

DECISION OF THE DIRECTOR

In the Matter of: *Business Practices and Consumer Protection Act, S.B.C. 2004, c.2
Travel Industry Regulation*

Respondent: Diamond International Travel Ltd

Licence Number: 44656

Case Number: 31838

Adjudicator: Daniel O' Connor

Date of Decision: August 06, 2024

A. INTRODUCTION

1. Under statutory delegation, Consumer Protection BC (Business Practices and Consumer Protection Authority) is responsible for the administration of the *Business Practices and Consumer Protection Act* [“BPCPA”] and the regulations associated with the BPCPA, including the Travel Industry Regulation [“TIR”].
2. Diamond International Travel Ltd [“the Respondent”] is operating under a travel agent licence granted by Consumer Protection BC.
3. Consumer Protection BC licensing records show Anny Law as the President for the Respondent.
4. On June 26, 2024, a Consumer Protection BC Inspector [“the Inspector”] issued the Respondent a Report to the Director [“the Report”] alleging the Respondent contravened section 12.1(b) of the TIR when they failed to include the address of the person making the payment on receipts issued to purchasers of travel services.

5. I have been delegated the authority of the Director to decide if a contravention to the TIR has taken place. This delegated authority allows me to exercise the powers of the Director under Parts 9 and 10 of the BPCPA. A copy of the Report has been provided to me to perform these delegated adjudicative functions.
6. With a few exceptions, the BPCPA requires the Respondent be given an opportunity to be heard to any allegation before a determination is made and any potential statutory action is taken.
7. On June 27, 2024, an opportunity to be heard [“the hearing notice”] on the allegation advanced in the Report was emailed to the Respondent. The hearing notice invited the Respondent to formally respond to the allegation by presenting written submissions such as evidence, explanations, interpretations of legislation and/or policies of Consumer Protection BC. The hearing notice outlined several possible consequences for the Respondent, should the allegation be confirmed, including licensing action, an undertaking, an administrative monetary penalty, and/or a Compliance Order. The Respondent was given until July 18, 2024, to provide a written response.
8. The Respondent provided a written response to the hearing notice on July 17, 2024, and July 18, 2024. The responses did not question the sufficiency of the notice (i.e., being adequately informed of the specifics of the allegation) and did not request any further disclosure of evidence, clarification, or time to respond. The written response demonstrated the Respondent was afforded the rights required under the BPCPA prior to the Director exercising statutory decision making and licensing or enforcement powers.

B. ALLEGED CONTRAVENTION / LEGISLATION

9. The allegation against the Respondent is stated as:

Diamond International Travel Ltd failed to include the address of the person making the payment on receipts issued to purchasers of travel services.

10. Section 12.1(b) of the TIR is cited as the basis for the allegation and reproduced as follows:

Travel Industry Regulation

"travel service" means

(a) transportation,

- (b) accommodation, or*
- (c) another service combined with transportation or accommodation that is for the use or benefit of a traveller, tourist or sightseer;*

Receipts

12.1 When a licensee receives a payment or refunds an amount for travel services, the licensee must give the person making the payment or receiving the refund a receipt that includes the following information:

[...]

(b) the name and address of the person making the payment or receiving the refund;

[...]

C. EVIDENCE IN THE REPORT TO DIRECTOR

- 11. The Report includes evidence of past inspections in 2014 and 2018 where the Respondent was notified of the requirement to include the address of the person making the payment on receipts issued to purchasers of travel services.
- 12. Resulting from an inspection which took place on April 05, 2024, the Report exhibits copies of five receipts provided to purchasers of travel services (travel services being transportation by air). The Inspector asserts the only address stated on each of these receipts was the address for the Respondent’s licensed location. As such, each receipt failed to include the address of the person making the payment. These receipts are dated between February 01, 2024, and April 02, 2024.
- 13. When questioned by the Inspector as to why the address information was missing from the five receipts, the Respondent replied they were aware of the legislative requirement to include this information on receipts issued for travel services sold, but this information is difficult to obtain from consumers.

