

Decision August 7th, 2017

**TRAVEL AGENCY COMMISSIONER
AREA 1 – DEPUTY TAC 3**

VERÓNICA PACHECO-SANFUENTES
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Vancouver, British Columbia V6K 1R5
CANADA

The Applicant: *Kelly Tours*
IATA Code # 15-3 0454 & 15-0 5841
Indonesia

The Respondent: International Air Transport Association (IATA)
80 Pasir Panjang
20 - 81 Mapletree Business City
Singapore 117372

NOTE:

This summarized decision is being posted as the Parties have received it. Occasional requests for clarification are not posted. However, should any Stakeholder requests it, a copy of such clarification will be sent to her/him.

Decision:

Background:

The Applicant claimed (and proved) having made proper payment of the outstanding monies due to BSP Participating Airlines, which generated its default and the ultimate issuance of the Respondent's Notice of Termination ("NoT").

Based on this payment, made on July 6, 2017, the Applicant requested the cancellation of the NoT and its reinstatement in to the BSP system.

Considering the Applicant's submissions, this Office encouraged the Respondent to, out of its own initiative, once the above mentioned payment would have been verified and duly received, that the NoT be cancelled, a financial security be calculated for this Applicant to submit and the Applicant's reinstatement in to the BSP system to take place at no further delay [pursuant Resolution 818g, "A", 2.3(a), 2.3.1(a) and 2.3.1(b)].

The Respondent accepted this Commissioner's proposal, but charged, additionally, the Applicant the "new Applicant" fees, arguing that the belated payments causing the default actions were attributable to the Applicant's lack of diligence.

The Applicant objected the fees and demonstrated that the delay in doing the BSP payments was not the result of its negligent actions, but rather the result of a misfortunate fraud perpetrated by the Applicant's staff and which the Applicant was unaware of.

Considerations:

The evidence provided by the Applicant, as well as her submissions, are deemed satisfactory by this Office. Furthermore, they demonstrate that the lack of timely payment was due to <<**extraneous factors**>> [Resolution 818g "A", s. 1.7(a)]. Factors that unfortunately the proper Applicant was not even aware of, until it was already too late to avoid the termination action, rightfully unfolded by the Respondent.

It is clear to this Office that the Applicant had no intention to default in its payments. On the contrary, its intention was to pay even before the Due Date. Furthermore, as the evidence shows, the Applicant had enough funds to cover the Remittances in full.

The referred situation made this Commissioner reconsider her earlier stance on this case. In fact, I deem the proven circumstances as sufficient to exonerate the Applicant from the "new Applicant's" fees.

Conclusion:

In light of the Respondent's lack of proofs submitted within the given time frame, as per my email dated August 2, 2017, I hereby order the Respondent to proceed with this Agent's application process as a "new Applicant" **without** demanding from it ANY additional charge, particularly NOT the new Applicant's fees.

The compelling evidence provided by the Applicant, and not contradicted nor proved against by the Respondent, has been deemed by this Office as sufficient to exonerate the Agent from the "new Applicant's" fees.

This decision is effective as of today.

Decided in Vancouver, the 7th day of August, 2017

Verónica Pacheco-Sanfuentes

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In accordance with Resolution 820e § 2.10, any Party may ask for an interpretation or correction of any error, which the Party may find relevant to this decision. The timeframe for these types of requests will be 15 days after receipt of this document (meaning no later than August 22, 2017).

Please also be advised that, unless I receive written notice from either one of you before the above mentioned date, this decision will be published in the Travel Agency Commissioner's secure web site, provided no requests for clarification, interpretation or corrections have been granted by this Commissioner, in which case the final decision will be posted right after that.

If after having asked for and obtained clarification or correction, any Party still considers aggrieved by this decision, the Party has the right to seek review by arbitration in accordance with the provisions of Resolution 820e § 4 and Resolution 824 §14.