

**VERÓNICA PACHECO-SANFUENTES**  
**TRAVEL AGENCY COMMISSIONER, AREA ONE**  
(The Americas and the Caribbean)  
# 110 – 3083 West 4<sup>th</sup> Avenue,  
Vancouver, British Columbia V6K 1R5  
CANADA

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**DECISION 2010 - # 3**

**In the matter of:**

**Agencia Turismo Skorprios Limitada**

IATA Code # 75- 5 0063 3 (HO)

Augusto Leguía Norte 118

Las Condes, Santiago

Chile

Represented by Mrs. Ana María Kochifas Coñuecar (legal representative) and Mr. Juan Francisco Venegas (treasurer)

**Applicant**

vs.

**IATA-Chile**

Av. Ricardo Lyon 222, Oficina 701A

(751-0125) Providencia

Santiago de Chile, Chile

Represented by IATA's Country-Manager, Ms. Heather MacDonald and IATA's Agency Administrator for Area 1, Mr. Carlos Bendjouya Fernández

**Respondent**

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**I. THE CASE – BACKGROUND**

On July 20<sup>th</sup>, 2010 the IATA Accredited Agent, Turismo Skorprios Limitada, assisted jointly by its legal representative and its treasurer, as above identified (called here in after “The Applicant”), sought a Travel Agency Commissioner’s (here in after called “TAC”) review of IATA’s decision, dated July 2<sup>nd</sup>, 2010, which declared *Unsatisfactory* the 2009 financial statements submitted by the Applicant, and requested a bank guarantee for the amount of Ten Thousand Dollars (US \$ 10.000.00), for one (1) year.

On July 28<sup>th</sup>, 2010 the review was admitted. On July 30<sup>th</sup>, 2010, as requested by the Applicant, after having a conference call with the parties and according to Paragraph 1.2.2.4 of Resolution 820e, the undersigned granted interlocutory relief, giving the

Applicant an extension of the term to present the bank guarantee until the end of the review process, estimating it in ten (10) business days after the last notification received from the parties.

## **II. THE TRAVEL AGENCY COMMISSIONER'S AUTHORITY FOR REVIEW**

Resolution 820e determines the scope of the Travel Agency Commissioner's review proceedings, and as so provides for Accredited Agents, for the Agency Administrator, for a group of Member Airlines and for the Agency Services Manager to seek review by the Commissioner in circumstances described therein. In this case, the most pertinent Paragraph as seen from the Agent's perspective was 1.1.5, since the bank guarantee seems to impose him a burden than diminishes its ability to conduct business in a normal manner.

Both parties have agreed to waive their rights for a formal hearing and have allowed the TAC to base her decision on the documentation rendered. The undersigned finds that the arguments of both sides are clear and an oral hearing can be dispensed without jeopardising the process.

## **III. THE APPLICANT'S ARGUMENTS IN SUMMARY – EVIDENCE**

The Agent based its request on the considerations below:

A. The 2009 Financial Statements that were submitted to IATA (attached to the submissions) when required, weren't the definitive ones due to the following circumstances:

- (i) The endemic illness (virus AH1N1) that affected Chile during 2009 caused the cancellation of several reservations, which effects were still to be quantified by the time the IATA's Report had to be submitted;
- (ii) The natural catastrophe that swept the southern part of Chile with the earthquake of February 2010, caused not only the cancellation of several reservations that weren't quantified by the time the Report was due; but also it caused severe damages to the computer systems, which encumbered the process of getting the needed information and translated in to more delays to get the Report done.

B. In the Applicant's case, the income from the BSP tickets' sales is considerably inferior compared to the one from the Agent's regular business. The Applicant's main activity is to provide cruises through ice fields in the North and South of Chile, therefore the BSP tickets' sales is marginal. It's done only as a complementary service to those customers (the vast minority) that like to have the entire trip planned and taken care of by the Applicant (meaning the flight tickets as well as the cruise ones). The income from BSP tickets sales corresponds to 6.47% of the Applicant's total income.

