

VERÓNICA PACHECO-SANFUENTES

TRAVEL AGENCY COMMISSIONER, AREA ONE – DEPUTY TAC 2
110 – 3083 West 4th Avenue
Vancouver, British Columbia V6K 1R5
CANADA

DECISION 2013 - # 2

In the matter of:

Agência de Turismo Sakura Ltd.

IATA Code 57-5 0940 6
Av. Liberdade No. 21 – 8^a Andar – Sala 805
Sao Paulo – SP 01505-000
Brazil
Represented by its Director, Ms. Vivi Siqueira

The Applicant

vs.

International Air Transport Association (“IATA”)

703 Waterford Way, Suite 600
Miami, Florida 33126
United States of America
Represented by the Accreditation Manager, Mr. Carlos Bendjouya
Fernández

The Respondent

I. The Case

On April 10, 2013, the Applicant, an IATA Accredited Agent (also called hereinafter as “the Agent”), sought a Travel Agency Commissioner’s (referred to as “TAC”) review of IATA’s (also called “The Respondent”) request to provide a bank guarantee for the amount of R\$ 3,283,000.00 (aprox. equivalent to US\$ 1,641,500.00) by April 18, 2013, since the financial statements were found unsatisfactory. The Applicant also sought, pursuant Res. 820e, Paragraph 1.2.2.4 an interlocutory relief in order to obtain an extension of the time frame originally provided by the Respondent to submit the referred guarantee, while this review process takes place.

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II. Chronology of Events – Evidence on file

According to the evidence on file, agreed by both Parties, the chronology of events was as follows:

- Due to a Change of Ownership situation, back in June 2012, the Respondent undertook a financial evaluation of the Applicant (financial statements of 2011), resulting it in unsatisfactory;
- Based on those results, on February 14, 2013 a financial security request letter was sent to the Applicant by e-mail, which was also sent by regular mail and received by the Applicant on Feb. 18, 2013;
- On Feb. 20, 2013 the Applicant sent new financial statements corresponding the year 2012, asking the Respondent to evaluate them instead of the ones of the year 2011, since, according to its views, these ones would result in satisfactory and even above the 22 points required by the Local Financial Criteria (“LFC”). In other words, the Applicant was requesting then (and still is now) a second analysis of its financial standing;
- In that occasion the Respondent explained to the Applicant the impossibility for them to do a second review based on financial statements from a different period than the one that was originally been investigated;
- However, considering the Applicant’s request, the Respondent escalated the case to its Country Director. On March 6, 2013 the Applicant was informed about the rejection of this second analysis by the Country Director and contacted this Office shortly after.

III. The Applicant’s arguments in summary

- <<We started to work on the process to obtain the financial guarantee immediately after we were notified by IATA. That means how serious and respectful we are with regards to all processes managed by IATA>>;
- <<It is true that we provided the financial documents from 2011 and based on these documents the result might have been unsatisfactory. However, we are in April 2013 and we presented IATA with updated documents which, in accordance to IATA’s financial criteria, the result should actually exceed the minimum 22 required by IATA to avoid the need to present a financial guarantee>>;

- <<If we are presenting financial documents related to 2012 that potentially might change the result, why not perform this second analysis?>>;
- <<If we were really a risk to the operation, we are since 2011 but the fact is that we have been paying regularly BSP invoices with no delays or prejudice to the system>>.

IV. The Respondent's arguments in summary

- It is deemed as a <<potential risk for Airlines' credit of having an Agency with an unsatisfactory result operating without guarantee>>;
- Considering the <<financial risk of having a large agency like SAKURA TUR operating without guarantee, we cannot extend the guarantee submission day beyond 60 days as indicated in Resolution 818g section 2.2.1 and also considering that IATA granted the largest time to submit the guarantee>>.

V. Authority for Review

Resolution 820e determines the scope of a TAC review proceeding, and 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 Applicants' perspective is 1.1.10.

Having received the Request for Review within the time frame limit, as indicated above (I), pursuant Paragraph 1.2.2.1 of Resolution 820e the undersigned decided to allow the proceeding in compliance with Paragraph 1.2.3 of the said rule.

