



DECISION OF THE DIRECTOR

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

Respondents: EU Travel Ltd.

Licence Number: 74270

Case Number: 30317

Adjudicator: Robert Penkala

Date of Decision: February 18, 2020

INTRODUCTION

Consumer Protection BC administers the *Business Practices and Consumer Protection Act* (“Act”) and the *Travel Industry Regulation* (“Regulation”). It is the licensing body for travel agents and wholesalers in British Columbia. Where businesses (or “suppliers”) violate the Act or Regulation Consumer Protection BC is authorized to impose administrative penalties, make remedial orders, or take licensing actions such as suspension or cancellation.

EU Travel Ltd. (“EU”, “respondent”, or “licensee”), is a company licensed by Consumer Protection BC to sell travel services from premises at 223 – 1024 Ridgeway Ave., Coquitlam, BC. On November 20th, 2019 Consumer Protection BC attended EU’s premises to conduct an inspection. The inspector identified several evident contraventions of section 12.1 of the Regulation, namely: issuing customer receipts lacking the purchaser’s address and failing to state any conditions for customer reimbursement.

On December 12th, 2019 the inspector issued a Report to the Director. The Report cites one previous inspection and subsequent notice to the licensee about the section 12.1 requirements, as well as evidence of the current allegations. I have been delegated by the director to decide based on the evidence whether the violations occurred and if so, whether penalties or other enforcement

actions are warranted.

OPPORTUNITY TO BE HEARD

Prior to the director or delegate taking enforcement action under the Act, the respondent must have an opportunity to be heard.

On December 17, 2019 I sent a letter to EU by e-mail and registered mail referring to the allegations in the Report and to procedural matters, giving it until January 7th, 2020 to respond formally to the allegations. (The inspector had already arranged separate delivery of a full copy of the Report.)

The letter explains that the director (or delegate) must consider the licensee's response before deciding whether the contravention occurred. It cites possible consequences if the allegations are proven. I did not receive any response from EU by January 7th, and in fact the registered mail came back to my office "unclaimed". On January 9th I sent another email to EU attaching notice of the hearing and a copy of the Report, explaining that in absence of a response I could adjudicate the matter based only on the Report. Subsequently I exchanged emails with EU and spoke by telephone with the wife of EU's president. I then extended the time for reply to January 15th. On January 10th EU delivered an email response to the Report ("Response") including a brief written submission and copies of seven invoices for EU's sale of travel services. The Response essentially states that after the inspection and Report, EU took steps to address completely the cited customer receipt deficiencies. Based on the foregoing, I conclude EU has been provided with an appropriate opportunity to be heard.

ALLEGED CONTRAVENTIONS

The respondent allegedly:

in six transactions occurring between June and November 2019 issued customer receipts that do not contain the addresses of the purchasers of travel services or conditions of reimbursement of consumers' payments.

LEGISLATION

The following provisions of the Regulation are relevant to this decision:

12.1 When a licensee receives a payment [...] for travel services, the licensee must give the person making the payment [...] a receipt that includes the following information:

- (a) [...]
- (b) the name and address of the person making the payment [...];
- (c) [...] [through] (h)

- (f) the conditions for the reimbursement of any money received
- (g) [...]

INSPECTOR'S EVIDENCE

Absence of purchasers' addresses / reimbursement conditions on receipts

- Exhibits 4 to 9 in the Report consist of copies of six electronic invoices (determined to be receipts) for travel services sold to customers in June, July, August, and November 2019.
- Exhibits 4, 6, 7, and 8 are single-page documents identifying names of the customers ("billed to"), details of services, and price and payment information.
- Exhibits 5 and 9 include supplementary itinerary information.
- The Inspector observes that none of the invoices appear to include an address for the purchaser.
- The Inspector states that none of the single-page invoices (Exhibits 4, 6, 7, and 8) refer to the respondent's or end-supplier's conditions for reimbursement or to any cancellation policies.
- According to the inspector, the respondent stated that "each customer receives a receipt and a trip itinerary". The inspector agrees that itinerary documents form part of the receipt.
- The inspector states that EU described to her its own cancellation fee, a surcharge of \$20 to \$100 meant to compensate EU for loss of sales commissions.

RESPONDENT'S EVIDENCE

The Response includes the following information:

- On April 4, 2019 [...] the inspector pointed out that the license displayed was outdated and license number must appear on advertisement. I made the corrections as soon as possible.
- Before he left, he asked me to send copies of receipts to his email. On site, I believe he did not mention anything regarding violation on receipts. I did not receive any letter from Canada Post.

