

DECISION 2010-04-26

Travel Agency Commissioner Area 2

Helene Cedertorn
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Sweden

The Case:

Request for Review of Decisions by the Agency Administrator regarding requirement to provide guarantee, now question of granting TAC Review or not

Applicant:

Golden Star Tour s.r.l. (referred to as "Applicant" or "Golden Star Tour")
Viale Stazione 1/B, 10024 Moncalieri, Italy
Represented by: Mr Alessandro Ragusa

Respondent:

Agency Administrator, Italy
International Air Transportation Association (referred to as "Respondent" or "IATA")
Viale di Val Fiorita 86
Represented by:
Mr Bossa, IATA Regional Manager Adriatic

Background, formalities etc:

By letter the 7th of Jan 2010 IATA provided notice of default to the Applicant. Following the financial review subsequent to the default decision IATA required a guarantee to be provided to the amount of 680 000.00 Euro, based on the average of twelve months of BSP net cash sales previous to default action. This was communicated to the Applicant in a letter dated the 18th of March 2010, as well in previous communications from IATA to the Applicant.

The Applicant requested Review by the Travel Agency Commissioner in a letter dated the 27th of March (due to the undersigned's move of address it arrived as late as the 12th of April). The Applicant claimed that the amount of the guarantee was too high considering the actual sales of the agency.

IATA responded in an e-mail the 13th of April and maintained its position with regards to the level of the guarantee. IATA also provided additional arguments and translations of previously submitted documents in an e-mail dated the 20th of April 2010.

The Applicant has provided additional comments in an e-mail dated the 21st of April 2010.

The Applicants main arguments:

Golden Star Tour has been approved as IATA agent for period longer than five years. In July 2009 IATA requested an increase of guarantees from 500.000.00 Euro to 680.000.00 Euro due to increased sales. Golden Star Tour acted quickly and provided the requested guarantee. In Sept 2009 following a late payment (only two days arrears) IATA froze the ticketing authority and placed the agency under review. The review was terminated in Dec 2009 with a reinstatement.

In Jan 2010 IATA once again froze the ticketing authority and placed the agency under review for partial lack of guarantee due to the expiry of a 170.000.00 Euro insurance bond. Reinstatement was subject to the renewal of the expired guarantee. During this time IATA kept unused guarantees of 510.000.00 Euro.

In March 2010 Golden Star Tour made a request to IATA to reduce the requested guarantees to 510.000.00 Euro. The reasons for this as follows:

The amount of 680.000.00 Euro is based on sales Aug 08-Jul 09. During this period extraordinary and non-repeatable circumstances raised the air ticket sales;

a) Golden Star Tour provided tickets to a large group in Oct 2008 for approximately 300.000.00 Euro.

b) Golden Star Tour provided tickets to Agency Lunediana Viaggi, former IATA Agency, for a monthly average amount of 150.000.00 Euro. Lunediana Viaggi is now very close to a new IATA approval and will no longer require the services of Golden Star Tour.

Excluding a 20 day period in Dec 2009 Golden Star Tour was unable to issue tickets in the last six months. This caused permanent loss of regular clients. In addition from Dec 2009 Golden Star Tour has started to ask its customers to change to credit card payments.

The guarantee of 510.000.00 Euro is substantial and should suffice. IATA needs a guarantee suitable for the average risk of travel agency's insolvency. For agency usually operating in BSP the guarantee corresponds to the average of 45 days of sales achieved in the last 12 months.

Nowadays reinstatement is subject to a 680.000.00 Euro guarantee, an amount that became iniquitous both because it was calculated on statistics outdated since almost a year and also because Golden Star Tour has demonstrated that it does not have the capability to sell as much as July2008/June2009 anymore.

All others requirements are met: safe premises, the staff attended all the courses, the balance is ready for a positive audit, one of the guarantees will expire end of May 2010 and will be renewed as soon as this review is concluded.

The Applicant has submitted copies of the following documents:

Letter dated 16 Dec 2009 to IATA, BSP sales statistics the period Feb 2008 – Mar 2010, letter from IATA dated 18 Mar 2010, letter to IATA dated the 2 Mar 2010.

The Respondents main arguments:

The Agent was declared in default due to overdue/late payment of BSP Italy Dec 2009 sales. All amounts due were settled after default declaration. Subject to financial review,

reinstatement will be granted providing former guarantee of 680.000.00 Euro is reconstituted.

One of the three guarantees which were formerly in place for total amount of 680.000.00 Euro expired in Dec 2009. Notwithstanding the timely and prompt warning sent to the Agent, the Agent failed to replace the coverage and this caused Golden Star to go under review for lack of compliance to the financial criteria. Default action for late payment followed. In addition to this, IATA received notice of termination from one of the remaining guarantors effective May 2010.

