

TRAVEL AGENCY COMMISSIONER
AREA 1 – DEPUTY TAC 2
VERÓNICA PACHECO-SANFUENTES
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CANADA

DECISION 2014 - # 4

In the matter of:

Aman Voyages SARL
IATA Code 20-2 5794 1 and 20-2 6129 0
124 rue Henri Barbusse
95100 Argenteuil, France
Represented by its Director, Mr. Ahmed Benhebri

The Applicant

vs.

International Air Transport Association (“IATA”)
Torre Europa
Paseo de la Castellana, número 95
28046 Madrid, Spain
Represented by Ms. Olena Dovgan, Europe Manager
Accreditation

The Respondent

I. The Case

On February 19, 2014 the Applicant sought a Travel Agency Commissioner’s review of the Respondent’s Notice of Default served on February 18, 2014, due to an accumulation of Irregularities during the last twelve consecutives months. On that same date the Applicant was suspended from the BSP system.

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The first Notice of Irregularity (“NoI”) had been served to the Applicant on November 8, 2013 due to a short remittance of € 24,427. This short payment was settled immediately upon receipt of the NoI. The second NoI was served on Feb. 18, 2014 due to a short payment of € 100 made in error by the Applicant out of a total remittance of € 33,470.55. This shortfall of € 100 was covered by the Applicant the same day (Feb. 18, 2014), prior to receiving from the Respondent the reinstatement requirements’ notice. In other words, the Applicant fully complied with the time frame given by the NoI.

As a result of this second NoI the Agent was placed in Default, suspended from the BSP system, and, on Feb. 19, 2014 informed about the reinstatement requirements which implied, other than paying the outstanding amounts and the non due yet amounts as well, which the Applicant in fact paid right away¹, the submission of a bank guarantee (“BG”) for the amount of € 109,000.

It is worth noting that the Applicant, upon receipt of the Respondent’s notice with the reinstatement requirements settled not only the sum of € 76,124.78 that was requested by IATA through the referred communication, but the Applicant paid the amount of € 82,609.75 corresponding to:

- The sum of € 43,141.90 for the first period of February (IATA codes 20-2 5794 and 20-2 6129); and,
- The sum of € 39,467.85 for the second period of February (IATA codes 20-2 5794 and 20-2 6129).

The Applicant did not pay the third period of February since at the time of its submissions to this Office it had not received the invoice from the Respondent. However, it declared that the amount was for € 19,847.66 and that it was going to pay that sum on Feb. 28, 2014, even though the due date was March 10, 2014 in accordance with the BSP calendar.

¹ Proof of payment made on Feb. 19, 2014 was sent to this Office, copying IATA.

II. The Applicant's arguments in summary

At first, the Applicant thought that the <<accumulation of irregularities>> was due to a first NoI erroneously issued by the Respondent since it was due to a demonstrated Bank error that had occurred in January and, hence, not attributable to the Applicant.

Nevertheless, over the course of this review process, the matter was clarified and the Applicant understood that the accumulation was due to a first NoI issued back in November 2013 and that the above mentioned documented and proven Bank error was processed by the Respondent as such, and, thus no NoI was raised in connection with that issue during 2014.

As to the second NoI the Applicant had, understandably, difficulty in realising that due to an error in calculation of merely € 100 amended the same exact date that it was brought to the Applicant's attention, was counted as a second NoI and actually was the ultimate cause triggering all the Default Actions against it, especially considering that the Respondent had –and still does have- in its possession a valid BG for the amount of € 35,000, after having released in the Applicant's favour a former BG for the amount of € 130,000.

The Applicant has been an Accredited Agent since 1969 (so for more than 45 years!) and has always honoured its obligations. The Applicant is also a member of a highly regarded network called "Tourcom", where the Respondent could acquire references regarding the Applicant's soundness if need be.

III. The Respondent's arguments in summary

<<Short payment of € 100 has been received on 18 February, after remittance date which was 17 February. But since the Agent accumulated 4 Instances of Irregularity during 12 consecutive months IATA must proceed in accordance with the applicable requirements set out in Resolutions, namely as per IATA Resolution 818g,

Attachment 'A' -Section 1, paragraph 1.7.5.2- in case of accumulation of 4 Irregularities during 12 consecutive the Agents should be placed under Default...; IATA's actions were performed in full compliance with Resolutions mentioned above>>;

When presented by this Commissioner with an alternative possibility to follow, also found in the applicable Resolutions, the Respondent answered as follows:

<<With the reference to Resolution 818g, Section 2.6 –we believe there is no conflict as here the Resolution talks about two separate provisions:

- failure to comply with any of qualifications or requirements listed in the Resolutions
- failure to meet the reporting and remittance requirements

Irregularity and Default actions are described in Resolution 818g, Attachment 'A'- Section 1. Reporting and Remitting.

