

**TRAVEL AGENCY COMMISSIONER - AREA 1 (DEPUTY TAC 2)**  
*VERÓNICA PACHECO-SANFUENTES*  
110 – 3083 West 4<sup>th</sup> Avenue,  
Vancouver, British Columbia V6K 1R5  
CANADA

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**DECISION 2013 - # 58**

**In the matter of:**

**Progrès Voyages**

IATA Code No. 8727956  
50/51 Rue de l'Arabie Saoudite  
1002 Tunis  
Tunisia  
Represented by its Director, Mr. Raouhda Jery and its legal counsel,  
Mr. Karim Boulaabi

**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 Risk Assessment Manager Africa & Middle East,  
Ms. Diala Halaseh

**The Respondent**

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**I. The Case**

The Applicant sought a Travel Agency Commissioner’s (“TAC”) review of the Respondent’s Notice of Suspension (“NoS”) from the BSP system on Sept. 5, 2013. The reason given for the suspension was <<not having uploaded the financial statements (“FS”) before the dead line>>.

However, the Applicant provided proof of having actually uploaded its FS on time (before June 30, 2013). The problem was that, by mistake, a page of the FS was scanned twice leaving behind the Balance sheet.

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On July 16, 2013 the Applicant was suspended from the BSP at the time that was informed about this detail by the Respondent. That same date, the Applicant uploaded the missing sheet and it was reinstated in to the system the following day (Jul. 17, 2013).

No possible explanation was found by the Applicant as being the cause of this new sudden suspension from the BSP (Sept. 5, 2013); the Applicant was under the belief that the FS matter was solved.

During the course of this review process it was revealed the real cause of the NoS served to the Applicant. It was issued because the Applicant did not submit the requested increase of the bank guarantee ("BG") that it had in place. This increase was based on the results of the Applicant's annual financial evaluation. The current financial standing of the Applicant does not meet the Local Financial Criteria for Tunisia ("LFC")<sup>1</sup>, and thus, an increase in the level of BG had to be requested by the Respondent.

The request for this new BG was sent to the Applicant on July 22, 2013; however, no indication of the grounds for this request was provided by the Respondent to the Applicant. The amount indicated in that notice was, I quote: <<**134,916 TND**>>. It is important to note that, even though the communication requesting the BG increase was drafted in French, the way the amount itself was referred to was in the American/British way of doing so, creating confusion in the Applicant who was certain of having complied by submitting a BG for the amount of 134 Tunisian Dinars with 916 cents the same day that it received the Respondent's request.

According to the non-British/American influenced manner of referring to numbers, the decimal mark used to separate the integer part from the fractional part of a number is the "coma" (,) and the "dot" (.) is the thousands' separator. Therefore, pursuant these parameters, the requested amount when referred to in French<sup>2</sup> should had been expressed: 134.916,00 TND; or, even better to avoid confusions in letters instead of in numbers or in both.

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<sup>1</sup> Proof of this was provided by the Respondent to this Office copying the Applicant.

<sup>2</sup> As well as in many other languages, such as Spanish, Italian, Portuguese



Notwithstanding the above and particularly noticing the fact that those <<134,916 TND>> are indeed a fairly small amount (aprox. US \$ 100) as to be a credible amount for a BG to be requested by IATA, this Commissioner considers that the Applicant should have realized/understood that he was not meant to submit a BG in the region for that amount or, at least, he should have inquired some clarifications from the Respondent in this regard before submitting it.

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

- The Applicant was never informed and actually never knew the real cause of its September suspension from the BSP before reaching the TAC Office;
- The Applicant <<had submitted the BG the same day as it had been requested (4 Sept.); nevertheless, that same day it received the NoS from the Respondent mistakenly stating that it did not upload its FS within the due time, when we thought that that issue had already been solved>>;
- The Applicant was requested to provide a BG of *134TND with 916 cents* and that is what the Applicant did. However, once suspended, the Applicant learnt from the Respondent that the actual amount was *134 thousand 9 hundred 14 Tunisian Dinars*. Neither explanation nor reason was ever provided to the Applicant as of the origin of this amount. The Applicant considers unreasonable the delay that was given to comply with this request;
- The suspension had no valid reasons;
- The Applicant has never been in default nor has ever been late in its BSP's obligations in 21 years. It has being an Accredited Agent since 1992;
- The moral and pecuniary damages that had been suffered by the Applicant are important <<and we esteem them to mount –prior of having an expertise- up the sum of 150 Thousand Tunisian Dinars to this day (9 Sept.)>>.

