

**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 - # 30**  
**(Area 3)**

**In the matter of:**

**Jetescape Travel Pty Ltd**, t/a Travelscene Logan,  
137 Bryants Road  
Loganholme QLD 4129  
Australia  
Represented by Mr. Leonard Padowitz, Managing Director

**The Applicant**

vs.

**International Air Transport Association (“IATA”)**  
Level 4, 83 York Street  
Sidney NSW 2000  
Australia  
Represented by Mr. Matteo Zanarini, Passenger Services Manager  
Australia and South West Pacific Islands

**The Respondent**

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**I. The Case**

On November 27, 2012 the Applicant (also called herein after as “the Agent”), sought a Travel Agency Commissioner’s relief of the Respondent’s (also called herein after as “IATA”) notice dated November 19, 2012, which has found that the Agent did not meet the Australian Financial Criteria and therefore was requesting from the Applicant a Financial Security for the amount of One Million Australian Dollars (AUS \$ 1,000,000), to be provided no later than 19 December 2012. The Applicant was seeking for an

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extension of the referred time frame <<to comply with the requirements of IATA for a further calendar month, or alternatively, until 31 January 2013 at the latest>>.

## **II. Background – Chronology of events**

According to both Parties' version of the facts of the case, this is how things unfolded:

- Following the 2011 Annual Financial Review Assessment the Agent was required to provide Financial Security in the amount of AUD\$126,000 which was provided in the form of Default Insurance Protection through a company called "CBL Insurance Limited" ("CBL"). The current CBL cover expires on December 21, 2012;
- The Agents' financial statements were submitted by IATA to its Global Assessor and the results were received on 19 November 2012;
- As a result of the financial assessment made by IATA's Assessor, the Agent did not meet the requirements of Test 1 (Minimum Share Capital & Reserves) and Test 3 (Working Capital) of the local financial criteria;
- Therefore, the Applicant was not only notified on Nov. 19, 2012 of the assessment's result but it was requested to provide, within 30 days, a financial security for total coverage of AUD\$1,000,000;
- The financial security calculation is based on the local financial criteria (point 4). The Agent's total amount payable to the Airlines for the financial year period is AUD\$14,549,375.74. Based on the applied formula (undisputed by the Agent), the amount at risk is \$1,050,788.24. This amount however has been capped by IATA at \$1,000,000.00, as per table 4 of the local financial criteria guidelines;
- The Applicant informed this Office and the Respondent that CBL had rejected his application for the renewal of the Default Insurance Protection after December 21, 2012. It also explained the hassle of obtaining a bank guarantee since the global financial crisis due to a commonly expanded conservatism in the sector. In light of which, and in an effort to mitigate the risk that represents its sales' volume increase and to <<ensure that it meets the minimum paid capital, reserves criteria and net working capital>>, the Applicant proposed the following options:

- a capital cash injection of AUD \$ 500,000, prior to the expiration of the said protection, which, according to the Applicant's perspective <<would ensure approximately five months overhead coverage instead on the minimum requirement of 1 month>>;
- To have an audit undertaken of its financial position and trading results for the six months period ended 31 December 2012 and submit them to IATA for reassessment by 19 January 2013;
- On December 3, 2012 IATA responded to the Applicant's proposal by suggesting the Agent that <<the AUD\$ 500,000 available for capital injection to be used for a provisional bank guarantee to be issued to IATA until such time that a new bank guarantee is made available>>. The Respondent also requested that the current security held with of AUD\$ 126,000, due to expire 21 December 2012 be extended to 19 January 2013. In its words, <<we believe that if there are sufficient cash reserves, as Mr. Padowitz has pointed out in his e-mail dated 29 November 2012, then these could be used to fund a provisional bank guarantee>>;
- The Commissioner notes the Respondent's willingness of allowing the fact that the sum of the provisional guarantee plus the CBL insurance policy despite being inferior to the total guarantee amount originally required by IATA will be accepted, as an allowance at this moment in time and for this particular case.
- On December 5, 2012 the Agent provided proof of the share capital increase by the amount of AUD\$ 500,000<sup>1</sup>. It also informed about the rejection of CBL to renew the bond nor issue any other bond or guarantee for the Applicant;
- The Applicant submitted to this Office a sample of a bank guarantee that another financial institution (Commonwealth Bank) would be willing to issue upon its request. The undersigned, after evaluating the sample and considering that it is not contrary to the requirements established in the Australian Financial Criteria, sent it to IATA for review;

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<sup>1</sup> Copy of the records of the Australian Securities and Investments Commission

- On December 10, 2012 the Respondent indicated its acceptance of the proposed format, requesting nevertheless for the guarantee to be an <<open ended (no expiry date)>> one.

### **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 1.1.5 and 1.2.2.4.

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. Decision**

After looking at the evidence at hand, as well as to the submissions filed by both Parties, particularly the different avenues that have been proposed by the Applicant to IATA in order to get its Agency in compliance with the Australian Local Financial Criteria; Considering also IATA's willingness to cooperate and to accept some of the proposals made by the Applicant; Having looked at the applicable Resolutions, with peculiar emphasis in the alternatives that the Local Financial Criteria for Australia allows in situations like this one;

This Commissioner decides:

- The Applicant must submit a bank guarantee for the amount indicated in IATA's notice dated November 19, 2012, according to the terms and conditions contained in the sample provided by the Commonwealth Bank and brought to this process by the Applicant and approved by the Respondent;
- This bank guarantee should have no expiry date;
- The extension to present the aforementioned bank guarantee is granted up to **January 19, 2013**;
- The current security that the Respondent holds from the Applicant of AUD\$ 126,000 due to expire on December 21, 2012 should be renewed (or replaced by other one, in case this one cannot be renewed) up to **January 19, 2013**.

The Parties are advised that 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 12<sup>th</sup> day of December, 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 (December 12, 2012). Please note that the time frame for interpretation and errors' correction will commence upon receipt of the electronic version of this decision.