

**DECISION 2012 – 12 - 07**  
**TRAVEL AGENCY COMMISSIONER – AREA 3**

Jo Foged  
685 Remuera Road,  
Remuera, Auckland 1050,  
New Zealand

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**Applicant:**

Agency Administrator, Geneva,  
International Air Transport Association, IATA,  
111 Somerset Road, #14-05,  
TripleOne Somerset,  
Singapore.

Represented by Ms. Ooi Hwa Tham, Manager, Agency Management Asia Pacific.

**Respondent:**

Otaki Travel Ltd,  
74 Main Street,  
Otaki,  
New Zealand.  
Represented by Mrs. Ann Marychurch, Director

**The Case and Decision:**

On 4 December 2012 the Agency Administrator sought a review by the writer of Otaki Travel Ltd on the grounds provided for in Resolution 818g, Attachment A, Section 1.8 "Prejudiced Collection of Funds". This action followed a request by a Member Airline who had noted a recent surge of sales on its services by this Agent and were consequently concerned as to whether the Agent's current level of financial guarantee was adequate to cover the higher volume of business.

Additionally it was alleged by the Member Airline that the Agent was ticketing travel generated by a person who had been a principal shareholder in an IATA Agency which defaulted on its BSP payments in December last year leaving carriers with a loss of NZD 607,396 post recovery of the total amount of financial guarantee held by the defaulting Agent.

As required by the above mentioned Section, on 30 November 2012 IATA suspended the Agent's ticketing authority, advised all BSP Airlines of the Agent's under review status and issued it with 2 Instances of Irregularity pending the outcome of the review to be conducted by the writer.

The Review seeking Member Airline cited the fact that the Agent's sales on its services had grown from NZD87,038 in calendar year 2011 to NZD577,734 for the 10 months up

to October 2012 and as a consequence of this increased exposure it removed the Agent's ability to issue its tickets on 30 November 2012. The Member Airline also expressed its concern that "the surge in sales may be due to dealings with Mr - - - - -, owner of the Terminated Agent XXXXX".

On 30 November 2012 the Member Airline advised the Agent, who is on weekly remitting, that due to their very strict finance and audit requirements and their recent experience with the Terminated Agent it would require an increase in the Agent's bank guarantee from its current level of NZD50,000 to NZD80,000.

In its defence the Agent advised the writer that it had explained to the Member Airline's representative that the reason for its increase in the Airline's business was due to the fact that when the Terminated Agent collapsed it (the Agent) was the closest agency on the same CRS therefore the Terminated Agent's unfinalised business came to the Agent for completion. Not long after this collapse the four brokers employed there continued to work through the Agent. Currently there are three brokers who generate "a reasonable amount of business."

The Agent admitted that it had had dealings with the Terminated Agent's principal shareholder but when it became apparent that this was not acceptable to the airlines it broke off that relationship. The Agent's business had also increased because the toll free phone number held by the Terminated Agent was now being directed to it as it had joined the same franchise chain to which the Terminated Agent belonged.

In the Agent's opinion, by even using the last 3 months higher sales figures extrapolated over 12 months, under the current Financial Criteria for New Zealand, the resulting bank guarantee required would remain at NZD50,000.

Having examined the factors involved in this case there are two issues to address. First there is the adequacy or otherwise of the Agent's level of financial guarantee. Based on information from the IATA AKL office the Agent's net BSP sales from August 2012 to November 2012 totalled NZD475,168.02. If this performance was extrapolated over a 12 month span the resulting amount would be NZD1,425,504.06. The current Default Protection provisions for New Zealand requires that established Agents ( ie Agents who have been subject to 2 Financial Reviews) provide a bank guarantee of NZD50,000 or in an amount equal to 2.66% of their adjusted gross sales, whichever is greater but not exceeding NZD500,000.

If the specified percentage of 2.66 was applied to the extrapolated amount of NZD1,425,504.06 the resulting value is NZD37,918.41 which is under the NZD50,000 yardstick detailed in the Financial Criteria for New Zealand hence the Agent's current level of guarantee meets that standard. My office has no authority to vary agreements reached between Member Airlines and Agents which form part of Resolutions.

If this formula is considered to be inadequate by some Member Airlines then the vehicle for change is the local Agency Programme Joint Council but as it stands the Agent

complies with the existing standard.

The second issue requiring examination is the matter of the Agent dealing with the principal shareholder of the Terminated Agent. There is a condition in Resolution 818g - Passenger Sales Agency Rules - under Section 2 "Qualifications for Accreditation" sub paragraph 2.1.8 "Trading History" which states:-

"No person who is a director of, or who holds a financial interest or a position of management in the Applicant, shall have been a director of, or had a financial interest, or held a position of management in an Agent which has been removed from the Agency List or is under notice of default and still has outstanding commercial debts:"

This condition does not cover the situation whereby the Agent who is subject to this Review had dealings with a shareholder of an Agent removed from the Agency List. This activity, since ceased according to the Agent, is a matter of ethical judgment and while it may be of concern to the complainant Member Airline is not a breach of the Passenger Sales Agency Rules.

Both Parties have agreed to waive their right to an oral hearing and have allowed the writer to reach a decision based on the written information submitted.

Based on the foregoing and after careful consideration it is hereby decided as follows:-

1. The Agent's suspension of ticketing authority as activated in IATA's 30 November 2012 letter is to cease with immediate effect and all Airlines are to be notified of the Agent's reinstatement.
2. The 2 Instances of Irregularity issued to the Agent are to be removed immediately.

Decided this 7th day of December 2012 in Auckland.

**Jorgen Foged**  
**Travel Agency Commissioner Area 3**

**Notes:**

1. As per Resolution 820e, Section 4, any Party has the right, if it considers itself aggrieved by this Decision, to seek review by Arbitration in accordance with the provisions of Resolution 824, Section 14.

2. The Parties are advised that effective from 1 June 2012, according to sub paragraph 2.10 of Resolution 820e, any of them may request an interpretation of this Decision, or for a correction of any error in computation, any clerical or typographical error, or any omission in this Decision. Such request must be made within 15 days of receipt of the electronic version of this Decision.

