

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

YURI MATOS,

Petitioner,

vs.

Case No. 22-0204

IBERCARIBE TOUR, LLC,

Respondent.

RECOMMENDED ORDER

On April 14, 2022, Hetal Desai, an Administrative Law Judge of the Florida Division of Administrative Hearings (DOAH), conducted a duly-noticed hearing by Zoom conference.

APPEARANCES

For Petitioner: Yuri C. Matos
1417 North Semoran Boulevard, Suite 102
Orlando, Florida 32807

For Respondent: No appearance

STATEMENT OF THE ISSUE

Whether Petitioner is entitled to his claim of \$4,256.45 against Respondent, a “seller of travel,” or Respondent’s performance bond posted with the Florida Department of Agriculture and Consumer Services (Department), pursuant to chapter 559, Florida Statutes (2021).¹

¹ Unless otherwise indicated, citations to the Florida Statutes refer to the 2021 version, which was in effect when the disputed transaction took place.

PRELIMINARY STATEMENT

On August 27, 2021, Petitioner, Yuri Matos Garcia (Mr. Matos or Petitioner), filed a Sellers of Travel Claim Affidavit (Claim) with the Department alleging he had attempted to utilize a credit of \$4,256.45 with Ibercaribe Tour, LLC (Respondent or Ibercaribe), or obtain a refund for this amount and was unable to do so. Petitioner also alleged he had attempted to contact Ibercaribe and that it had avoided his calls and emails. Petitioner provided supporting documentation and sought payment from Ibercaribe or Ibercaribe's surety.²

On January 3, 2022, Respondent filed an Election of Rights form with the Department. The form was submitted by Humberto Blanco, who described himself as Ibercaribe's owner and president. Mr. Blanco checked the box on the form indicating Respondent did not dispute the facts, but also attached a statement that clearly disputed the facts alleged by Petitioner. In his statement, Mr. Blanco argued that Petitioner's only recourse was to sue an alleged parent company located in Spain, and that any dispute was barred by "Force Majeure" as a result of the COVID-19 pandemic. Mr. Blanco also attached to the Election of Rights form a number of documents that are in Spanish. These documents have not been officially translated, entered into evidence, or considered by the undersigned.

On January 19, 2022, the Department referred the matter to DOAH where it was assigned to the undersigned. A Notice of Hearing by Zoom Conference was issued on February 15, 2022; and a Notice of Zoom Pre-hearing Conference was issued on February 17, 2022. Both notices, as well as an Order of Pre-hearing Instructions, were sent to Respondent via U.S. Mail at the contact information provided by the Department. None of these documents were returned to DOAH as undeliverable.

² There was no evidence at the hearing and nothing in the referral documents sent by the Department to DOAH that establishes the name of Ibercaribe's surety company.

On April 6, 2022, the undersigned held the pre-hearing conference via Zoom as previously noticed. Mr. Matos attended the conference; no one from Ibercaribe attended the conference. During the conference, the undersigned answered Petitioner's questions regarding the hearing process, and offered instructions on how to file exhibits on the DOAH website. The DOAH Spanish-English interpreter also attended the conference, but Mr. Matos indicated he was comfortable testifying in English.

In addition to sending the notices to Ibercaribe's address provided by the Department, DOAH staff attempted to contact Mr. Blanco through the phone number and the two email addresses provided by Mr. Blanco on the Election of Rights form. The email sent to the Ibercaribe email address came back as undeliverable. The email to Mr. Blanco's Gmail address did not come back to DOAH. Neither Mr. Blanco nor anyone else from Ibercaribe responded to the email. The phone number provided by Mr. Blanco for Ibercaribe was no longer valid.

The undersigned conducted the final hearing on February 14, 2022. The undersigned waited ten minutes for an appearance from Ibercaribe before commencing the hearing. The hearing lasted approximately 45 minutes. No one ever appeared at the Zoom hearing on behalf of Ibercaribe, nor did anyone from Ibercaribe contact DOAH to indicate they could not enter the Zoom hearing.

Petitioner testified on his own behalf and Petitioner's Exhibits A through E (made up of E1 and E2) were admitted into evidence. All but Petitioner's Exhibit D were in Spanish. DOAH's official Spanish-English translator provided written English translations for Exhibits A, B, E1, and E2, and verbally translated Exhibit C (which was a snapshot of a computer screen written in Spanish) into English.

