

VERÓNICA PACHECO-SANFUENTES

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

DECISION 2012 - # 8

In the matter of:

Safina-E-Haram Pvt. Ltd.
LGF-7 Century Tower Kalma Chowk
Gulberg III
Lahore, Pakistan
Represented by its Managing Director Mr. Farhan Mansoor

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.
Nadarajah Prabaharan and Ms. Jin Sun Ryoo

The Respondent

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, dated April 20, 2012, of disapproving the Applicant’s request to become an IATA Accredited Agent, after a site-inspection, allegedly due to not having <<competent and qualified staff able to sell international air transportation and correctly issue electronic travel documents and report these to the BSP>>.

Telephone: + 1 – 604 - 742 9854
Fax: + 1 – 604 - 742 9953
e-mail: Area1@tacommissioner.com
website: travel-agency-commissioner.aero

II. Chronology of events – Evidence on file

On May 18, 2012 the Applicant submitted a request for review, with its corresponding supporting document, to the TAC3 Office, which was later on forwarded to the undersigned being the Deputy TAC3. On June 3, the undersigned was involved in the matter and asked the Respondent to provide the answers to the questions that had been previously asked by her colleague TAC3.

On June 11, the Applicant complemented his request for review by sending to this Office some supporting documents. The next day, the Respondent sent its submissions as well as its supporting evidence, being those: (i) the disapproval letter, which had already been sent by the Applicant; (ii) the Inspection Report; (iii) the Applicant's official license to operate according to the local Law; and, (iv) an explanatory email sent to the Respondent from the person who undertook the site-inspection on its behalf.

While doing the case study the undersigned had some questions for the Parties and both of them provided their respective answers and evidence, whenever it was needed, in a complete and timely manner.

According to the evidence on file, non-contradicted by either Party, the chronology of events was as follows:

- Once the Applicant had provided the Respondent with the documents required to acquire an IATA accreditation, as part of the process to become one, on April 10, 2012, a site-inspection took place;
- This site-inspection was unannounced and was not made by the Respondent itself, but by an IATA Member-Airline sales' representative¹;
- According to the closing remarks of the Inspection Report, the results are <<unsatisfactory as mentioned staff actually not working with Agency>>; the rest of the Report has no detrimental comments in regards to the Applicant's premises;

¹ In this case it was undertaken by a representative of Emirates Airlines

- Ten days after the site-inspection and based on its results, the Respondent decided to disapprove the Applicant's request to become an accredited Agent;
- Additional information was provided by the Respondent to this Office² that appears to confirm the fact that actually the Applicant did not have any qualified and experienced employee on its payroll. The only two employees that it has are not qualified. Moreover, one of the Applicant's member staff seemed to be aware of the circumstance and actually offered the Inspector to cooperate and regularise the situation in order to fulfil IATA's requirement. In this regard, the Inspector stresses in an email sent to the Respondent, I quote: <<the contact person of Safina-e-Haram, Mr. Umer Arshad, promised to arrange qualified and experienced staff within days>>, however, <<upon my several visits agency failed to arrange qualified staff who can handle ticketing and reservation matters>>. No comments or evidence was received from the Applicant in this respect.

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 Paragraph 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

² Copying the Applicant

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 views are:

- All documents were provided according to IATA's requirements;
- During the <>surprise site inspection, our staff was available and complete except one senior member of our team who was on lunch break>>, and when explained the situation to the Member-Airline representative and asked him to <>allow us some reasonable time to call that staff back>>, he <>refused and went out just after five minutes and send the decision to IATA>>;
- It was never given the Applicant the opportunity to explain to <>IATA's Office staff the findings of the inspection at all>> before receiving the disapproval letter from it.

V. The Respondent's Arguments in Summary

As indicated above, the Respondent based its decision on the Inspection Report, done by a sales representative of Emirates Airlines on April 10, 2012. According to the general comments stated by the Inspector, as closing remarks, I quote: <>unsatisfactory as mentioned staff actually not working with Agency>>. Later on, further details of the Applicant's situation were provided by the Inspector to the Respondent.

