

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

DECISION – September 20th, 2018

In the matter of:

SUNRISE Viagens et Turismo

IATA Code 57-5 1203 3

Rio de Janeiro, Brazil

Represented by its Managing Director Mr. Marcelo de Moraes Casqueiro

The Agent

vs.

International Air Transport Association (“IATA”)

Global Distribution Centre

Torre Europa

Paseo de la Castellana, 95

28046 Madrid, Spain

Represented by the Assistant Accreditation Manager, Mr. Ronald Guzmán

The Respondent

I. THE CASE

The Agent claims having been suspended from the BSP system due to non-submission of a bank guarantee ("BG"), allegedly requested due to an unsatisfactory result from the Agent's annual financial evaluation.

As per the Agent's submissions, the Agency is a sound business, and what prompted such an unfavourable result was the way IATA's assessment was done regarding the Agent's liquidity ratios. The Agent is, therefore, requesting a new evaluation, one that would take into consideration the factors mentioned below.

The Respondent argued that based on the financial documents provided by the Agent and comparing them with the IATA's financial assessment, the result of the liquidity ratio is 1.44. Nonetheless, according to the evidence provided, the points achieved by the Agent are equal to 5 (max of 7), hence, even if the Agent achieved the maximum of points, it would still have a total number of points equal to 20.40, which would not be enough to have a satisfactory result.

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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

Having analyzed carefully the situation, in light of the applicable Resolutions (notably the Local Financial Criteria ("LFC")) applicable in Brazil, as well as Resolutions 818g s. 2.1.4, 2.1.4.1, 800f and 800f, "A", s.2.4 to 2.6),

Hereby are my conclusions:

- As per the above-mentioned Resolutions' text, the Agent has to comply at all times with the Financial Standards established in the LFC;
- The Agent has recognised that it did not comply with them during 2017, thus, the evaluation of the financial statements ("FS") corresponding that period, even if according to the Agent it had a sound financial situation, resulted in an "unsatisfactory" outcome and, hence, giving rise to IATA's request for a Bank Guarantee ('BG');
- Having revised the LFC, the Agent states that its 2018 standing is in accordance with the referred criteria, therefore, is requesting to be exempt from providing the BG for the rest of 2018, considering that the year is quite already advanced;
- Even though a logical reasoning, it cannot be supported since the rules state that the financial criteria must be complied with at all times and just because this issue has been taken more time than usual to be finally settled (since the Agent did not submit a request for review of this matter when it first was served with the Notice of Irregularity, nor when it was served with the Notice of Default), reaching the matter the current stage (prior termination), it should not be deemed as if the Agent had been in compliance or if its initial non-compliance with the LFC was irrelevant.

IV. DECISION

Based on the evidence on file, the Agent's own admissions, and the applicable norms, I hereby decide as follows:

1. The Agent has to provide the BG in the requested terms within the next 40 days as per Resolution 818g s. 2.2.1.3, starting as of tomorrow September 21, 2018;

2. When the time for Agents in Brazil come to submit their FS for the year 2018, provided the Agent's evaluation of those FS results in satisfactory, the Agent can request IATA for the release of the BG that it would have submitted this year as indicated in the previous paragraph;

3. Once the Agent would have submitted the referred BG, the Notice of Termination ("NoT") should be voided and its full reinstatement into the BSP system shall be undertaken at no further delay. Until then, the NoT remains on hold;

4. In the alternative, should IATA's assessors determine, as affirmed by the Agent, that the Agent is currently in full compliance with the LFC (regarding its 2018 FS), then the Agent could be temporarily reinstated into the BS system until the BG would have been submitted, in which moment the reinstatement shall become permanent.-

This decision has immediate effect.

Decided in Vancouver, the 20th day of September 2018.

A handwritten signature in blue ink, reading "Patricia Sanjurjo". The signature is written in a cursive style and is positioned above a horizontal line.

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 **October 5, 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.