

VERÓNICA PACHECO-SANFUENTES

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

DECISION 2012 - # 9

In the matter of:

Easy Haj and Umbra Private Limited

31-E 1, Gulberg III

Lahore, Pakistan

Represented by its Managing Director Mr. Abdul Rouf

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 Prabakaran and Ms. Sujitra Punyashthiti

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 May 30, 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 transport and correctly issue electronic travel documents and report these to the BSP>>.

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II. Chronology of events – Evidence on file

On June 17, 2012 the Applicant submitted a request for review, with its corresponding supporting documents to this Office, which were: (i) the challenged IATA's decision; (ii) an award given to the Applicant by the Lahore Chamber of Commerce, called the Lahore Chamber Achievement Award in 2009; and (iii) a letter issued from the Ministry of Religious Affairs of the Government of Pakistan, dated September 3, 2010, certifying that the Applicant is registered with the said Government for organizing pilgrimage groups and particularly for providing services to the 2010 Pakistani pilgrimage group.

Once given the opportunity to do so, the Respondent sent its submissions as well, accompanied by: (i) the disapproval letter, which had already been sent by the Applicant; (ii) the Inspection Report; and, (iii) the Applicant's official license to operate according to the local Law.

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 provided the Respondent with the documents required to acquire an IATA accreditation, as part of the process to become one, on May 17, 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 <<not satisfactory. None of the qualified staff was available except the Sales Manager>>;

¹ In this case it was undertaken by a representative of Emirates Airlines (also referred to as "EK")

- Thirteen 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 concerning the site-inspection was brought forward by the Applicant indicating that the Inspector, I quote: <<... was in a very aggressive mood and even he has not bothered to meet the Chief Executive of the company. His behaviour towards my staff was not a professionalism, he has totally investigated on personal basis>> (sic). It is worth to note that the Applicant also wonders why it seems to be always a sales' representative from the same IATA Member Airline² doing the site-inspections <<in the Lahore Region>>, instead of having other Member Airlines' representatives undertaking this task.

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 have been filed by both of them, since she has considered that it will not jeopardise the process.

² Emirates Airlines, also called "EK"

IV. 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 agent in advance before visiting their office>>.

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 had 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:

<<... 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 cases: East & West Travel vs. IATA, dated July 6, 2012 and Safina-E-Haram vs. IATA, dated July 30,

2012, resolved by this Commissioner) (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, particularly to:

³ Highlights made by the undersigned

(i) Attachment “A” of the Inspection Report that lists three staff members as being <<Airlines or IATA/UFTAA or other Certificate Courses Passed which are Acceptable to the AIP/IATA>>; plus to,

(ii) The fact that none of these employment contracts or the staff’s qualifications were challenged nor proved invalid, and therefore presumed valid and legitimate,

This Commissioner considers that there were no legal grounds for IATA to base its decision on the sole and simple fact stated in the Inspection Report, according to which the qualified staff <<was not available>> at the time of the inspection. Not having available at one particular moment in time qualified staff does not make *per se* the Applicant non-compliant with the requirement stated in Resolution 818g, Paragraph 2.1.3, as indicated *infra* in Section B of this Chapter.

D. - Another aspect that has been brought to the attention of the undersigned by the Applicant is its impression of the Member Airline representative’s behaviour while undertaking the site inspection on behalf of IATA. As the undersigned has indicated in previous decisions (East & West Travel Services, dated July 6, 2012):

According to the first part of Paragraph 3.2.4, Resolution 818g:

<<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 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 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 Lahore, 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 ensuring that the person that does the Inspection on its behalf 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.-

In light of what had been stated, and considering that it is the Respondent's right to choose the Inspector that would act of its behalf, it might be convenient for the Respondent to consider seeking help from other Member Airlines that might be located in those other regions where it does not have a physical presence.

V. 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's decision dated May 30, 2012 is overturned;
- The Applicant is to be inspected promptly by IATA 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;
- No fees will be charged to the Applicant as a consequence of this new site inspection.

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 3rd day of August, 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 (August 3, 2012). Please note that the time frame for interpretation and errors' correction will commence upon receipt of the electronic version of this decision.