

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

DECISION 2017 # 4

In the matter of:

Bahia Bella Viagens e Turismo Ltda.

IATA Code 57-8 2466

Tancredo Neves No.1063 Caminho Das Arvores Ed. Metropolitano
Salvador/Bahia 41820-021

Brazil

Represented by its Director, Ms. Gisela Vianna Maia

The Applicant

vs.

International Air Transport Association (“IATA”)

703 Waterford Way, Suite 600

Miami, Florida 33126

United States of America

Represented by the Agency Manager – The Americas, Ms. Carolina
Montoya Jaramillo

The Respondent

I. The Case

The Applicant sought a review of the Respondent’s Notice of Default (“NoD”) and its consequent suspension from the BSP system, due to an accumulation of irregularities.

The Applicant argues not being aware of any prior notices, let alone of the fatal consequences of accumulating irregularities within the current IATA system of irregularities.

The Applicant claims having a type of societal form that, according to Brazilian laws, does not require having financial statements (“FS”). The Applicant claims having submitted a similar set of documents for its 2015 financial review and even alerted IATA of same; yet, the Applicant suddenly found its ticketing capacity removed without understanding the Respondent’s actions, since it was never advised last year nor any time after that about the supposed inadequacy of the documents that it submitted to get its financial soundness assessed by the Respondent.

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II. Chronology of events

Considering that no Member Airlines' funds were at risk, interlocutory relief was granted by this Office and the Applicant was promptly reinstated in to the BSP system.

The following is the chronology of events extracted by this Commissioner from the submissions and abundant evidence provided by the Respondent, not contradicted by the Applicant nor proved against it:

- Indeed, as per Brazilian law, the “*Optante do Simples ou Lucro Presumido*” companies are not required to present FS to the government, reason why IATA created a “*Formulario de Informacoes Financeiras*” in order to undertake the financial assessment of these kind of companies.
- As clearly supported by evidence, the situation of prior years' financial reviews was as follows:
 - 2015:
 - April 1st: Annual financial review period was opened in the Brazilian market with deadline May 1st. During this period the Respondent informed the Applicant about the need to provide the “*Formulario de Informacoes Financeiras*” (“FIF”), considering the type of company that they had.
 - April 30th: the Applicant submitted some legal documents to demonstrate that they were an “*Optante do Simples ou Lucro Presumido*” company. However, these documents did not include the FIF.
 - May 14th: The financial evaluation resulted in a sanity check failure. The Respondent sent to the Applicant the FIF, for them to fill out and resubmit.
 - 2016:
 - April 5th: Annual financial review period was opened in the Brazilian market with deadline May 6th. During that period the Respondent informed the Applicant again about their need to submit the FIF if they were that type of company.
 - May 2nd: the Applicant contacted the Respondent in order to obtain the FIF. That same day, the FIF was provided to the Applicant.
 - May 6th: the Applicant submitted all the required documents including the FIF.
 - 2017:
 - April 3rd: As in previous years, the annual financial review period was opened in the Brazilian market with deadline May 3rd. In the communication sent to the Applicant it was included the notification that the FIF had to be requested to IATA if applicable.
 - April 18th, 25th, 30th and May 1st: Reminders were sent to the Applicant.
 - May 3rd: the Applicant submitted some legal documents, but not the FIF.
 - May 5th: the result of the assessment was a <<*Sanity Check Failure*>>.

The same day of the failed result, the Respondent contacted the Applicant and sent it the FIF, providing a new deadline (May 10th).

- May 10th: As documents were not provided by the Applicant, a Notice of Irregularity (“NoI”), due to late submission of FS was issued, accumulating the Applicant six instances of irregularities, which triggered the NoD.
- May 11th: the Applicant contacted the Respondent, requesting the FIF, which was sent to the Applicant that same day.
- May 13th: the Applicant submits, late, the missing and essential document for its financial evaluation.

Some other important facts were:

- 20 June 2016 – two irregularities were applied due to late submission of financial security (it was submitted two days later)
- 16 November 2016 – two irregularities were applied due to short payment of BSP remittance (remittance due on 14NOV2016, Applicant paid 2 days later)

Additional information was brought to this Commissioner’s attention regarding the Applicant’s satisfactory assessment of its 2016 FS; therefore, no need to present any financial security for that reason. Nonetheless, considering this technical default, due to an accumulation of irregularities, the Respondent had to request a financial security. The time frame given for its submission is no later than 19 June 2017, in the amount of BRL 111.000.

III. Oral Hearing

Pursuant s. 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 without the need of an oral hearing and without jeopardizing the due process.

IV. Considerations – Decision

Based on the abundant evidence provided by the Respondent, it is clear to this Commissioner that the Applicant was timely and adequately informed about the needed documents that it had to submit in order to get its financial assessment properly done. The fact that according to the Tax Laws and Tax Authorities in Brazil, there is no need for the Applicant to have FS, as it claims, is not a valid excuse for the Applicant not to submit **other** documents requested by the Respondent that would allow it to undertake the mandatory review that, at least once a year, the Respondent has to undertake over every Accredited Agent worldwide.

Additionally, the fact that the Applicant did submit the proper FIF, as requested by the Respondent for its 2015 evaluation, shows that the Applicant was aware of the required documents and failed in proving to this Office the reasons why this year (for its 2016 evaluation), despite the various reminders received from the Respondent, it did not react on time.

Therefore, having carefully looked at the applicable Resolutions and the evidence on file, it is hereby decided as follows:

- The Respondent acted in accordance with the applicable Resolutions, and, in having an attentive customer service approach by reaching out to the Applicant in multiple occasions, trying to prevent the application of the last irregularity that triggered the default actions;
- The NoD served to the Applicant, due to an accumulation of irregularities, stands;
- The Applicant is to provide a financial security in the requested terms by June 19, 2017: until then, its temporary reinstatement should stand.
- Provided the referred security will be timely submitted by the Applicant, its temporary reinstatement will become permanent.

Decided in Vancouver, the 24th day of May, 2017



Verónica Pacheco-Sanfuentes
Travel Agency Commissioner Area 1

Right to ask for interpretation or correction

This decision is effective as of today and in accordance with Resolution 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 this document (meaning no later than **June 8, 2017**).

Right to seek review by arbitration

If after having asked for and obtained clarification or correction, any Party still considers aggrieved by this decision, the Party has the right to seek review by arbitration in accordance with the provisions of Resolution 820e § 4 and Resolution 824 §14.