Therefore our default action against the Agent was applied in full compliance with Resolutions mentioned above as the Agent failed to meet remittance requirements>>.

IV. Oral Hearing

Pursuant Paragraph 2.3 of Resolution 820e and Rule #14 of the Rules of Practice and Procedures, this Commissioner, acting upon both Parties' agreement 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.

VI. Considerations leading to Decision

Indeed, as it has been stated by the Respondent, Res. 818g, Attachment "A", paragraph 1.7.5.2, does indicate the course of action for IATA to follow when faced with situations of accumulation of Irregularities as in this case.

Nevertheless, considering the minimal amount of money –compared with the total amount due- by which the Applicant was short when honouring its latest remittance,

in addition to the fact that this shortfall was immediately covered by the Applicant once it was made aware of, this Commissioner deems appropriate under the circumstances to analyse two different aspects of the applicable Resolutions that had not been applied by the Respondent:

1) Resolution 818g² states in Section 2.6 <<in the event an Agent fails to comply with any of the requirements ... listed in the Passenger Sales Agency Rules ... suspension action may be taken in accordance with Section 13 of these rules>>, and, Res. 818g in the referred Section 13 Paragraph 13.3 not only establishes a course of action when an Agent is to be suspended from the BSP but also determines a specific time frame for the sanction (suspension) to take place, given the Agent a margin <<no earlier than 15 days after the date of the notice>> to explain its situation and/or to comply with the missing requirement;

Therefore, if we apply the said provisions to this case, BEFORE SUSPENDING the Applicant from the BSP, the Respondent should have given time for the Applicant to demonstrate that it had actually paid the € 100, avoiding all the inconveniences and the damaging consequences of a suspension for the amount of € 100 out of a remittance of € 33,470.55.

When given the opportunity to comment on this potential course of action, the Respondent submitted the following observation:

<<we believe there is no conflict as here the Resolution talks about two separate provisions:

- failure to comply with any of the qualifications or **requirements** listed in the Resolutions³
- failure to meet the reporting and remittance **requirements**⁴>>
(This Commissioner's highlighting)

² Which has a **higher ranking** than its Attachments, in this case the Attachment "A" above mentioned, pursuant the recently adopted Res. 010, in effect since Jan. 1, 2014

³ Reference is made to Section 2.6

⁴ Reference is made to Res. 818g, Attachment "A" Section 1

This Commissioner dissents from the Respondent's views since for her the language used in the Resolution text (namely, Res. 818g Section 2.6) is crystal clear, since it includes both situations, *id est*, not only an Agent's *qualifications* (which seems to be the Respondent's interpretation of the provision in question) but also any **requirement** <<listed in the Passenger Sales Agency Rules or with any of the terms of the Passenger Sales Agency Agreement>>. Furthermore, the provision expressly states, and I quote: <<In situations where an Agent fails to meet the **requirements of the reporting and remittance** rules...>>, which are precisely the requirements that have been questioned by the Respondent. Consequently, there is no doubt that those types of "**requirements**" are definitely included in the condition enshrined in Res. 818g, Section 2.6.

2) Furthermore, considering that at no time were Member Airlines' monies at risk, since an error in calculation of € 100 out of a total remittance of € 33,470.55 -immediately settled- cannot reasonably be considered as a "risk", IATA had indeed the alternative of taking a different course of action other than the suspension (by applying Res. 818g, Attachment "A", paragraph 1.7.5.2 -as it did-), but by applying Res. 818g, Section 13.3, where a **reprimand** could have been served on the Applicant, encouraging it to be more thorough when calculating the amount to be settled without the need for suspending it from the BSP and avoiding the rest of the Default actions that unfolded thereafter.

VII. Decision

Having carefully reviewed all the evidence and arguments submitted by the Parties in connection with this case,

Having analysed the applicable Resolutions,

It is hereby decided as follows:

- As per Resolution 818g, Section 13.4.3 a Reprimand Notice should be served by the Respondent on the Applicant encouraging it to be more rigorous when doing its remittances in order to avoid this type of situations in the future;

- The Notice of Irregularity/Notice of Default that was served to the Applicant on February 18, 2014 must be expunged from the Applicant's records;
- The Applicant must be reinstated promptly in to the BSP system without the need of having to provide any other Bank Guarantee (different from the valid one that it has already in place), provided all outstanding monies would have been settled by the Applicant at the time of the reinstatement.

Decided in Vancouver, this 18th day of March, 2014



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 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.

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 above mentioned period for interpretation/corrections would have expired.