

**TRAVEL AGENCY COMMISSIONER - AREA 1 (DEPUTY TAC3)**

*VERÓNICA PACHECO-SANFUENTES*

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Vancouver, BC V6K 1R5

CANADA

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**DECISION 2013 - # 66**

**In the matter of:**

**Satyam Leisure Travel Pvt Ltd.**

IATA Code 14-3 04776

UG 8, River Palace, opp. Civil Court

Nanpura, Surat 395001

Guyarat, India

Represented by its Managing Director Mr. Shirishkumar R. Patel

**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,

Mrs. Hwa Ooi Tham

**The Respondent**

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**I. The Case**

The Applicant sought a Travel Agency Commissioner’s review of the Respondent’s Notice of Termination (“NoT”) dated 1 August 2013, supposedly served due to non-submission of the financial statements (“FS”) on time.

The Applicant alerted IATA-Mumbai in various occasions about the technical difficulties that it encountered when uploading its FS through his computer. The Applicant substantiated to this Office (copying the Respondent) all the communications that it had with IATA-local concerning the issue.

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The first time that it contacted IATA's Mumbai Office was on Oct. 30, 2011. It is worth to note that the due date for submitting the referred documents, in accordance with the instructions given by the Respondent to the Applicant, was on Nov. 30, 2012.

Seeing it as a solution to this problem, the Applicant decided to accept an offer that the Treasurer of the Travel Agent Association of India ("TAAI") has made him and on May 8, 2013 the Applicant, by a private courier, sent to TAAI the hardcopies of its FS for TAAI's Treasurer to submit them at IATA-Mumbai's Office, as previously agreed.

The FS never reached IATA's Office and the Applicant claims not having been aware of this fact until it received the NoT in August 2013.

## **II. The Applicant's arguments in summary**

- We have being an accredited Agent for the past 6 years and have never defaulted IATA nor stopped submitting our FS;
- << We have been instantly telling to IATA office in India since a year that Financial reviews on my office computer are not downloaded due to technical error. I had also requested on 30.10.2011 by E-mail to link us to send our financial documents, I also had narrated my problems to Ms. Shruti of IATA office in Mumbai that I am unable to upload any financial file on my computer>>;
- We trusted TAAI's Treasurer <<who let us down, went abroad and forgot about sending our FS to IATA>>;
- <<We agree that we must be punished for our offence, but the punishment must match with the degree of offence>>.

## **III. The Respondent's arguments in summary**

<<- 22 November 2012: Annual Financial Review upload request mail sent to the agent. Due date for submission of financials – 30 Nov., 2012.

- 23 November 2012: Letter containing same information was uploaded onto all agents BSP/link account. Due date for submission of financials – 30 Nov., 2012.

- 04 December 2012: 2nd request mail sent to the agent. Due date for submission of financials remained same as 30 Nov., 2012.
- 07 December 2012: Letter containing same information was uploaded onto all agents BSPlink account. Due date for submission of financials – 14 Dec., 2012.
- 07 December 2012: Letter containing same information was sent to those agents whom do not access BSPlink account. Due date for submission of financials – 14 Dec., 2012;
- 22 April 2013: NoI letter sent to the agent. Due date for submission of financials – 21 May, 2013;
- 05 June 2013: Letter of NoT sent to the agent. Due date for submission of financials – 31 Jul., 2013;
- 01 August 2013: Termination letter sent to the agent>>

<<With regards to Mr. Patel mentioning that the financial statements were sent to Mr. Arvind Mistry instead of to IATA, we have no oversight on this arrangement between the two Parties. As per our notification to the Agent it is clearly stated the steps to follow>>.

#### **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**

Pursuant Resolution 818g, paragraph 2.1.4.1 it is an Accredited Agent's obligation to submit its financial statements <<showing a satisfactory financial standing and ability to remain solvent and pay bills>>.

The Applicant has indicated, without being contradicted by the Respondent, that it has been an Accredited Agent for more than 6 years and that it had never before failed in providing its FS on time. It has also claimed that it never received any notice from IATA

concerning the FS issue until he received the termination letter dated August 1, 2013. The Applicant provided copy of the emails exchange with IATA-Mumbai Office concerning his uploading problems.

