

**VERÓNICA PACHECO-SANFUENTES**

TRAVEL AGENCY COMMISSIONER, AREA ONE – DEPUTY TAC 3  
(The Americas and the Caribbean)  
110 – 3083 West 4<sup>th</sup> Avenue,  
Vancouver, British Columbia V6K 1R5  
CANADA

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**DECISION 2012 - # 6**

**In the matter of:**

**East & West Travel Services**

G-7 Chaudhry Arcade  
10/8 New Civil Lines  
Faisalabad, Pakistan  
Represented by its Managing Director Mr. Muhammad  
Shahid Sharif

**The Applicant**

vs.

**International Air Transport Association (“IATA”)**

111 Somerset Road, #14-05  
TripleOne Somerset  
Singapore 238164  
Represented by its Manager, Agency Management Asia Pacific, Mr.  
Prabaharan Nadarajah and Ms. Sujitra Punyashthiti

**The Respondent**

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**I. The Case**

The Applicant (also called herein after as “the Agent”), sought a Travel Agency Commissioner’s (referred to as “TAC”) review of the Respondent’s (also called herein after as “IATA”) decision of disapproving the Applicant’s request to become an IATA Accredited Agent, after a site-inspection, allegedly due to none fulfilment of the criteria for approval. The Applicant based this review proceeding on Resolution 820e, Paragraph 1.1.1.

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## **II. Chronology of events – Evidence on file**

### **(A) Chronology**

By June 7, 2012 this Office received the Applicant's formal request for review of the Respondent's action, as well as the rest of its supporting documents. The Respondent's decision was dated May 18, 2012. According to the documents that have been submitted by both Parties to this Office, the chronology of events unfolds as follows:

- After having submitted an application for IATA accreditation the Applicant was visited by a sales executive from Emirates Airline, as an Inspector on behalf of IATA, on a non-pre-arranged basis on April 25, 2012 in order to verify the information detailed in the application documents;
- According to the Inspector's report <<all the supporting documents were fake>> and <<even do not have proper staff>>; therefore, <this does not meet the criteria and may not be considered for approval>>. The rest of the questions of the report were found satisfactory for the Applicant;
- Without seeking any clarification or further information from the Applicant nor from any other sources, but based on what was stated in the Inspector's report, IATA (i) decided to disapprove the Applicant's request; (ii) communicated its decision to the Agent; and, (iii) took steps towards the refund of the application fee;
- Once received the Respondent's decision, the Applicant sought a TAC review;
- When studying this case the undersigned deemed necessary to require further information –clarification- from the Respondent, who, without delay, provided it accordingly.

### **(B) Evidence**

The evidence that has been provided to this Office by the Applicant, non-contradicted by the Respondent, consists of the following documents:

- IATA's disapproving decision, dated May 18, 2012;

- Signed letters from various IATA Accredited Agents stating that the Applicant has made air ticket sales through them, between the period of May 2011 to April 2012;
- Signed letters from various IATA airlines (such as Thai Airways and Saudi Arabian Airlines) and non-IATA airlines (such as Pakistan International Airlines) stating that the Applicant has made ticket sales for them during the period covered from May 2012 to April 2012, and, that they have collected from the Applicant the due amounts;
- The Applicant's Financial Statements prepared by the Applicant's external chartered accountants, as of April 30, 2012;
- Letters of recommendation for two of the Applicant's staff, issued by IATA Accredited Agents, stressing the employees capabilities of issuing travel documents;
- Appointment letters to those two Applicant's staff.

The Respondent has sent to this Office, copying the Applicant, the Inspection Report, as well as the disapproval letter dated May 18, 2012.

### **III. Authority for Review**

Resolution 820e determines the scope of the TAC's review proceedings, and as so provides for Applicants, Accredited Agents, for the Agency Administrator, for a group of Member Airlines and for the Agency Services Manager to seek review by the Commissioner in circumstances described therein. In this case, the most pertinent Paragraph as seen from the Applicant's perspective is 1.1.1.

Having received the Request for Review within the time frame limit, as indicated above, pursuant Paragraphs 1.2.2.1 and 1.2.3 of Resolution 820e, the undersigned decided to allow the proceeding.

Pursuant Paragraph 2.3 of Resolution 820e and Rule 14 of the Rules of Practice and Procedure for Area 3, the undersigned, 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, since she has considered that it will not jeopardise the process.

#### **IV. The Applicant's Arguments in Summary**

The Applicant responds to the Inspector's findings by indicating that:

- the Emirates' representative had an aggressive and moody behaviour towards the Applicant;
- considering that the Inspector stayed not even 8 minutes at the Applicant's premises, it seems unlikely that during that short period of time, he had had any chance to thoroughly examine the documents that were handed in to him, let alone to conclude that they were fake;
- the conclusion reached by the Inspector was never communicated to the Applicant *in-situ* nor later on, so he had no opportunity to clarify or explain anything in regards to those documents if needed be;
- from the Applicant's perspective, it does not seem reasonable that its sales statements were found fake nor that its staff was considered not qualified, when the Applicant is <<the top seller of Thai Airways and Saudi Arabian Airlines>> and its <<sales are more than Four Billion (sic)>>;
- all the tickets that had been issued by the Applicant could be verified by IATA with all IATA Agents and airlines;
- finally, the Applicant wonders <<why only Emirates Airlines is doing site inspection since the last three years, why not other airlines>>, as Saudi Airlines, Etihad Airways, Thai Airways, Gulf Airways, Qatar Airways...

