

**TRAVEL AGENCY COMMISSIONER**  
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*VERÓNICA PACHECO-SANFUENTES*  
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Vancouver, British Columbia V6K 1R5  
CANADA

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**DECISION 2015**

**In the matter of:**

**Sullivans Ltd.**

IATA Code 50-2 7953  
Oakhill, Old College Street  
Sliema SLM 1378  
Malta

Represented by its Directors, Mr. Edward and Bryan  
Sullivan

**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**

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**I. The Case**

The Applicant sought the review of the Respondent’s Notice of Default dated July 31<sup>st</sup>, 2015 due to an accumulation of irregularities, triggered by a lack of timely remittance of the latest BSP Sales’ Report. A previous Notice of Irregularity (“NoI”) had also been served against the Applicant caused by a belated remittance due to a "*genuine mistake*" when reading the Agent's BSP calendar.

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The Applicant had been an Accredited Agent for 25 years, claiming having had only these "*human errors*" recently and is seeking a prompt reinstatement in to the BSP system. Proof of payment has been provided, corresponding the outstanding amount of EUR 16,874.72, as per the Billing Report.

During the course of this review process interim relief was granted and considering that no monies were outstanding, since the Applicant had not only paid the BSP Sales Report in full, but also the sales which settlement was not yet due, in accordance with the BSP Calendar for Malta, this Commissioner did not deem necessary to request the submission of any financial security, as allowed by Resolution 820e, Sub-Section 1.2.2.4 (final paragraph). Nevertheless, the temporary reinstatement was not executed by the Respondent, since in the meantime this Office rendered a final decision, making unnecessary any temporary relief.

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

In the Applicant's words:

- <<I am so very sorry for this irregularity, honestly, we assumed that the payment was due 31<sup>st</sup> July, and not 30<sup>th</sup> July;
- It was a genuine human mistake;
- The funds for the amount of EUR 16,874.72 were deposited in the BSP account this morning<sup>1</sup>;
- We regularly pay the BSP every two weeks, always on due date;
- We have been IATA for 25 years and we never had any major issues>>

On further submissions, the Applicant explained the reasons for the one (1) day belated payment, in the following terms:

- <<... our shortcoming was completely genuine and stemmed from our Office being very temporarily short staffed due to the demise of Edward

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<sup>1</sup> Referring to July 31<sup>st</sup>

Sullivan's mother-in-law who also was our other travel consultant, Nicholas Sullivan's, grandmother. This put the burden of work and specifically the mandatory BSP payment on the overworked shoulders of Ms. Claudia Micallef who wrongly assumed payment being due on the last day of the month. One point we would like to make is that paying the BSP bi-weekly is a choice, which we voluntarily made in lieu of paying at the end of each month. Had we opted for the end of month payment on 31<sup>st</sup> July no default would have arisen>>.

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

I quote:

- <<The BSP payments should be always executed as per BSP Calendar and it should be always available for the Agent to perform remittance. For this purpose it is published on IATA Customer Portal and every Agent has access to it;
- The first case of irregularities took place on 16 December 2014, the Agent delayed the payment for 2<sup>nd</sup> period of November 2015, the remittance date was 15 December 2014, the Agent did not pay complete amount, two instances of irregularity were recorded;
- The second one took place on 31 July 2015, 1<sup>st</sup> period of July 2015, the remittance date was 30 July 2015, the Agent did not pay complete amount, two instances of irregularity were recorded;
- Since the Agent accumulated 4 irregularities the default action was taken in accordance with IATA Resolution 818g, Attachment 'A', Section 1.7.5, Paragraph 1.7.5.2>>.

On further submissions, the Respondent claimed that the Agent did <<*not have an impeccable record*>>, since it was indeed served with three prior Notices of Irregularities ("NoI") (dated Dec. 3, 1993; March 1, 2011 and Dec. 2, 2013) during its 25 years operating as Accredited Agent.

#### **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**

Based on the facts of the case and the evidence on file, herewith are my conclusions:

- The Applicant has been an accredited Agent for the past 25 years, having been served with three prior NoIs since 1992, that were due to a day or two in late remittances <<*which were never intended or planned*>>, yet were the <<*result of human errors*>>;
- During the course of this review process, it surfaced that the Applicant had a previous NoI due to an oversight of the adequate calendar back in December 2014. It is worth noting that it is not the first time that this type of situations comes to this Office's attention and it seems that no Agent is exempt from committing this simple human error, yet with drastic consequences in the long run;
- Once this mistake was realised, the Applicant immediately settled the proper amount, which from this Office's perspective, reveals a clear intention to abide by the applicable rules and to upset the fault committed. Other would have been the appreciation of this fact if the Applicant would had been reluctant to comply or would have not had sufficient funds to honour its obligation;
- However, this Office observes that this first NoI was rightfully served by the Respondent, since indeed the payment was made one (1) day late.

- As of the second NoI, it was also a human error that occurred in the midst of extraneous and pressing circumstances, such as the death of a family member that briefly and momentarily altered the course of regular business at the Applicant's organization, having the travel consultant Ms. Micallef to step in and make the BSP payment, instead of the Director, Mr. E. Sullivan, who often takes care of this part of the business. Those circumstances were in that precise moment in time beyond the Applicant's control and certainly not the lack of its reasonable diligence. Once again, as soon as the Applicant was made aware of the referred mishap and the lack of payment on due date (paying on July 31<sup>st</sup> instead of July 30<sup>th</sup>, which, worthy to say, it is quite understandable that payment was due the last day of the month instead of one day before its end!), the Applicant took immediate steps to repair this fault and made an immediate settlement of the amounts that were owed to Member Airlines;
- Due to the existence of the previous NoI no Minor Error Rule could be applied in this case by the Respondent, nor ordered by this Office.

Considering that this formal decision has been rendered at this time, there is no need for the Respondent to execute the Interim Decision that was rendered by this Office on August 1, 2015 and temporary reinstate the Applicant.

As of the execution of this decision, I hereby request the Applicant to provide proof of having had sufficient funds in its Bank account a day before due date (meaning by July 29<sup>th</sup>, 2015) in order to demonstrate that it was clearly a human error issue and in no way a manner of purposely ignore a mandatory time frame to comply. Once this proof would have been submitted by the Applicant, the Respondent **must reinstate the Applicant in full** in to the BSP system with its status prior suspension **fully restored**.

Lastly, considering the various occasions where human errors were commitment by the Applicant when settling the BSP Sales Report in the past, this

Commissioner emphatically encourages the Applicant to put in place strong measures for these types of incidents not to happen again in the future, ensuring that its obligations as Accredited Agent are complied with in a timely fashion.

It is an Agent's responsibility to implement adequate measures aimed at guaranteeing its compliance with the applicable Resolutions, whatever kind of measures they might be.

## 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 second NoI was served by the Respondent in accordance with the applicable rules, since pursuant the BSP Calendar applicable in Malta the Applicant had indeed to pay on the 30<sup>th</sup> of July instead of the 31<sup>st</sup>. However, according to Section 13.9 of Resolution 818g, this Commissioner finds that the referred one (1) day delay in settling the amounts due, in light of the circumstances that surrounded that fact in that precise moment, can be considered as an <<***Excusable Delay***>>, in accordance with the terms stated in the above mentioned Resolution; therefore, this NoI is to be **expunged from the Agent's records** and, consequently, no bank guarantee should be required from the Agent.

Nota Bene: the Applicant did provide proof of having had sufficient funds available to cover the remittance in full, therefore, its reinstatement became permanent.

Decided in Vancouver, the 5<sup>th</sup> day of August 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.