December 2013¹ and December 31, 2013 will be settled well in time;

- In view of the above facts and my faith in settling the IATA dues, I earnestly request your honour to review the decision taken by the Agency Management, Asia Pacific and withdraw the termination of my agency>>.

¹ As indicated before (I), this instalment was duly paid by the Applicant during the course of this review process (evidence was provided to this Office, copying the Respondent).

III. The Respondent's arguments in summary

In the Respondent's words:

<<20-May-13: Agent defaulted due to dishonoured remittance. IATA issue Default letter;

12-Aug-13: Agent entered into repayment agreement with IATA;

2-Sep-13: Agent did not honour the repayment agreement;

3-Sep-13: IATA issued Termination letter>>.

According to the Respondent's calculations, the Applicant <<still has an outstanding due to IATA with the amount of PKR 502,648.00 as at 12 Dec. 2013 ... we would like to comply with the repayment agreement signed by Agent and IATA>>.

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 findings of the case, this Commissioner deems that the lack of timely settlement of the second instalment of the Repayment Agreement by the Applicant was due to circumstances <<beyond the reasonable control of the Agent>>, as stated in Resolution 818g, Section 13.9. Furthermore, once the Applicant was able to regain control of the situation after the accident, it diligently managed to get the said instalment paid, therefore, the late payment was <<not the result of the Agent's lack of diligence>>, and consequently the 3 days belated settlement is considered by this Commissioner as <<an Excusable Delay>>, as defined in the above mentioned provision.

Pursuant the General Principles for Review, enshrined in Resolution 818g, the Applicant was able to demonstrate its compliance with the terms of the Agreement and willingness

to continue its compliance not only with the Repayment Agreement but also with the applicable rules in order to preserve its IATA Accreditation, avoiding the undesired consequences of its Passenger Sales Agency Agreement's termination.

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 NoT of the Applicant's Passenger Sales Agency Agreement shall be expunged and removed from the Applicant's records;
- The Applicant is to honour not only the remaining balance of the last installment, due on December 31, 2013, but all outstanding monies due to Member Airlines as agreed with IATA;
- Once the conditions for reinstatement would have been met, the Applicant is to be reinstated in to the BSP system at no delay.

Decided in Vancouver, the 27th day of December 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.