



## **DECISION OF THE DIRECTOR**

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

**Respondents:** Parastoo Travel Ltd.

**Licence Number:** 37601

**Case Number:** 30313

**Adjudicator:** Robert Penkala

**Date of Decision:** December 30, 2019

### **INTRODUCTION**

Consumer Protection BC is the licensing body for travel agents and wholesalers in British Columbia. As such, it administers the *Business Practices and Consumer Protection Act* (“Act”) and the *Travel Industry Regulation* (“TIR”). Where businesses (or “suppliers”) violate the Act or TIR, it is authorized to impose administrative penalties and issue remedial orders.

Parastoo Travel Ltd. (Parastoo, “licensee”, or “respondent”) is a company licensed by Consumer Protection BC to sell travel services from premises at 101 – 2922 Glen Drive Coquitlam, BC. On November 7, 2019, Consumer Protection BC carried out an inspection at Parastoo’s premises and identified evident contraventions of section 12.1 (b) of the TIR, namely: issuing customer receipts lacking required information (purchasers’ addresses).

On December 3, 2019 an inspector issued a Report to the Director (“Report”). The Report cites previous inspections of the licensee relating to the TIR requirements, as well as evidence to support the current allegations. I have been delegated by the director to decide based on the evidence in this case whether the violation 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 3, 2019, I sent a letter to Parastoo via e-mail and by registered mail in reference to the Report and procedural matters, giving it until December 17 to respond to the allegations. (The inspector had delivered the Report to the licensee separately.)

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. Parastoo delivered an email response to the Report ("Response") on December 4<sup>th</sup>. Based on the Response, I conclude the licensee has been provided with the relevant materials and an appropriate opportunity to be heard.

## ALLEGED CONTRAVENTIONS

The Respondent allegedly:

*in 7 transactions occurring in 2019, issued customer receipts that do not contain the addresses of the purchasers of travel services.*

## LEGISLATION

The following provisions of the TIR 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 [...] **(b)** the name and address of the person making the payment [...]

## INSPECTOR'S EVIDENCE

- The Report outlines a history of Consumer Protection BC's engagements with the respondent in the form of inspections and follow-up communications, including two formal "warnings", dealing with the absence of customer addresses on receipts. There are four examples of such previous notice to the licensee pertaining to sec. 12. 1 (b) of the Regulation between 2015 and 2019. [Exhibits 1 through 8]
- The inspector notes that 7 receipts [Exhibits 11 to 17] issued for air travel purchased by customers between August and November 2019, do not document addresses for the purchasers.

- During the November inspection the business owner told the inspector she was aware of the sec. 12.1 (b) requirement but “could not add [the information] to the receipts because [they] are automatically generated by a [third] party.”
- The owner also stated that in most cases she collects the customers’ addresses and stores them in her computer. She demonstrated this to the inspector.

## RESPONDENT’S EVIDENCE

The Response consists of the following statement emailed to me by the owner of Parastoo (in part paraphrased or otherwise edited for spelling, grammar, and clarity).

- I am working in my own Persian community. I want customers to be satisfied and happy with me to come back to the business in the future. They are family to me after all those years how can I be dishonest to them and purposely violate the Regulation by not noting their address on their invoices?
- In July an inspector came to my agency and mentioned that an invoice has to have passenger address [sic] and I said I will ask them and note it on the invoice. Some of them came to the agency to purchase tickets but most of them over the phone: some freaked out because of a bad experience with another travel Agency (shut down last year by Consumer Protection BC), especially as this travel agent was working for me in the past, though I had released her.
- With this background it was hard to convince people to give their own address, most of them did not feel right about it and said the email address is enough. With all this stress of finding clients to sell to, why make them uncomfortable [about the address disclosure], and I was sure about my being honest with them. I didn't take the issue that seriously or think about violating the Regulation or doing anything against my clients.
- I didn't intend to do anything wrong; I just was a little careless, please forgive me as last time and I promise it won't happen again.

## ANALYSIS

### ***Did the Respondent fail to include on customer receipts an address for the purchasers, contrary to section 12.1 (b) of the TIR?***

After reviewing the evidence, I am unable to find address information associated with the purchasers in the transactions documented in the Report’s Exhibits. The inspection is a reliable basis for my conclusions involving receipt issuance, namely that the transactions in evidence document the absence of purchasers’ addresses on the receipts issued by the respondent, in contravention of sec. 12.1 (b) of the TIR.

