

TRAVEL AGENCY COMMISSIONER - AREA 1

VERÓNICA PACHECO-SANFUENTES

110 – 3083 West 4th Avenue,
Vancouver, British Columbia V6K 1R5
CANADA

DECISION 2013 - # 6

In the matter of:

Moturismo

IATA Code No. 57-7 7487 2

Jose de Alencar No. 916

Salas 801/804 Ilha do Leite

Recife, Pernambuco

Brazil

Represented by its General Manager, Mr. Jacques Stambonsky

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 Fernández

The Respondent

I. The Case

On November 27, 2013 the Applicant sought a Travel Agency Commissioner’s review of the Respondent’s Notice of Suspension (“NoS”) from the BSP system (dated Nov. 26, 2013) allegedly due to <<failure to comply with the Bank Guarantee by a given deadline>>. A Notice of Irregularity (“NoI”) was also served to the Applicant in that same occasion for the same grounds.

The reason behind the bank guarantee (“BG”) request was the result of the Applicant’s financial statements’ evaluation, which was found unsatisfactory.

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The amount of the BG was R\$ 18,000 (approx. US\$ 9,000). This is the minimum amount for the Brazilian market.

The BG was initially requested on Oct. 11, 2013 with a time frame to comply by Nov. 11. This due date was extended on Nov. 7 until Nov. 25 when IATA responded the Applicant's enquiry about the reason behind the demand of a BG. The Applicant had posed this question upon receipt of the request (Oct.11), since it did not understand why it was requested to submit a BG when it had been trading as an Accredited Agent for more than 40 years and had never been asked to provide any type of security.

It is important to note that the response that the Applicant received from IATA's Customer Service representative was basically the same one that it had been already stated in the BG request itself meaning: the unsatisfactory result of the financial assessment made on the Agent's financial statements. In other words, the Applicant has not been given a proper, complete and accurate answer to his question.

Up until this day, the Applicant has not been explained what part of the Local Financial Criteria for Brazil he is not meeting; the Applicant has not been provided with a copy of the assessment made by the Respondent's auditors for him to know exactly with what criteria he is not complying and hence be able to address it.

II. The Applicant's arguments in summary

- Despite been in disaccord with the request to submit a BG, on Nov. 18, the Applicant contacted the authorized insurance company in order to get the BG in place;
- However, <<we have received no reply of the insurer who was appointed>>, but instead on Nov. 26, 2013 <<we received a statement stating that we were suspended from the BSP Brazil>>;
- <<We disagree with this suspension , because although we are not satisfied with the justification to request guarantees , we seek to meet them through one of the options offered, as instructed by IATA, and the company indicated in the correspondence gave no response to our requests>>;

- <<Independent not have been clear to us the reason for the request, we sent the message to Allianz in 18/11, before the deadline given by IATA and contacted by phone with Banks Bradesco and Santander, those appearing on the relationship IATA that we keep the current account>>;
- <<Also we contacted our insurance broker to find out information about insurance from Allianz. Unfortunately, our mistake, which was only discovered later, the broker e-mail appointed by IATA was recorded erroneously, but the insurance company e-mail was correct>>;
- << Finally I would say that although, as previously mentioned, yet not having been satisfied with the reasons for the request, we are doing every effort to meet them, as we always did in past 40 years, but it seems that communication with the banks and the insurance company indicated by IATA are a bit difficult>>;
- <<We also think that the IATA's decision was very hard and the more than 40-year relationship, without any warning or punishment, were not considered>>.

III. The Respondent's arguments in summary

Quoting the Respondent, rebutting the Applicant's allegations:

<<1) That IATA did not answer back to Emails:

-The Agent was instructed to follow a communication procedure, as usual, and there was a failure:

Portuguese letter October 11, 2013. Attached by the agent:

Qualquer dúvida relacionada a este assunto, entrar em contato através do website: <http://www.iata.org/cs> e referir-se com o número de caso: 03703880

What the agent did instead... he used the "replied" bottom to the sender.

-The agent did the same mistake twice, so no answer from IATA can be provided. Later, on Oct. 27, an audit of the cases discovered that there were 2 emails "floating in the system".

2) Insurance company fail to answer the agency back:

... In the case of Brazil, Allianz, a worldwide company is one company (*that IATA chose*¹) and this company appointed as their broker the company GYABROKER

Allianz Seguros S.A.

Emails: garantia.iata@allianz.com.br com cópia para tayane.braga@gyabroker.com Para consulta é necessário enviar por e-mail CNPJ e esta carta.

Normally, the broker receives the Agency documentation, validate that everything is correct and then, the insurance company issues the Bond. As you can see, the GYABROKER email address was incorrect.

