

**VERÓNICA PACHECO-SANFUENTES**

TRAVEL AGENCY COMMISSIONER, AREA ONE – DEPUTY TAC 2  
110 – 3083 West 4<sup>th</sup> Avenue  
Vancouver, BC V6K 1R5  
CANADA

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**DECISION 2013 - # 46**

**In the matter of:**

**Mistral Voyages Port Gentil SARL**

IATA Code 2120076

Avenue Savorgnan de Brazza

Port Gentil, Gabon

Represented by its Managing Director, Mr. Basile Affoyon Attanda

**The Applicant**

vs.

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

King Abdallah II Street, Al Shaab roundabout

Business Park, Building GH8

P.O. Box 940587

Amman 11194, Jordan

Represented by the Passenger Agency Manager

Africa & Middle East, Ms. Ruba Al-Sharif

**The Respondent**

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**I. The Case**

The Applicant (also called hereinafter as “the Agent”), sought a Travel Agency Commissioner’s (“TAC”) review of IATA's (also called "The Respondent") Notice of Irregularity (“NoI”) dated July 7, 2013 allegedly served due to an incomplete submission of the financial statements (“FS”), since they were not audited nor certified as required by the Local Financial Criteria. In the NoI in question it was given 30 days for the Applicant to send the required audited version of its FS; however, since the Applicant had a previous NoI (issued within the 12 consecutive months prior to this

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event), on July 8, 2013 a technical default notice was served to the Applicant with its consequent suspension from the BSP system that same day, pursuant Resolution 818g, Attachment “A”, Paragraph 1.7.5.2.

Interlocutory relief was granted by this Office. The interlocutory decision (“IR”) became effective and, thus the Applicant was reinstated in to the BSP system once it provided the financial security that was required, based on the Respondent’s risk assessment, in addition to fulfilling the rest of the requirements for re-instatement as instructed by the Respondent.

## **II. The Applicant’s arguments in summary**

The Applicant did not understand the reason behind the suspension from the BSP system, since:

- (i) The Respondent had received its FS on Jun. 28, even 2 days earlier from the due date, and,
- (ii) the NoI dated Jul. 7, indicated that the Applicant had 30 days (until Aug. 6), to submit the audited version of the FS, pursuant the Local Financial Criteria and despite that <<they suspended our license Monday 8<sup>th</sup> July, without any more reasons or information>>.

## **III. The Respondent’s arguments in summary**

<<- The agent was instructed to upload his latest audited and certified financial statements by 30 Jun.

- Although the agent did upload his FS before the deadline, the uploaded FS were neither audited nor certified.
- The sanity check failure has resulted in 2 points of irregularity.
- The agent also had previous points in his record for late payment for period 1-31 Dec 2012 (NOI Date 18 Jan 2013).

- This has resulted in an accumulation of 4 irregularities and accordingly to a default>>.

#### **IV. Oral Hearing**

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' consent on waiving their right for 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 Decision**

According to the West & Central Africa Financial Criteria ("LFC") the Agents that chose Option 1, as is the Applicant's case, should comply with the following requirements:

<<Option 1: to provide financial statements for evaluation. The agent that selects this option must provide each year and within 6 months after the end of the financial year, a balance sheet, profit and loss account and annexes, duly certified by an accredited independent accountant>>.

It is worth noting that this rule is been in effect since December 2010.

According to the evidence on file, accepted by both Parties, the Applicant uploaded an unaudited version of its FS on June 28 (so before the due date – Jun. 30, 2013); once it was advised by the NoI object of this review process, issued on July 7, 2013 that the FS needed to be certified or audited, pursuant the LFC, giving the Applicant 30 days to comply with this requiremets (until Aug. 6, 2013), on Monday July 22, 2013 the Applicant uploaded in IATA's portal the certified version of its FS as requested. The auditors' certification is dated July 8, 2013.

Even though this Commissioner understands the Applicant's frustration when its ticketing capacities were removed, considering that from the Applicant's perspective it was given to it 30 days to present the audited version of its FS; it is not attributable to the Respondent the previous NoI that the Applicant had on its file, which accumulation with the July NoI was the cause of the technical default and its subsequent withdrawal from the BSP system. There was no wrongdoing in the Respondent's actions towards the Applicant.

Observations:

- (i) According to the evidence on file, non-contradicted by either Party, during the course of this TAC procedure aiming at its temporarily re-instatement, pursuant the IR TAC decision, the Applicant uploaded, as instructed by the Respondent, all the documents required for its re-instatement as well as the audited version of its FS in IATA's portal. Nevertheless, it is noted by this Commissioner that its re-instatement was not undertaken by the Respondent until the original letter containing the bank guarantee ("BG") had reached the Respondent's Office, which means that the uploaded version of the said BG was not enough for the Respondent to proceed accordingly. Instead, the Applicant, in the midst of a very anxious situation since as it had indicated from the beginning of the case, this was the <<peak season>> for its sales, after days waiting in vain to be re-instated, had to send the original BG by DHL to Amman, Jordan from Port Gentil, Gabon (so crossing a continent from one extreme to the other and even a little further up), in order to make its reinstatement possible. Had the Applicant been timely and fully informed by the Respondent about the need of sending the original BG by courier to the Respondent's Office, all this trouble would had been avoided.

According to the applicable Resolutions, communication between the Respondent and Accredited Agents is of essential nature, and as such should be accurate and complete, so Agents have clear instructions to comply with, especially when non-compliance due to a miscommunication problem does lead to damaging consequences for Agents.

**(ii)** Considering the severe problems that Agents often face to get their ticketing capacities back after “reinstatement”<sup>1</sup> from individual Member Airlines, it is this Commissioner’s view, as the Applicant suggested, that IATA should **always clearly state the reason(s) behind a NoI**, so Member Airlines will have the real facts of the situation at hand for them to make their own judgment on this matter, rather than false ideas about the potential causes for the NoI and/or, ultimately, for the withdrawal of an Agent’s ticketing rights.

## **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 Notice of Irregularity served to the Applicant on July 7, 2013 was issued in accordance with the applicable rules and, hence, it stands;
- Considering that all the requirements for reinstatement were met by the Applicant, at the Respondent’s satisfaction, its temporarily re-instatement should become permanent.

Decided in Vancouver, the 23<sup>rd</sup> day of August, 2013

*Verónica Pacheco-Sanfuentes*  
Travel Agency Commissioner Area 1  
acting as Deputy TAC2

### **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

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<sup>1</sup> As this is not an uncommon situation that has reached the TAC Office

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.