

DECISION 2014 – 03 - 19
TRAVEL AGENCY COMMISSIONER – AREA 3

Jo Foged
685 Remuera Road
Remuera, Auckland 1050
New Zealand

Applicant:

Pinpoint Travel Group Pty Ltd.
Somerset Mews, 9/5 Rosebery Place
Balmain NSW 2041
Australia.
Represented by Mr. Nick Mittiga, General Manager

Respondent:

Agency Administrator, Geneva
International Air Transport Association, IATA
Represented by Mrs. Hwa Ooi Tham, Manager, Agency Management Asia/Pacific
IATA, Singapore.

The Case and Decision:

The core of this long-standing case is whether or not the minimum paid up capital requirement detailed in Clause 1.10 (or 3.7 of the 1 January 2014 version) of the Financial Criteria for Australia applies automatically to the Parent Company of an IATA Accredited Passenger Sales Agent.

The clause, in both versions, reads as follows:-

"Group:

If your company is a subsidiary of another company or more than one company, you will need to submit a copy of the most recent annual accounts of these controlling companies. Such parent company accounts will be considered in the determination of your financial standing as an applicant or agent. If the entity holding the accreditation passes all the tests independently, but the holding company or group financial status **have an adverse impact on the subsidiary**, Financial Security will be required for the "Sales at Risk " of the subsidiary up to the maximum Financial Security required (Refer to Section 4, Financial Security)."

In the case under consideration the Agent's owner Pinpoint Pty Ltd has equity of AUD 30,552, 345.00, is in profit and has been in business for approximately 30 years but has a paid up capital of AUD 205.00 only which has remained unchanged since the Company's inception. The IATA assessment requires the minimum capital to be AUD 25,000.00 failing which the Agent must submit a financial security of the same amount.

The Agent states that in all previous years the Annual Financial Assessment has found the AUD 205.00 share capital to be satisfactory and no financial security has been required and hence finds this last assessment inconsistent and has sought a review. The Agent has passed all the Tests and has a paid up capital of AUD 52,290.00.

In connection with this year's assessment IATA has been unwilling to explain why the financial security requirement has been introduced despite having been given a number of opportunities to do so and has subliminally, in the opinion of the writer, sought a decision rather than attempting to explain the logic behind seeking the security.

In examining this case the writer wishes to record that he is reluctant to interfere in matters involving financial assessments and financial criteria however in the subject case the issue is very clear even to a layman. The assessment has automatically assumed that the Parent Company's financial state "has an adverse impact on the subsidiary" due to the parent not having a paid up capital of at least AUD 25,000.00. It completely ignores the positive state of the parent Company's finances, longevity and ample equity to cope with any shortfall in the Agent's performance. These factors have clearly influenced previous assessors. Furthermore, what practical difference would it make to the Agent's circumstances if the Parent Company did have the AUD 25k capital?

The inverse would apply where the Parent Company is displaying signs of financial weakness and in such instances the writer has confirmed IATA's actions in requiring a financial security from the subsidiary Agent.

As required by sub paragraph 2.3 of Resolution 820e 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. The Agent also conformed to the within 30 days time frame for seeking a review.

Based on the forgoing therefore it is hereby decided as follows:-

1. The requirement by IATA for an AUD 25,000.00 financial security is hereby removed.

Decided this 19th day of March 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.