C. The Applicant argues that the Financial Statements submitted were audited by external and independent auditors, which it's done voluntarily, since they are not

obligated to do so by any legal regulation in Chile. From its perspective, this fact speaks highly of its seriousness and level of commitment with its business.

Finally, the Applicant requests to be exonerated from presenting the bank guarantee and to be allowed to submit new 2009 Definitive and Audited Financial Statements by August 30<sup>th</sup>, 2010, that will reflect the real financial situation of the Applicant's company.

#### **IV. IATA'S ARGUMENTS IN SUMMARY –EVIDENCE**

IATA alleges that even though the Applicant fulfils the minimum capital required by the current regulations for Chile, it doesn't comply with the minimum twenty-two (22) points of the financial ratios, established in Section 3 of the Travel Agent's Handbook-2010 ("TAH") (pages 117 and the following); therefore, the financial statements had to be declared unsatisfactory.

Important is to note that the Applicant doesn't refute this circumstance of the financial ratios.

Once the financial statements were found unsatisfactory, according to the TAH, IATA had to request from Agent, as in fact it did, the submission of a bank guarantee for one (1) year.

#### **V. CONSIDERATIONS LEADING TO CONCLUSION**

Regardless the empathy of the undersigned with the Applicant's situation, particularly in regards to the difficulties that it has been through (national health emergency and serious magnitude earthquake) that affected its normal manner of conducting business, the current applicable Resolutions do not give the TAC any margin to favourably attend its requests.

(i) In fact, concerning the exoneration of the requested bank guarantee, the rule prescribed in the TAH-2010 (page 126 *in fine*) is clear stating the obligation for IATA to request a bank guarantee in cases where the financial statements had been declared Unsatisfactory. Therefore, been the Applicant in that circumstance IATA simply applied the correct rule.

In this regard observes the undersigned that, having IATA requested the minimum amount established in the TAH (page 121 *in fine*) for bank guarantees, it certainly took in consideration the arguments submitted by the Applicant, *id est*, the low volume of BSP sales, due to the fact that it is not the biggest part of its business.

(ii) In respect to the Applicant's second request, to be allowed to submit, by August 31<sup>st</sup>, 2010, new Definitive and Audited Financial Statements for 2009 that reflects the real business' conditions, the undersigned considers the following:

The Applicant's 2009 Financial Statements ("Report") were submitted to IATA-Chile the last day of May 2010, meaning five (5) months after concluded the year object to analysis. The

Applicant had five (5) months after the year ended to reflect in numbers its financial situation.

Unfortunately, the applicable Resolution, Section 3 of the TAH (page 117), indicates that no Financial Statement can have more than six (6) months old, therefore authorizing the submission of a new 2009 Report, by August 31<sup>st</sup>, 2010 would mean authorizing an eight (8) months old Report, a seniority not allowed by the rules. Thus, the Applicant's request can not be attended since it is contrary to the applicable rule.

## **VI. DECISION**

Having carefully reviewed all the evidence and arguments submitted by the parties in connection with this case,

Having looked at the applicable Resolutions,

This Commissioner decides

- IATA's decision, dated July 2<sup>nd</sup>, 2010, was according to the rules, therefore is upheld. Consequently,
- The Agent must provide IATA with the bank guarantee as indicated in the above referred decision.

Per Resolution 820e, Section 4, the parties have the right, if they consider themselves aggrieved by this decision, to seek review by Arbitration, in accordance with the provisions of Resolution 818g, Section 12.

Decided in Vancouver, Canada, the 14<sup>th</sup> day of August 2010

*Verónica Pacheco-Sanfuentes*  
Travel Agency Commissioner Area 1

**NOTE:** The original signed version of this decision will be sent to the parties by regular mail. In the mean time, in order to ensure timely receipt by the parties, an electronic version of it is sent on August 14<sup>th</sup>, 2010.