

VERÓNICA PACHECO-SANFUENTES

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

DECISION 2013 - #

In the matter of:

Interneto Partneris

IATA Codes 68-3 2103 5, 23-2 7887 2 and 19-2 0306 3
Laisves av 125
LT – 06118 Vilnius
Lithuania
Represented by its lawyer, Mr. Jonas Bloze

The Applicant

vs.

International Air Transport Association (“IATA”)

Torre Europa
Paseo de la Castellana, 95
28046 Madrid
Spain
Represented by the Accreditation Manager, Mr. Ignacio Mula

The Respondent

I. The Case

On January 30, 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") Notice of Default dated January 23, 2013. As a result, default action was taken against all of the Agent’s Approved Locations, being the German Agency the one at the origin of the lack of timely settlement. The Applicant also had operations in Lithuania and Finland.

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II. Chronology of Events – Evidence on file

According to the evidence that has been submitted by both Parties, the following is the chronology of events in this case, which has not been disputed by any Party.

- On January 21, 2013 the Applicant's German branch had a direct debit rejection due to insufficient funds in order to cover the BSP Report corresponding the sales period of Dec.24 – Dec. 31, 2012;
- A Notice of Irregularity was sent to the Head Office in Lithuania (Jan. 22, 2013) requesting payment before close of business of the following day;
- When IATA Service Center in Madrid did not receive the requested amount within the deadline given, default was declared;
- In order to get things sorted out in the German Location, aiming at the Agent's re-instatement, all sales that had been generated up to the date of default had to be immediately settled. Furthermore, since a financial assessment had to be conducted, IATA-Germany swiftly did so and timely informed the Agent;
- As a result of that assessment, the financial security currently held by the Agent was not sufficient to cover the Agent's recent cash sales and therefore needed to be increased to EUR 54,000;
- The Agent timely provided the requested financial security and settled all outstanding amounts, and thus, was ready to be re-instated in regards to the German Location;
- On its turn and also aiming at the Applicant's reinstatement, IATA Finland conducted a financial assessment of the Applicant's Finnish Accredited Office resulting as unsatisfactory, so the Agent was requested to increase the financial security up to EUR 310,000. As soon as this financial security would had been increased, re-instatement would had been processed;
- Considering the hefty cost that this operation would had implied for the Applicant, and looking forward to a swift reinstatement in the other two Locations, on February 5, 2013 the Applicant voluntarily decided to relinquish its accreditation in the Finland Location (option that was submitted by the Applicant to this Office in an earlier email dated January 31, 2013);
- As a consequence of the said voluntary relinquishment, and once all outstanding amounts were settled by the Applicant, that same day, Feb. 5, 2013, the bank guarantee increase request was withdrawn by IATA-Finland;
- On Feb. 6, 2013 this Office received confirmation from IATA-Germany about (i) the Agent's reinstatement in Lithuania and in Germany; and, (ii) the

communication sent to the Global Distribution Systems (GDS) in order to re-activate the ticketing capacity and <<refund functions according to the assigned ticketing authorities in BSPlink>>. The Agent was informed accordingly;

- On Feb. 11, 2013, after receiving the Applicant's final submissions and the Respondent's indication that no further arguments were going to be presented from its side, the case was declared closed for submissions.

III. The Applicant's arguments in summary

- Actions taken against all Approved Locations of the Applicant are significantly excessive considering that only one and newly opened Location was the source of the problem, while the other two have always honoured their BSP report on time;
- Resolution 818g, Attachment "A", Section 1.10.2 allows the default declaration and the removal of all Standard Traffic Documents ("STDs") from *the Approved Location*, in singular, thus not allowing the other Locations of an Agent to be affected by the default actions. Other rules supporting this view are: Res. 818g, Subsection, 13.2, 13.4.1.1, 13.4.2.1¹, 13.6.2, 15.2; and Res. 818g, Attachment "A" Paragraphs 1.7.3.1(a), 1.9.2 (see comment in the footnote) and 1.9.4. Consequently, having done so, the Respondent did not follow correct procedure in the Agent's direct and serious detriment;
- The Applicant stresses that <<there is no explicable connection within accredited locations one in Lithuania and other in Finland, except>> that they <<are supervised by one legal entity, head office joint stock company "Interneto Partneris">> (this Commissioner's highlights);
- The financial evaluation of the Finland Location before the regular timeframe where Financial Evaluations usually take place in that country (by June normally) seems unreasonable, especially considering the one (1) week time limit that was given, in addition to the fact that that Location in itself had nothing to do with the late payment committed by the German Location only;
- The Applicant informed IATA <<that the bank guarantee increase for more than EUR 310,000 (up to EUR 760,000) could not be received from a bank and presented to the Administrator quicker than within three/four weeks>>;
- The Applicant has <<taken adequate measures to prevent the recurrence>> of the irregularities that generated the default action and has the ability to demonstrate to the Agency Administrator its' <<financial capability to ensure its accreditation>>;

¹ This Commissioner notes that the Applicant also indicated Sub-Sections 13.13 and 13.4.1.2 of Res. 818g which do not exist. Also it is worth to mention that Paragraph 1.9.2 of Res. 818g, Attachment "A" was amended by the last PACONF No. 35, having entered in effect the new version of that rule on 1 January 2013.

