

IN THE MATTER OF FINAL
ORDER OF THE DISPUTE
RESOLUTION COMMITTEE,
DOCKET NO. DRC 2024-0002

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MOTION TO THE BOARD OF
TRUSTEES OF IFTA, INC.

JANUARY 17, 2025

**MOTION FOR CLARIFICATION OF THE PROCEDURES UTILIZED FOR THE
HEARING ON OR ABOUT FEBRUARY 3, 2025**

The Commissioner of Revenue Services of the Connecticut Department of Revenue Services (the “Commissioner”) hereby respectfully submits the following questions to the Dispute Resolution Committee Chairperson (the “DRC” and “DRC Chair,” respectively) in accordance with the letter issued by the IFTA, Inc. Board of Trustees on or about January 6, 2025.

The Commissioner intends to argue that the DRC abused its discretion in finding that the Commissioner “unjustly benefited” from the volume of audits he performed. Upon information and belief, and upon a review of the findings of fact in the Final Order issued by the DRC, the DRC was presented with no factual evidence that could reasonably give rise to the conclusion that the Commissioner “unjustly benefited” from the volume of audits he performed. In order for the Commissioner to address this argument, please respond to the following questions:

1. Please provide a definition for the term “unjustly benefited” as used by the DRC in its Final Order.
2. Please identify the provisions of the Articles of Agreement that define the term “unjustly benefited.” If none, please identify the provisions of the Articles of Agreement relied upon to determine that the Commissioner “unjustly benefited” from the volume of audits conducted.
3. Please provide a list of all facts the DRC relied upon to conclude that the Commissioner “unjustly benefited” from the volume of audits he performed.
4. Please explain how the DRC calculated the amount by which it concluded that the Commissioner “unjustly benefited” from the volume of audits he performed.
5. Please explain the discrepancy between the amount that the DRC calculated that the Commissioner “unjustly benefited” from and the average amount of an IFTA assessment issued by the Commissioner.
6. Please identify any other Final Order in which the DRC found that a member jurisdiction “unjustly benefited” from an Articles of Agreement violation. In so doing, please identify

how said calculations were conducted to determine the amount by which the member jurisdiction “unjustly benefited.” Please provide copies of said Final Orders.

7. Please identify each and every member jurisdiction that has filed a complaint against the Commissioner regarding the volume of audits he performs and the damages that they claim they incurred as a result thereof. If none, please identify how the DRC determined that the Commissioner harmed other member jurisdictions.
8. Please identify any evidence the DRC considered to show that carriers with Connecticut as a base jurisdiction that were not audited failed to voluntarily comply and pay the amount due.
9. Please identify any evidence that DRC considered to show that carriers with Connecticut as a base jurisdiction owe any member jurisdictions any additional tax than what they voluntarily paid.
10. Please identify any member jurisdiction that has ever claimed that the Commissioner was deficient in auditing a carrier with a base jurisdiction as Connecticut.

The Commissioner intends to argue that the DRC made a significant error of interpretation of the Agreement and a procedural error. Upon information and belief, the DRC exceeded the scope of its authority in fashioning its Order. Specifically, the DRC went beyond the scope of its authority to issue “disgorgement,” “restitution,” and a “punitive fine.” In order for the Commissioner to address this argument, please respond to the following questions:

1. How many matters has the DRC reviewed since its inception?
 - a. Of those matters, how many have resulted in “disgorgement” ordered?
 - i. Please provide copies of any decisions in which the DRC determined that a member jurisdiction “unjustly benefited” and “disgorgement” was ordered.
 - b. Of those matters, how many have resulted in “restitution” ordered?
 - i. Please identify how the DRC calculated the amount of “restitution” ordered in each of those decisions.
 - ii. Please provide copies of any decisions in which the DRC ordered “restitution.”
 - c. Of those matters, how many have resulted in “punitive fine” ordered?
 - i. Please identify how the DRC calculated the amount of the “punitive fine” ordered in each of those decisions.
 - ii. Please provide copies of any decisions in which the DRC ordered a “punitive fine.”
2. On page 14 of the IFTA Dispute Resolution Process a list of progressive discipline for noncompliance is identified. Please explain why the first step of progressive discipline was disregarded and instead the DRC fashioned its own penalties of “disgorgement,” “restitution,” and a “punitive fine.”
3. Please identify the provisions of the Articles of Agreement that authorize the DRC to issue “disgorgement,” “restitution,” and a “punitive fine.”