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

- <<The agent uploaded their FS on the 27th of June, which was before the deadline (30 June 2013)

- On the 15th of July, we received a notification that they have uploaded the incorrect FS (Balance sheet data missing). The agent was suspended.
- The agent was reinstated on the 16th of July, as they have uploaded the correct FS.
- The agent was then suspended on the 5th of September, as they have not provided the increase BG before the deadline, which was on the 4th of September.
- A wrong letter in French was sent to the agent on suspension mentioning that they have been suspended for not uploading their financial accounts before the deadline instead of providing the additional BG.
- The agent is still suspended, as they still have not provided the original increase BG;
- BG requested on the 22nd of July 2013;
- The reason of the increased BG requested, is as per the financial assessment performed results>>.

#### **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 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**

According to the evidence on file in addition to the findings of the case, the following are the facts on which this Commissioner will base her decision, in accordance with Res. 820e, paragraph 2.7, facts that have not been contradicted by either Party:

- The Respondent, when decided to suspend the Applicant on Sept. 5, provided the wrong reasons as grounds for its action. In the NoS it stated that it was due to <<not having uploaded the financial statements within the given time frame>><sup>3</sup>;

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<sup>3</sup> Please note that this has been a free translation made by this Commissioner. The actual sentence being in French, stated as follows: <<vous n'avez pas téléchargé vos états financiers avant le dernier délai>>.





- Due to a misunderstanding in the expressed value amount of the BG, the Applicant submitted the next day of having received the Respondent's communication the BG for a lesser amount than the one intended to be requested by IATA on its Notice dated July 22, 2013;
- At no time, before reaching this Office, was an explanation or a clarification provided by the Respondent to the Applicant in regards to: (i) the erroneous grounds for having been served with an NoS; nor (ii) the proper amount of the requested BG; nor (iii) the reasons behind the request to increase the BG that the Applicant had already in place;
- Despite the referred misunderstandings and mistakes, it is worth to note that in the two occasions where actions were demanded from the Applicant, it immediately responded (namely: by uploading the missing sheet the same day it was informed about it; and, by submitting the next day of having received the BG request the new increased one), so it is evident that the Applicant has had no intentions of non-compliance with the applicable rules;
- The erroneous information contained in the referred communications cannot be attributable to the Applicant; he had no control over them. Both communications were sent by the Respondent and, therefore, this Commissioner considers that:
  - Even though there is no question about the non-compliance of the Applicant's FS with the LFC, as clearly demonstrated by the Respondent during this review process, the delay in the Applicant's submission of the requested increase in its current level of BG is, considering the mistakes involved in its requesting process, excusable;
  - Based on those facts, the Notice of Irregularity imposed on the Applicant's records should be removed.

It is worth to underline that this Commissioner found no grounds for the Respondent's first suspension action against the Applicant for not having uploaded all the proper

documents of its FS. Best of this Commissioner's knowledge, there is no provision in the applicable Resolutions that would contemplate such a sanction for the mishap committed by the Applicant. Indeed, Res. 818g, paragraph 2.2 does not mention any suspension action in situation of the like; on the contrary, it states a particular time frame for the Agent to comply and only once that time frame would have elapsed and the Agent would have NOT complied, then a suspension action is contemplated.

## **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 Applicant is to provide the increase of the BG in the terms that have been calculated by the Respondent (*id est*, up to the amount of *One Hundred Thirty Four Thousand Nine Hundred Sixteen Tunisian Dinars*) in order to comply with the Local Financial Criteria;
- The Applicant is hereby granted until December 6, 2013 to submit the referred BG;
- Once the BG had been submitted and subject to its evaluation by the Respondent, the Applicant re-instatement in to the BSP system must take place at no delay;
- The Notice of Suspension served against the Applicant, as well as the Notice of Irregularity must be expunged from the Applicant's records.

Decided in Vancouver, the 6<sup>th</sup> day of November 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 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.

