

DECISION 2009-03-19

Travel Agency Commissioner Area 2

Helene Cedertorn
Karlavägen 30
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Sweden

The Case:

Request for Review of Decision by the Agency Administrator the 20th Jan 2009 regarding bond requirement; now question of granting Review or not

Applicant:

The Business Travel Partnership Limited
Represented by Alan G Bowen, AGB Associates
8 Jubilee Court, Harrow
HA3 0QW

Respondent:

Agency Administrator, United Kingdom
International Air Transportation Association, IATA
Represented by Mr Gilmartin, Country Manager UK & Ireland

Background, formalities etc:

By a letter the 20th of Jan 2009 IATA required a bond of 480,000.00 GBP to be submitted by the 20th of Feb by The Business Travel Partnership Ltd. The deadline for submission was later extended until the 20th of March. The bond was required on the grounds that both the parent company of the agent (BTP Group Limited) and the trading company (The Business Travel Partnership) failed to meet the liquidity requirements of the financial criteria.

The Applicant requested assistance and interlocutory relief by the Travel Agency Commissioner (hereafter TAC) in an email the 13th of March 2009, later explained to be a request for review under the provisions of Resolution 820e section 1-1.1.5. The applicant has requested relief for 21 additional days, in order to be able to submit restated accounts that would meet IATA's requirements.

The Applicant's Arguments in short summary

The company has held IATA accreditation since 1984. The parent company was set up with the sole purpose of holding the shares of the IATA Agency. The parent company has never traded nor sought any profit. The changes necessary to ensure compliance could be made relatively easily and would have been effected two years ago had the agent been aware. For the trading company capital is not an issue and nor is profitability, the sole issue is the

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apparent lack of net current assets, although the company has positive net assets. The accounts could be restated in a much more favourable light, although they are not dissimilar to accounts for at least the four years when no such request for a bond has been made. There are serious problems with the bonding market in the UK at present time. It would therefore be extremely difficult to this level in any event but it would be impossible, and an unnecessary burden to do so, within the next seven days. The agent will have to sell in at a fire sale price or potentially close down, when the business is actually growing and profitable. The change of the financial criteria two years ago was never specifically drawn to the attention of the UK agents.

The Applicant has submitted copies of the following documents:

IATA Financial Accreditation Report

Credit Report for The Business Travel Partnership Ltd

Calculation of restated accounts, The Business Travel Partnership Ltd, year ended 30 June 2008

Letter dated the 12th of March 2009 from Andrew Burnham, Partner at MacIntyre Hudson
Balance Sheet as of 31st Jan 2009 for Business Travel Partnership Ltd

The Respondent's arguments in short summary

IATA's review of the accounts for year ended June 2008 revealed a failure of both the parent company (BTP Group Limited) and the trading company (The Business Travel Partnership Limited), to meet the liquidity requirements of the financial criteria. In these circumstances, a bond is required in every case. Therefore on 20 January 2009 IATA issued a bond request for GBP 480,000.00 to be issued within 30 days. The ground for request for review is pursuant to Resolution 820e, Section 1, subparagraph 1.1.5, action "that unreasonably diminishes the Agent's ability to conduct business in a normal manner". IATA's application of the financial criteria has been carried out within the required timescales including the grant of an extension of 30 days to enable the agent to arrange bonding; our action does not therefore unreasonably diminish the agent's ability to conduct business being fully aligned with the provisions of the PSAA with regard to failure to satisfy the financial criteria.

The bond request was discussed at a meeting held on 26 January 2009. On 05 February 2009, the Applicant was granted an extension of the deadline for submission of the bond to the condition that no further extension to the deadline could be made. The request for a further 21 day extension was correctly denied since the maximum time allowed for the deadline is 60 days.

With regard to the change to the financial criteria effective from January 2007 it is not true to say that this was never specifically drawn to the attention of any UK agents. The process of communication of changes to the Travel Agents Handbook has been approved by the PAConf.

In view of Resolution 820e Section 2.7 coupled with the obligations of the agency administrator to follow resolutions, the application made by the agent for review on the ground that IATA has taken action that unreasonably diminishes the Agent's ability to conduct business in a normal manner be dismissed in accordance with Resolution 820e paragraph 2.1.1.

The Respondent has submitted copies of the following documents:

Letter from MD Joel Rouet, dated the 26th of Jan 2009, to IATA

Email correspondence between IATA and Managing Director Joel Rouet

Rules of interest

To become an accredited agent an agent signs a Passenger Sales Agency Agreement (hereafter referred to as the Agreement) in accordance with IATA Resolution 824. In this contractual relationship the Director General of IATA represents the IATA Members (or in other words the IATA airlines) and acts for and behalf of these.

The Agreement stipulates that terms and conditions governing the relationship between the Carrier and the Agent are set forth in the Resolutions contained in the Travel Agent's Handbook (hereafter referred to as the Handbook) as published from time to time under the authority of the Agency Administrator. The Handbook is local and varies by country and incorporates, amongst other things, local financial criteria. These criteria form the basis for the financial review of agents in a particular country. - The financial criteria are consequently to be considered as part of the contractual relationship between the individual agent and the IATA Members.

