TRAVEL AGENCY COMMISSIONER - AREA 1
VERÓNICA PACHECO-SANFUENTES
110 – 3083 West 4th Avenue
Vancouver, British Columbia V6K 1R5
CANADA

DECISION – February 2nd, 2018

In the matter of:

Carlson Wagonlit Travel New Westminster
IATA Code 61-9 45004
635 Sixth Street
New Westminster, British Columbia V3L 3C1
Canada
Represented by its Managing Director and co-owner, Ms. Maria Victoria (Marivic) Cregan

The Applicant

vs.

International Air Transport Association ("IATA")
Global Distribution Centre
Torre Europa
Paseo de la Castellana, 95
28046 Madrid, Spain
Represented by the Accreditation Manager, Ms. Carmen Alicia Sánchez

The Respondent

I. THE CASE

The Applicant sought a review from this Office in light of a change of ownership ("CoO") situation that it went through back in 1998 (20 years ago), which seemingly did not follow IATA's procedures, stated in Resolution 818g chapter 10; in addition, to another CoO underwent in March 2016, in which time the Applicant intended to follow the referred provisions.

The Applicant argues against being treated as "*new Applicant*" and, hence, being asked, amongst other requirements, to submit a Letter of Credit, as stated in the Local Financial Criteria ("LFC") applicable to Canada, since basically the same management has been leading the company for over 20 years with an outstanding record of compliance with the applicable Resolutions; and, where at no moment in time, the Applicant's good financial standing has ever been questioned nor its ability to honour its BSP Sales Reports.

II. BACKGROUND

In recent contacts with IATA-MAD made by the Applicant[1], it became obvious to her, that despite her best understanding and knowledge of the events that took place back in 1998 and then in 2016, when Ms. Cregan acquired more shares of the company, the -at the time- shareholder supposedly in charge of the paper work, did not follow through and the CoO was not reported at all in 1998 and was not properly completed in 2016, leaving the Applicant in the current situation.

According to the evidence and submissions on file, non-disputed by any Party, the chronology of events was as follows:

- The Applicant's original owners were Frank Scott, Karen Kirby and Monica Crang in equal portions;

- On June 18, 1998, Ms. Cregan bought Monica Crang's shares of the company (1/3);

- On March 2016, Mr. Scott conveyed his intention of retiring in August 2016. Ms. Cregan offered to purchase his shares (1/3) and so she did;

- On August 2016, Mr. Scott contacted IATA regarding the procedure for CoO. An IATA's customer service representative instructed the Applicant about the steps to follow, and Mr. Scott faithfully followed those instructions (or so he thought) and submitted the required forms to this IATA's representative;

- On August 31, 2016, Mr. Scott formally retired and Ms. Cregan took over and officially owned 2/3 of the company;

- One year later, in August 2017, Ms. Cregan found out that the notice of CoO was not, I quote <<*... properly filed "in the portal" as what was required, so I started the entire process again and sent all documents required by IATA to fulfill the change. Once filed, I heard nothing from IATA since then*>>;

- On January 2, 2018 the Applicant realised, by *motu propio* checking IATA's portal for any messages, that all her cases were closed <<*... except for the "Notice of Change" which showed pending. I then sent a complaint to IATA asking why it is still pending. This is already year two*>>.

NOTE:
It is this Commissioner's view that, even if there is no doubt about the Agents' responsibility to notify IATA about any CoO occurred within their legal structure, it would be convenient and definitively will save many Agents from wrongful assumptions, if IATA would timely notify them (by sending an email directly to management) about the current status of their application and, particularly, if such application was somehow

[1] It is worth noting that in this matter it has been the Applicant who has, acting out of her own initiative, reached out to IATA in order to clarify the situation aiming at bring it to a closure.

incomplete or if for whatever reason it could not be processed. This is a minimum "customer friendly" action that IATA could undertake.

III. ORAL HEARING

In the opinion of this Commissioner, as per Resolution 820e, s. 2.3, an oral hearing was not deemed necessary, having given the Parties ample opportunity to present its submissions and evidence accordingly.

