

DECISION 2013 – 01 – 18 Addendum 1
TRAVEL AGENCY COMMISSIONER – AREA 3

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

Applicant:

Shenel Holding Group Pty Ltd t.a. Destination Travel Centre,
40 The Gateway,
Broadmeadows VIC 3047,
Australia
Represented by Ms Belgin Shenel, Director.

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:

This Decision provided the Agent with interlocutory relief until Thursday 14 February 2013 in order to allow its Director to return from overseas and take steps to arrange a financial guarantee. This guarantee was required due to the Agent failing the Client Travel Account operation test during the course of the Annual Financial Review.

The Director was due to return to the office on 7 February 2013 however on 14 February 2013 the Director contacted the writer with a request for a further one week's extension due to the Agent's Auditor being absent until next week. In his earlier findings the Auditor advised that the Client Travel Account (CTA) was not being operated in accordance with the regulations. It was being used for interoffice transfers of ticket payments, commission transfers between the SYD and MEL offices and bank charge deductions.

The thrust of the Director's explanation for this state of affairs was that the Agent's accounts person was not aware of the procedure and did what she thought was right at the time. The Agent seeks reconsideration of its situation citing its consistency over the past 15 years. Its hope is that the Auditor will clarify the operation of the CTA with IATA SYD and this clarification will remove the need for a financial guarantee.

The writer sought advice from IATA SYD as to whether the granting of interlocutory relief until Friday 22 February 2013 would be cause for concern. IATA's response is that the Agent has not provided the required declaration for the operation of a CTA notwithstanding the interlocutory relief period provided to allow such a declaration to be

made. The Agent has referred IATA to the original documents submitted. There is no form of financial guarantee currently held for the Agent and IATA is unwilling to allow a further extension unless financial security is provided by the Agent as an interim measure until such time as an appropriate declaration is submitted confirming that a CTA is being properly maintained.

Having examined the factors involved in this case there are a number of issues that deserve comment. Firstly the original Decision was granted to allow the Director to take immediate action on her return on 7 February 2013 to resolve the issue with regard to failing Test 2 of the Australian Financial Criteria. Apart from the action detailed in the previous paragraph the Agent left the matter to the last day of the interlocutory relief period to seek further relief. Secondly the fact that the Agent's accounts person "was not aware of the procedure and did what she thought was right at the time " is no excuse. The Agent has failed to educate a key staff member on the purpose and parameters of the use of the CTA.

While I have the authority to grant interlocutory relief I am influenced by the views of IATA SYD who are responsible for minimising financial risk to carriers. In light of the position taken by IATA SYD I am not prepared to grant the Agent the full period of relief sought. The period granted is intended to allow the Agent to deliver the appropriate declaration to IATA by the deadline date or if this is not possible to acquire a financial guarantee for an interim period until such time as the declaration can be delivered and accepted.

Consequently it is hereby decided as follows:-

1. The Agent is granted interlocutory relief until Wednesday 20 February 2013.

Decided this 14th day of February 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.