

TRAVEL AGENCY COMMISSIONER - AREA 1 (DEPUTY TAC3)

VERÓNICA PACHECO-SANFUENTES

110 – 3083 West 4th Avenue,

Vancouver, BC V6K 1R5

CANADA

DECISION 2013 - # 9

In the matter of:

New Al-Falah International Travels

IATA Code 27-3 0899 3

UG 98, Deans Trade Center Peshawar,

Cantt NWFP

Peshawar, Pakistan

Represented by Mr. Sajid Riaz

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”) dated 8 January 2014, with immediate effect, caused by failure <<to settle all outstanding amounts due to airlines>>.

However, the Applicant claims having contacted the Respondent on 28 December 2013 in order to obtain <<the details of total payment>>, considering that its BSP*link* was not available (the Applicant being disconnected from the BSP could not have access to that *link*), the Applicant was incapable of knowing the total outstanding and <<pay 50% and come in repayment schedule>>, but it did not receive any answer from IATA.

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In light of the lack of answer from the Respondent, on December 30, 2013 the Applicant sent a reminder to IATA stating that it was still waiting for a response to its email dated Dec. 28, 2013 and informed the Respondent about the bank closure during December 31, 2013. On January 1, 2014 the Respondent acknowledged the Applicant's concern and indicated him that <<subject to verification *our office will revert with further information accordingly*>>. However, no information was sent to the Applicant in response to his query.

Back in November 22, 2013 the Respondent sent to the Applicant the conditions for reinstatement indicating that the outstanding amounts had to be settled before December 31, 2013 in order to avoid termination action.

II. The Respondent's arguments in summary

In the Respondent's words:

<< 20 November 2013 – 2 instances of IRR¹ issued due to non-payment for sales period of 16-31 October 2013;

20 November 2013 - IRR served due to non-payment of 16-31 Oct 13 billing which triggers technical DEF² due to Accumulative Irregularities;

22 November 2013 – Reinstatement procedure sent to agent via SF email informing agent that billing is downloadable from BS*Plink* for agent to make payment;

8 January 2014 – Agent did not pay 50% by the stipulated deadline. Termination initiated.

May we understand why the Agent waited until 28 December 2013 to contact us for the 50% outstanding amount when our letter to them was communicated on 22 November 2013>>.

III. The Applicant's arguments in summary

After the email sent by the Applicant on Dec. 28, 2013 requesting the exact amount of the outstanding debt, neither instructions nor information were received from the

¹ Stands for "Irregularities"

² Stands for "Default"

Respondent prior the NoT, despite the reminders sent by the Applicant. In fact, the only response received prior to the NoT was dated January 1, 2014 indicating to the Applicant: <<subject to verification *our office will revert with further information accordingly*>>.

At the request of this Commissioner, the Applicant answered the Respondent's question, indicating that indeed it had received the communication dated Nov. 22, 2013 providing him the reinstatement requirements with the deadline <<of 50% payment till 31dec13 and I asked on 28dec13 that the total outstanding was not available with me as the invoices were blocked and those were not opening in our *BSPlink*>>.

The Applicant also stated having being <<hospitalised for one month that is 24nov13 til 23dec13>>, and once being discharged from hospital was able to do the necessary funds' arrangements and <<contacted IATA for the total outstanding to pay 50% percent of the total and come into the repayment schedule>>.

At the request of this Office, the Applicant provided proof of his hospitalisation.

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

It is a fact that has not being contradicted by the Respondent that once an Agent is disconnected from the BSP system **it does not have access to *BSPlink***, thus, the Applicant's claim in this sense seems reasonable, especially if we consider that the communication sent by the Respondent on Nov. 22, 2013 about the reinstatement requirements did not provide any figures of the outstanding debt that the Applicant had.

In other words, the Applicant needed, indeed, to get the information that it was looking for from the Respondent in order to fulfil its obligation as an Accredited Agent and settle the outstanding monies.

On the other hand, this Commissioner also noted, as the Respondent did, that the Applicant waited a long time (actually reacting only 3 days before the due date) to request the exact amount to be settled, when it was informed by the Respondent a month back about its pending debt and the ways to tackle it. The situation was clarified by the Applicant's submissions explaining his health conditions and, furthermore, by providing proof of the Applicant's hospitalisation, which lasted from November 24, 2013 until December 22, 2013 when the Applicant was discharged. However, it is worth noting that the Applicant, legally speaking, did not commit any wrongdoing in waiting until Dec. 28, 2013 to get the information that it needed from the Respondent, since *it was still within the given time frame for it to comply*.

In any case, from this Commissioner's perspective, the fact of being seriously ill, at the point of having the need to be hospitalised, is a situation beyond the Applicant's reasonable control that explains why it did not seek the Respondent's required information before Dec. 28, 2014. Nevertheless, the fact of having been impeded to get that information earlier than 3 days prior to the expiration of the due time to comply, does not excuse IATA's lack of timely response.

On another note, and considering that the term and condition for a repayment agreement has been mentioned during this review process, this Commissioner deems appropriate to state that, pursuant Section 2.2 of Resolution 818g, Attachment "A", two different possibilities are available for the Parties to consider:

(a) The first option, stated in Sub-Section 2.2.1(ii), establishes the scenario in which the Agent would have to pay at least 50% of its debt in order to set a repayment agreement for the remaining balance; and

(b) The second option, stated in Sub-Section 2.2.2, establishes a different scenario. It consecrates the possibility of an <<alternative repayment schedule>> where <<a fraction of such amount (the outstanding amount - TAC comment) has been settled

and a firm schedule for repayment by installments over an agreed period... has been agreed between the Agency Administrator and the Agent>>.

Therefore, according to the above mentioned provisions, even in the hypothesis where the Agent would not have paid 50% of the outstanding amount, it is still eligible to reach an alternative repayment schedule agreement with IATA based on the terms and conditions to be discussed between the two Parties.

VI. Decision

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

Having considered the applicable Resolutions;

It is hereby decided:

- Considering the Applicant's request of the needed information to settle the due amount made within the given time frame to comply with its payment obligation; and, considering the lack of the Respondent's timely answer to this key information unobtainable by the Applicant by other means, the Notice of Termination served against it should be expunged from the Applicant's records; and,
- A Repayment Agreement is to be discussed and signed by the Parties, in order for the Applicant to settle the outstanding monies to the BSP Member Airlines as soon as possible.

Decided in Vancouver, the 3rd day of March 2014

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.