- The requirements for accreditation are excessive, as they demand from the Agent <<to maintain double guarantees for a huge amount of money>>. That policy <<is not oriented into cooperation due to resolution of issues, but to work by letter without understanding the bureaucratic interferences>>;
- The Applicant requested for interlocutory relief and stated that it <<was ready to temporarily withdraw the operation in Finland Location just to save the business and reopen the activities in other Locations>>;
- Lastly, the Applicant claims for reimbursement of damages suffered as a consequence of the improper procedure followed by the Respondent.

Note: a new argument was brought to the attention of this Office by the Applicant on its Closing Submissions, pertaining to a supposedly discriminatory practice against Agencies located outside Finland however operating within the Finnish market. The impossibility of accessing a Finnish Credit Rating Institution prevents the Applicant from being released from bank guarantees considering that, in the Applicant's terms: Interneto Partneris <<could be recognised as having an "A" and higher credit rating level>>.

IV. The Respondent's arguments in summary

- As per Resolution 818g, Attachment "A", Section 1.7.2.1 (b) <<in case the Head Office or any of its Branch Office Locations has a default as a result of late payment>> then ALL of the Approved Locations will <<be placed in default immediately (even if they have different remittance dates)>>,
- Considering the facts of the case, the Responded simply followed standard procedures;
- In order for the Applicant to be reinstated, the following requirements should be fulfilled:
 - << 1. Settle all outstanding amounts. Or alternatively pay at least 50% of the outstanding amount and agree a firm schedule of repayment of the balance in installments, plus interest at the official (prime) bank rate plus 1%, in writing between yourself and the BSP Management.
 2. Furnish a valid financial Security>>.

V. Authority for Review

Resolution 820e determines the scope of the TAC's review proceedings, and as so 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 Applicant's 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.

Pursuant Paragraph 2.3 of Resolution 820e and Rule #14 of the Rules of Practice and Procedure for Area 2, this Commissioner, acting upon both Parties' agreement on waiving an oral hearing, had decided to base her decision only on the written submissions that have been filed by both of them, since she has considered that it will not jeopardise the process.

Considering the course of action that this review process took, as a consequence of the pro-active steps taken by both Parties, it was decided by this Commissioner to solve the core of the matter at once rather than render an interlocutory relief decision first as originally requested by the Applicant.

Pursuant Rule # 8 of the Rules of Practice and Procedure for Area 2, considering the Agreement that the Parties were able to reach once some elements of the case were clarified and evidence to demonstrate them were submitted by the Applicant, to the Respondent's and this Commissioner's satisfaction, it is hereby decided, based on the following considerations:

VI. Considerations leading to Decision

1.- The case for review consists in whether or not the Respondent had followed correct procedure when decided to apply default actions to all of the Applicant's Approved Locations, when only one of them had actually incurred in irregularities and, consequently, declared in default.

Before looking at the applicable rules (A) and its interpretation (B), it is important to establish that both Parties have agreed on various facts, namely: (i) that one of the Approved Locations (German Location, identified with IATA code # 23-2 7887 2) had actually incurred in irregularities and, consequently, proper default actions had to be declared by IATA, pursuant Paragraph 1.7.2.1(b) of Resolution 818g, Attachment “A”; (ii) that the amounts that were transferred by the Applicant to the Respondent concerning not only the defaulting Location but all of them were correct and a true representation of the concerned cash sales’ levels; and, (iii) that the financial security that was provided by the Applicant in both Locations, Germany and Lithuania, was adequate and therefore immediate re-instatement was implemented in both Locations.

(A) Applicable Rules

Res. 818g, Attachment “A”, Paragraph 1.7.2.1 (b), located under Section 1.7.2 Overdue and Dishonoured Remittance, states as follows:

<<**Paragraph 1.7.2.1 (b)**: if payment is not received on demand, the Agency Administrator shall immediately notify the Agent, and shall take Default Action *with respect to all Locations of the Agent* in accordance of Paragraph 1.10>>

<<**1.10 Default Action**

The provisions of this Paragraph govern the procedures if Default Action is required to be taken in accordance with any of the provisions of Paragraph 1.7, when the procedures prescribed below shall be followed:

1.10.1: the Agency Administrator shall immediately advise al BSP Airlines that the Agent is in Default *at all Locations or at the Location concerned* (BSP Airlines which have appointed the Agent shall be notified by email or similar fast method of communication)>>.

(Commissioner’s emphasis)

(B) Rules' interpretation

When interpreting rules, the interpreter should look not only at the mere norm, but also at the context in where it is located, the meaning of the words, the rationale behind it, its purpose, its goal and contrast them with the facts in a given case.

In regards to the meaning of the words used in IATA Resolutions, Res. 818g establishes in its very first introductory Paragraph that <<the use of words and expressions in the singular shall, where the context so permits, be taken to include their use in the plural and vice versa>>.

