

TRAVEL AGENCY COMMISSIONER - AREA 1 - DEPUTY TAC2
VERÓNICA PACHECO-SANFUENTES
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Vancouver, British Columbia V6K 1R5
CANADA

DECISION – August 25, 2018

In the matter of:

Afric Voyages

IATA Code 39-2 0254

Côte d'Ivoire

Represented by its Managing Director Mme. Marie-Reine Koné

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, Ms. Carmen Alicia Sánchez

The Respondent

I. THE CASE

Originally the Agent sought a review of the Respondent's decision requesting it to submit a bank guarantee (“BG”), and about the rating of her Agency as been placed under a category “C” of her Risk History due to a change of ownership (“CoO”) that occurred within the internal structure of the Agent.

However, that CoO was not a major one, as defined in Resolution 812, s. 10.3.1.1 since it not only did not exceed 30% of the total issued shares of the corporation owned by the Agent, nor it implied a transfer vesting the control in any person which did not hold it prior to the change.

Furthermore, Mme. Koné has been the **sole Managing Director of the company since 1991** and has been the major shareholder (substantially, since **she holds 86,14%** of the total issued shares) **since 2010** to these days; therefore, does not seem reasonable to qualify her as a risky Agent and, hence, assign her category "C" in terms of her risk evaluation.

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Once this issue was pointed out by this Office, the Respondent noticed its mistaken appreciation of facts and amended the situation. The BG request was withdrawn and the risk evaluation was amended, but still to a “B” category, not an “A”, which motivated the Agent’s second challenge during this review.

The second challenge was about, specifically, the criteria that the Respondent was applying to evaluate the Agent’s financial statements. The issue at bar was whether the Respondent could apply the criteria set out in the Local Financial Criteria (“LFC”), applicable in Côte d’Ivoire as a West African country, by analogy or inference, instead of the general criteria established in Resolutions 800f and 800f “A”, considering that the particular choice made by the Agent in terms of her options to present her financial statements, did not contemplate specific parameters to be applied.

II. 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. Therefore, this decision is based on that written documentation only.

III. CONSIDERATIONS

In regards to the matter at hand and in light of the Parties’ submissions and evidence, I would like to make the following precisions and communicate to both Parties my conclusions:

1. Financial annual review / Submission of financial statements

It has never been put in question every Agent's obligation to submit, at least once a year, its financial statements in order to undergo a financial assessment by the Respondent, pursuant Resolution 818g. This Agent is no exception to this rule worldwide applied, nor she has ever challenged it. Consequently, this topic is out of any discussion.

2. Evaluation of financial statements

The issue at bar is how these financial statements are assessed by the Respondent: which criteria is IATA to apply when doing this evaluation:

- Shall it apply, by analogy, the criteria stated in the LFC applicable to West African countries (CWA - LFC) for Option 1, since no specific provision is found there when Agents chose Options 2 or 3 (as in this case the Agent had validly chosen Option 2)? or,

- Shall it apply the provisions stated in Resolution 80of and 80of Annexe "A", in light of the LFC's lack of specificity?

As Ms. Sánchez rightfully points out (when referring to the issue mentioned *supra* as # 1), pursuant the General Rule No. 2 of Resolution 80of, in case of conflicts or inconsistency between any LFC and these Resolutions, the Resolutions' texts prevail. I also would like to draw the attention to the hierarchy of sources mandated by Resolution 010, according to which:

4. HIERARCHY OF SOURCES

4.1 the following hierarchy of sources of rights and obligations continues to apply in connection with the Agency Programme:

1st. any Applicable Law;

2nd. the form of Passenger Sales Agency Agreement embodied in Resolution 824;

3rd. any contractual document specifically executed by the Agent and by IATA, acting on behalf of the Carriers;

4th. all other Resolutions of the Conference contained in the Travel Agent's Handbook;

5th. any Local Financial Criteria, as approved by the Conference; and,

6th. any and all applicable rules and provisions of the Resolution included in the BSP Manual for Agents.

4.2 in the event of any inconsistency between two sources of rights and obligations with respect to any matter specifically dealt with by both, **the provisions of the higher-ranking source governs. In such a case, the inferior-ranking source remains in force but simply does not apply to the extent of the inconsistency.**

...

4.4 the Conference may exceptionally provide that a source of inferior ranking, such as a Local Financial Criteria, will prevail, but such provision by the **Conference must be explicit and it can never be inferred or presumed** (emphasis mine)

IV. DECISION

Consequently, considering that the Conference has NOT provided that the CWA-LFC, as a source "of inferior ranking", is to prevail over the application of Resolutions 80of and 80of "A" for the specific situation at bar, I am compelled to conclude, based on those provisions, that:

- IATA has to apply the criteria set out in Resolutions 80of and 80of "A", until the Conference would have explicitly dictated otherwise;
- Therefore, IATA cannot apply, by inference nor analogy, the criteria set out for Option 1 to this Agent, since the Agent has opted for Option 2;
- IATA will re-assess the Agent based on the above-referred criteria and will notify the Agent of the results of such assessment accordingly.

This Decision has immediate effect.

Decided on the 25th day of August 2018.

A handwritten signature in blue ink, reading "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 **9 September, 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.