VI. Considerations leading to conclusion

A.- As a preliminary topic, the undersigned points out a discrepancy between the Respondent and the Applicant's answers to the question posed by her whether the site-inspection was pre-arranged with Applicant or not.

In fact, on one hand, the Applicant indicates that the site-inspection <<was not previously agreed nor announced>> to him; on the other hand, the Respondent states that <<EK personnel informed the agent in advance before visiting their office>>.

It is worth to note that not even the CEO/Manager was present, but out of the country. Judging by the turn out of the inspection, as well as the rest of the evidence on file, it seems to the undersigned quite illogic that had been pre-arranged the inspection, being a pre-requisite to get the desired IATA accreditation, the Applicant would not have been diligent enough as to ensure that its competent member staff was present at the time of the inspection, in order to allow the verification of the documents previously sent to IATA, which indicated that it had <<in its employment competent and qualified staff able to sell international air transportation>> (as mandated in Resolution 818g, Paragraph 2.1.3).

In any case, as indicated in previous TACs' decisions concerning this matter:

<<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 TAC 3 appointments are made as a matter of routine when Applicants or Agents are to be inspected>> (extracted from case: East & West Travel vs. IATA, dated July 6, 2012) (highlights made by the undersigned)

B. - Looking now at the requirement itself, stated in Resolution 818g, Paragraph 2.1.3, according to which: <<The applicant must have **in its employment** competent and qualified staff able to sell international air transportation and correctly issue electronic

travel documents and report these to the BSP>>³. It is clear to this Commissioner that the Applicant is not obligated to have present at the premises during all business hours competent staff in the terms defined by the said rule. In fact, what the rule requires is that the Applicant would have as part of its hired member staff, competent and qualified employees, able to sell and issue international air transportation tickets and report them to the BSP.

Furthermore, I would affirm that is even irrelevant, according to the quoted Paragraph, if at the time of the Inspection those employees are there or not, because technically speaking the applicant is not obligated to have them present at all times, so not only the applicant is not violating or been non-compliant with the applicable Resolution rule due to the fact that at the time of an Inspection qualified employees are not on site, but IATA would have acted wrongly if disapproving an applicant's request based only in an Inspection Report that would have pointed out that fact. Pursuant Paragraph 2.1.3 of Resolution 818g, the relevant fact for an applicant to comply with, and therefore be able to demonstrate accordingly, is that it currently has under its payroll qualified and competent personnel that would enable the Agent to issue international air transportation tickets and dully process them over the BSP system.

C. - Contrasting the above mentioned interpretation of the applicable rule to the facts of the case and the evidence on file, it seems to the undersigned that at the time of the Inspection not only the qualified staff was not present (which in itself, as indicated *supra*, would not have legally been at the origin of any detrimental consequence for the Applicant), but that it is nonexistent. The Applicant does not seem to currently have employed any competent and qualified staff (pursuant the Resolution terms) among its payroll or, at least, it failed to demonstrate its compliance with the requisite stated in Paragraph 2.1.3 of Resolution 818g. In light of which this Commissioner observes that the burden of proof resided on the Applicant; it was in his own interest and benefit to clearly demonstrate compliance with the terms and conditions established on the

³ Highlights made by the undersigned

applicable rules, for the authority –in this case, IATA- to be able to grant the desired accreditation. The result of non-compliance with this requisite allowed the Respondent to disapprove the Applicant's request.

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 Respondent had followed correct procedure in this case; therefore,
- IATA's decision dated April 20, 2012 is upheld;
- Considering the Applicant's interest in obtaining an IATA accreditation: (i) provided it will hire competent and qualified staff able to sell international air transportation tickets and report these properly to the BSP system, in accordance with Resolution 818g, Paragraph 2.1.3.; and, that (ii) it will undoubtedly demonstrate its compliance with this rule, as well as the rest of the requirements, its IATA accreditation should be granted;
- In case another site-inspection would be required, the Applicant is to cover the cost of it.

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 the 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 document.

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, Canada, the 30th 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, once the above mentioned timeframe for interpretation/corrections had elapsed. In the meantime, in order to ensure timely receipt by the parties, an electronic version of it is sent on this date (July 30, 2012). Please note that the time frame for interpretation and errors' correction will commence upon receipt of the electronic version of this decision.