

DECISION 2009-07-22

Travel Agency Commissioner Area 2

Helene Cedertorn
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Sweden

The Case:

Request for Review of Decision by the Agency Administrator the 15th May 2009 regarding bond requirement; now question of granting Review or not

Applicant:

Cosmos Coach Tours Ltd
Represented by Finance Director Richard Francis
Wren Court 1st Floor, 17 London Road, Bromley, BR1 1DE

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 15th of May 2009 IATA required a bond of a 1 920 000.00 GBP to be submitted by the 15th of June by the Applicant. The deadline for submission was later extended until the 15th of July. The bond was required on the grounds that Cosmos Coach Tours Ltd failed to meet the liquidity requirements of the financial criteria.

The Applicant requested that the bond level should be left at the previous level of 1 100 000.00 GBP by e-mail to the Travel Agency Commissioner (hereafter TAC) the 30th of June March 2009, later in an e-mail dated 6th of July explained to be a request for review under the provisions of Resolution 820e section 1.1.9. and section 1.1.10.

The Respondent has provided a response in an e-mail dated the 13th of July 2009, and the Applicant has provided comments in an e-mail dated the 17th of July.

The Applicant's arguments in short summary

IATA currently holds a bond of £1,100,000 which has been in place for approximately eight years. Since this bond was put in place in 2001 there have been no requests from IATA to increase the value of the bond. Following the most recent financial review by IATA, which was based on the accounts for Cosmos Coach Tours Limited for the year ended 31 October

2008, IATA have requested an increase in the bond value to £1,920,000. The reason for this request is that the latest accounts show a lack of liquidity according to IATA's rules.

The issue is that the accounts of Cosmos Coach Tours Limited have shown this similar position for the past few years, and there has been no similar request to increase the bond value. This is due to the fact that IATA has reviewed the consolidated balance sheet in previous years, whereas this year it reviewed the company balance sheet. If the consolidated balance sheet were to be used then there would not be a lack of liquidity. The consolidated balance sheet and company balance sheet net current assets for the last three years are as follows:

Consolidated balance sheet:

Year ended 31 October 2008 - £613,000

Year ended 31 October 2007 - £385,000

Year ended 31 October 2006 - £192,000

Company balance sheet

Year ended 31 October 2008 - £(277,000)

Year ended 31 October 2007 - £(347,000)

Year ended 31 October 2006 - £(367,000)

If the consolidated balance sheet is used then there has not been a lack of liquidity, but if the company balance sheet is used then there would have been a lack of liquidity for each of the past three years. As mentioned above, this has only been raised as an issue in the last of these years.

On looking at the Travel Agent's Handbook the financial criteria under the liquidity section state: 'Your accounts must indicate that you have a favourable liquidity ratio. Current assets must exceed current liabilities at the end of an accounting period.'

It is not clear from the above statement whether it is referring to the company balance sheet or the consolidated balance sheet. It is not clear whether this is referring to the company only accounts or the consolidated accounts of the agency. It is clear that the consolidated accounts have been used by IATA in their review up until the 2007 financial year, and then without any notice the company only accounts have been used by IATA in their review for the 2008 financial year. It is unjust for this situation to change without any notice, whether this has been done correctly or not in the past. If Cosmos Coach Tours had been aware of this situation, then a dividend from Cosmos Coach Tours Limited's subsidiary company, Archers Tours Limited would have been paid, in order to rectify the position. It would be possible to arrange for the payment of a dividend now in order to rectify the liquidity position.

The bond should be left at its current level of £1,100,000, on the condition that a dividend is paid from Archers Tours Limited to Cosmos Coach Tours Limited. The balance sheet of Archers Tours Limited shows that it has sufficient distributable reserves to pay the required dividend to Cosmos Coach Tours Limited.

IATA has not dealt with the point made about resolving the liquidity issue by offering to pay a dividend from Archers Tours Limited to Cosmos Coach Tours Limited now. Cosmos Coach Tours Limited would then obviously be happy with the financial criteria being reviewed on the company's balance sheet going forwards, as it is now aware of IATA's interpretation of the financial criteria paragraph stated above.

