

DECISION 2014 – 07 – 22
TRAVEL AGENCY COMMISSIONER – AREA 3

Jo Foged
685 Remuera Road
Remuera, Auckland 1050
New Zealand

Applicant:

Checkmyhotels Pty Ltd.
Suite 813, 301 George Street
Sydney NSW 2000
Australia.
Represented by Mr. Roy Parihar, Managing Director

Respondent:

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

The Case and Decision:

The Applicant's application for IATA accreditation was disapproved based on sub paragraph 2.1.8 of Resolution 818g which reads as follows:-

"No person who is a director of, or who holds a financial interest or a position of management in the Applicant, shall have been a director of, or had a financial interest, or held a position of management in an Agent which has been removed from the Agency List or is under notice of default and still has outstanding commercial debts."

The principal shareholder in the Applicant's company had been a Manager in an Agency that had defaulted and was ultimately terminated. He had been employed initially "to look after integration and business development". The Owner then wanted to add money transfer, mobile recharge and hosting to the business and the Applicant was offered the position of Chief Operating Officer. This was accepted however when the commensurate salary was not paid the Applicant declined to continue with that responsibility which was then given to another person and the Applicant returned to overseeing integration and sales.

IATA's main concern was whether or not the Applicant had the authority to operate on the terminated Agent's bank account. The Applicant states that he never had such an authority and only used a company credit card for travel expenses. The Applicant

submitted documents which showed that he was not a shareholder in the terminated Agency. He also submitted a declaration from the terminated Agent's bank that he "did not have admin rights at the moment to the user ID number quoted". In a subsequent message, the terminated Agent's bank advised that it was unable to advise what permissions were held by the Applicant previously.

Finally the Applicant submitted a Statutory Declaration in which he declared that he did not have any bank admin authorities and that all such authorities were held by the Owner and Director and one other named staff member. The Declaration was witnessed by a JP and the document clearly states that "a person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years".

The Applicant has also offered to go to the Bank with an IATA employee to verify the fact that he has never had authority or transferred funds. He has email records where he requested the named Agent staff member to pay invoices as this person was authorised to operate the bank account.

Informed of all of the above IATA's position is as follows:-

"We appreciate the effort that the Applicant has made in clarifying his position, however, we do believe that being a senior employee he would have had oversight on the business operation since the director was based overseas. The bank also was not able to establish whether Roy had access to the bank account at the time of the default. They can only state as for today's date."

Both Parties have been placed on notice, as required by sub paragraph 2.3 of Resolution 820e, that in my judgement an oral hearing is not justified and that a decision will be rendered based on the written information submitted.

In considering this matter it is quite clear that IATA's decision is subjective and is based on their opinion of the Applicant's degree of authority while employed by the terminated Agent. The Resolution 818g clause detailed above is a difficult one to apply in a case such as this. If a Director or Shareholder is involved then the situation is quite clear. In the case of management staff is less so.

In my judgment, the Applicant has made a sincere attempt to prove that he was not involved in the financial affairs of the terminated Agent. He has submitted as much information as is obtainable at this stage and has made the offer of an IATA employee verifying the veracity of his statements by interviewing the terminated Agent's Bank's staff. His statutory declaration in which he risks imprisonment should it be found that any of his claims are untrue emphasises his anxiety to have his statements accepted.

Based on the foregoing, the writer accepts the Applicant's claim that he was not involved in the financial affairs of the terminated Agent and hence is not disqualified under the subject clause of Resolution 818g.

Consequently it is hereby decided as follows:-

1. The Applicant's application for IATA accreditation must not be disapproved under sub paragraph 2.1.8 of Resolution 818g.

Decided this 22nd day of July 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.