

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

DECISION – July 10, 2017

In the matter of:

Vatis Travel Services SARL

IATA Code 10-2 1047 6

Rue de la Chambre de Commerce

BP 4849 Douala

Cameroun

Represented by its General Manager, Ms. Marie-Paule Niat

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 - Agency Management,
Africa & Middle East, Ms. Sandra Pommier

The Respondent

I. THE CASE

Initially, the Applicant voluntarily requested the Respondent to increase its own bank guarantee ("BG"), in order to provide an extra layer of financial security to BSP Participating Airlines for its operation, considering that it was a new Agent. Without any explanation, this request was ignored by the Respondent. Months later, due to a rise in the Applicant's level of cash sales, such an increase was requested by the Respondent. The calculation of this BG increase is the subject of this review process.

Despite objecting the calculation, the Applicant was doing the needful to comply with it. However, the Applicant requested an extension of the time frame to provide it, due to its bank's time constraints. In support of its request, the Applicant provided a formal bank letter, where the institution indicated that even though it had received the

request from the Applicant in a timely fashion, meaning as soon as the Applicant itself was notified by the Respondent, the Bank required more time than the originally allowed to process it, in accordance with their internal procedures and regulations. In addition to that, the Applicant pointed out various statutory holidays that happen to be in May in Cameroun, making even harder to get its Bank to issue the BG on time (fact that could have been easily confirmed by the Respondent).

Nonetheless, such request was denied by the Respondent and the Applicant was suspended from the BSP system. The Applicant sought a review of the Respondent's actions.

After having examined the compelling evidence submitted by the Applicant, and after having allowed the Respondent an opportunity to prove against such evidence, this Commissioner granted interim relief. The Applicant was temporarily reinstated.

II. BACKGROUND

Several issues were subject to review in this case; some of them were solved and clarified to the Parties, such as, per example:

- the regrettable fact that as per Resolution 010, an Agent might be in full compliance with the Local Financial Criteria ("LFC") applicable to its country, and, yet, the generic standards prescribed in Resolution 80of and 80of "A" would prevail in case of a conflict between the two sets of provisions;
- the fact that even though Resolution 818g, s. 2.2 and Resolution 80of "A", s. 3 stipulate the prerogative for the Respondent to undertake financial reviews of any Accredited Agent at any time (called "*interim financial reviews*"), this discretionary power is not arbitrary. Such interim reviews have to be conducted <<*for cause*>>¹, and such cause, reason or motifs have to be properly communicated to Agents before subjecting them to this extraordinary financial evaluation. In this case, upon this Office's request, the Respondent provided an explanation of the reasons behind its demand for the Applicant to increase the initial financial security that it had in place. The reason was a considerable increase in the Applicant's cash sales' level;

Some other issues are still the object of disagreement between the Parties. The main, and most important one for this review process pertains the **method** used by the Respondent when calculating the BG increase demanded from the Applicant.

The Respondent has insisted in indicating that it has based its calculation in **s. 2.2.1.2** of Resolution 818g. Conversely, the Applicant has argued that the parameters established in the LFC for Cameroun are applicable in this case, or, alternatively, that the method to calculate its BG is the one established in Resolution 80of "A", s. 4.3.2, in accordance with the definition of "sales at risk" stated in Resolution 866.

¹ Resolution 818g s. 2.2.1.2 and Resolution 80of "A", s.3.1

In various occasions this Office requested the Respondent to substantiate its BG's calculation by clearly stating the rule that it was using to arrive to such a sum. The Respondent failed to provide any further explanation other than reiterating the referred provision of Resolution 818g, and that the LFC for Central & West Africa (Cameroun), was not the rule to be applied in this case, based on the supposed hierarchy of sources determined by Resolution 010.

Having considered both Parties' submissions in light of the applicable Resolutions, below are my conclusions:

III. CONSIDERATIONS/DECISION

For clarity sake, I deem important to start by alluding to an essential distinction that is necessary to bear in mind when analysing this case:

- On one hand, there is the unquestionable Respondent's prerogative, as indicated *supra*, of undertaking interim/random financial reviews of Agents, whenever a cause (pursuant Resolution 818g s. 2.2.1.2) will justify such extraordinary review. In that circumstance, as prescribed in the referred rule, the outcome of the review might be an adjusted financial security that <<*may go beyond the established LFC*>>. In this scenario, there is no doubt that the application of Resolution 818g, s.2.2.1.2, prevails over any LFC.
- On the other hand, there is the issue pertaining the **method** used by the Respondent when estimating the financial security amount, as a result of this interim financial review.