Looking at the context where both of the quoted norms are included this Commissioner notes that both are located under the Irregularities and Default Sections of Attachment "A", so in Sections where most of the rules concerning Agent's financial risks and measures intended to correct those situations are mentioned.

On the other hand, according to the evidence on file, in this particular case, even though operating in different countries and therefore bound by different Local Financial Criteria, we have as the Applicant himself recognises: one (1) sole Agent, one (1) sole owner, one (1) sole legal entity called "*UAB Interneto Partneris*", an Accredited Agent that had three (3) IATA Approved Locations at the time where the irregularity took place. In other words, despite the fact of having many different Approved Locations, at the end of the day there is only one legal entity responsible for the entire business, one sole responsible for honouring all BSP sales' reports. Hence, even though the rule is not sufficiently clear because it refers in one part (Paragraph 1.7.2.1(b)) to all Locations, using the plural and meaning all the different approved centres where the Agent might have operations, and then in Section 1.10, Paragraph 1.10.1² makes an apparent differentiation between all Locations **or** the concerned one, this Commissioner considers that:

² As well as in the other rules that were mentioned by the Applicant and referred by this Commissioner on page 3, where the same sort of differentiation seems to be made.

- It is perfectly understandable the interpretation that the Applicant has had about these rules and hence its frustration seeing IATA's actions going in to a completely opposite direction;
- However, considering that there is only one (1) legal entity responsible for the business, and as such only one (1) legal entity signatory of the Passenger Sales Agency Agreement with IATA, this Commissioner deems that correct procedure was applied by IATA when decided to affect by its decision of removing the ticketing capacity from **all** Agent's Approved Locations and the rest of the default actions, regardless the fact that only one of them had technically defaulted its payments.

The rationale behind these rules is to protect airlines' monies and particularly to control or diminish the risks involved in the tickets' sales business, having in consideration that Agents receive and temporary keep the airlines funds until final remittance. Pursuant the current stage of applicable Resolutions, that is the reason why those rules not only call for a cautious action but also have to be interpreted in a rather cautious and restrictive manner, because that was precisely the intention that motivated their creation. Consequently, default actions have to be applied to all Approved Locations, and not only to the one in particular that could have defaulted, because the legal reality of the situation is that there is only one legal responsible behind the entire operation. Following this line of thought, when Paragraph 1.10.1, as well as the other scattered rules that use the same language, indicates that default actions are to be applied <<or at the Location concerned>>, it refers only to those cases where Agents actually have just one (1) Approved Location so there is no other Location to be involved in those procedures, because no other operation centre would represent any risk at all, it is simply inexistent.

Notwithstanding the above mentioned criteria, it would be worth for IATA to explore the possibility of revising these rules since it appears to this Commissioner, at least from the evidence on file –proof of what had been the swift re-instatement of the Applicant-, that in cases like this one, where financially sound Applicants who operate in various

markets running actually successful operations for the Member Airlines' benefit, it could be established a slightly different procedure that would allow the Agent that committed the irregularity in one Location not to be penalised in the rest of its operation so inclemently, causing harm not only to its own business but also to the Member Airlines' profit from its sales.

2.- In regards to the <<limited time frame provided>> to the Applicant to submit a financial security concerning the Finnish Location, this Commissioner deems necessary for the Respondent to consider the *real financial/banking market conditions before* setting a particular time stringent period for Agents to provide the necessary bank guarantee or any other type of financial security in order to be re-instated. It is essential when imposing an obligation to an Agent to consider its total possibility of compliance. The contrary would be seen as a **denial of justice** altogether, since the obligation is *per se* implying non-compliance by the Agent, due to the concrete impossibility to fulfil the required mandate. In this case, it was clearly stated by the Applicant the banks' inability to provide any financial security in such a short notice.

It is well known that due to the current world financial situation banks are acting more and more cautiously when dealing with these types of requests, so the Respondent should be aware of these undeniable market conditions where it operates and where its business partners operate as well.

3.- In connection with the Credit Rating Agency in Finland and the argument brought by the Applicant in regards to its inability to have access to it, being this situation a discriminatory practice against foreign Accredited Agents legally operating in that market, this Commissioner would like to respectfully draw the Respondent's attention to this matter by encouraging it to review the Finland Local Financial Criteria in order to ensure that every single Accredited Agent could actually have access to this possibility in that market. No further representations should be made at this point, since the Applicant as of February 2013 has ceased operations in that country.

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,

This Commissioner decides:

- The decision taken by IATA of applying default actions with respect to the Applicant's all Approved Locations was in accordance with Resolution 818g, Attachment "A", Paragraph 1.7.2.1(b) and therefore it is upheld.
- In future occasions, the Respondent should take in consideration the current financial and banking market conditions in order to ensure that the time frame given to Agents to provide financial securities are reasonable and thus attainable by them;
- In regards to the request for damages' compensation derived from the Respondent's actions, the Applicant would have to address this complaint to local Courts since this type of matters are out of the TAC purview, or submit a request for Arbitration at the International Chamber of Commerce which hosts the International Court of Arbitration in Paris, France.

Decided in Vancouver, the 7th day of March, 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.