#### **V. The Respondent's Arguments in Summary**

As indicated above, the Respondent based its decision only in the Inspection Report, done by a sales representative of Emirates Airlines on April 25, 2012. According to the general comments stated by the Inspector as closing remarks on the said Report: <<the owner kept on lying in everything, all the supporting documents were fake, even do not have proper staff. This does not meet the criteria and may not be considered for approval>>.

## **VI. Considerations leading to conclusion**

After looking at the arguments and the evidence submitted by both Parties and contrasting them with the applicable Resolutions, three important rules came in to light. Those rules allude to what I have found are the three main issues to be decided in this review, which are (i) the inspection done at the Applicant's premises as part of the requirements of its accreditation process; (ii) the accuracy and completeness of the material submitted with the application; and (iii) the opportunity or not for the Applicant to clarify or demonstrate its compliance with the requirements for its accreditation. I am referring here, respectively, to Resolution 818g, Section 3, Paragraph 3.2.4; Section 2, Paragraph 2.1.14 General Requirement; and, to the General Principles of Review that encompasses the whole spirit of Resolution 818g<sup>1</sup>. I will base my decision on those set of rules.

(i) I will start my considerations by referring to the necessary inspection that needs to be done whenever an applicant wants to become an IATA Accredited Agent, as part of the process towards its accreditation. According to the first part of Paragraph 3.2.4:

<<IATA will arrange for at least one inspection to assist in determining whether the applicant meets the qualifications necessary to become an Accredited Agent...>>  
(highlighted by the undersigned)

Pursuant to the quoted rule, two things come to the surface, on one side, it is clear that is IATA's responsibility to undertake the inspection at the Applicant's premises; and, on

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<sup>1</sup> These Principles are set out at the very beginning of Resolution 818g, right before Section 1.

the other side, the reason for this inspection is to help, to allow IATA to verify the information provided by the Applicant in order to determine its compliance or not with the requirements, meaning that not only it should base its decision on the documents and material that the Applicant must have submitted, but also on whatever is found *in-situ* at the inspection and the comparison, subsequently, between the two findings.

Looking at the facts of the case, the Respondent did not do the inspection itself. It decided to seek help from a Member Airline representative, due to the fact that it only has offices in Karachi and not in Faisalabad, where the Applicant's premises are located. Even considering that the quoted rule gives IATA the discretion of asking a third party to undertake its responsibility, the undersigned deems that the Respondent has still the obligation of making sure that the person that does the Inspection would do it in an *utmost fair, neutral and respectful manner*, according to the terms of Section 2 of Resolution 818g. The onus resides on the Respondent itself.

It is worth to note that not only in this particular case, but also in others that this Commissioner has had the opportunity to know while acting as Deputy TAC3, it seems to be a constant comment from different Applicants this unfortunate behaviour from the Member Airline representative when doing the site inspections. This behaviour is contrary to the applicable Resolutions, particularly against Section 2 of Resolution 818g; therefore, being IATA the legally responsible entity to do the inspections, it is its obligation to ensure that whoever does the inspections on its behalf complies with the code of conduct stated in the said rule. Otherwise, the inspections would have to be carried out by IATA's personnel, despite the fact of none having offices in all the different cities in Pakistan.

Whereas pre-arranged site-inspections, the undersigned notes a slight discrepancy in the information provided by both Parties, hence, in order to clarify this important topic and quite a repetitive fact in that part of the world, echoing my colleague's criteria, current Travel Agency Commissioner for Area 3, Mr. Jo Foged, stated in decisions made on December 6, 2011, case: Rehmani Air Travel vs. IATA, and on March 23, 2012, case: Meraj-Un-Nabi Travels vs. IATA, considering that the *<<purpose of the IATA inspection*

*is to verify the information submitted by the Applicant*, in my opinion such an inspection would be more effective if *pre-arranged* thus avoiding the events that have occurred in this and other cases. In other parts of TC 3 appointments are made as a matter of routine when Applicants or Agents are to be inspected>> (highlights made by the undersigned).

(ii) In regards to the documents submitted with an application, Paragraph 2.1.14 of Resolution 818g, states: <<*all material statement made in the application shall be accurate and complete*>><sup>2</sup>. Based on this rule was the Applicant's request disapproved, since according to the findings of the Member airline Inspector, the documents presented to him at the site inspection were <<fake>>. However, no reasons were provided to the undersigned (nor to the Agent) as of to justify or explain why the documents were found fake, what in particular was not accurate on them, which common element among them lead the Inspector to believe that all the material submitted by the Applicant was not trustful. It was a unilateral and plain accusation without any supporting reasoning.