The IATA Resolutions may change from time to time, as decided by the Passenger Agency Conference (hereafter referred to as PAConf). The PAConf has the overall decision making authority with regard to the IATA Resolutions. The Agency Administrator of IATA has no power to change, ignore or overrule a Conference Resolution. For the UK the local financial criteria are discussed and recommended by local Agency Programme Joint Council (consists of airline and agent representatives) and thereafter the criteria are proposed to the PAConf. It is ultimately the PAConf who has the power to make a decision, and by this adopt the financial criteria with the effect that the criteria forms part of the individual agent's contract.

The Agreement stipulates that the Agency Administrator shall provide the agent with subsequent editions of the Handbook and all amendments thereto. The agent shall be notified by the Agency Administrator of any amendments to the contents of the Handbook and such amendments shall be deemed to be incorporated in the contract unless within 30 days of receipt of such notification, the agent terminates the Agreement by written notice to the Agency Administrator.

The financial criteria for UK were changed, with regards to what is here of interest, effective from the 1st of Jan 2007. The same criteria were in effect also during 2008.

Travel Agency Commissioner Review – rules and conclusions

The procedures under which the Travel Agency Commissioner (hereafter referred to as TAC) operates are contained in IATA Resolution 820e. The Commissioner shall initially decide whether or not a credible case for review has been made, according to section 1.2.3 of this Resolution. - The first initial assessment by the TAC is therefore if the matter is a credible case for review or not. When doing this assessment the TAC needs to be careful in order to ensure that the rights of the Applicant are not diminished or set aside. It is therefore necessary to reflect upon if other grounds for review could potentially be of interest in the matter, still based on the claimed circumstances, to ensure no rights are lost. It is however worth to note that the Travel Agency Commissioner does not have authority to overrule

resolutions, or change the material content of any rules. The Passenger Agency Conference has the power to implement any rules or procedures it so wish.

- When reflecting on other potential grounds for review I note that there have been two previous reviews granted by the undersigned with some circumstances that are similar to the circumstances in this matter. The previous reviews were based on resolution 820e section 1.1.10 stating; The Commissioner shall review and rule on cases initiated by an Agent who considers that the Agency Administrator (as defined) has not followed correct procedures as delegated by the Passenger Agency Conference, to that Agent's direct and serious detriment. In these reviews I came to the conclusion that the UK Financial criteria in the specific situations were to be interpreted in favour of the agents, as there was a certain lack of clarity in the wording of the financial criteria. However in this matter the failure by the Applicant to meet the criteria also concerns the trading company itself. In this situation the wording of the UK Handbook is very clear. The text clearly shows that for the accredited agent the current assets must exceed current liabilities, otherwise a bond will be required. I therefore do not find that there is any potential possibility for the Applicant to be successful in a TAC Review, based on this ground for review, given the circumstances in this case.

The Applicant has requested a review on the basis of Resolution 820e section 1.1.5. This section states that the Commissioner shall review and rule on cases initiated by an Agent who has received notice from the Agency Administrator of impending removal of the Agent or an Approved Location of the Agent from the Agency List, or of any action or impending action by the Agency Administrator with regard to the Agent, that unreasonably diminishes the Agent's ability to conduct business in a normal manner.

When I assess this ground for a potential review I find that the bond is calculated in way that is laid down in the Travel Agent's Handbook. The calculation is based on the BSP turnover to reflect the money at risk and there are no circumstances that indicate that it is unreasonable in parity to the turnover or the size of the Applicant. The Applicant was given an extension of the timeframe to submit a bond accompanied with clear information that no further extension of the deadline could be granted. The Managing director of the Applicant has, in a letter dated the 26th of Jan, stated that he is taking necessary steps to arrange for a bond to be issued. I can therefore not find that the claimed circumstances indicate that, not even potentially, the action by the Agency Administrator unreasonably diminishes the agent's ability to conduct business in a normal manner. The possibility that new restated accounts will be submitted does not change this assessment.

In summary I cannot find that there is any potential possibility for success for the Applicant in a Travel Agency Review on any of the grounds for review as laid out in Resolution 820e, based on the claimed circumstances. In light of the need to ensure the resources of the TAC Office are handled with care, and my obligation to initially decide whether a credible case for review has been made, I therefore dismiss this request for review in accordance with resolution 820e section 1.2.3.

Decision

The request for Travel Agency Review is dismissed. The request for interlocutory relief is consequently also dismissed.

Decided in Sundbyberg 2009-03-19

Helene Cedertorn

Sent this date by e-mail to: Mr. Gilmartin and Mr. Bowen

Note:

The parties may, if considered aggrieved by this decision, seek review by arbitration in accordance with the provisions of Resolution 818, section 12.