Parastoo's Response does not in my view provide evidence in rebuttal. To the contrary, the submission generally acknowledges the violations and consists more accurately of several *excuses* for the violations and a request for Consumer Protection BC's forbearance.

### **The Defence of Due Diligence**

The licensee is entitled to a complete defence against the allegations if it demonstrates that it took all reasonable steps to prevent the contraventions from occurring (due diligence). I find that Parastoo has not set out an adequate basis for such a defence. The owner appears to state that the violations were in some way related to customers' reaction to "bad experiences" with a competing travel agency, but she fails to explain whether Parastoo attempted to avoid the contraventions.

The owner also states that she did not or would not harm ("betray") customers in connection with the violations, and that the violations were in any case not deliberate. However, I find that the Response does not focus meaningfully on behaviour that can be characterized as properly *diligent*.

I note also the Report sets out that the respondent was given notice by Consumer Protection BC on several occasions in the last 4 years down to the present regarding requirements of section 12.1 (b) of the TIR. In their totality, these notices were unequivocal in terms of the nature of the violation and the implications for enforcement actions if the omissions were not remedied by the licensee.

For the above reasons I conclude that Parastoo has not defended itself against the allegations or persuaded me to refrain from considering enforcement action as suggested by the Report.

### **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 TIR are prescribed under the *Business Practices and Consumer Protection Regulation*.

I have considered each of these possible enforcement actions and determine it appropriate to make an order for remedial actions by the licensee (to comply with the relevant requirements) and for payment of costs in the inspection. Further, monetary penalties are a corrective measure authorized by the Act and supported by Consumer Protection BC policy: below I outline the basis for my discretion to issue such a penalty in this case. The circumstances involve a pattern of recurrence referred to in the Report, thus I believe the breaches rise to a level where a monetary penalty is appropriate.

### **Administrative penalty**

As per section 164 (1) of the Act, a penalty (AMP) may be imposed where a person contravenes a prescribed provision of the Act. Section 12.1 of the TIR is prescribed by the *Business Practices and Consumer Protection Regulation*, therefore an AMP may be applied. After considering the factors under section 164 (2) of the Act (below), I have decided that an AMP is warranted for the breaches of the TIR demonstrated in this matter.

Section 164 (2) of the Act 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 supplier
- (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

For the violation at issue, I consider all these factors to decide whether an AMP should be imposed. If imposing an AMP, to determine the *amount* that should be imposed I consider the section 164 (2) factors 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.

The Policy, normally applied by Consumer Protection BC, sets out how the AMP amount is calculated, starting with a base penalty amount. The Policy helps to ensure that calculations of AMP amounts are consistent, transparent, flexible, and proportionate to the contraventions at issue, and that suppliers subject to AMPs know how Consumer Protection BC interprets the Act and analyses the criteria 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 Act in the public interest.

According to the Policy, contraventions for which AMPs are imposed are first categorized into Type A, Type B, or Type C, as set out in the Appendix. 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.

After categorization of the contravention, the decision maker considers a set of “adjustment factors” laid out in the Policy. These “adjustment factors” are based on section 164 (2), 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.

When applying the Policy, the decision maker is considering all the factors under section 164 (2) in his or her calculation or analysis of the AMP amount that should be imposed. The decision maker continues by then deciding in his or her discretion whether the amounts in the Policy should be imposed or different amounts imposed based on consideration of the factors under section 164 (2) (and one additional related criterion) and any other relevant circumstances.

In the notice of this hearing, I identify the Policy and advise that it will be applied as part of any decision that may impose an AMP. The notice further states that the Policy can be viewed on our website and would be otherwise provided to the respondent in paper form upon request. Therefore, Parastoo has had an opportunity to respond to the Policy by making submissions on the appropriateness of its application or its consistency with the criteria under the Act. However, in this hearing I have not received any submissions on the Policy or related matters.

I have determined that an AMP should be imposed for the Licensee’s failure to include on customer receipts the information required under section 12.1 (b) of the TIR.

#### **Calculation of the AMP amounts**

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) and one additional criterion, and any other relevant circumstances.

Violations of section 12.1 of the TIR are “Type B” contraventions under the Policy. I agree with the categorization of the contravention in the present circumstances as an intermediate level of inherent severity and potential harm according to the Policy.