(a) Application of Resolution 818g, s.2.2.1.2:

Contrary to what the Respondent has argued, there is no support in Resolution 818g, s. 2.2.1.2 for the Respondent to have based its calculation of the requested BG. The reason for this finding is very simple: such provision does **NOT** contain any **method** for calculating any financial security whatsoever. The referred provision only states the possibility for the Respondent to require from an Agent an adjustment in its BG at any given time, to ensure appropriate and sufficient coverage of the sales at risk.

The Respondent despite the various opportunities given by this Office, could not substantiate from where it was taken a <<*35 days period*>> of supposed sales at risk (meaning, the sales of only 1 month, which, by the way, was the one with the highest volume of sales), in order to estimate the sum to be guaranteed by the Applicant. Such number is nowhere to be found in the referred provision.

(b) Application of Resolution 80of and 80of, Appendix "A", s. 4.3.2

In principle these two Resolutions were considered to be applicable in this case. However, a deeper and meticulous study of them revealed that actually they should not be applied either; since, even though s. 4.3.2 of Resolution 80of "A" does indeed have a method to determine the financial security, the preamble of Resolution 80of clearly states that those provisions are to be applied ONLY in cases where:

- (i) <<a market may have not developed its own LFC>>; or,
- (ii) where a LFC in <<a particular market may raise financial concerns>>>,

in such situations, the rules stated in <<Appendix 'A' shall be taken into account as a best practice for the establishment and/or review of the Local Financial Criteria in markets where existing Local Financial Criteria raise substantiated concerns>>.

Consequently, considering that Cameroun, being part of Central and West Africa group of countries, has a fairly defined, and even recently confirmed (in the latest Travel Agent's Handbook effective as of June 2017) Local Financial Criteria, which has its own **method** to calculate any required BG, these Resolutions' text should be discarded.

(c) Application of the Central and West Africa LFC

The method to calculate a BG is determined in **s. 2.1.1 of Cameroun's LFC**, as follows:

<<2.1.1. Amount of guarantee required for a new agency

... The amount of the guarantee is calculated on the basis of the estimated turnover (volume of BSP sales) provided by the accreditation candidate in respect of the first year of activity.

Two concepts will be important for determining the amount of the guarantee:

- the number of sales days at risk*
- the risk amount*

- 1. The number of "sales days at risk" is counted from the 1st day of sales to the date of settlement, plus 5 days*
- 2. The "risk amount" is the result obtained above, divided by 360 days, then multiplied by the annual estimated volume of BSP cash sales constituting the "risk amount".*

The amount of the guarantee shall be equal to the "risk amount". Please note:

- When applying the above formula, the **IATA office will undertake a review of the guarantee any time after the first 3 months of BSP activity, on the basis of the real BSP cash sales volume for***

the past months. The amount of the guarantee required shall then be raised if it appears to be insufficient to cover the "risk amount".

- ***Subsequently, the "risk amount" is to be calculated by using the average annual cash sales for the past 12 months. The amount of the guarantee required shall be readjusted by the BSP office if necessary***>> (this Office's emphasis)

Further more, the LFC goes on to clearly state, I quote:

<<2.3 *Mandatory adjustment of Travel Agencies bank guarantee*

When over a period of 6 months an agent records a sustained increase of over 20% of its monthly sales, an automatic adjustment of its bank guarantee shall be requested by IATA by applying the same rate of such increase to its available bank guarantee>> (this Office's emphasis)

Based on the above, it is hereby decided as follows:

- The BG request stated in the Respondent's notice to the Applicant dated June 6, 2017 is voided and, therefore, it has to be removed from the Applicant's records;
- The Respondent is mandated to make a new calculation of the BG that needs to be requested from the Applicant, considering the increase of more than 20% of its cash sales' level, in accordance with the method and rules established in Central and West Africa LFC;
- Once such calculation would have been made, the Applicant must be duly notified and a new term of 30 days shall be granted for its submission;
- Once such BG would have been submitted by the Applicant, its temporary reinstatement will become permanent;
- Until such a date, the Applicant's *status quo* as being temporarily reinstated in to the BSP system **will remain unchanged.**
- This decision is effective as of today.

Decided in Vancouver, the 10th day of July 2017.

Verónica Pacheco-Sanfuentes

Verónica Pacheco-Sanfuentes
Travel Agency Commissioner Area 1

Right to ask for interpretation or correction

In accordance with Resolution 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 this document (meaning no later than **July 25, 2017**).

Please also be advised that, unless I receive written notice from either one of you before the above mentioned date, this decision will be published in the Travel Agency Commissioner's secure web site, provided no requests for clarification, interpretation or corrections have been granted by this Commissioner, in which case the final decision will be posted right after that.

Right to seek review by arbitration

If after having asked for and obtained clarification or correction, any Party still considers aggrieved by this decision, the Party has the right to seek review by arbitration in accordance with the provisions of Resolution 820e § 4 and Resolution 824 § 14.