

DECISION 2014 – 06 - 20
TRAVEL AGENCY COMMISSIONER – AREA 3

Jorgen Foged
685 Remuera Road
Remuera, Auckland 1050
New Zealand

Applicant:

Happy Star Travel Services Ltd
Flat B, 11/F
8 Hart Ave, TST
Kowloon, Hong Kong.

Respondent:

Agency Administrator, Geneva
International Air Transport Association, IATA
Represented by Ms. Chen Yuping, Manager Agency Management China and North Asia,
IATA, Beijing, PR China.

The Case and Decision:

In brief, the Agent was issued with 2 Instances of Irregularity (NoI) on 22 May 2014 as a consequence of failing to submit a Bank Guarantee by the deadline date of 21 May 2014. The Agent contacted the writer on 13 June 2014 with a request for a review of IATA's action with a view to removing the NoI.

On 7 May 2014 the Agent had submitted a bank guarantee document prepared by the Bank of China (Hong Kong) Ltd which did not match the IATA pro forma and was consequently declined. The Agent requested its Bank to modify its form of guarantee to meet the IATA version however this format did not meet the Bank's requirements and hence the Bank was not able to issue the guarantee and advised the Agent of that situation on 15 May 2014.

IATA, being made aware of the Bank's position, forwarded the Bank's form of guarantee to its Legal Dept for verification. Approval for the format was received on Saturday 17 May 2014. On the Monday the Agent asked the Bank to issue the guarantee with an effectiveness date of 21 May 2014. The Bank provided the Agent with the final document on 22 May 2014 and it was submitted to IATA that day.

In its explanation the Agent stated that the Bank's internal process for having the guarantee prepared and signed by authorised executives consumed 3 days and it felt that the 1 day delay in submission should have been understood by IATA.

IATA's summary of events matched the description advised by the Agent and went on to state that its bank guarantee template "cannot not be casually amended as any party

wishes." As a result of a number of Hong Kong Agents having the same issue with the IATA template an internal meeting had decided that all varying format bank guarantee documents required checking by its Head Office Legal Dept. IATA did not see that it had behaved inappropriately and had to apply policy strictly.

The request for review has been submitted within the 30 day time frame allowed for in sub paragraph 1.2.2.1 of Resolution 820e and the writer has applied the new provision in sub paragraph 2.3 of the same Resolution and has determined that an oral hearing is not required and that a decision can be rendered based on the written information submitted.

In examining this case it should be recorded that this is one of a number of cases where Hong Kong based Agents have had to pass through a similar process in order to have their Bank's guarantee document ultimately accepted by IATA. In some situations the time taken to reach a conclusion has taken considerably longer than on this occasion. Clearly IATA's objective of having all Agents' proffering the same form of bank guarantee is a worthwhile ambition and it is understood that it has been largely successful. However IATA has to recognise that the banks have their own criteria for such documents and as long as all the required conditions to allow a claim to be made are extant then the banks' form of guarantee must be accepted. As can be seen, that has been the eventual outcome in the cases brought to my attention.

In this present case the time required for IATA Legal to examine the Bank's form of guarantee document should have been taken into consideration when setting the submission deadline date or alternatively born in mind when contemplating the issuance of the NoI. The 3 days that it took for the Bank to issue the guarantee document could be considered excessive but was outside any third party's control.

Based on the foregoing it is hereby decided as follows:-

1. The Notice of Irregularity issued to the Agent is to be expunged from the Agent's record.

Decided this 20th day of June 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.