My assessment of the adjustment factors applicable to these contraventions under the Policy’s “Penalty Matrix” is set out in the table below:

<b>Adjustment Factor</b>	<b>Effect on Gravity</b>	<b>Analysis</b>
<b><i>1. Previous enforcement actions for contraventions of a similar nature</i></b>	<b>0</b>	The Report refers to formal warnings including one such notice given in the context of an administrative regulatory hearing conducted by Consumer Protection BC against the respondent. There are, however, no previous penalties, orders, or licensing actions against the respondent for this breach. For this factor I do not consider warnings as “enforcement actions” and the effect is neutral.

<p><b>2. Gravity and magnitude of the contraventions</b></p>	<p>0</p>	<p>The contravention in this case was discovered during inspection and is unrelated to any complaint or loss. However, the failure to remediate the identified violation despite prior recent engagement by Consumer Protection BC is itself somewhat serious. I also note the contravention involves six separate transactions occurring over several months, rather than having the appearance of a “one-off” or aberration.</p> <p>Failing to include the information required by section 12.1 (b) may in general have no immediate consequence. However, it may affect eligibility for compensation in claims against the Travel Assurance Fund or other potential disputes involving proof of the transaction between the parties. This concern is relevant to the application of a penalty, though not specifically aggravating.</p>
<p><b>3. Extent of the harm to others resulting from the contraventions</b></p>	<p>0</p>	<p>There is no evidence of, and no basis to infer, harm to others resulting from the contraventions.</p>
<p><b>4. Whether the contraventions were repeated or continuous</b></p>	<p>0</p>	<p>Parastoo is responsible for six instances of the contravention of section 12.1 (b) over about 3 months. There is no evidence in the Report of additional violations. Therefore, the evidence does not lead me to conclude the degrees of repetition and continuity aggravate liability.</p>
<p><b>5. Whether the contraventions were deliberate</b></p>	<p>0</p>	<p>The contravention appears to be related to Parastoo’s lack of diligence, especially for failing to rectify its practices after earlier notice. But that in itself does not lead to an inference of deliberate intent to circumvent the requirements of the TIR. This factor is neutral.</p>
<p><b>6. Economic benefit derived by the person from the contraventions</b></p>	<p>0</p>	<p>I do not believe the respondent was motivated by or derived any economic benefit from the contraventions per se.</p>
<p><b>7. Whether the person made reasonable efforts to mitigate or reverse the contraventions’ effects</b></p>	<p>0</p>	<p>In absence of any issues arising from the absence of purchasers’ addresses on receipts, the only known effect of the technically deficient receipts is their being given to and kept by customers. The respondent stated to the inspector that “in most cases” she kept an address for the purchaser in a computer file as seen in Exhibit 10. I accept that this record-keeping could be relevant to</p>

		mitigation of the receipt deficiency. It could feasibly be reproduced to help verify the original transactions, however it does not touch on the effects of the violations in this case. This factor is neutral.
<b>8. The person's efforts to correct the contraventions to prevent recurrence</b>	<b>0</b>	In its Response, Parastoo submits no evidence it has made changes to the invoices / receipts generated from its ticket-booking or point of sale systems. The likelihood of future recurrence is not really addressed except for the owner's pledge not to commit future breaches. I am unable to give any significant weight to this factor in respect of penalty.

### **Final Calculation of AMP**

The Policy determines violation of section 12.1 (b) is a Type B contravention with a base penalty amount of \$3,500. For this violation, application of the AMP "Matrix" involves no adjustments for aggravating or mitigating factors. Thus, the effect on "gravity level" of the contravention is neutral or "zero".

In this case, after considering the policy adjustment factors, I apply a penalty of **\$3,500** per Part 4.3 of the Policy (penalty matrix). Attached to these reasons is a Notice of Administrative Penalty in that amount.

### **Compliance Order**

Having found Parastoo responsible for contravening section 12.1 (b) of the TIR, I have authority under the Act to order reimbursement of Consumer Protection BC's costs for the relevant inspection, including preparation of the Report for this hearing. Recognizing the resources allocated to discovery and documentation of the violations, I impose **inspection costs of \$600** on the respondent. The Order enclosed with this decision gives formal notice to that end.

Further, I direct Parastoo to implement any necessary changes to its electronic booking platform or manual receipt issuance to ensure the creation of receipts (or "invoices") stating purchasers' addresses. Any failure to comply with these conditions in future may be the subject of additional proceedings for breach of the order and result in penalties against the respondent.

### **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](mailto:shahid.noorani@consumerprotectionbc.ca)

Considered on December 30<sup>th</sup>, 2019 in Burnaby, BC by:

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Manager of Enforcement Hearings

Enc: Compliance Order / Notice of Penalty