- [...] after my wife’s conversation with [the adjudicator] on phone I retrieved the email from inspector in April among a lot promotion emails. I read through the post inspection letters and realized that the specific violation not mentioned during inspection was stated in [the letter]
- [On] November 20, 2019 [during the] second inspection [...] I showed the inspector that I have corrected all violations [...] When the inspector pointed out the that receipts are missing certain information, I was very honest that I was not aware of the violation. [If] I had realized it, I would have corrected it.
- I expressed my concerns that clients would not want to disclose personal information such as address. The inspector answered my questions and instructed me on how to correct the receipts to avoid future violations. I followed her advice by adding client address and refund policy on all receipts dated after November 20, 2019. I have complied with TIR ever since.
- When I asked the inspector will there be a second inspection on examining the appropriate and accuracy of receipts. She said she will contact me by email later. Before she left, she asked me for several invoices dated before November 20, 2019, which are those receipts issued before I learnt how to properly put clients address and refund policy on each receipt.
- Included in the Response are seven invoices for travel services sold to consumers after the inspection in November 2019. These invoices appear to have been issued between November 21, 2019 and early January 2020. Each identifies a person “billed to” and an associated address, as well as a statement that “once documents issued” payments are non-refundable and non-exchangeable, and that deposit payments are non-refundable and valid only for further purchases.

ANALYSIS

The Response does not challenge the Report’s allegations, or the Inspector’s evidence regarding the missing information required by sections 12.1 (b) and (g) of the Regulation. The main thrust of the Response is that, post-inspection, EU corrected the breaches. Further, EU submits that it addressed the issues expressly raised during the April 2019 inspection prior to the November inspection, and offers an explanation for its failure to correct the two section 12.1 receipt deficiencies. I discuss this submission below.

Did EU fail to include on customer receipts an address for the purchasers and conditions of reimbursement contrary to section 12.1 (b) and (g) of the Regulation?

The evidence in Exhibits 5 - 11 verifies customers’ purchases of travel services from the licensee. During inspection the licensee confirmed that the invoices are copies of the complete customer receipts issued. Customers are identified by name on the invoices / receipts, however there is no

address information associated with the purchasers. I conclude the invoices and other documentation that make up the “receipts” do not include the purchasers’ addresses as required by section 12.1 (b) of the Regulation. I am satisfied, without qualification, that the Report substantiates the allegation with respect to the lack of purchasers’ addresses. Nothing in the Report or hearing raises any doubt that EU failed to record and reproduce the addresses.

Similarly, with two exceptions (Exhibits 4 and 9) the exhibited receipts do not state any information regarding possible conditions of reimbursement of purchasers or other information material to potential reimbursement, such as cancellation policies. I find that the supplementary information included in the tour package in Exhibit 4 features relevant disclosure of the tour operator’s cancellation policy, while the “e-ticket” document provided to the inspector in relation to the sale of air travel in Exhibit 9 states that tickets are non-refundable and changes will incur surcharges. In four of the six transactions cited by the Report there is no information about reimbursement or whether the sale is simply non-refundable. Moreover, the inspector says EU informed her that it also applies a discretionary cancellation / refund policy according to which the customer is assessed a fee between \$20 and \$100. There is no evidence that EU issued receipts disclosing any such fee. In its Response, EU neither concedes nor disputes the inspector’s description of its “proprietary” cancellation fee.

I am, however, left with certain observations and questions about the evidence regarding the alleged non-disclosure of “conditions of reimbursement”, namely:

- EU told the inspector that it issues itineraries as part of its customer receipting practice. It said that for technical reasons it was unable to reproduce them for four of the cited air travel transactions, though it was able to do so for the last of the transactions.
- The itineraries (or “e-tickets”) apparently contain a “general information” clause that sets out a “no refund” (and change fee) policy, presumably originating with the air carriers.
- If EU, as it told the inspector, imposes a discretionary cancellation fee in some cases, it is not clear how it would apply for bookings of air travel that are in any case non-refundable.
- The Report suggests, rather than ruling out, that EU may have issued e-ticket / itineraries containing “no refund” conditions. If indeed it did so, EU’s discretionary cancellation fee seemingly had no application or relevance to those transactions (since there would be no refund amount from which EU could deduct its own cancellation fee; and, it is not clear that it would need to recover any lost commissions for fares retained 100% by the end-supplier of air travel).

