

TRAVEL AGENCY COMMISSIONER - AREA 1
VERÓNICA PACHECO-SANFUENTES
110 – 3083 West 4th Avenue,
Vancouver, BC V6K 1R5
CANADA

DECISION 2013 - # 4

In the matter of:

Viñales Tours, S.A. de C.V.

IATA Codes No. 86-8 0652 1 and 86-5 4391 4

Oaxaca 95, Colonia Roma

México, D.F.

06700 México

Represented by its Director, Mr. José Manuel Covarrubias Celis

The Applicant

vs.

International Air Transport Association (“IATA”)

703 Waterford Way, Suite 600

Miami, Florida 33126

United States of America

Represented by the Agency Administrator-The Americas, Mr. Carlos Bendjouya and the legal counsel Mr. Éric Vallières

The Respondent

I. The Case

The Applicant sought a Travel Agency Commissioner’s review of the Respondent’s decision (dated July 29, 2013) of suspending it from the BSP system <<until further notice>> on the following grounds:

IATA is obligated to cease to perform any financial services for Viñales Tours via the Billing and Settlement Plan (“BSP”) as your agency is listed on the US Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) as a Specially Designated National (“SDN”) for violations of Cuba-related economic sanctions.

Considering the peculiarity of the subject matter, in order for this Commissioner to

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assess, in accordance with Resolution 820e, paragraph 1.2.3, whether or not she has jurisdiction to determine the matter <<and, if so, whether a credible case has been made or not>>, she has allowed the Parties the opportunity to present their submissions and to provide evidence in support of them.

The Parties have also had the opportunity to entertain a Preliminary Conference, pursuant Rule No. 8 of the Rules of Practice and Procedures of the Travel Agency Commissioners where it was mainly agreed to allow a compass of six weeks for the Respondent to progress in the Applicant's investigation in order to have a better and clearer overview of its situation. Nevertheless, no further agreement was reached by the Parties concerning the Applicant's potential reinstatement in to the BSP system. Both of them have authorised this Commissioner to decide based on the written submissions that they have sent to this Office.

II. The Applicant's arguments in summary

- The Applicant has been promoting tourism in Cuba from México for more than 32 years, has been an IATA Accredited Agent for over 30 years, and has always fulfilled its obligations as such;
- A political reason should not be applied to an international commercial legal activity; furthermore, American laws should not be applied in a Mexican jurisdiction;
- <<After 13 operational years, until 1993, OFAC sized half a million American dollars and declared Viñales a "national designated" according to a time of war American law. That money was a normal procedure to pay tourism services to Cuban providers; unfortunately such a bank operation through *Banco Atlántico* (Spanish bank) was mistakenly sent to Miami. Money was frozen and so has been ever since 1993>>;
- <<Nobody recognized as correct and legal, the enforcement of such a law to Viñales from OFAC or the USA authorities, since Viñales nor her owners were not, and are not American subjects ... the illegal extra-territoriality of this law violates México sovereignty>>;
- <<This constitutes another mischievous OFAC doing, because of the fact that IATA being an independent international organization legally constituted to operate within the USA without any obligation to receive illegal petitions, nonetheless, orders, from USA government or dependencies. I understand Miami IATA's people reaction, probably under tremendous pressures of OFAC. Simply IATA Miami personnel

panicked. They immediately issued the Viñales IATA membership cancellation without previous notice, obviously under OFAC menaces of heavy fines and prison>>;

- <<It is a matter of outrageous lawless power against lawful common sense>>.

III. The Respondent's arguments in summary

- <<The maintenance of Viñales Tours and its continued participation as an IATA accredited agent would likely cause IATA and IATA employees to violate of United States criminal laws. In that context, the present matter is not one which falls within the scope of the Commissioner's jurisdiction>>;

- <<American citizens and persons located in the United States are prohibited from having any commercial or financial dealings with persons designated as SDN by the OFAC>>;

- The Applicant <<cannot be reintegrated in BSP Mexico or maintain its accreditation due to its SDN status>>;

- If <<IATA's employees in Miami would be called upon to deal with Viñales Tours in a manner that could be prohibited under the *Cuban Assets Control Regulations*... this could technically result in criminal prosecution of IATA or the relevant employees, with fines up to \$10,000,000 and imprisonment of as much as 10 to 30 years>>;

- <<IATA is therefore prevented from performing any of its obligations under the Passenger Agency Agreement which ... must consequently be considered without effect>>;

- <<Viñales has argued that it is not bound to respect United States Laws. However, pursuant Paragraph 4>> of Resolution 824, <<Viñales Tours is bound to respect not only the laws of Mexico, but the laws of any territory where it sells transportation>>.

IV. Considerations leading to conclusion

Based on the evidence on file and in the facts narrated *supra*, it is clear for this Commissioner that she does not have jurisdiction to address this matter since, in accordance with Section 1.4 of Resolution 820e, this case is about a <<*restraint of trade law/regulations of the state or international authority having jurisdiction*>> (paragraph 1.4.1) and, therefore, out of the purview of this Office and as such, this Commissioner must decline to act. Consequently, no further considerations or provisions should come from this Office pertaining the core of this matter.

V. Decision

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

Having looked at the applicable Resolutions;

It is hereby decided:

-The request for review that has been submitted by the Applicant must be dismissed since the Office of the Travel Agency Commissioner does not have jurisdiction to act in this case.

Decided in Vancouver, the 29th day of October 2013



Verónica Pacheco-Sanfuentes
Travel Agency Commissioner Area 1

Right to ask for interpretation or correction

In accordance with Res 820e § 2.10, any Party may ask for an interpretation or correction of any error which it 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.

Right to seek review by arbitration

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 referred period for interpretation/corrections would have expired.