According to local criteria (approved by APJC prior to changing to Res 818) the established rule which determines the coverage requirement in terms of financial coverage is 45 days of the actual average previous 12 months of BSP net cash sales. Based on such parameter the increase to 680.000.00 Euro was requested by IATA the 3 Aug 2009. Contrary to what is stated by Golden Star Tour not only did the Agent fail to comply by the specific date but they also failed to settle BSP Aug 2009 sales. The Agent was therefore declared in default on 18 Sept 2009. The requested increase was later submitted as part of the review proceedings for reinstatement. – Default action for overdue/late payment has also been applied against the Agent for the billings of Dec 2007 sales.

BSP Agents in Italy are reminded of the actual method of the calculation of guarantees on a monthly basis via the BSP bulletin, which is distributed via BSPlink.

BSPlink is the IATA global interface for Agents and Airlines to access BSP. It is an internet based system to facilitate interaction and exchange of information between all participants in the BSP namely Agents/Airlines/IATA/GDSs/DPC. Each BSP Agent is provided with a unique login and password to access BSPlink.

The Agent's Billing Analysis (for the remittance of the BSP sales) as well as communication from IATA or BSP Airlines is distributed/downloaded from BSPlink.

In the BSP Italy the remittance frequency is monthly; tickets issued during March are paid on the 15th of April.

The Respondent has submitted copies of the following documents:

Response dated 12 of April 2010 with attachment 1-13.

Nov, Dec 2009 and Mar 2010 BSP Bulletins for Italy.

Translation into English of documents already submitted in Italian.

Rules of interest and some conclusions with regards to these

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, the Passenger Sales Agency Rules (for Italy contained in Res 818 from 1st of June 2010 Res 818g) and local financial criteria. These local 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.

In many countries the local financial criteria contains rules relating to requirements to provide guarantees. There are rules on when a guarantee is required and how to calculate the required amount. It shall be noted however that it is not only in situations when the Agent fails to meet the local financial criteria that guarantees may be required. Also in for example default situations an Agent will be asked to provide a guarantee under other rules. When an Agent subsequent to default decision is under review by the Agency Administrator, the Agent shall if all outstanding amounts are settled, still provide a guarantee or a bond equivalent to sales at risk (see Res 818 Attachment A section 2.3). Normally also these guarantees are calculated according to the methodology for calculating guarantees as laid down in the relevant local criteria.

The Italian local financial criteria do not contain rules on how to calculate guarantees or bonds if required. The Respondent has stated that the guarantee constantly remains in line with the average amount of the BSP Net Cash Sales. The formula considers the previous 12 months (not year) with coverage of 45 days (30 days of the month + 15 days of the following month/remittance date). - The basis for this calculation has been clearly communicated regularly to all BSP Agents, and according to IATA's undisputed statement is based on a decision by the local APJC from the time before Italy was under Res 818.

I note that it is practice in many countries to use a twelve month period sales with a formula considering the number of days the funds are at risk, though shorter periods also exist. This is therefore in my opinion not unreasonable for the Agent. I therefore find that the method for calculation as described by IATA, and disclosed monthly in the BSP bulletin for Italian BSP Agents, shall be applied.

-This means that peak sales, changes to the Agent's client base and other changes to the business will have remaining effects on the guarantee level for a certain period of time. In this particular case the effects are, as actual sales are considered and the Applicant has been under default for certain periods with no sales, that the twelve months that forms the basis for the calculation covers a period of time that extends twelve months. This is a logical consequence of the rule as it is established as the projection for future risks could not be based on sales figures during a month with no sales.

I want to underline that my interpretation of the rule is that month by month sales at a lower level will have effects on the level of the guarantee. In this case there were peak sales in Oct/Nov 08, and now only a few months' sales at a lower level will have the effect that these months are not included in the calculation of the guarantee, and consequently the required amount of the guarantee will be lower.

Travel Agency Commissioner Review – rules and final 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.

In this matter the main question is if IATA has followed correct procedures when requiring a financial guarantee based on the net cash sales of the last twelve months with actual sales. I have already found that this decision by IATA is correct and in accordance with the established rule for calculation of guarantees in Italy.

I have also considered the circumstances leading to the decision to require a guarantee in this matter. Based on the documents submitted I find that there are no indications that the Respondent has not followed correct procedures in the process leading to the decision to require a guarantee. I note that this is not either argued by the Applicant.

Altogether this means that I find that the Respondent, based on the available information, has followed correct procedures in this matter. I cannot either 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 decision by IATA to require guarantee at the requested level stands.

It shall be noted though that the level shall be monitored by the Respondent, and if there are changes of some substance considering the last twelve months (full months) with actual sales, the level of the required guarantee shall be adjusted.

Decided in Stockholm 2010-04-26

Helene Cedertorn

Sent this date by e-mail to Mr. Ragusa, Ms Masi and Mr. Bossa

Note:

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