In the present context, I am left with some uncertainty whether the four air travel receipts in question in fact failed to disclose to purchasers conditions of reimbursement or their non-applicability.

In conclusion, I find that EU issued receipts deficient in respect of section 12.1 (b) as alleged in the Report, in contravention of the Regulation.

The Defence of Due Diligence

The respondent is entitled to a complete defence against the allegations if it demonstrates that it took all reasonable steps to prevent the contravention from occurring (due diligence). EU has not set out any express basis for such a defence, certainly not if one presumes licensees to have knowledge of basic requirements set out in the Regulation (I take it that it is fair to presume licensees in a regulated field to know the relatively few and straightforward requirements found in one governing regulation). It is not clear to me what efforts EU made to comply with the Regulation in the sense of obtaining the required information. While EU has stated that some customers prefer not to divulge a residential address, it is not evident that EU took any steps to inform the customers about the Regulation or to overcome this aversion in order to put the information on its receipts.

ENFORCEMENT ACTIONS

As an adjudicator determining that the violations occurred as alleged, I may take one or more of the following actions:

- Issue a compliance order (under section 155 of the Act), which may direct the Respondent to:
 - stop a specified act or practice;
 - take specific actions to correct the issue; and,
 - repay Consumer Protection BC the costs of this inspection.
- Impose a penalty of up to \$5,000 on an individual, or up to \$50,000 on a corporation (under section 164 of the Act), since the cited violations of the Regulation are prescribed under the *Business Practices and Consumer Protection Regulation*.

In this connection, I add the following comments that relate to information about the licensee and the background to the Report. These considerations do not affect my conclusion above regarding the absence due diligence. However, they relate to my exercise of discretion in the use of enforcement measures:

- EU has been a licensee since September 2017. The first inspection of its business occurred in April 2019.

- EU's president says the inspector discussed certain matters related to the Regulation with him during the April inspection, and he addressed those issues promptly.
- EU says the inspector at the April inspection did not bring the section 12.1 issues in the Report to the president's attention in person. It did not receive any follow-up documentation by mail.
- Until the section 12.1 issues were raised at the November inspection as a subject of "follow up", EU did not find a post-inspection email from the April inspection attaching a letter including notice of the receipt deficiencies.
- After the November inspection, EU says, it made the required changes to its receipting practices without delay.

I have considered EU's submissions about the inspection background and previous notice to the licensee regarding potential violations and the licensee's opportunity to remediate them. Based on this and the entire context of the case, including my sense of the scope and gravity of the contraventions, I have decided not to include a monetary penalty for the contravention proven in this case. I have considered each of these possible enforcement actions and determined the appropriateness of an order for costs of the inspection and for EU to comply with conditions for avoiding further contraventions. Should EU violate the terms of the order, however, it may be liable to significant monetary penalties. Such an order should deter recurrence of the contraventions.

Compliance Order

Having found the licensee responsible for contravening section 12.1 (b) and (g) of the Regulation, I have authority under the Act to order reimbursement of Consumer Protection BC's costs of inspection, including preparation of the Report for this hearing. I therefore impose **inspection costs of \$475** on EU. The respondent is also ordered to comply henceforth with the obligations stated in section 12.1 of the Regulation discussed above. The Order enclosed with this decision gives notice to that end.

RECONSIDERATION OF DECISION AND ORDER

This decision and the related Order may be reconsidered in accordance with Division 1 of Part 12 of the Act. A request for reconsideration must be submitted **within thirty days** of receiving this notice. *The request must be in writing, must be accompanied by a \$247 reconsideration application fee, and must identify the error the person believes was made or other grounds for which the reconsideration is requested.*

Please note that reconsiderations of determinations are subject to the provisions outlined in section 181 and 182 (2) of the Act. Requests for reconsideration should be addressed to:

Consumer Protection BC
Attention: Shahid Noorani, VP Regulatory Services
200 – 4946 Canada Way
Burnaby, BC V5G 4H7

Or by email to: shahid.noorani@consumerprotectionbc.ca

Considered on February 18, 2020 in Burnaby, BC by:

A handwritten signature in black ink, appearing to read "R Paul". The signature is written in a cursive style with a horizontal line underneath the name.

Manager of Enforcement Hearings

Enc: Compliance Order