

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

DECISION 2015

In the matter of:

Centre Point Travel Agency
IATA Code 59-2 4247
Nigeria
Represented by its Managing Director, Mr. Olajide Sarayi

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 Assistant Manager & Deputy Manager
Agency Management Africa & Middle East, Ms. Christine
Hazboun

The Respondent

I. The Case

The Applicant sought a review of the Respondent’s termination, which took place more than a year ago, due to a non-submission of the Applicant’s Financial Statements (“FS”).

This Commissioner allowed the review based on the extraordinary circumstances that were proved during the course of this process by the Applicant and accepted by the Respondent.

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II. The Applicants’ arguments in summary

Facts of the case from the Applicant's perspective:

- The Applicant's Managing Director had a fatal car accident in January 2014, which led to a prolonged hospitalisation and, consequently, an absence from the daily business activity of the Agency during critical moments;
- The Managing Director was not able to <<... read the several reminders that were sent from IATA and take action, as I was battling for my life>>;
- The member staff that was <<supposed to take action while these difficult times did not perform;
- Necessary actions were taken on that serious laxity by terminating the services of the concerned staff;
- The Applicant has tried to operate all the years in accordance with the rules without default;
- The Applicant does not claim to be without faults but was not due to negligence, but to circumstances beyond my control>>;
- The Applicant promises <<to be more careful in the future>>.

III. The Respondent's arguments in summary

Chronology of events according to the Respondent¹:

1. <<The Applicant's financial year end is in December and submission deadline for FS is June;
2. IATA has requested the Agent to upload the 2014 FS on 5/22/2014 by the deadline of 30 June 2014;
3. The Agent was sent reminders to upload on the following dates 6/2/2014, 6/10/2014, 6/16/2014, 8/21/2014, 8/28/2014,

¹ Not contradicted by the Applicant

9/2/2014, 9/3/2014, 10/17/2014, 10/24/2014, 10/29/2014, and 10/30/2014;

4. Accordingly we raised the below non compliances:
 - First non-compliance on 8/4/2014 and, accordingly, the Agent was served with a Notice of Irregularity (“NoI”), and given extra 30 days to comply;
 - Second non-compliance on 9/5/2014 where the Agent was served with a Notice of Termination (“NoT”) to take effect on 10/31/2014;
 - Third non-compliance on 11/13/2014 where the Agent was terminated
5. The Agent was terminated for failure to upload the FS on 13 November 2014, more than a year ago, therefore, the Agent has exceeded the 30 days permitted time to initiate a review by the TAC commissioner>>.

IV. Oral Hearing

Pursuant Paragraph 2.3 of Resolution 820e, this Commissioner has decided to base her decision on the written submissions that have been filed by both Parties only, since both of them have presented their arguments and evidence deeply enough as to render unnecessary any oral hearing without jeopardizing their procedural rights. Both Parties have agreed.

III. Considerations leading to Decision

After a thorough analysis of the particular circumstances of this case in light of the evidence that was provided, this Office concludes the following:

1. ***Admission of the request for review:***

As of the time elapsed between the NoT and the actions seeking a Travel Agency Commissioner's review undertaken by the Applicant, which clearly exceeded the 30 day time period enshrined in Resolution 820e, Paragraph 1.2.2.1, according to **Rule No. 2.2(i)** of the Rules of Practice and Procedures, norms created in accordance with Section 2 of Resolution 820e, it is evident for this Office that the circumstances that impeded the Applicant to seek an earlier review were far beyond his control and ability to perform, therefore, the requested review was allowed.

This Office was satisfied with the evidence provided by the Applicant, demonstrating his inability to look after his business properly, not only limited to the term that the Managing Director/owner was hospitalized (from January to May 2014), but also during the months that followed his discharge from hospital, since he was still under weekly follow-ups and in fairly weak health conditions until recently when he was able to contact this Office.

It is also important to point out that the Applicant during all the time that was unable to take care of business was under the false impression that the member staff supposedly in charge of uploading the FS of the Agency had done his job, when regrettably the reality showed that he did not fulfill his obligations leading the Applicant's towards its current situation.

Based on the Balance of Probability's theory, from this Commissioner's perspective, the Applicant could not have foreseen this circumstance, which is the reason why he did not take any prior actions. All these factors were beyond the Applicant's reasonable control and awareness. Furthermore, this Commissioner sees no logic in assuming that an Agent will risk its livelihood by purposely not uploading its FS, an activity that Agents are fully aware of and that they are bound to comply with every year.

2. Core of the matter:

- The Respondent has acted in accordance with the applicable Resolutions. In all fairness, the Respondent has to be praised in this case for its continuous efforts to get in contact with the Applicant by sending him not one but several reminders during a 5 months period in order for the Applicant to upload its FS before terminating its Passenger Sales Agency Agreement in November 13, 2014;
- On the other hand, there is no doubt about the Applicant's inability to respond to those reminders due to the life threatening condition of the Managing Director/owner's health. However, it has also been noted that it was the responsibility of an Applicant's member staff to attend to these matters while the owner was temporarily out of the office; circumstance that the owner did not know until his life condition improved and he was able to get back in to business.

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:

- The Respondent acted in accordance with the applicable Resolutions, and hence, the NoI served against the Applicant stands;
- Nevertheless, it is clear that the scenario that impeded the Applicant to comply with its obligation as an Accredited Agent falls in to a *force majeure* case, in accordance with Resolution 818g, Section 13.9, and, hence, the delay in responding to the various reminders to comply, once the NoI had been served, should be considered as <<an "*Excusable*

Delay">>, therefore, the NoT must be removed from the Applicant's records;

- The Applicant has to upload its FS as soon as possible and no later than **August 27, 2015**. Once those FS would have been properly assessed by the Respondent, the Applicant should be reinstated in to the BSP system, provided its FS would have been found satisfactory, in accordance with the Local Financial Criteria applicable to Nigeria.

Decided in Vancouver, the 27th day of July of 2015

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.