

DECISION 2011-10-31

Travel Agency Commissioner Area 3

Jo Foged
685 Remuera Rd
Remuera, Auckland
New Zealand

The Case:

The Agency Administrator seeks a Review of PT. Soka Shinning Tours and Travel, Jakarta, Indonesia under Resolution 818g Section 2 subparagraph 2.4.4 which relates to an Agent materially misrepresenting its financial standing.

Applicant:

Agency Administrator, Geneva
International Air Transport Association, IATA
Represented by Mr Nadarajah Prabaharan, Manager Agency Management, Industry Distribution and Financial Services, Asia/Pacific Region, IATA, Singapore.

Respondent:

PT. Soka Shinning Tours and Travel, Jakarta, Indonesia
Represented by Ms Tiny Mangarek Chief Executive Officer.

Background, formalities etc:

The Agent submitted a set of audited financial statements which had not been audited by the Auditor concerned leading IATA to believe that the Agent had misrepresented its financial standing as described in Resolution 818g Section 2 subparagraph 2.4.4.

Under this provision the Agency Administrator has the authority to terminate the Agent however the decision was taken to refer the matter to the Travel Agency Commissioner (TAC). In so doing the Agency Administrator did not advise the Agent concurrently of its actions. On prompting by the undersigned this oversight was rectified and the Agent received the relevant notice and documentation.

IATA and the Agent have agreed to waive their rights for a formal hearing and have allowed the TAC to base his decision on the documentation tendered. The undersigned finds that the information provided by both sides is clear and an oral hearing can be dispensed with without jeopardising the process.

Authority for Review:

The terms of Resolution 820e – Reviews by the Travel Agency Commissioner – provides for the Agency Administrator to initiate a Review in a set of situations described in Section 1.3 of Resolution 820e, the preamble of which states:-

“The Agency Administrator, on his own initiative or at the request of any Member, a group of Members, or of the Agency Services Manager, shall initiate a review to determine whether the Agent or Location has breached the Passenger Sales Agency Agreement, including IATA Resolutions incorporated into it, when the Agency Administrator has determined that a credible case has been made, in particular in respect of any of the following: “

In the case under consideration the provisions of Paragraph 1.3.1 apply. This states:-

“the Agent or Approved Location no longer fulfills the qualifying requirements for accreditation under the Passenger Sales Agency Rules;” (namely subparagraph 2.4.4 of those Rules).

Schedule of Events:

1. On 13 September 2011 the Agency Administrator (AA) suspended the Agent and placed it on notice of termination due to it having submitted a set of audited financial statements which had not been audited by the Auditor purported to have performed the process. The AA went on to advise that the termination date would be 31 October 2011 however termination would not take effect provided that the Agent submitted requisite audited financial statements prior to that date.
2. On 26 September 2011 the AA contacted the undersigned attaching a 23 September 2011 letter which requested a review of the Agent citing the submission by the Agent of fraudulent financial statements.
3. Having been reminded to alert the Agent to the act of seeking a TAC Review the AA did so by writing to the Agent on 30 September 2011 referring to his 13 September 2011 suspension letter and the Notice of Termination and acknowledging the receipt of a second set of audited financial statements as requested in that letter.
4. The undersigned contacted the Agent on 5 October 2011 (copying in IATA JKT and SIN) and outlined the nature of the allegations being made by the AA and requesting an explanation why audited financial statements purporting to have been prepared by Kantor Akuntan Publik (Drs. Sahat MT) and proven not to have emanated from that firm were submitted to IATA JKT.

The Applicant's Arguments in Summary:

1. As is standard practice by the IATA Agency Services Office Indonesia the accounting firm recorded as having performed the audit for the Agent concerned is contacted to confirm that in fact it has prepared the documents submitted by the Agent.
2. In the case of the Respondent, the firm shown on the covering letterhead advised that it had not prepared the subject audited financial statements.
3. Consequently a breach of the Passenger Sales Agency Rules as described in "Background, formalities" above had occurred and the Agent was suspended and issued with a Notice of Termination.
4. The Agent was invited to submit requisite audited financial statements prior to 31 October 2011 which would thereby avoid termination action. In hindsight this was erroneous.
5. Comparison between the first and second set of financial statements revealed that there were differences in the figures published.
6. Having realised that the second set of financial statement option should not have been given to the Agent it was decided to approach the TAC for a Review citing Resolution 818g Section 2 subparagraph 2.4.4 as the vehicle to achieve the Respondent's termination.

