

**TRAVEL AGENCY COMMISSIONER - AREA 1**  
*VERÓNICA PACHECO-SANFUENTES*  
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Vancouver, British Columbia V6K 1R5  
CANADA

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**DECISION 2015 - # 4**

**In the matter of:**

**Interglobe Turismo Ltda. and Airlines Turismo e Passagens Ltda.**

IATA Codes 57-9 4669 6 and 57-5 0867 3  
SHS-Quadra 01-Bloco A, Loja 06 Terreo  
Brasilia, Distrito Federal 70322-900  
Brazil

Represented by their Managing Director, Mr. Marcio Bessa

**The Applicants**

*vs.*

**International Air Transport Association (“IATA”)**

703 Waterford Way, Suite 600  
Miami, Florida 33126  
United States of America

Represented by the Assistant Director, Agency Management, SC Americas, Ms. Diana Larrañaga

**The Respondent**

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**I. The Case**

The Applicants submitted a request for review of the Respondent’s sudden Notice and action of Suspension from the BSP system, undertaken on February 16, 2015.

The referred suspension was executed by the Respondent based on the Prejudiced Collection of Funds’ provisions, stated in Resolution 818g, Attachment “A”, Section 1.8, as a result of the information gathered in connection with the default of the Accredited Agent **ROD2 Turismo Ltda**, with whom the Applicants had an ongoing commercial relationship.

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However, according to the Applicants' allegations (i) they have been IATA Accredited Agents for over 20 years without ever having any default problem; and, (ii) the misbehaviour committed by another IATA Accredited Agent should not be attributed to the Applicants.

## II. Chronology of events

The Respondent identified a number of transactions originally booked by *Airlines Passagens*, which were later ticketed by another Accredited Agent called *ROD2 Turismo Ltda.* who later failed to remit to the Airlines participating in BSP Brazil;

The review of *Airline Passagens Ltda.* resulted in the finding that this Agent as well as *Interglobe Ltda.* partly shared the same owners, hence, given the contractual relationship between the Applicants and IATA and the Airlines participating in BSP Brazil, and, given that there is a commercial relationship between *Airline Passagens* and *ROD2 Turismo Ltda.*, the Respondent considered that it had sufficient grounds for the Agency Administrator to suspend the Applicants under Resolution 818g, Attachment A, subparagraph 1.8 Prejudiced Collection of Funds;

Both Applicants are up to date with their payments to BSP:

- *Airline Passagens LTDA* – the Respondent does not hold a financial security, however, their sales at risk are approximately USD 32,500;
- *Interglobe LTDA.* – the Respondent holds a financial security due to unsatisfactory financial results in the amount of BRL 768,000,00 (equivalent to USD 295,000) while current sales at risk are BRL 1.338,000,00 (equivalent to USD 453,000).

During the course of this review procedure, in light of the Applicants' submissions/evidence as well as a result of further investigations undertaken by the Respondent, the Respondent *motu proprio* decided to reinstate *Airline Passagens Ltda* on the basis of limited sales' risk exposure that was not covered by a financial security.

As of Applicant *Interglobe Ltda.*, the Respondent stated that <<it will be reinstated subject to the presentation of a financial security ... to cover the current sales' risk exposure equivalent to USD 160,000.00>>. A letter was sent to the Applicant requesting the increased financial security equivalent to BRL 1.338.000,00 (approximately USD 160,000.00).

The Applicant was reluctant to provide this bank guarantee increase and objected it; the Applicant did not understand the rationale behind it. It felt as been penalised for a crime that he had not committed.

### **III. Oral Hearing**

Pursuant Paragraph 2.3 of Resolution 820e, this Commissioner has decided to base her decision on the written submissions and evidence that have been filed by the Parties with out the need of an oral hearing. Both of them have agreed.

### **IV. Considerations leading to conclusion**

After thoroughly reviewing the facts of the case, this Commissioner has come to the following conclusions:

- There is no doubt about the Respondent's rightfulness in taking the decision of temporarily suspending the Applicants on the grounds of Prejudiced Collection of Funds' provisions, based on the written information that it had at hand at the time where the actions were implemented, which led the Respondent to belief that the collection of Member Airlines' funds from the Applicants might have been compromised; however,

- It has also been proved during the course of this review process that the Applicants:

- Have no outstanding monies towards any Member Airline, they have settled their BSP Billing Reports in full;
- In the case of *Interglobe* it has been an Accredited Agent for 20 years without having had any default or lack of payments' history;
- *Interglobe* has a valid Bank Guarantee in place that will expire in September 2015;
- *Interglobe's* relationship with the defaulted Agent, *ROD2 Turismo Ltda*, had nothing to do with the lack of payment incurred by this last Agent

The standard requirements for reinstatement regularly applied by IATA after Agents being defaulted should not be applied in this case, since not only this is not a defaulted Agent case, but mainly because the suspension unfolded against this Applicant was not the Applicant's fault, nor was it motivated by any action or omission attributable to it. On the contrary, the Respondent did not proof any non-compliance situation against this Applicant; its suspension was caused by factors beyond its control. In fact, it was found in the course of the Respondent's investigations that the Applicant was not responsible for the actions undertaken by the defaulted Agent *ROD2 Turismo Ltda*; therefore, its reinstatement in to the BSP system must be undertaken by the Respondent immediately without ANY further requirement nor condition.

## **V. Decision**

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

Having analysed the applicable Resolutions, particularly Section 1.8 of Resolution 818g, Attachment "A", it is hereby decided:

- The Applicant should be reinstated at no delay in the BSP system and any Notice of Irregularity that would have been served against it by the Respondent as a result of this Prejudiced Collection of Funds' procedure should be voided and expunged from the Applicant's records;

- It is expected that this decision will be implemented at no delay; the Applicant has been suspended already during almost a month.

It is clearly understood that the Respondent could at any time, for a reason, undertake a financial review of these Applicants and if as a result of this evaluation a financial security or an increase of the existing one is required, the Applicants will have to comply with this new requirement, provided reasonable time to comply will be given to them.

Decided in Vancouver, the 9<sup>th</sup> day of March, 2015

*Verónica Pacheco-Sanfuentes*  
Travel Agency Commissioner Area 1  
acting as Deputy TAC3

**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.