

DECISION 2013 – 04 - 9
TRAVEL AGENCY COMMISSIONER – AREA 3

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

Applicant:

Travel Design International Pty Ltd,
Suite G02 Ground Floor,
180 Albert Street,
South Melbourne VIC 3205,
Australia.

Represented by The Honourable Patrick McNamara, 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:

Following the completion of the Agent's financial statements to 30 June 2012, the Agent's Auditors advised the Directors that in order to meet the Working Capital requirements of IATA an increase in the company's capital of AUD91000 would be required. The Directors followed this proposal and on 28 November 2012 injected AUD107500 as further share capital.

On 15 March 2013 the Agent received an IATA SYD letter dated 14 February 2013 (it had initially been sent to an incorrect address) advising that following the assessment of the Agent's financial statements the criteria of Test 3 - Working Capital to Meet Overheads, had not been met and consequently a financial guarantee to the value of AUD91000 was required by 31 March 2013. In light of the delayed notification that date was subsequently amended to 5 April 2012.

In response, the Agent's Auditors wrote to IATA SYD on 22 March 2013 stating that Working Capital requirements had been met through the prior injection of AUD107500. This letter was followed up by an email on 27 March 2013. On 4 April 2013 IATA SYD telephoned the Agent with the advice that the share capital increase did not meet the requirement of Test 3. In light of the lack of written confirmation of this position the Agent, having failed to reach IATA SYD, contacted the writer with a view to preventing any adverse action being taken against it pending independent review.

From the writer's examination of the factors involved in this case it is evident that the

problem has arisen as a result of the Agent's Auditors recommending the share capital increase to the Directors in November 2012. The IATA Global Assessor's evaluation concluded that Test 3 was the only Test not met by the Agent and identified the AUD91000 financial security requirement.

At this point it is appropriate to record Clause 3 of the Financial Criteria for Australia which reads as follows:-

"FINANCIAL DISCRETION

It is recognised that different interpretations of financial accounts are possible and do occur. Accordingly, IATA shall have absolute discretion as to the most appropriate accounting classification for all items included in Financial Statements or Annual Financial Reviews."

The clarity of this clause is obvious and gives IATA the authority described.

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 SYD makes the comment that the Agent does currently not provide a financial security.

Having examined the factors involved in this case it is hereby decided as follows:-

1. The Agent must submit a financial security of AUD91000 as required by IATA SYD.
2. In order to allow time to meet this requirement the Agent is granted interlocutory relief until Friday 19 April 2013.

Decided this 9th day of April 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.