As a consequence, item # 1 and item #2 were originated by the Agent's fault and IATA cannot be liable in any way for these errors>>.

IV. Oral Hearing

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

V. Considerations leading to conclusion

Despite the unfortunate miscommunication problems that occurred in this case and the lack of proper answer from the Respondent, it is clear for this Commissioner the need for the Applicant to provide the requested BG, considering the unsatisfactory results of its financial statements' annual evaluation.

Once the Applicant gets the proper information about its financial assessment from the Respondent², if the Applicant considers that its financial standing does meet the Local Financial Criteria for Brazil (as it is published in the Travel Agent's Handbook), it has the right to challenge IATA's decision, but while no action is undertaken against that

¹ This Commissioner's addition

² The Respondent must provide a copy of the results of the Applicant's financial assessment so the Applicant can have access to that vital information and act accordingly.

assessment, the Applicant is bound to comply with the required BG by the given time frame.

A. Concerning the communication method used by the Applicant to address its demand for clarification about the request to provide a BG vs. the one instructed by the Respondent to follow (uploading a query/request at an IATA portal), even though it has become the way the Respondent wants to communicate with the community of Agents worldwide in recent times, it is also understandable the “natural” tendency manifested by the Applicant in replying directly to the person/service from which it received the communication (the BG request in this case) and expect an answer from it.

The fact that the Applicant had immediately asked for clarifications, even the same day that it received the request from the Respondent, demonstrates its good faith and its willingness to comply with the rules once it would have obtained an explanation from the Respondent. This Commissioner finds also reasonable the doubt that the sudden request to provide a BG had arose in the Applicant, considering that (i) in 40 years of trading history it had never been requested to submit any financial security and, from his perspective, he is a sound Agent; and, (ii) that at no moment in time was the Applicant provided with a copy of the assessment done over his finances for him to know which criteria was not met and thus act accordingly in a timely manner.

This Commissioner considers laudable the extension that the Respondent provided *motu proprio* to the Applicant for him to provide the BG, once it detected the unanswered emails sent by the Applicant and replied to them.

B. As per the communication mishaps that occurred between the Insurance company and the broker that were chosen by IATA for the Brazilian market and the Applicant, two facts have to be considered:

- (i) The Applicant contacted, before the deadline, not only the Insurance company and its broker but also the banks with whom IATA has accounts in order to get the BG in place; and,

- (ii) even though the Applicant, when sending the email to the Insurance company and to the broker (this last one being copied in the email, the main addressee being the Insurance company itself) asking them for the needed requirements to get a BG, had written wrongly the email address of the broker, which would explain the lack of its response, *the Applicant never received a timely answer from the Insurance company either*. This lack of response from the Insurance company is not excusable particularly considering (a) that the Applicant not only once but three times sent the same email asking for the requirements to proceed with the BG; and, (b) the Applicant was under a given time frame to comply, which imprinted *per se* a sense of urgency to these types of communications. Urgency that being an IATA authorised company, the Insurance Company should have been aware of and, as such, should have acted promptly.

Therefore it is clear for this Commissioner that no negligence is attributable to the Applicant when taking care of complying with the applicable Resolutions as instructed by the Respondent.

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;

It is hereby decided:

- The Respondent has followed correct procedure, pursuant Resolution 818g, Paragraphs 2.2 and 2.2.1.
- The Applicant is to provide the BG in the terms demanded by the Respondent.
- However, considering the evidence provided by the Applicant, not contradicted by the Respondent, substantiating his several timely attempts to reach the Insurance company in order to get the BG in place, and thus demonstrating its good will to comply with this requirement (despite being in disagreement with it and despite not having received a proper explanation as of the results of his financial assessment –being the reason behind the BG request-);

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- Considering that the process to obtain the BG has already been unfolded and thus the BG will be issued in the coming days;
- Considering that the amount of the BG in question is the minimum required in Brazil R\$ 18,000 (approx. US\$ 9,000);
- Considering that the Agent has been an Accredited Agent for more than 40 years with what it appears to be an impeccable record;

The Applicant is to be **reinstated in to the BSP system at no delay** while the BG completes the process and it is finally submitted to the Respondent.

- Considering the communication problems that occurred in this case, particularly with the Insurance Company authorised by the Respondent, no termination action should be undertaken against the Applicant if by Dec. 26, 2013 he cannot submit the BG. A reasonable extension of the due date should be given by the Respondent to the Applicant in order for the banking/insurance process to be completed and the BG issued submitted;
- The Applicant is exempt from paying the reinstatement fee as indicated in the Notice of Suspension dated November 26, 2013.

Decided in Vancouver, the 12th day of December 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.