Even though an interlocutory relief request has been filed by the Applicant in order to get the suspension of the time frame to provide the bank guarantee while this review process takes place, considering:

- (1) the short period of time given to this Commissioner to decide, since the request for review was submitted on April 10 and the due date for submitting the financial security is April 18, 2013;
- (2) considering also that the core of the matter has not been discussed, meaning the Applicant has not objected the reasons behind the unsatisfactory results of its financial statements of 2011, but rather had asked to be evaluated based on the 2012 books;

This Commissioner has decided, for efficiency sake, to render one sole decision that will solve both matters at the same time.

Pursuant Paragraph 2.3 of Resolution 820e and Rule #14 of the Rules of Practice and Procedure for Area 1, this Commissioner, acting upon both Parties' agreement on waiving their right for an oral hearing, had decided to base her decision only on the written submissions that have been filed by both of them.

VI. Considerations leading to Decision

This Commissioner notes that in no time had the Applicant contradicted nor questioned the results obtained by the Respondent's assessor in regards to its financial evaluation of 2011, which failed to reach the minimum of 22 points mandated by the LFC. The Applicant has, therefore, admitted that it had operated without fulfilling the financial requirements stated in the LFC and in the applicable Resolutions;

According to Section 2 of Res. 818g, Agents are required to maintain <<the necessary qualifications and financial standing>> as Accredited Agents <<with the consequent credit entitlement that results>> of that condition, during the whole life of their Passenger Sales Agency Agreement. In case of non-compliance with these financial standards, Paragraph 2.2.1 of Res. 818g states the obligation for the Respondent to inform the Agent about the conditions that need to be met and, if appropriate, it should request <<the provision of a Financial Security>> from that Agent;

The Applicant's main argument has been to be allowed to submit financial statements for the year 2012 and get an evaluation based on that year's documents instead of the

one done for the previous year which it failed, in order to be allowed to operate without having to provide a financial security. However, to the best of this Commissioner's knowledge the current stage of the applicable Resolutions, nor the LFC, allow the Respondent to discard the results obtained under one period of an Agent's financial evaluation, particularly when they are found unsatisfactory, and evaluate a different year in order to determine whether or not a financial security is required;

This Commissioner also notes that the Respondent has already extended the time frame for the Applicant to provide the requested financial security, since the first request dated back Feb. 14, 2013 and the current due date is April 18, 2013, so there has been a 64 days period for the Applicant to process the guarantee.

VII. Decision

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

Having looked at the applicable Resolutions, particularly at Res. 818g Section 2,

This Commissioner decides:

- Based on the unsatisfactory results of the Applicant's financial evaluation, the Respondent had no other alternative than to request the financial security that had been demanded from the Applicant. The Respondent had followed correct procedure;
- To the best of this Commissioner's knowledge, there is no possibility in the applicable Resolutions for the Respondent to allow a second evaluation of a different period of an Agent's finances, when results have shown them as unsatisfactory, in order to avoid requesting a bank guarantee, hence, the Applicant's request is dismissed;
- Considering that an extension of the due date to provide the bank guarantee has already been granted to the Applicant by the Respondent, no further extension is entertained; nevertheless, the Applicant would be temporarily allowed to provide a non-notarized letter from its financial institution stating the bank guarantee by Thursday April 18, 2013 while the notarized version of it is issued as expeditiously as possible, before been penalised with a Notice of Irregularity and

the withdrawal of its ticketing capacity, in accordance with Paragraph 2.2.1 of Res. 818g.

Decided in Vancouver, the 17th day of April, 2013

Verónica Pacheco-Sanfuentes
Travel Agency Commissioner Area 1
acting as Deputy TAC2

In accordance with Res 820e, § 2.10, any Party may ask for an interpretation or correction of any error which the Party may find relevant to this decision. The timeframe for these types of requests will be 15 days after receipt of the electronic version of this document.

As per Resolution 820e, Section 4 any Party has the right, if it considers aggrieved by this decision, to seek review by Arbitration, in accordance with the provisions of Resolution 824, Section 14, once the above mentioned time frame would have elapsed.

Note: The original signed version of this decision will be sent to the Parties by regular mail, once the above mentioned timeframe for interpretation/corrections would have expired.