The proceeding was recorded by a court reporter, but the parties did not order a copy of the transcript. Mr. Matos submitted a written statement prior to the hearing, which the undersigned treats as a proposed recommended order at Petitioner's request. Ibercaribe did not submit a proposed recommended order.

FINDINGS OF FACT

1. Petitioner is the owner of Alas Cuba, a travel agency specializing in travel to Cuba, Cancun, Mexico, the Dominican Republic, and elsewhere. Alas Cuba is based in Orlando, Florida. Petitioner books travel for himself and for Alas Cuba's clients either directly or through third-party travel providers.

2. Respondent is a "seller of travel" registered with the Department (Registration Number ST-39412) that operates a full-service travel agency out of Miami, Florida. Respondent operates a Spanish language online reservation system for hotels and tours.

3. On March 6, 2017, Mr. Matos, on behalf of Alas Cuba, entered into an agreement with Ibercaribe. The contract describes Ibercaribe as a wholesale/retail agency and reservation center that offers and sells tourism products and services through an online reservation system located at www.ibercaribetour.com.

4. Under the terms of the agreement, Petitioner would send U.S. dollars to Ibercaribe through wire transfers or checks. The money would be held as a credit in Petitioner's account with Ibercaribe. Petitioner could use this credit toward the purchase of travel services and reservations. Ibercaribe would then issue a voucher to Petitioner for the travel services purchased.

5. After entering into the agreement, Mr. Matos received an account number, username, and password credentials to use the website. He wired money to Ibercaribe, which was credited to his account. Using his credentials, he could log on to Ibercaribe's website and view the balance in his account. He could also book hotel rooms, transportation, tours, travel packages, and other travel-related services and use the credit in his Ibercaribe account toward the purchase of these services.

6. Prior to July 2021, Mr. Matos had regular contact with Mr. Blanco or other Ibercaribe representatives via phone and email. Petitioner met in person with Mr. Blanco on one occasion in Miami.

7. The agreement between Alas Cuba and Ibercaribe was valid for two years, and expired on March 6, 2019. There was no evidence the parties entered into another contract, but Petitioner continued to wire Ibercaribe money and use the website to book travel services until July 2021.

8. On April 16, 2021, Petitioner booked a hotel reservation (the Reservation) for an all-inclusive stay at Paradisus Palma Real Golf & Spa Resort (the Resort) in Punta Cana, Dominican Republic, on behalf of an Alas Cuba client. Petitioner did this through Ibercaribe's website and used existing credit in his Ibercaribe account.

9. Ibercaribe took payment from the balance of Petitioner's account for the Reservation and sent Petitioner confirmation that the Resort had been booked for the client from August 2 through 8, 2021.

10. On July 7, 2021, Ibercaribe emailed Mr. Matos that the Reservation had been cancelled. Ibercaribe told Petitioner the cancellation was initiated by the Resort due to the COVID-19 pandemic. Ibercaribe indicated the funds for the Reservation would be placed back into Petitioner's account.

11. Mr. Matos attempted to rebook the Reservation with Ibercaribe, but was denied access to his account on the Ibercaribe website. His password and login credentials no longer worked.

12. Upon looking into the matter, Petitioner discovered that the Resort was not closed due to COVID-19, but had cancelled the Reservation for lack of payment by Ibercaribe. Mr. Matos was able to rebook a reservation at the Resort for his client through another travel website.

13. Meanwhile, Mr. Matos repeatedly attempted to access his account with Ibercaribe, which should have had a balance of \$4,256.45 of unused credit if Ibercaribe had refunded the money for the cancelled Reservation. He repeatedly called and emailed Ibercaribe and Mr. Blanco individually. He was unable to use his

login credentials again and never garnered a response to his inquiries from anyone at Ibercaribe.

14. On August 27, 2021, Petitioner filed the Claim against Ibercaribe and its surety with the Department seeking reimbursement for the full amount of the \$4,256.45 remaining in his Ibercaribe account.

15. Because Ibercaribe failed to attend the hearing, file any exhibits, or provide any testimony, Petitioner's evidence is un rebutted and taken as true.

16. Based on the foregoing, the undersigned finds that Ibercaribe: (1) failed to refund Mr. Matos the amount paid for the cancelled Reservation to Petitioner's account; (2) lied to him about why the Reservation was cancelled; (3) wrongfully locked Mr. Matos out of the Ibercaribe online reservation platform; and (4) denied him use of the remaining credit of \$4,256.45 that should have been in his Ibercaribe account.