The Applicant has submitted copies of the following documents:

Letter dated the 15th of May from IATA to Cosmos Coach Tours Ltd

Accounts Cosmos Coach Tours Ltd dated 20081031

Accounts Archer Tours Ltd dated 20081031

The Respondent's arguments in short summary

The grounds for request for review is pursuant to Resolution 820e, Section 1, subparagraphs 1.1.9 and 1.1.10 – where an agent is aggrieved by an impending amendment to the Passenger Sales Agency Agreement, and who considers that the Agency Administrator has not followed correct procedure as delegated by the Passenger Agency Conference respectively.

The facts of this case are as follows:

1. The agent was requested to increase the current bond we are holding of GBP1,100,000 to GBP1,920,000 on 15 May 2009 due to the annual financial review which showed a lack of liquidity in the accounts for the financial year ended October 2008.
2. We were contacted by Mr. Richard Francis on 18 May asking why we needed the bond - we responded on 01 June to confirm an increase to the current bond was required
3. The bond has been in place since 21 June 2001 as a bank guarantee from Credit Suisse. We have not previously requested an increase since the results from our then accounts for financial review in 2006 and 07 showed the criteria were met.
4. We spoke to Mr. Francis on 05 June concerning the review of the consolidated accounts of the agency Cosmos Coach Tours Ltd which has a subsidiary agency in their group. The consolidated accounts meet the criteria of profit and liquidity. He is aware that this is what was being reviewed as he has been given the figures from the reviews and they match the consolidated sheets.
5. We have explained that while the consolidated accounts (for the financial year ended October 2008) would meet the criteria the agency accounts do not.
6. We discussed a potential solution of applying for IATA accreditation the subsidiary agency, relinquishing the license for Cosmos Coach Tours Ltd by which course the agency accounts for the subsidiary would meet the criteria, and the consolidated accounts for Cosmos would be reviewed as the parent, again, meeting the criteria. The agent was granted an extension to provide the bond or submit the application for the new agency by 15 July 2009.

In view of Resolution 820e, paragraph 2.7 coupled with the obligations of the agency administrator to follow resolutions, I submit that the application made by the agent for review on the ground that IATA the Agency Administrator has not followed correct procedure be dismissed in accordance with Resolution 820e paragraph 2.1.1., and that there are therefore no grounds for the granting of interlocutory relief.

Rules of interest

To become an accredited agent an agent signs a Passenger Sales Agency Agreement (hereafter referred to as the PSAA) 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 (APJC, 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.

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 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 wishes.

There have been some recent changes in the local financial criteria for the UK to clarify that, in relation to UK Parent Companies, it is the consolidated accounts that now are to be reviewed, not the stand alone Parent Company Accounts. – In my interpretation this is to ensure it is the potential effects on the trading company that are caught, and this is logical.

Overall however the responsibilities and liabilities of an accredited Agent primarily rest with the Agent, as a legal entity. I cannot find that the text of the financial criteria for UK is unclear with respect to this. The wording of the text relating to bond requirements is quite clear that a bond will be required if the accredited Agent - (You) - do not meet the liquidity requirement, both in the version of the text from 2008, and the new version effective June 2009.

The failure by the Applicant to meet the criteria concerns the trading company itself and, as outlined, I cannot find in this situation that the relevant wording of the UK Handbook is unclear. I therefore do not find that there is any potential possibility for the Applicant to be successful in a TAC Review given the circumstances in this case, as the Agency Administrator has followed correct procedures. This could not either be seen as an amendment to the PSAA that potentially would aggrieve the Agent, as it is in line with the local financial criteria for the UK and duly incorporated in the PSAA.

My conclusions are despite the fact that the Agent may have been misled by previous practice by the IATA Agency Administrator, as the stand-alone accounts of the trading company have not been reviewed previously. Possibly this was not correct procedure, but such an error could not be reviewed at the request of an Agent as it has not suffered by the error. It is not possible to sort out the situation by a dividend as suggested by the Applicant, as it is the most recent annual accounts that should be reviewed according to the local criteria for the UK. This is possibly something for the local APJC to discuss, if it would like to suggest some sort of relief with respect to this for all Agents in the UK.

I note that the bond is calculated in way that is laid down in the Travel Agent's Handbook and the calculation is based on the BSP turnover to reflect the money at risk.

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.

Decided in Sundbyberg 2009-07-22

Helene Cedertorn

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

Note:

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