

DECISION 2009-08-17

Travel Agency Commissioner Area 2

Helene Cedertorn
Karlavägen 30
172 76 Sundbyberg
Sweden

The Case:

Request for Review of Decision by the Agency Administrator the 6th July 2009 regarding bond requirement

Applicant:

Travel Alliance Ltd
Boundary House, 7-17 Jewry House, London, EC3N 2EX
Represented by Mr. Derek Barlow

Respondent:

Agency Administrator, United Kingdom
International Air Transportation Association, IATA
Represented by Mr. Jean Charles Odele, Country Manager UK & Ireland

Background, formalities etc:

By a letter the 6th of July 2009 IATA required a bond of 555,000.00 GBP to be submitted by the 6th of Sept by Travel Alliance Ltd. The letter stated that the bond was required as a result of the lack of liquidity shown in the parent company accounts. The deadline for submission of the bond has later been extended until the 7th of Sept 2009.

Travel Alliance Ltd initially requested review by the Travel Agency Commissioner (hereafter TAC) in an e-mail dated the 16th of July 2009, in later communications clarified to be under the provisions of Resolution 820e Section 1- 1.1.8., 1.1.9. and 1.1.10.

The undersigned granted review the 3rd of Aug 2009, preliminary on the ground as stated in Res 820e Section 1- 1.1.10.

The Respondent provided its initial comments in an e-mail dated the 30rd of July 2009, and the Applicant has provided additional arguments in e-mails dated 5th and 13th of Aug. The Respondent has been given the opportunity to respond, but has had no further comments.

Both parties have agreed to that a decision by the TAC could be based on the written submissions of the parties. The undersigned finds that the arguments from both parties are clear and that all submitted evidence in the case are in writing. Therefore the decision could,

without jeopardizing the process, be based on the written submissions, and an oral hearing is not necessary.

The Review - Rules of interest

The authority and duties of the Travel Agency Commissioner are set out in IATA Resolution 820e. In this matter what is of interest is a review on the basis of Resolution 820e section 1.1.10. This section states:

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 order to determine whether the decision under review was made in accordance with applicable Resolutions and based on credible facts.

The Case - 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 financial criteria for UK were changed, with regards to what is here of interest, effective from the 16th of June 2009. The criteria were changed to clarify that the review of the parent company accounts should be done based on the consolidated accounts, and not as the previous practice the based on the "stand alone" parent company accounts.

The text states;

"If your company is a subsidiary of another company or more than one company ("Parent Company"), registered in the UK, i.e. financial control is vested in one or more UK Parent Company(ies)) you will need to submit a copy of the most recent annual accounts of these

controlling company(ies). Such Parent Company Consolidated Accounts will be considered in the determination of your financial standing as an Applicant or Agent.”

The rules require (with regards to liquidity) that the trading company accounts must indicate a favourable liquidity ratio. Current assets must exceed current liabilities at the end of an accounting period. This requirement is also extended to the Parent Company Accounts. If this requirement is not fulfilled, a bond is required.

The Applicant’s arguments in summary

In 1991 the business of Travel Alliance Limited was bought by the management and in order to enable the management buyout to be financed and to comply with legislation in the UK a holding company was put in place, Travel Alliance Holdings Limited, with a share capital of £10,000. Travel Alliance Holdings Limited owned 100% of the shares of Travel Alliance Limited and the debt of £550,000 was gradually repaid. During this time there was no bond requirement. In March 2008 Travel Alliance Holdings Limited bought back the non working shareholders shares with approval of IATA. A small loan of £200,000 was taken out and half was repaid by 31 December 2008. At all times Travel Alliance Holdings Limited has owned 100% of Travel Alliance Limited. As a result of the buy back of shares the share capital is now £5,150.

The holding company has not traded and will not trade. It is only a method of holding the shares in the trading company. Please note there has been no bonding requirement until the submission of the accounts for the year ended 31 December 2008 even though the structure of the business has not changed. Any requirement for a bond will put an unnecessary cost on the company and impact on the profitability of the company. Also other agents will be given an unfair advantage. The holding company does not trade and acts only to hold shares in the trading company. The trading company satisfies the criteria and therefore there should be no bond required. If it had been known there was going to be a bond requirement, alternative arrangements would have been made, to avoid the substantial cost of bonding.

The Applicant has submitted copies of the following documents

Financial Statements for the Travel Alliance Holding Ltd, year ended 31 December 2008.

Financial Statements for the Travel Alliance Ltd, year ended 31 December 2008.

IATA letter dated the 6th of July 2009

The Respondent’s arguments in summary

IATA’s review of the agent’s accounts for year ended December 2008 revealed a failure of their Parent Company (Travel Alliance Holdings Limited) to meet the liquidity requirement of the local financial criteria, since there were no current assets, and liabilities of £100,000. The UK local financial criteria were modified with effect from January 2007, whereby the examination of parent company accounts was included as part of the agent’s financial review. Consequently, should either the parent company or the trading company fail the financial tests a bond is required in every case. In view of Resolution 820e, paragraph 2.7 coupled with the obligations of the agency administrator to follow resolutions, IATA submits 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.

Conclusions and reasons for decision

Resolution 820e section 1.1.10, described above, forms the basis for this review. It shall be noted 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. It is purely the process for implementation and execution of the rules that could be reviewed by the Travel Agency Commissioner based on section 1.1.10.

-As mentioned above, the financial criteria for UK effective from 16th June 2009 state that the **consolidated** parent company accounts will be considered in the determination of the financial standing of an agent. - It is my understanding that one of the reasons for the clarification of the rule was to ensure that situations when a non-trading holding company owns the shares of a trading company (The Agent), should be evaluated by a method more relevant with regards to actual financial effects on the trading company.

In this particular case the numbers of the financial statements of Travel Alliance Ltd and its holding company Travel Alliance Holdings Ltd indicate that the liquidity criteria would be fulfilled if the consolidated accounts were to be presented. - To my knowledge there are no obstacles for the Applicant to present the consolidated numbers, based on the financial statements of Travel Alliance Ltd and Travel Alliance Holding, year ended 31st of Dec 2008.

As the IATA Agency Administrator has not informed the Applicant of these circumstances, or given it the opportunity to provide consolidated accounts, in a situation where it seems most likely that the Agent would fulfill the failing criteria if it so did, I find that the Respondent has failed to follow correct procedures as laid out in Res 820e section 1 – 1.1.10.

Decision

The Applicant shall present and submit consolidated financial statements for the companies Travel Alliance Ltd and Travel Alliance Holdings Ltd (based on the accounts as per the financial statements year ended 31 Dec 2008) the latest by the 15th of Sept -09.

The decision by the Agency Administrator the 6th of July 2009 requiring a bond from Travel Alliance Ltd is hereby made null and void, and is thereby no longer in effect. The Respondent may, if it finds reason for it, make a new decision, based on the assessment of the consolidated parent accounts as outlined above, after the 15th of Sept 2009.

Decided in Sundbyberg 2009-08-17

Helene Cedertorn

Signed original copies of this decision will be sent by postal mail to the parties.
Sent this date by e-mail to: Mr. Odele and Mr. Barlow.

Note:

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