IV. CONSIDERATIONS

Based on the facts exposed in Chapter II *supra*, I hereby confirm what I have stated on an email dated January 27th, 2018:

- IATA must focus in the CoO occurred in March 2016, which the Applicant has been trying to register, as per the applicable Resolutions since August 2016, but that unfortunately did not do properly, so it was never recorded as completed;

and,

- Considering the extended period of time that has elapsed between the first CoO (1998) and the present time (2018), period in which the Applicant has been trading as an Accredited Agent without having had any irregular behaviour nor any non-compliance situation in regards to its obligations towards BSP Participating Airlines, there is no practical nor logical sense in requiring the Applicant to submit a Line of Credit for the "old" CoO, since clearly the Applicant had gone by during 20 years without presenting any risk for the credit that has been granted by the BSP Participating Airlines; therefore, this review procedure will only deal with the procedure followed by IATA and the Applicant in respect to the **CoO occurred in March 2016**.

CoO occurred in March 2016:

The evidence shows that, in fact, Ms. Cregan acquired 30% of the company's shares from her former business partner back in 2016. Such transaction falls in to the hypothesis referred to in s. 10.2.1(b) of Resolution 818g, which required to be notified to IATA, but does not require the execution of a new Sales Agency Agreement.

As per s. 10.2.2 of Resolution 818g, the Applicant, as a consequence of this partial CoO, is bound to undergo a financial review in order for IATA to determine whether or not it still meet the qualifications for accreditation, and, if the change alters the Applicant's legal nature (procedure that is corroborated by ss. 10.5.1 and .2), in the understanding that the Applicant will cover the fees associated with that procedure (s. 10.4.1.).

In light of the applicable rules, *supra* mentioned, provided the Applicant:

(i) Meets the qualifications for accreditation, as mandated by the LFC for Canada; and,
(ii) IATA verifies that indeed the change that occurred in the share holding of the Applicant's company does not alter its legal nature, the Applicant should be good to continue its operation as Accredited Agent under the new ownership, **without the need to provide any financial security**.

Furthermore, the LFC for Canada specifically states that a financial security will ONLY be required, if one of these 2 conditions are present, I quote:

> *<< **1. Change Of Ownership***
> *If the change of ownership of an accredited agency constitutes a 30% or more transfer of shares or assets, **to an outside party** and/or **constitutes a change of status of the legal entity previously accredited with IATA**, the new owner(s) will be required to provide a temporary financial security in the form of an Irrevocable Letter of Credit for a minimum period of 2 years. The minimum amount of the temporary security will be CAD $35,000 and will be reviewed every six months for two years>>* (emphasis mine)

As proven by the evidence on file:

- First, Ms. Cregan cannot be considered, in any way, an "***outside party***" to the Applicant's company; on the contrary, she has been working and actually managing the company since, at least, back in 1998 when she became part owner of it. Therefore, that condition is not met in this case;

- Second, the company, as a consequence of the referred CoO, did not become a different legal entity as it was before such acquisition of shares. Before and after it, the company was and still is a British Columbia Limited Liability Corporation named 53 8132 BC Ltd. Hence, the second condition is not met in this case either.

V. DECISION

Based on the referred arguments, uncontroverted proofs and applicable rules, I hereby decide as follows:

- The Applicant is to submit all the required/updated documents in order to process the latest change of ownership underwent by the company, which dates back to March 2016;

- Once the financial review of the Applicant would have been conducted by IATA, provided the Applicant continues to fulfil the qualifications for accreditation, its change of ownership will be duly recorded by IATA;

- The Applicant **shall NOT provide any financial security** (in this case, any Letter of Credit) based on the changes of ownership that it went through;

- The Applicant is to pay the applicable fees for getting its new shareholding composition duly registered in IATA's files.

- Any other communication/notice/instruction given to the Applicant by IATA pertaining this matter and stating anything different from this decision's content is hereby declared null and void.

This decision has immediate effect.

Decided in Vancouver, the 2nd day of February 2018.

In accordance with Resolution 820e § 2.10, any Party may ask for an interpretation or correction of any error, which the Party may find relevant to this decision. The time frame for these types of requests will be 15 days after receipt of the electronic version of this document (meaning no later than **February 17th, 2018**).

Both Parties are also hereby advised that, unless I receive written notice from either one of you before the above mentioned date, this decision will be published in the Travel Agency Commissioner's secure web site, provided no requests for clarification, interpretation or corrections have been granted by this Commissioner, in which case the final decision will be posted right after that.

If after having asked for and obtained clarification or correction of this decision, any Party still considers aggrieved by it, as per Resolution 820e § 4, the Party has the right to seek review by Arbitration in accordance with the provisions of Resolution 824 § 14, once the above-mentioned time frame would have elapsed.