

DECISION 2013 – 01 - 14
TRAVEL AGENCY COMMISSIONER – AREA 3

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

Applicant:

Amity Travel Centre Pty Ltd t.a Travelworld,
Suite 12, Floreat Forum Shopping Centre,
Floreat 6014,
Western Australia
Represented by Mr Luke Chittock, Manager.

Respondent:

Agency Administrator, Geneva
International Air Transport Association, IATA,
Represented by Mr Matteo Zanarini, Passenger Services Manager Australia and SWPI,
Sydney, Australia.

The Case and Decision:

The Agent failed to meet Test 2 and Test 4 of the Australian Financial Criteria during the course of the Annual Financial Review. Test 2, the operation of a Client Travel Account, was confirmed latterly on Friday 11 January 2013 and hence the matter which is the subject of this review is the failure to meet the profitability test as described under Test 4.

IATA mailed notice to the Agent on 5 December 2012 requiring the Agent to provide a financial guarantee of AUD93,000 by no later than 11 January 2013. In its request for interlocutory relief the Agent states that it was not aware of this requirement until a phone call was received from the IATA SYD office at 1100 on the 11th of January 2013 reminding it of the requirement. This was 3 hours before the deadline would expire. The Agent advises that it did not receive the 5 December 2012 letter and expresses concern that matters of such importance are not sent by traceable registered post to ensure delivery or are followed up by email or a phone call.

The time estimated to be needed to procure the required financial guarantee amount is 25 January 2013. The Agent undertakes to make every endeavour to resolve the matter well before then.

In view of the non-receipt of the IATA letter the Agent has requested that the 2 Instances of Irregularity issued against it be removed.

In seeking advice from IATA SYD on their communication process with Agents on matters of this nature the response was that such letters were mailed well in advance, in this case approximately 5 weeks before the deadline date, and that email was not used as

Agents did not keep their addresses updated with IATA hence post was considered to be the best medium. That being the case, the Agent has queried why traceable registered mail is not utilised as it has been in the past.

As provided for in sub paragraph 2.3 of Resolution 820e 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. IATA states that, in light of the non-delivery of the subject letter, "We are confident that a prompt response from the Agent's accountant can be provided within the next couple of days."

The Agent disagrees with IATA's submission time frame as third parties will require to act during the process of the Agent being able to provide the subject guarantee.

The writer finds the lack of some form of back up to letters affecting an Agent's standing to be a weakness in IATA's communication process, and while the instances of mail non-delivery may be small, the impact of such an event can have critical outcomes as evidenced by this case.

Having considered the factors involved in this case and bearing in mind the varying estimates of the interlocutory period required it is hereby decided as follows :-

1. The Agent is granted interlocutory relief until Wednesday 23 January 2013.
2. Due to the non-delivery of IATA's letter the 2 Instances Irregularity are to be withdrawn.

Decided this 14th day of January 2013 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 Subparagraph 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.