On the other hand, the Respondent when given the opportunity to substantiate its allegations provided copy of the communications sent to the Applicant in connection with the FS submissions, but none of them addressed the particular problem that the Applicant had been indicating since Oct. 2012 –meaning, its technical/computer problems to get its FS properly uploaded in to IATA’s portal-.

When examining those communications the following came to the surface:

- Nov. 23, 2012 email supposedly sent to the Applicant – the document provided is a sample of a letter not even addressed to the Applicant. It is not an email;
- Dec. 4, 2012 email supposedly sent to the Agent – was not provided;
- Dec. 7, 2012 communication posted on BSPlink – it is a template;
- Dec. 7, 2012 letter supposedly sent to Agents that do not have access to BSPlink - it is template. The letter is not addressed to the Applicant nor it was proved that it was actually sent to the Applicant;
- March 11, 2013 letter titled “Financial Review 2012” is a sample; it is not addressed to any Agent in particular. Actually, the Agent’s Name and Agent’s IATA Code space are left in blank. Moreover, it shows an erroneous email address (librahifliers@gmail.com), which the Applicant claims never had provided to the Respondent nor is even known to him. It is worth to note that IATA-Mumbai had the valid email address of the Applicant, since both of them were able to communicate in several occasions regarding the uploading problems encountered by the Applicant through that email address (*id est*: satyamtravel@gmail.com)<sup>1</sup>;
- April 22, 2013 NoI is a copy of the “registered” letter supposedly sent to the Agent. This is the sole communication that has been addressed to the Applicant and where the Applicant has been fully identified by its IATA Code and by its physical address; however, no proof of having actually sent that letter was

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<sup>1</sup> The same one that has been used by the Applicant during this review process

provided. This Commissioner understands that when it comes to registered letters, the sender receives some sort of “proof of dispatch” from the Post Office, which is precisely the difference when a letter is sent through the regular, ordinary way.

- June 5, 2013 NoT – same comment as the NoI.

In accordance with the findings of the case, this Commissioner considers that:

- Even though the Applicant has proved that it had alerted the Respondent about his technical difficulties for uploading the FS through his computer a year earlier, it was the Applicant’s responsibility to ensure that the FS were duly submitted, if not by properly uploading them at the IATA Portal, at least, by presenting them to the Respondent’s local Office in Mumbai. Having trusted in a third party’s good will to do so does not excuse the Applicant from his obligation as an Accredited Agent;
- The Respondent did not prove having contacted the Applicant through its current and validly provided email address. The burden of proof lied on the Respondent;
- Considering that the Applicant had in fact ready its FS even before the due time;
- Considering the Applicant’s statement of not having received any notice from the Respondent prior to the NoT dated August 1, 2013;
- Based on the Balance of Probability, this Commissioner deems credible the fact that the Applicant did not take any action regarding the submission of his FS before receiving the NoT, simply because it did not receive any previous communication from the Respondent alerting him about: (i) the fact that the FS never reached the Respondent’s Office; nor, (ii) about the consequences of non-compliance (reference is made here to the NoI).

## **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:

- Having the Respondent been unable to demonstrate actual proof of dispatch of the Notice of Irregularity nor of the Letter of Termination, pursuant Resolution 818g, Section 1.9, paragraph 1.9.1, both Notices should be considered void and thus nonexistent, since they never reached the Applicant and as such never became effective; therefore, both Notices must be expunged from the Applicant's records;
- Considering that it is the Applicant's obligation to ensure that its FS are duly submitted to the Respondent within the given time frame, the Notice of Termination, dated August 1, 2013, should be considered as a Notice of Irregularity (the first one in the Applicant's records);
- The Applicant is to submit its FS at no delay and definitively not later than the time frame that the Respondent will grant him;
- The Applicant's reinstatement must take place immediately.

Decided in Vancouver, the 27<sup>th</sup> day of November 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.