The Respondent's Arguments in Summary:

1. The preparation of audited financial statements was arranged by the Chief Accountant in whom the Chief Executive Officer had full trust.
2. It has come to light that the Chief Accountant had embezzled company funds including fees for the preparation of the first set of financial statements. This mishap was discovered when advice was received from IATA on 7 September 2011.
3. The Chief Accountant has absconded and hence prosecution under the law cannot be pursued.
4. The issue created is sincerely regretted and apologies are extended to IATA and the auditing firm whose name has been used fraudulently by the Chief Accountant.
5. As requested a second set of authenticated audited financial statements have been submitted to IATA. The difference in the figures shown in this set is due to the general format adopted by this Auditor.
6. The main priority currently is to resolve the matters that are putting the company's operations on hold.

Considerations Leading to Conclusions:

The AA refers to Resolution 818g Section 2 subparagraph 2.4.4 as the justification for requesting a Review of this Agent by the undersigned. This subparagraph states the following:-

“in the event an Agent or applicant materially misrepresents its financial standing, providing that written evidence of such action is presented and can be verified, the Agency Administrator shall take action to remove the Agent from the Agency List and to serve immediate notice of suspension. Such action shall take effect on the date so described by the Agency Administrator.”

As can be seen the Agency Administrator had the authority to terminate the Agent when written evidence of the fraudulent action came to light. For reasons best known to the Applicant this provision was not exercised but instead the Agent was suspended and invited to submit a second set of audited financial statements prior to 31 October 2011 if it was to avoid termination action.

Having at some point realised that the option given to the Agent was non-compliant with the circumstances involved in this case the AA contacted the undersigned with the objective of achieving the same end result as that described in the Resolution 818g subparagraph detailed above.

The IATA supplied translation of the statement made by the accounting firm purporting to have prepared the first set of financial statements declaring that they had no hand in that process has been sighted and accepted by the undersigned.

The Agent's Chief Accountant's motives in submitting non-authenticated financial statements to IATA can only be guessed at. The fact that he embezzled funds held in his employer's keeping is accepted. The apparent inability for him to be pursued under the law due to his “absconding”, the term used by the Respondent's CEO, is puzzling and one would have thought that reporting to the authorities of this crime would have been a priority. However not being familiar with the situation related to such things in Indonesia I will let that matter rest.

In earlier Decisions I have ruled that in a case of proven fraud action can only be taken against the “Agent” as the entity defined in Resolution 866. In this case, due to the written invitation to the Agent by the AA to supply a second set of financial statements to avoid termination, albeit erroneous, the principle of fair play dictates that an obligation exists for this process to be honoured. In other words, the Agent having gone to the trouble and expense of having a second set of statements prepared must have them assessed by the IATA Global Assessor. The outcome of that assessment will then be processed in accordance with the provisions enshrined in the Passenger Sales Agency Rules.

At this stage, to my knowledge, the second set of audited financial statements has not been examined by the IATA Global Assessor and therefore the financial health of the Respondent is yet to be determined.

Decision:

1. The Notice of Termination issued by the AA dated 13 September 2011 is hereby revoked and will not take effect on 31 October 2011.
2. The second set of authenticated audited financial statements must be submitted promptly to the IATA Global Assessor for examination and a finding.
3. The Agent shall remain suspended until such time as the IATA financial assessment has been concluded and whatever requirements of IATA upon the Agent have been complied with by the Agent. This process must be conducted as quickly as possible so as to minimize negative commercial impact on the Agent.

Decided this 31st October 2011 in Auckland:

Jorgen Foged
Travel Agency Commissioner Area 3

Note:

Either party may, if considered aggrieved by this decision, seek review by arbitration in accordance with the provisions of Resolution 820e Section 4 subparagraphs 4.1 and 4.3.