

**TRAVEL AGENCY COMMISSIONER - AREA 1 (DEPUTY TAC 2)**

*VERÓNICA PACHECO-SANFUENTES*

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Vancouver, British Columbia V6K 1R5  
CANADA

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**DECISION 2013 - # 60**

**In the matter of:**

**Alba Travel Service, Agence de Voyages et de Tourisme**  
IATA Code No. 85-2 09972  
321, Avenue Nicolas Grunitzky  
O7 B.P: 12125, Lomé-Togo  
Represented by its General Manager, Mr. Raoul Marc Symenouh

**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 Accreditation Manager Africa & Middle East,  
Ms. Ruba Al-Sharif

**The Respondent**

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**I. The Case**

The Applicant sought a Travel Agency Commissioner’s review of the Respondent’s Notice of Irregularity (“NoI”) served on September 18, 2013 as well as a Default Notice (“NoD”) issued on September 20, 2013, which lead to the Applicant’s suspension from the BSP system, allegedly due to non-payment of the Sept. 17, 2013 BSP Billing Statement for the amount of XOF 78,977,928.

On September 19, 2013 in order to explain what it seemed to have been a “late payment” and to avoid its withdrawal from the BSP, the Applicant submitted to the Respondent a

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letter from its Bank, which clearly stated the following:

- The full amount of the BSP Report was withdrawn from the Applicant's bank account the due date (meaning Sept. 17), being also **accredited in to IATA's bank account with value of that same date** (Sept. 17);
- The date's disparity was <<due to the fact that IATA account number on the swift is the old format what has not allowed an automatic processing of the request on 2013/09/17. Ecobank Togo has then to process manually the transaction on 2013/09/18 **keeping the value date of 2013/09/17**>>;
- Furthermore the bank even indicated to the Respondent <<To avoid any such situation in the future, we would encourage you to communicate to all your customers the update nomenclature of IATA BSPCWA account number as follows: .....>>.

Disregarding this Bank letter the Applicant was suspended from the BSP system.

Once the Applicant complied with the reinstatement requirements that were demanded from the Respondent, which in this case was paying the <<subsequent billing = XOF 78,977,928>> that was not yet due, the Applicant was reinstated on Oct. 1, 2013.

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

<<On September 17, 2013 Alba Travel Service with IATA code number 85209972 has paid the amount of XOF 78,977,928 on ... account IATA BSPCWA at Ecobank Togo in settlement of August 2013 invoice N° 3088520997;

- Surprisingly, we received a mail from IATA urging us to produce evidence of availability of necessary funds on the said account by September 17, 2013;
- We then approached Ecobank who informed us that it was only on September 18, 2013 that the payment was processed for reasons still unknown to us as it was on the same account with the same references we are holding from IATA that we had done all past payments;

- Despite Ecobank sending directly to IATA and our own selves an explanatory letter, the credit advice in date of September 17, 2013 and a copy of the swift, our company got disconnected from the BSP;
- Many contradictory mails have been sent to us by IATA amongst which one summoning us to pay the amount of XOF 40,911,651 as a part-payment from our September 2013 invoice>> as a condition for re-instatement;
- <<We are just a victim and we were unable to work since Sept. 18, 2013. That is why we accepted to pay in advance the September invoice of XOF 40.911.651>> in order to get our ticketing capacity back.

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

Quoting the Respondent:

<<-Remittance date: 17/09/2013

Amount: XOF 78,977,928.00

Date of NoI that led to technical Default: 18/09/2013

Date of Technical Default: 18/09/2013

Agent provided Bank letter on 19/09/2013 saying that they remitted amount on time but because IATA account number was in wrong format it could not be processed automatically and got processed manually on the 18/09/2013. Default withdrawal rejected because IATA account number provided to the bank by the agent is not valid>>

<<- Reinstatement requirements sent to agent on 19/09/2013:

1. Outstanding amount = XOF 78,977,928
2. Subsequent billing = XOF 40,911,651
3. No BG increase was requested

Technical default turned to non-payment default on 20/09/2013.

The agent complied with all reinstatement requirements and has been reinstated>>.

### **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**

Section 1.7.4 of Resolution 818g, Attachment “A” determines the conditions that have to be met for a delay in payment to be considered as excusable due to bank processes or mistakes.

In light of the findings of the case, based on the evidence that has been provided by the Parties, particularly the Bank letter dated September 19, 2013, even though we are not in a situation of a bank error, since IATA/BSP Bank account was credited with the Applicant’s funds at a value date of Sept. 17, and hence it is unquestionable that the Applicant not only made the payment on time but that it actually had the funds available for that purpose, the requirements numbered in paragraph 1.7.4.3 of Res. 818g, Attachment “A”, concerning the bank letter stating the facts of the case and certainly explaining the cause of the “apparent” delay in receiving the funds, were definitively met by the Applicant.

Even if we consider valid the reason provided by the Respondent when indicated that it was the Agent who provided a <<not valid>> account number to the Bank, contradicting what the Respondent’s Bank itself had stated in its letter, the fact of the matter is that the Respondent was credited with the full amount of the outstanding remittance the date that those funds should had been there, therefore, for this Commissioner that is a more than reasonable ground not only to have avoided the Agent’s drastic suspension from the BSP system, but certainly to remove from its records the NoI and the NoD that have been inflicted on the Applicant. At no moment in time was the Applicant not complying with the applicable Resolutions nor were the Member Airlines’ monies at risk as a consequence of the narrated situation.

## 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 Respondent did not followed correct procedure since the Bank letter provided by the Applicant after been served with the NoI, should had been considered as reasonable grounds [as per Res. 818g, Attachment “A”, paragraph 1.7.4.3, specifically sub-paragraphs (iii) and (iv)], for the Respondent to avoid issuing the NoD and the Default Actions taken against the Applicant; consequently,
- The NoI and the NoD should be expunged from the Applicant’s records;
- The Applicant’s temporary re-instatement should become permanent.

Decided in Vancouver, the 20<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.