CONCLUSIONS OF LAW

17. DOAH has jurisdiction over the parties and subject matter in this proceeding. §§ 120.569, 120.57, and 559.929, Fla. Stat.

18. The Florida Sellers of Travel Act (Act) found in Part XI of chapter 559, regulates companies that offer travel services:

“Seller of travel” means any resident or nonresident person, firm, corporation, or business entity that offers, directly or indirectly, prearranged travel or tourist-related services for individuals or groups, including, but not limited to, vacation packages, or vacation certificates in exchange for a fee, commission, or other valuable consideration. The term includes such person, firm, corporation, or business entity who sells a vacation certificate to third-party merchants for a fee, or in exchange for a commission, or who offers such certificates to consumers in exchange for attendance at sales presentations.

§ 559.927(11), Fla. Stat.

19. Although in its statement to the Department (which is not credible evidence in this proceeding) Ibercaribe argued it was owned by a Spanish company, the Act applies to both Florida based and foreign companies. Moreover, a “seller of travel” includes companies that indirectly provide travel or tourist-related services.

20. Based on the facts, above Ibercaribe meets the definition of a “seller of travel” and is subject to the Act’s requirements.

21. Sellers of travel are required to register with the Department in order to transact business in Florida. § 559.928(1), Fla. Stat. As part of the registration process, sellers of travel must provide a performance bond in an amount set by the Department. Section 559.929(2) states:

The bond must be filed with the department ... in favor of the department for the use and benefit of a consumer who is injured by the fraud, misrepresentation, breach of contract, or financial failure, or any other violation of this part by the seller of travel. Such liability may be enforced by proceeding in an administrative action as specified in subsection (3) or by filing a civil action.

22. Petitioner established Ibercaribe made a misrepresentation when it told him the Reservation was cancelled due to COVID-19, but it was actually cancelled due to Ibercaribe’s failure to pay the Resort. Moreover, Ibercaribe’s failure to allow Petitioner to use the credit in his account, refund him the amount of credit, or timely respond to his inquiry, are violations of the Act that have injured Petitioner.

23. To recover from a performance bond, the Act requires an injured party to file a claim with the Department within 120 days of being injured. Section 559.929(3) states:

A consumer may file a claim against the bond. Such claim, which must be submitted in writing on an affidavit form adopted by department rule, must be submitted to the department within 120 days after an alleged injury has occurred or is discovered to have occurred or a judgment has been entered. The proceedings shall be conducted pursuant to chapter 120. For proceedings conducted pursuant to ss. 120.569 and 120.57, the agency shall act only as a nominal party.

24. Petitioner timely filed his claim against the bond seeking reimbursement for Ibercaribe's failure to provide services in the form of access to its online reservation system, and its failure to allow him to spend his unused credit. Mr. Matos became aware that Ibercaribe had failed to pay the Resort for the Reservation on July 7, 2021. By July 8, 2021, he realized he no longer had access to the website and that Ibercaribe refused to communicate further with him. His Claim was filed approximately 50 days later.

25. As the party seeking payment against the performance bond, Mr. Matos has the burden to prove entitlement to reimbursement by a preponderance of the evidence. *Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co.*, 670 So. 2d 932, 934 (Fla. 1996)(stating that "[t]he general rule is that a party asserting the affirmative of an issue has the burden of presenting evidence as to that issue.").

26. Mr. Matos met his burden and established he was entitled to full reimbursement for the amount of credit he should have had in his Ibercaribe account.

27. Pursuant to section 559.929(5), the seller of travel has 30 days within which to pay the consumer any "indebtedness" determined to be owing by the Department in a final order. Absent a timely payment, the Department shall demand payment from the surety that issued the performance bond. Absent a payment by the surety, the Department may file an action in circuit court.³

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Agriculture and Consumer Services issue a final order directing Ibercaribe Tours, LLC to pay Yuri Matos the sum of

³ The Department is also authorized to impose discipline against a registered seller and its registration, and to pursue broad civil relief. § 559.936. A violation of any provision of the Act subjects the seller to prosecution for a misdemeanor or, in rare cases, a felony. §§ 559.9355 and 559.937, Fla. Stat.

\$4,256.45, and absent timely payment, granting a claim against the performance bond filed with the Department by Ibecaribe Tours, LLC.

DONE AND ENTERED this 20th day of April, 2022, in Tallahassee, Leon County, Florida.



HETAL DESAI
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 20th day of April, 2022.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.