

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

DECISION – May 19, 2018

In the matter of:

Jamsol Travel & Tours Ltd.

IATA Code 85-5 3164 4

Jamaica

Represented by its Managing Director Ms. Pauline Stewart

The Agent

vs.

International Air Transport Association (“IATA”)

Global Distribution Centre

Torre Europa

Paseo de la Castellana, 95

28046 Madrid, Spain

Represented by the Accreditation Manager, Mrs. Carmen Alicia Sánchez

The Respondent

I. THE CASE

The Agent is challenging the submission of a financial security ("FS") for which IATA has given 30 days to comply with.

According to the Agent's submissions, and proofs submitted in support of her allegations, it appears quite clear to me that a misunderstanding or an IATA's mistake has occurred. In fact, as per the evidence submitted, IATA, itself, acknowledged the Agent's lack of culpability in the late payment of one of its BSP Sales Report and, hence, withdrew the Notice of Irregularity (“NoI”), as well as the request for a FS that had been originally served against the Agent. Despite this very clear fact, the Agent received days ago another notice from IATA, completely ignoring the referred cancellation, seemingly disregarding the Agent's proofs from its Bank stating that the delay occurred for causes none attributable to the Agent, and, hence, demanding again the FS.

This Office granted interim relief to this Agent.

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II. BACKGROUND

As of the Interim Relief Order:

IATA executed the interim relief order rendered by this Office and, hence, suspended any request for the Agent to submit a financial security until this process comes to an end. However, I draw IATA's attention to an email that was sent to the Agent on May 18, 2018, by an Agency Management representative in total contradiction with the order rendered by this Office, causing anxiety and confusion to the Agent, I quote:

<<From: "Agency Management" <agencymanagement@iata.org>
[mailto:agencymanagement@iata.org]
Sent: Friday, May 18, 2018 10:21 AM
To: discoverytravel@cwjamaica.com
Subject: Financial security reminder [ref:_00D208TF._5001r1xpeNB:ref]

Dear agent,

This is a reminder in regards to our request of your financial security requested.

Please note that the deadline to provide the financial security was 23/05/2018.

We must receive not only the original financial security but also the communication DIRECTLY FROM the BANK, either in hard-copy or via e-mail to arme@iata.org, validating the issuance of the guarantee.

To avoid any inconvenience to your agent, please submit by the deadline mentioned above.

If you have any questions please do not hesitate to contact us.

Best Regards,

Paloma Morales>>

I presume this email was a mistake and, therefore, I hereby instruct the Agent to discard it and only acknowledge what Ms. Sánchez has stated in her email to this Office regarding the suspension of such request and its supposed timeline.

III. ORAL HEARING

In the opinion of this Commissioner, as per Resolution 820e, s. 2.3, an oral hearing was not deemed necessary. Ample opportunity was given to the Parties to present their submissions and evidence accordingly. They both made good use of this opportunity. Consequently, this decision is based on that written documentation only.

IV. CONSIDERATIONS

As of the NoI and the *bona fide* bank letter:

The evidence provided by the Agent clearly shows that the Bank has assumed full responsibility for the delay that occurred in the latest remittance. That is an unquestionable fact.

This Office has already stated in various cases that the *bona fide* bank letter's provision (stated in s. 1.7.4.3(i) of Resolution 818g, Attachment "A") is NOT the only provision that would allow a NoI to be declared null and void, since there are various other provisions that also allow for that cancellation of NoI to be applied, depending on the circumstances of each case.

Furthermore, this Office has also stated in several decisions that the <<10 days>> period, referred to in the above mention provision, should NOT constitute a barrier for the Agent to actually demonstrate its lack of control in the situation causing the delay at the Bank level. The essential elements, as this Office has stated, are:

- 1) For the Agent to have had enough funds available in its bank account to cover the remittance in full; and,
- 2) For the Agent to have given the order to its bank on time for the transfer to be made within the limits of the Resolution: meaning by Due Date.

Applying those parameters to the case at bar,

- The evidence clearly demonstrates the Agent's lack of control in the delay that occurred within its bank;
- The Agent's bank account was indeed fully funded to cover the total amount of the BSP Sales Report;
- The Agent's order to its bank was made on time;
- The Bank has taken full responsibility for the delay

V. DECISION

Having looked at the precedents set by this Office's previous decisions pertaining this same exact matter;

Based on s. 1.7(a) of Resolution 818g Attachment "A", considering that the Agent's delay was due to an *extraneous factor*, rather than to an act attributable to the Agent's lack of diligence, I hereby decide:

- The NoI that has been served to the Agent is declared null and void and, thus, shall be expunged from the Agent's record;

- In light of such annulment, there is NO need for the Agent to provide any BG.

This decision has an immediate effect.

Decided in Vancouver, the 19th day of May 2018.

A handwritten signature in blue ink that reads "U Pacheco Sanfuentes". The signature is written in a cursive style and is underlined.

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 **June 3, 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.

CLARIFICATION
RENDERED JUNE 2, 2018

Dear Parties,

I hereby acknowledge receipt of IATA's submissions (presented by Ms. Sánchez), as well as the bank letters re-submitted by the Agent.

Dear Ms. Sánchez,

Allow me to remind you that if IATA disagrees with a Commissioner's decision it has two options, either to

- (i) request a clarification (as per Resolution 820e, s. 2.10) in case some things but not be clear or an error might have been committed, or,
- (ii) bring the decision to an International Chamber of Commerce Arbitral proceeding (as per Resolution 820e, s. 4);

other than those two options, **IATA is bound to comply with a Commissioner's decision the moment the decision has been rendered**, as per Resolution 820e, s. 2.9 *in fine*.

In light of your submissions, considering that they have been presented 12 days AFTER my decision was rendered (copied below for ease of reference), I will treat it as a clarification, assuming that my statements were not clear enough for you.

As stated in the referred decision, the evidence provided by the Agent (and never questioned by IATA) irrefutably demonstrated that:

- The delay was caused by the Agent's lack of control in the internal proceedings that occurred within its bank;
- The Agent's bank account was **fully funded** to cover the total amount of the BSP Sales Report;
- The Agent's order to its bank was made on time, and,
- The Bank took **full responsibility for the delay**

This Office has stated in numerous decisions, which valuable precedent is hereby confirmed, that the only provision to be considered when it comes to delays caused by Banks actions is NOT the provision enshrined in s. 1.7.4 of Resolution 818, "A", but that there are many other situations that could actually happen (like the one in this case), which are NOT covered by the premises stated in that section. Furthermore, there are indeed other Resolutions' provisions that HAVE TO BE taken into consideration and actually applied in circumstances where the Agent is clearly NOT responsible for the delay.

As I stated in my decision, which I hereby confirm, based on the evidence on file, on the grounds set by **s. 1.7(a) of Resolution 818g Attachment "A"**, the Notice of Irregularity that was served against this Agent is hereby declared NULL and VOID and, therefore, must be expunged from the Agent's records immediately.

The decision rendered on May 20, 2018 stands.

Decided in Vancouver, the 2nd day of June 2018

Verónica Pacheco-Sanfuentes
Travel Agency Commissioner - Area 1