D. EVIDENCE FROM THE RESPONDENT

- 14. On July 17, 2024, in response to the hearing notice, the Respondent sent an email which stated:
 - *“I have carefully reviewed the findings and would like to express my sincere apologies for any areas of non-compliance indentified [sic] during the inspection.”*

- *“Firstly, I would like to provide some context regarding the circumstances that led to my absence from the office and potential lapses in compliance. Unfortunately, my absence was due to the devastating passing of my son, who lost his battle with leukemia [sic]. This tragic event has had a profound impact on my personal life, causing immense grief and emotional distress. I deeply regret any inconvenience or oversight that may have occurred as a result of my absence during this challenging time.”*
- *“In addition to the loss of my son, I have also facing [sic] significant health problems that have further hindered my ability to fulfill [sic] my responsibilities adequately. While I understand that these personal circumstances do not excuse [sic] any non-compliance, I believe it is important to provide this context to emphasize the exceptional circumstances that I have been grappling with.”*
- *“I want to assure you that I am fully committed to rectifying any areas of non-compliance promptly and ensuring that this company operates in accordance with all applicable laws and regulations. I have carefully reviewed the Post Inspection Letter and will take immediate action to address and correct the issues highlighted within.”*
- *“I assure you that steps are being taken to prevent any recurrence of these issues in the future.”*

15. On July 18, 2024, the Respondent sent an email containing thirteen receipts provided to purchasers of travel that did appear to include the address of the person making the payment. These receipts are dated between February 01, 2024, and July 15, 2024. The email stated:

- *“Please find attached our receipt to customer. We already tried our best to follow the rule.”*

16. Nothing further was submitted.

E. ANALYSIS

17. The requirement for inclusion of the purchaser’s address on the receipt creates a method whereby the identity of the purchaser can be confirmed should there be an issue with provision of the travel services resulting in a possible claim to the Travel Assurance Fund, which is used as a source of compensation for consumers.

18. The receipts evidenced in the Report show payment for transportation by way of air travel, which is included in the definition of travel services.

19. The Respondent does not deny the allegation regarding the address information required by section 12.1(b) of the TIR or challenge any of the evidence provided by the Inspector in the Report.

20. In their email of July 17, 2024, the Respondent states steps are being taken to prevent any recurrence of these issues in the future. The Respondent does not provide any evidence or further explanation of what these steps are.

21. In their email of July 18, 2024, the Respondent appeared to demonstrate compliance with section 12.1(b) of the TIR by submitting thirteen receipts for travel services sold between February 01, 2024, and July 15, 2024.

22. From a review of these thirteen receipts, I note:

- The receipts were issued by three different representatives for the Respondent.
- The receipts were issued over a five-month period, with nine of the receipts issued prior to the Report being delivered to the Respondent.
- In addition to the Respondent's address, each of the receipts also appears to include the address of the person making the payment for the travel services sold.

23. It is clear the Respondent has an understanding of the requirement to include the address information on receipts, and has been relatively consistent in populating this information on receipts two reasons:

- During the Inspection, the Respondent informed the Inspector they were aware of the legislative requirement to include the address information on receipts issued for travel services sold.
- The nine receipts, issued over a four-month period by three different representatives, appeared to include the address of the person making the payment for the travel services sold.

24. However, the Respondent still contravened section 12.1(b) of the TIR as the address of the person making the payment was not included on the five receipts evidenced in the Report.

F. CONCLUSION

25. I conclude the Respondent contravened section 12.1(b) of the TIR when they failed to include the address of the person making the payment on receipts issued to purchasers of travel services.

G. DUE DILIGENCE

26. Due diligence can serve as a full defence of the contravention if the Respondent can demonstrate that it took all reasonable steps to prevent the contravention from occurring. The onus is on the Respondent to establish this defence.

27. In their response, the Respondent did not submit any evidence to demonstrate that measures were taken to avoid this contravention; therefore, the defence of due diligence has not been established.

H. ENFORCEMENT ACTION

28. As the Director's delegate, and having determined that a contravention has occurred, I may take one or more of the following actions:

- i. Suspend, cancel, or impose conditions on a license, pursuant to section 146 of the BPCPA.
- ii. Accept an Undertaking, pursuant to section 154 of the BPCPA.
- iii. Issue a Compliance Order, pursuant to section 155 of the BPCPA directing the Respondent to:
 - Stop a specified act or practice and take actions to correct the issue;
 - Pay Consumer Protection BC the costs of the relevant inspection.
- iv. Impose an administrative monetary penalty of up to \$5,000 on an individual or up to \$50,000 on a corporation, pursuant to section 164 of the BPCPA. A contravention to section 12.1 of the TIR is prescribed for the purpose of administrative penalty under the Business Practices and Consumer Protection Regulation.

29. For the contravention of failing to comply with section 12.1(b) of the TIR, I have decided to issue a Compliance Order and Administrative Penalty. Further information is noted below.

