

DECISION 2014 – 01-03
TRAVEL AGENCY COMMISSIONER – AREA 3

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

Applicant:

Cox and Kings India Ltd.
Vaman Centre, Makwana Road
Marol, Andheri-E
Mumbai – 400059
India

Represented by Mr. John Nair, Vice President and Head Business Travel India

Respondent:

Agency Administrator, Geneva
International Air Transport Association, IATA
Represented by Mr. Rodney D’Cruz, Manager, Agency Management Asia/Pacific
IATA, Singapore.

The Case and Decision:

The Agent lost its ticketing authority as a result of not meeting the financial criteria for India and providing the full amount of the financial security required by IATA by 31 December 2013. The Agent had covered 80 percent of the required security by means of a default protection insurance arrangement and claims to have misunderstood the need to provide a further 20 percent by means of a bank guarantee. Action has been initiated to acquire said guarantee but as the process will take between 7 and 10 working days the Agent has sought interlocutory relief until Wednesday 15 January 2014 in order to submit the guarantee to IATA SIN.

In its response to the Agent's submission IATA states: -

“The unique circumstances that exist are because the Insurance Regulatory and Development Authority in India allow Insurers to cover only 80% indemnity for trade credit insurance. That is why the Agents cannot be considered to have complied with the financial criteria until they have deposited a financial security equal to 20% of the sum insured to supplement the insurance cover.

Notice for this financial security of INR89,444,000.00 was served to the Agent on 30 October 2014 for the supplementary bank guarantee. Two reminders were sent on 30th November 2013 and 13 December 2013 respectively soliciting compliance. Since the guarantee was not deposited by 31 December 2013, consequential action was taken of suspending ticketing authority and issuing 30 day notice to submit the financial security requested within 30 days in terms of paragraph 2.2.1 of Resolution 818g.

The Agent pleaded that the personnel responsible for providing the guarantee did not receive the e-mail communication even though it was sent to five e-mail addresses, four of which are still active. He also made the point that the Agency has paid for an insurance guarantee that covers 80% of the value of sales at risk and hence reasoned that there is insufficient cause for suspension of ticketing in the light of the fact that they are a major tour operator and stand to lose heavily should their ticketing time limits expire as a consequence of the suspension.

Although we concur that these statements are factual and valid, we were compelled by governance of Resolution 818g to take action."

The Agent has met the within 30 day time limit set for the requesting of a review as provided for in sub paragraph 1.2.2.1 of Resolution 820e and both parties have agreed to waive their rights to an oral hearing and have allowed the writer to reach a decision based on the written information submitted as detailed in sub paragraph 2.3 of the same Resolution. IATA confirms that is is comfortable with the Agent's current level of security should interlocutory relief be granted until 15 January 2014.

In considering this matter one must conclude that there was a lack of organisation within the Agency for the communication sent by IATA to the Agent on 3 occasions not to have reached the responsible executive within the company. However in light of the urgent action now being taken by the Agent some credence can be given to the possibility of a misunderstanding. That being so the writer is prepared to give the Agent the benefit of the doubt and trusts that no repetition of this occurrence will prevail at the end of this year.

Taking the foregoing matters into consideration it is hereby decided as follows:-

1. The Agent's ticketing authority is to be reinstated without delay.
2. The Agent is granted interlocutory relief until Wednesday 15 January 2014.

Decided this 3rd day of January 2014 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.