The undersigned observes that the quoted rule requires, indeed, accuracy and completeness of all the material that is submitted by an applicant who desires to become an accredited agent, so there is no doubt that both characteristics are essential to get IATA's approval. Therefore, it is indispensable in order to ensure the fairness of the due process that whenever a material submitted by an applicant does not fulfill those essential requirements, that a clear explanation of the reasons behind that finding is provided to the applicant, for him to be able to complete the missing documentation, to replace the untruthful document, to desist altogether from the accreditation process, or to take any other step as judged convenient. But as a matter of Law Principle, no effective defense can be made in blindness.

In other words, and applying it to the present case: without knowing what exactly had made the Member airline Inspector conclude, in quite a short period of time, that all the

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<sup>2</sup> It is worth to note that IATA, probably due to a typographic mistake, quotes an inexistent rule on its decision, since it indicates as legal grounds for it <<Resolution 810 Section 3 Paragraph 3.1.14 of the Travel Agent's Handbook>>, when probably meant to refer to *Resolution 818g, Paragraph 2.1.14*.

material that was handed to him by the Applicant was simply <<fake>>, and basing the Respondent its decision on this sole comment, leaves the Applicant in a practically defenseless stage, in a very difficult position to proof against, when in reality the burden of proof resided with the Inspector, or technically speaking with IATA, who is actually the legally responsible entity to pursue these site-inspections and ultimately to approve or deny accreditation requests, not with the Applicant.

This fact takes particular relevance if we consider that the Respondent had in its hands, prior to the Inspection, all the material that was subsequently showed to the Member airline Inspector, however, no comments or questions of any kind were posed to the Applicant in regards to the completeness or accuracy of those documents. It appears to the undersigned that, before the inspection, the material did not originate any distrust in IATA's personnel.

(iii) Lastly, concerning the opportunity for the Agent to demonstrate its compliance with the requirements to get his accreditation approved, the undersigned notes that when asked the Respondent about having given this possibility to the Applicant, as a response she got, I quote: <<Since there were no provisions under the Resolutions for IATA to approach applicant to clarify, IATA made the decision to disqualify based on the report provided by the inspecting airline>> (sic). In light of this statement and considering the rest of the facts of the case, this Commissioner deems appropriate to make a special reference to the General Principles of Review, stated at the beginning of Resolution 818g, according to which:

<<In the event the Agency Administrator, hereinafter referred to as IATA, notifies an Agent of any kind of failure to meet or continue to meet the criteria so here described or of any other irregularity or non-compliance with these Rules, the *Agent shall at all times be able to enter into discussion with IATA, to provide information to demonstrate its compliance and continued compliance with the terms of this Resolution* within the prescribed deadlines. The Agent is also able to request a review by the Travel Agency Commissioner in accordance with Resolution 820e...>> (highlighted by the undersigned)

From the undersigned perspective and interpretation of the mentioned rule, in connection with what has been stated in literal (ii) in regards to the findings of the



Member airline inspector, this Commissioner considers that this IATA applicable rule is quite implicit when indicating the obligation that IATA had to contact the Agent and allow him <<*to provide information to demonstrate its compliance*>> with the requirements to become an accredited agent, especially after having an Inspection Report that (i) not only was not made by the Respondent itself, but by a third party; (ii) was going to be grounds for the rejection of the Applicant's request, and additionally, (iii) it contained no particular explanation nor reasoning for quite conclusive remarks to the Applicant's detriment.

Furthermore, looked at a cost-effective perspective, it even makes more sense that IATA notifies the Agent and allows him to demonstrate its compliance with the applicable rules **before** rejecting its application based on an unreasoned report not even made by IATA' staff members, rather than having to make arrangements for another inspection, devote time for another application review process, and, finally allow time for IATA's personnel to come to a conclusion whether approving or rejecting the application.

## **VII. Decision**

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

Having looked at the applicable Resolutions;

This Commissioner decides:

- The Applicant is to be inspected promptly by IATA' staff member on a pre-arranged basis, using the already submitted Application Form for Approval as an IATA Passenger Sales Agent as the source document for verification;
- Before the inspection takes place the Applicant will be given the reasons behind the inaccuracy found on the material submitted with his application, in order for him to amend whatever needs to be corrected and provide proper documents if needed be;

- The appropriate fee for the process being undertaken is to be paid by the Applicant.

The Parties are advised that, effective June 1, 2012, according to Paragraph 2.10 of Resolution 820e, any of them may request for an interpretation of this decision; or for a correction of any error in computation, any clerical or typographical error, or any omission in this decision. Please be advised that the time frame for these types of requests will be the following 15 days after receipt of the electronic version of this decision.

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.

Decided in Vancouver, BC, Canada, the 6<sup>th</sup> day of July, 2012

*Verónica Pacheco-Sanfuentes*  
Travel Agency Commissioner Area 1  
acting as Deputy TAC3

**Note:** The original signed version of this decision will be sent to the parties by regular mail. In the meantime, in order to ensure timely receipt by the parties, an electronic version of it is sent on this date (July 6, 2012). Please note that the time frame for interpretation and errors' correction will commence upon receipt of the electronic version of this decision.