I. COMPLIANCE ORDER

30. My delegated functions give me the authority to issue a Compliance Order following a determination that a contravention has occurred. The Compliance Order may, amongst other things, require the Respondent to:

- Stop a specified act or practice;
- Take actions to correct the issue; and,
- Reimburse Consumer Protection BC the costs of inspection in the matter.

31. Recognizing the extent of inspection resources allocated to the contravention of section 12.1(b) of the TIR, I believe it appropriate to order the Respondent to reimburse Consumer Protection partial costs of the associated inspection in the amount of \$500.00. Specific terms are described within the Compliance Order.

J. ADMINISTRATIVE MONETARY PENALTY

32. A contravention to section 12.1(b) of the TIR is prescribed for the purpose of administrative monetary penalties (“AMPs”) under the Business Practices and Consumer Protection Regulation. The BPCPA authorizes the imposition of a penalty of up to \$5,000 on an individual or up to \$50,000 on a corporation (section 165 of the BPCPA).

33. In the context of the factors under section 164(2) of the BPCPA, I have decided that an AMP is warranted for the contravention. The purpose is to effect deterrence and to promote the Respondent’s compliance in the future.

34. Section 164(2) of the BPCPA sets out the following factors that must be considered before imposing an AMP:

- a. Previous enforcement actions for contraventions of a similar nature by the person
- b. The gravity and magnitude of the contravention
- c. The extent of the harm to others resulting from the contravention
- d. Whether the contravention was repeated or continuous
- e. Whether the contravention was deliberate
- f. Any economic benefit derived by the person from the contravention
- g. The person’s efforts to correct the contravention.

35. For the contravention at issue, I considered all these factors to decide whether an AMP should be imposed. If imposing an AMP and in determining the amount that should be imposed, I consider section 164(2) of the BPCPA together with the Consumer Protection BC policy, “Calculation of Administrative Monetary Penalties Policy and Procedures” [“the Policy”]. The Policy model and rationale are discussed below.

36. The Policy, normally applied by Consumer Protection BC, sets out how an AMP amount is calculated, starting with a base penalty amount. The Policy is a guidance document that helps to ensure the calculation of AMP amounts are consistent, transparent, flexible, and proportionate to the contraventions at issue. The Policy allows suppliers subject to AMPs to know how Consumer Protection BC interprets the legislation and analyses the criteria when determining AMP amounts. Consumer Protection BC has developed the Policy from its experience and expertise in providing consumer protection services, and from its mandate to administer the legislation in the public interest.
37. According to the Policy, contraventions for which AMPs are imposed are first categorized into Type A, Type B or Type C. Consumer Protection BC makes these assignments based on its purposes and experience in delivering consumer protection services in the public interest, and the consideration of two factors: 1) the inherent severity of harm specific to the contravention; and 2) the probability that a person will experience harm from the contravention.
38. After categorization of the contravention, the decision maker considers a set of “adjustment factors” that are laid out in the Policy. These “adjustment factors” are based on section 164(2) of the BPCPA, plus one additional criterion consistent with the legislation. The Policy requires the decision maker to choose a “gravity” value for each adjustment factor based on consideration of the relevant aggravating or mitigating circumstances.
39. When applying the Policy, the decision maker considers all the factors under section 164(2) of the BPCPA in their calculation or analysis of the AMP amount that should be imposed. The decision maker continues by exercising their discretion on whether the amounts in the Policy should be used or whether different amounts should be imposed based on consideration of the factors under section 164(2) of BPCPA (and one additional related criterion) and any other relevant circumstances.
40. In the Respondent’s hearing notice, I identified the Policy and advised that it would be applied as part of any decision that may impose an AMP. This notice further stated that the Policy can be viewed on Consumer Protection BC’s website and would be otherwise provided to the Respondent in paper form upon request. Therefore, in this hearing the Respondent had an opportunity to respond to the Policy by making submissions on the appropriateness of its application or its consistency with criteria in the BPCPA. The Respondent did not make any submissions regarding the Policy.

41. I have determined that an AMP should be imposed for the Respondent’s contravention to section 12.1(b) of the TIR for failure to include the address of the person making the payment on receipts issued to purchasers of travel services.

Calculation of the AMP amount

42. I first apply the Policy to calculate an AMP amount. I then decide whether that amount, or a different amount, should be imposed based on consideration of the factors under section 164(2) of the BPCPA, one additional criterion and any other relevant circumstances.

43. A breach to section 12.1 of the TIR is a Type B contravention based on categorization in Policy (Appendix A, page 19, line 150). I agree with this categorization, given the circumstances of this contravention. It represents the appropriate level of severity and potential harm for prescribed contraventions according to the Policy.

