

Decision 34 / 2019

Travel Agency Commissioner - Area 2

Andreas Körösi
P.O. Box 5245
S-102 45 Stockholm, Sweden

Applicant: *Preps International Ltd.* (IATA Code 41-2 116 5)
7th Floor, Finance House, Loita Street
00603 Nairobi, Kenya

Respondent: International Air Transport Association (IATA)
Torre Europa
Paseo de la Castellana, número 95
28046 Madrid, Spain

NOTE:

Both Parties are hereby advised that this is a summarised decision based on the findings of the case. Below considerations and the decision, itself are based on the written statements submitted by both Parties, since according to my judgement, as allowed in Resolution 820e § 2.3, I do not see the need for an Oral Hearing.

Background

18 December 2018, *Preps International* (the “Agent”) was placed under default for not paying their debt to BSP (USD 7,245). Reinstatement requirements included a new total Financial Security of USD 50.000. After having paid all outstanding plus interest, as per the repayment agreement, the Agent wanted to provide a combination of USD 20,000 as insurance (“DIP”) and USD 30,000 in bank guarantee (“BG”). This solution could not be accepted by IATA due to coexistence of subrogation rights. The Agent was allowed until end September to provide the necessary BG. In light of the Agent’s lack of compliance, IATA terminated the Agent’s Passenger Sales Agency Agreement (“PSAA”) on 07 November, 2019.

Considerations

It is obvious that IATA has acted according to Resolutions and IATA's SOP. Having said this and also considering information provided by the Agent, not refuted by IATA, that the Agent having informed IATA, as have approximately 40 other Agents in Kenya, to get a DIP coverage by SAHAM Insurance. **On 30 September 2019 IATA acknowledged SAHAM as a DIP provider.**

On the 10th of October, only 10 days later, the Agent was notified that IATA no longer wanted to accredit SAHAM as DIP provider.

After discussions between KATA (The Kenyan National Travel Agents Association), and after having sought a TAC review on the issue and after having consulted IATA, on the **28th of October** the Agent was definitely informed that SAHAM was not accepted and that the Agent needed to turn to an alternative financial security provider.

Quoting the Agent:

28.10.2019: *IATA writes to the Agent to replace DIP with any of the 5 options given. **The Agent is then given a deadline of 15.12.2019.***

IATA's key argument to terminate the PSAA is that the 15th December deadline was part of: "... *many communications that has been massively distributed to the whole market. The communication was sent without taking into consideration agencies under default such as Preps International and considering the non-compliance actions of the agency, it seems very clear that the deadline for Financial Security submission related to the non-payment overrules the mass-communication to the market.*"

Given the circumstances that all has been repaid, and the termination was done only 10 days after *Preps International* was informed that SAHAM will no longer be accepted as DIP provider, I cannot see why the Agent should be punished twice, additional BG PLUS not to be allowed, what was promised in writing to all other Agents in Kenya, meaning the new deadline being the 15th of December. Neither can I see the benefit for Member Airlines nor IATA to terminate the PSAA and start all over with a new application involving new costs and the additional work hours.

Decision

(Even though fully aware that also the 15th December deadline is difficult to meet):

- *Preps International* is to be reinstated, and
- allowed until 15 December 2019 to provide the needed financial security.
- IATA is to charge USD 150 as administrative recovery fee.

This Decision is effective as of today.

In accordance with Resolution 820e § 2.10 any Party may ask for an interpretation or correction of any error in computation, any clerical or typographical error, or any error or omission of a similar nature which the Party may find relevant to this decision. The time frame for these types of requests will be maximum 15 calendar days after receipt of this decision. Meaning as soon as possible and **not later than 8 December 2019.**

Decided in Stockholm, on 22 November, 2019

Andreas Körösi
Travel Agency Commissioner
IATA-Area 2

Please 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 of this decision, any Party still considers aggrieved by it, as per Resolution 820e § 2.10, the Party may seek a reviewed decision by the majority of the three Commissioners; furthermore, if after this decision the Party still feels aggrieved, as per Resolution 820e § 4, the Party has the right to seek review by Arbitration in accordance with the provisions of Resolution 824 § 14, once the above-mentioned time frame would have elapsed.

Please let me know if any of the Parties requires a signed hard copy of this decision and I will send one once the time for "interpretation or correction" has elapsed.