4. Please identify the definition of “disgorgement” relied upon. Please identify the provisions of the Articles of Agreement that define the term “disgorgement.” If none, please identify the provisions of the Articles of Agreement relied upon to determine that the DRC had the authority to order “disgorgement.”
5. Please identify the definition of “restitution” relied upon. Please identify the provisions of the Articles of Agreement that define the term “restitution.” If none, please identify the provisions of the Articles of Agreement relied upon to determine that the DRC had the authority to order “restitution.”
6. Please identify the definition of “punitive fine” relied upon. Please identify the provisions of the Articles of Agreement that define the term “punitive fine.” If none, please identify the provisions of the Articles of Agreement relied upon to determine that the DRC had the authority to order “punitive fine.”
7. Please identify how the amount of “disgorgement” was calculated in the Final Order and where said calculation appears in the Articles of Agreement.
8. Please identify how the “restitution” was calculated in the Final Order and where said calculation appears in the Articles of Agreement.
9. Please identify how the “punitive fine” was calculated in the Final Order and where said calculation appears in the Articles of Agreement.
10. Please identify the “complete set of circumstances” that the DRC analyzed to determine that punitive measures were warranted.
11. Please identify what, if any, consideration was given by the DRC to the extenuating circumstances of the COVID 19 pandemic in ordering disgorgement,” “restitution,” and a “punitive fine.”

The DRC made a procedural error in issuing its Final Order. Upon information and belief, the DRC failed to consider the applicable defenses to a breach of contract “impracticability/impossibility” and “frustration of purpose.” The Commissioner contends that no breach occurred as performance was excused by extraordinary events, and the DRC’s failure to consider said defenses renders its determination procedurally defective. In order for the Commissioner to address this argument, please respond to the following questions:

1. The DRC reached seven (7) conclusions of law in its Final Order. Said conclusions are silent as to the defenses raised by the Commissioner. What, if any, consideration did the DRC give to the fact that any noncompliance was beyond the Commissioner’s control and as a result of the effects of the COVID-19 and the extraordinary staffing issues that resulted there from? Did the DRC analyze and apply the raised defenses of “impracticability/impossibility” and “frustration of purpose”?
2. If the DRC did analyze and apply the raised defenses of “impracticability/impossibility” and “frustration of purpose,” please identify why said defenses are not applicable to mitigate the breach.

The Commissioner intends to argue that the DRC abused its discretion made a significant error of interpretation of the Articles of Agreement and a procedural error in ordering “IFTA Inc to withhold clearing house payments to the Respondent until the complete assessment has been satisfied and to take any other actions consistent with the Articles of Agreement to enforce this order.” Said order is clearly beyond the authority of the DRC and violates the Commissioner’s sovereign immunity. In order for the Commissioner to address this argument, please respond to the following questions:

1. What provision of the Articles of Agreement authorize the DRC to order that taxes held in trust for the State of Connecticut not be paid over to the Commissioner?
2. Does the DRC concede that neither Maryland, Massachusetts, nor Connecticut would have a basis for knowing based on the Dispute Resolution Process that penalties of the type the DRC imposed (disgorgement and fines) could be expected for non-compliance with audit requirements?

RESPECTFULLY SUBMITTED
MARK BOUGHTON, COMMISSIONER
OF REVENUE SERVICES FOR THE
STATE OF CONNECTICUT

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