44. According to the AMP Matrix in part 4.3 of the Policy (page 5), the “base” amount for the AMP is \$3,500.00 for a business.

45. My assessment of the adjustment factors applicable to this contravention under the Policy’s AMP Matrix is set out in the table below.

Adjustment Factor	Effect on Gravity	Analysis
1. Previous enforcement actions for contraventions of a similar nature	0	There are no previous enforcement actions for a contravention of a similar nature; therefore, the gravity level is maintained at zero.
2. Gravity and magnitude of the contravention	0	I feel the base penalty is appropriate in this case. I maintain the gravity level at zero.
3. Extent of the harm to others resulting from the contravention	0	I find no direct evidence of harm resulting from the contravention. I maintain the gravity level at zero.

<p>4. Whether the contravention was repeated or continuous</p>	<p>0</p>	<p>The Respondent issued five receipts to purchasers of travel services that failed to include the address of the person making the payment. While these five instances could be treated as five separate contraventions, I have decided to treat them as one contravention of TIR s. 12.1(b). The gravity level is maintained at zero.</p>
<p>5. Whether the contravention was deliberate</p>	<p>0</p>	<p>There is no evidence to indicate the contravention was deliberate. I maintain the gravity level at zero.</p>
<p>6. Economic benefit derived by the person from the contraventions</p>	<p>0</p>	<p>There is no evidence of economic benefit derived by the Respondent from the contravention. I maintain the gravity level at zero.</p>
<p>7. Whether the person made reasonable efforts to mitigate or reverse the effects of the contravention</p>	<p>0</p>	<p>There is no evidence of mitigation or reversal of the contravention. I maintain the gravity level at zero.</p>
<p>8. The person's efforts to correct the contraventions & prevent recurrence</p>	<p>0</p>	<p>While the Respondent states steps are being taken to prevent any recurrence of these issues in the future, no evidence was submitted to detail what these steps are. I maintain the gravity level at zero.</p>

Final Calculation of AMP

46. According to my application of the Policy and its AMP Matrix, the overall adjustment for the contravention to section 12.1(b) of the TIR involves an overall score of “zero”.

47. The Policy determines that a contravention of section 12.1 of the TIR is a Type B contravention based on categorization in Policy with a base penalty amount of \$3,500.00. In this case, having found a gravity level of “zero” the Matrix calls for an AMP of \$3,500.00.
48. In their response to the hearing notice, the Respondent offered some context regarding the circumstances that led to their absence from the office and the resulting non-compliance evidenced in the Report. This included facing significant health problems and a family bereavement.
49. While acknowledging the personal hardships the Respondent has endured, these personal circumstances do not excuse non-compliance, as the Respondent correctly notes in their response.
50. Having said that, I feel it important to consider two points before finalizing the AMP amount.
- In the Report, the Inspector has submitted evidence of five receipts, issued over a two-month period, that failed to include the address information for the person making payment.
 - In their response, the Respondent has submitted evidence of nine receipts, issued over a four-month period, that appear to include the address of the person making payment.
51. In considering there were several instances where the Respondent appeared to be compliant with TIR s. 12.1(b) I find the base penalty amount to be excessive.
52. I have factored in these additional considerations into my analysis and calculation of the penalty, resulting in a variation from the Policy amount.
53. I have considered the \$3,500.00 AMP under the Matrix and the guidance provided under the Policy, mindful that I am not bound to the Policy, or the amounts calculated under it. Exercising my discretion to apply a penalty amount of up to \$50,000.00 for business, I believe \$2,000.00 to be an appropriate amount given the reasons I have discussed above. Attached to these reasons is a Notice of Administrative Penalty in the amount of **\$2,000.00**.

K. RECONSIDERATION

54. A Notice of Administrative Monetary Penalty and/or the Compliance Order may be reconsidered in accordance with sections 181 and 182 of the BPCPA. A request for reconsideration must be submitted within 30 days of receipt of the Notice of Administrative Monetary Penalty / Compliance Order. The request for reconsideration needs to be

presented in writing and must satisfy the “new evidence” requirements under section 182(2) of the BPCPA. A reconsideration fee in the amount of \$283 must accompany the written request for reconsideration.

55. A request for reconsideration should be addressed to:

Consumer Protection BC
Attention: Director
200 – 4946 Canada Way, Burnaby, BC V5G 4H7

Decided on August 06, 2024, in Burnaby, BC.



Daniel O' Connor
Director of Compliance
Consumer Protection BC