

DECISION 2010-1-12**Travel Agency Commissioner Area 3**

Jo Foged
685 Remuera Rd
Remuera, Auckland
New Zealand

The Case:

At the request of the Agent a Review of the decision by the Agency Administrator to remove this Agent from the Agency List as a result of an unauthorized change of ownership is being sought.

Applicant:

Eureka Travel and Tours,
46D Rafi Ahmed Kidwai Road,
Satyam Building 5th Floor,
Kolkata – 700016,
India.
Represented by Mr A.Majumder, Proprietor.

Respondent:

Agency Administrator, Geneva
International Air Transport Association, IATA
Represented by Ms Siew Cheng Lim, Assistant Director Accreditation – Asia/Pacific,
IATA, Singapore.

Background, formalities etc:

In light of the softer trading conditions being experienced Mr Majumder, the sole proprietor of the Agency, decided to change its legal status to that of a private limited liability entity. A company, Eureka Travel and Tours Pvt Ltd, was registered in March 2009. The Agent advised the Agency Administrator of a change of ownership in December 2009 and as no advance notification of this development had been provided to IATA the provisions of Resolution 810i para 11.3.1 required the Agent to be removed from the Agency List.

Both parties have intimated waiving their rights to a formal hearing and have allowed the Travel Agency Commissioner (TAC) to base his decision on the documentation rendered. The undersigned finds that the arguments of both sides are clear and an oral hearing can be dispensed with without jeopardizing the process.

Authority for Review:

The terms of Resolution 820e – Reviews by the Travel Agency Commissioner – provides for an Accredited Agent to seek Review by the TAC in circumstances described therein. In this case the most pertinent paragraph as seen from the Applicant's perspective is 1.1.5 which states:-

“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”

Having received the appeal for Review by the Applicant the undersigned has decided to allow the Review as application was made within the 30 day time limit.

Schedule of Events:

1. On 11 December 2009 the Agent advised the IATA India office that Eureka Travel and Tours had become a Pvt Ltd entity in March 2009.
2. Mr Majumder acknowledged his error in not informing IATA earlier but pressure of business had allowed this matter to slip.
3. The Agent was advised that as no Passenger Sales Agency Agreement existed with the new entity immediate removal from the Agency List was required by the governing Resolution.
4. On receiving this advice from IATA the Agent sought a review of this action by the undersigned.

The Applicant’s Arguments in Summary:

1. The Agent’s IATA Accreditation is in the name of Eureka Travel and Tours.
2. The current bank account is in the name of Eureka Travel and Tours.
3. All cheques to IATA are in the name of Eureka Travel and Tours.
4. The Agent’s lease agreement with its landlord is in the name of Eureka Travel and Tours.
5. The Agent is still operating as a sole proprietor entity.
6. The company Eureka Travel and Tours Pvt Ltd was registered in March 2009 however no bank accounts or cheques have been opened or issued in that name.
7. The Agent’s intentions were to transfer the business and liabilities to the Pvt Ltd entity once approval from IATA had been received.
8. The Agent regrets not having been more specific as to the actual status of the proposed change of ownership when he advised IATA of the situation in his e-mail of 11 December 2009 which has brought about this misunderstanding.

The Respondent’s Arguments in Summary:

1. The advice received from the Agent referred to a change of ownership having taken place in March 2009.
2. Without a signed Passenger Sales Agency Agreement with the new entity the clear action required was to terminate the Agent’s accreditation with immediate effect.

Considerations Leading to Conclusions:

This is a clear case where insufficient information from the Applicant caused an outcome which could have been avoided had the Applicant been more detailed in its 11 December 2009 advice to IATA regarding the status of the change of ownership as it existed at that time. Mr Majumder's intentions were to seek advice from IATA on how he should go about effecting the change envisaged before taking any change of ownership action. The Agent is currently covered by a bank guarantee for INR3500000 in international sales until 31 December 2010 and is insured for domestic sales up to the end of August 2010.

Decision:

The Agent is to be re-instated on the Agency List subject to it satisfying the Agency Administrator with the following documentation:-

1. a certified bank statement up to 22 December 2009.
2. a current business license (Shops and Establishment Certificate and Service Tax Registration) of Eureka Travel and Tours – sole proprietorship.
3. audited statement of accounts for the period from 1 April 2009 until 30 November 2009.
4. current valid lease agreement/ownership details of the premises where the Agency is located, duly notarized.

Decided this 12th January 2010 in Auckland:

Jorgen Foged
Travel Agency Commissioner Area 3

Note:

The Agent may, if considered aggrieved by this decision, seek review by arbitration in accordance with the provisions of Resolution 820e Section 4 Paragraph 1 and as detailed in Resolution 810i Section 13.

