

VERÓNICA PACHECO-SANFUENTES

TRAVEL AGENCY COMMISSIONER, AREA ONE – DEPUTY TAC 3
110 – 3083 West 4th Avenue,
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CANADA

DECISION 2013 - # 59

In the matter of:

Satkar Travel (Pvt) Ltd

SCO-46, 1st Floor Sector 13 Shopping Complex
Hisar, Haryana 125 005
India

Represented by its Managing Director Mr. Anil Sikri

The Applicant

vs.

International Air Transport Association (“IATA”)

111 Somerset Road, #14-05
TripleOne Somerset
Singapore 238164

Represented by its Manager, Agency Management Financial &
Distribution Services, Asia Pacific, Mr. Rodney D’Cruz

The Respondent

I. The Case

The Applicant sought a Travel Agency Commissioner’s review of the Respondent’s Notice of Irregularity (“NoI”) dated June 27, 2013 issued due to a <<return of your Domestic remittance cheque for F/N 01-15 June, 2013>>; which the Applicant has been contesting since that same date, receiving a final view from the Respondent on this matter on September 3, 2013.

Upon notice of the bank’s rejection (reason provided <<drawer signature not as per mandate>>), payment was immediately done by the Applicant. The Applicant claims that the bank’s action was due to a human/bank error and thus beyond the Applicant’s control.

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II. The Applicant's arguments in summary

The signatures <<were the same as were on previous cheques which were duly cleared by the same bank. Our representation was rejected as there is no provision under IATA regulation for human error>>.

The Applicant is based in Hisar and its Bank is located in that same city; however, the <<cheques are presented at (New) Delhi in Centralized Clearing House in which approx. 200 persons are working, and matching of signatures is purely a subjective matter>>.

After getting approval from the Applicant's Bank head office ("HO"), a letter was issued corroborating the Applicant's statement <<that it was **not our fault**>>; furthermore, the Bank clearly states that **sufficient funds were available** in the Applicant's bank account at the moment where this event took place.

The reason why the Applicant's nationalized Hisar Bank took more than 10 days to issue the above mentioned letter was because it had to wait for the HO's approval, which is located in New Delhi.

III. The Respondent's arguments in summary

The NoI was justifiable since the instrument of payment was dishonoured by the Applicant's banker.

<<The letter from the bank was insufficient reason for the Agency Administrator to withdraw the Irregularity in terms of Resolution 818g, Attachment A, paragraph 1.7.4. The reasons were as follows:

- The letter is dated 30 August 2013. It was not within the 10 days of the NoI,
- The name of the Bank signatory is missing from the letter and most importantly,
- The bank does not admit any error on their part for having dishonoured the instrument>>.

IV. Oral Hearing

Pursuant Paragraph 2.3 of Resolution 820e and Rule 14 of the Rules of Practice and Procedure, this Commissioner, 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.

V. Considerations leading to conclusion

Resolution 818g, Attachment "A", Section 1.7.4 takes care of the issue at hand. In fact, the said provision deals with *Bona Fide* Bank Error situations, expressly indicating in paragraph 1.7.4.3 the characteristics that the Bank letter must have in order to be validly invoked by an Agent aiming at getting its NoI withdrawn by the Agency Administrator.

When analysing the referred provision in contrast with (i) the copy of the Applicant's Bank letter which was submitted as evidence by both Parties, and, (ii) with their arguments, this Commissioner observes the following:

- The Applicant has explained the reason for the delay in providing the Bank letter (after the prescribed 10 days), which this Commissioner deems reasonable and thus excusable, considering the standard bank practices when it comes to provincial branches of nationalized banks in some parts of the world. Furthermore, not only the Respondent did not object nor contradicted the said reason, but it is also a common sense discernment: it is obvious that it was in the Applicant's best interest to obtain the said letter as expeditiously as possible, so it makes no sense at all to consider that the delay was in any way attributable to the Applicant's negligence when it had demonstrated since the very beginning its keen interest in having the NoI removed from its records;
- The letter was signed by the *Canara Bank's* Manager in Hisar which name appears –indeed- written underneath his/her signature in Hindi characters. As part of the Applicant's submissions, the Applicant provided the Manager's name

in Roman characters, indicating that the person's name was B. Choudhary, as well as his/her contact telephone number;

- In the referred letter the Bank clearly states that <***there appears no fault of our Client M.s. Satkar Travel (Pvt.) Ltd***>>;
- Furthermore, and most importantly from this Commissioner's point of view, in the said letter the Bank indicates that <<***there was sufficient balance in the account from the date of cheque i.e. 25th June and the cheque was presented on 27th June*** (statement of Account is enclosed)>>; hence, it is absolutely clear to this Commissioner that in no time was the Applicant's intention to default IATA or to serve a cheque without provision of funds. The Applicant has acted in good faith.

In addition, it is worth to note that even if considered that the referred Bank letter did not fulfill all the requirements demanded by the above mentioned provision, **Section 13.9 of Res. 818g**, when describing the different scenarios where ***Force Majeure*** can be applied and thus the Agent <<shall not be liable for delay or failure to comply with the terms of the Passenger Agency Agreement>>, includes <<any other cause, whether similar or dissimilar, **beyond of the reasonable control of the Agent**>>, when it <<**is not the result of the Agent's lack of reasonable diligence**>>.

From this Commissioner's perspective, those two conditions are present in this case:

- (i) the analysis made by the Bank's employees of the signatures in the cheque and the Bank's delay in issuing the letter were events *beyond the Agent's reasonable control* and, thus, *the Applicant should not be liable* for them, let alone *punished*; and,
- (ii) according to the evidence on file, it is unquestionable the diligence that the Applicant has put in solving this matter, promptly acting not only by (a) paying the due remittance amount upon been aware of the Bank's rejection, but also in (b) clarifying the issue with IATA by getting back to its Bank and obtaining the letter reflective of the situation in their end, which was the cause of all this affair; and, (c) by adopting a

<<RTGS mode to take care of>> future remittances, avoiding the cheque signatures' eventualities.

VI. Decision

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

Having looked at the applicable Resolutions;

It is hereby decided:

The Notice of Irregularity must be removed from the Applicant's records.

Decided in Vancouver, the 18th day of October 2013

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

Right to ask for interpretation or correction

In accordance with Res 820e, § 2.10, any Party may ask for an interpretation or correction of any error which it may find relevant to this decision. The timeframe for these types of requests will be 15 days after receipt of the electronic version of this document.

Right to seek review by arbitration

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, once the above mentioned time frame would have elapsed.

Note: The original signed version of this decision will be sent to the Parties by regular mail, once the referred period for interpretation/corrections would have expired.