



SO ORDERED: April 06, 2005.

Basil H. Lorch III
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In Re:

ATA Holdings Corp., et al,¹

Debtors.

Chapter 11

Case No. 04-19866 (BHL)
(Jointly Administered)

Honorable Basil H. Lorch

**ORDER AUTHORIZING ASSUMPTION OF
DISCOVER CARD MERCHANT AGREEMENT**

This matter is before the Court on "First Day Motion To Assume Certain Credit Card Agreements And Utilize Particular Notice Procedures" (the "Motion") filed by ATA Holding Corp. and certain of its affiliates (collectively, the "Debtors") in the above-captioned Chapter 11 cases. Through the Motion, the Debtors request authority to assume the Merchant Services Airline Agreement dated March 20, 1995 (the "Agreement") between the Debtors and Discover Financial Services, Inc., fka Discover Card Services, Inc. ("DFSI"). On February 7, 2005,

¹ The Debtors are the following entities: ATA Holdings Corp. (04-19866), ATA Airlines, Inc. (04-19868), Ambassadors Travel Club, Inc. (04-19869), ATA Leisure Corp. (04-19870), Amber Travel, Inc. (04-19871), American Trans Air Execujet, Inc. (04-19872), ATA Cargo, Inc. (04-19873), and Chicago Express Airlines, Inc. (04-19874).

Discover filed its "Objection By Discover Financial Services, Inc. Debtors' First Day Motion To Assume Certain Credit Card Agreements And Utilize Particular Notice Procedures" (the "Objection") objecting to the Motion for the reasons stated therein.

Debtors and DFSI desire that Debtors assume the Agreement upon the terms of the Agreement as modified by that certain First Amendment and Modification to Merchant Services Airline Agreement between DFSI and the Debtors dated March 29, 2005 (the "Amendment"). The Objection filed by DFSI having been resolved by the Amendment, and the Court having considered the Motion and being otherwise advised,

the Court HEREBY FINDS AND CONCLUDES as follows:

1. On October 26, 2004 (the "Petition Date"), the Debtors commenced their reorganization cases by filing a voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors' cases are jointly administered.
2. The Debtors have remained in possession and management of their assets and businesses as debtors-in-possession pursuant to Bankruptcy Code §§1107 and 1108.
3. Pursuant to the Agreement, the Debtors accept the Discover Card (the "Card") for the purchase of goods and services ("Card Sales").
4. After a purchase by a customer with a Card, the Debtors forward to DFSI the transaction data documenting the Card Sale. Within the period provided in the Agreement (after receipt by DFSI of the transaction data corresponding to the Card Sale), DFSI remits to the Debtors the amount of the purchase less any discount (the "Merchant Fee") and less any chargebacks, returns, processing fees and adjustments as provided in the Agreement.
5. Cardmembers are billed directly by DFSI for purchases made on Cards. When the customer pays a bill on their Card account, DFSI retains the payment. In the event that

Cardmembers do not pay any amounts due on their Card account(s) or where Cardmembers dispute the quality of items or non-delivery of merchandise or services charged on a Card, DFSI, rather than the Debtors, bears the risk of non-payment for items purchased with the Card, and if DFSI is unable to recover such amounts from the Debtors, DFSI will bear the loss for such amounts.

6. In the event of a Chargeback of a Card Sale, in order to recover the amounts already paid to the Debtors for the Card Sale in question, the Agreement permits DFSI to collect the amount of Chargebacks from amounts owed to the Debtors for subsequent Card Sales.

7. Payment of amounts owed by DFSI to the Debtors under the Agreement is subject to the rights of DFSI to recoup or otherwise setoff against amounts which are or hereafter become due and owing by the Debtor to DFSI, including, without limitation, Merchant Fees owing under the Agreement and both contingent and fixed claims for Chargebacks, adjustments and refunds.

8. Pursuant to the Agreement, DFSI has the right under certain circumstances to request the establishment of a reserve (as defined in the Amendment, the "Reserve") to protect itself from liability from valid chargebacks to secure the full performance of the Debtors under the Agreement.

9. Debtors and DFSI have agreed that the Agreement should be assumed, as modified by the Amendment.

10. Pursuant to the Amendment, Discover is authorized to take appropriate steps to create a Reserve as set forth therein.

11. Pursuant to the Amendment, Discover is also authorized to make adjustments to the Reserves as set forth therein without further order of the Court.

12. Pursuant to the Amendment, in the event that the Reserve is not sufficient to satisfy the obligations of the Debtors under the Agreement and the Amendment, DFSI will hold a superpriority claim pursuant to Bankruptcy Code §507(b) with respect to any deficiency. However, any superpriority claim held by DFSI shall be subordinate to the superpriority claims of Southwest Airlines, Inc. and the Air Transportation Stabilization Board and Citibank, N.A., but not to any other claim of any other creditor.

NOW THEREFORE, based on the Agreement, the Amendment, the forgoing findings and conclusions, and the entire record before this Court,

IT IS HEREBY ORDERED that

1. The Agreement, as modified by the Amendment, is hereby assumed by Debtors pursuant to Bankruptcy Code §365.

2. The Debtors and DFSI are authorized to transact business in accordance with the Agreement and the Amendment, and DFSI is authorized to offset all Merchant Fees, chargebacks, returns, processing fees and other adjustments in accordance with the Agreement and the Amendment.

3. DFSI is authorized to take any and all appropriate actions to create the Reserve and exercise all rights against the Reserve as provided under the Agreement and the Amendment without further order of the Court.

4. DFSI is authorized to make adjustments to the Reserve as provided under the Agreement and the Amendment without further order of the Court.

5. In the event that the Reserve is not sufficient to satisfy the obligations of the Debtors under the Agreement and the Amendment, DFSI shall hold a superpriority claim pursuant to Bankruptcy Code §507(b) with respect to any deficiency subordinate only to the

superpriority claims of Southwest Airlines, Inc. and the Air Transportation Stabilization Board and Citibank, N.A., previously allowed by this Court.

6. The Debtors shall not propose a Plan that modifies the rights of DFSI as provided under the Agreement, the Amendment, and/or this Order.

7. The provisions of this Order will be binding upon the Debtors and DFSI their respective successors and assigns, including but not limited to, any trustee in bankruptcy hereinafter appointed as a representative of the Debtor's estate.

8. The Court has and will retain jurisdiction to enforce this Order according to its terms.

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Requested by:

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