

DECISION 2015-03-17A
TRAVEL AGENCY COMMISSIONER – AREA 3

Jo Foged
685 Remuera Road
Remuera, Auckland 1050
New Zealand

Applicant:

Richmond Travel Ltd.
2205-6 China Insurance Group Building,
141 Des Voeux Road
Hong Kong
People's Republic of China
Represented by Ms. Betty Kan, Manager

Respondent:

Agency Administrator, International Air Transport Association (IATA)
Geneva, Switzerland
Represented by Ms. Chen Yuping, Manager Agency Management China and North
Asia, IATA, Beijing, People's Republic of China

The Case and Decision

The Agent was due to submit a bank guarantee (BG) of HKD 730,000 (USD 94,100.00) to IATA by 9 March 2015. On 7 March 2015 the Agent contacted the writer seeking interlocutory relief beyond that date for a 2-week period.

The justification for seeking the additional time was that the HSBC BG format had been rejected by IATA on the grounds that it did not match the IATA template. The Agent stated that the amount required for the BG was already lodged in a dedicated account.

After a number of message exchanges between the Agent and IATA it was decided to forward the HSBC format document to IATA's Legal Department for approval. That approval was granted ultimately; however, in the meantime, the Agent had persuaded HSBC management to adopt the IATA template and as at 12 March 2015 the Bank was doing its best to expedite the process.

In its response to the possible granting of interlocutory relief IATA advised that the request for a BG was made on 2 February 2015 giving the Agent 30 days to comply. The Agent did not react until 24 February 2015 at which point it sought additional time to comply. The submission/approval process of the HSBC BG format with IATA's Legal dept then occurred as described above. Depending on the

interpretation of the emails related to this matter the time consumed in this process was either 5 days or 7 days. IATA referred to the Agent's unsatisfactory annual financial review result, which categorised it as high risk.

The Agent's request for review was made in compliance with sub paragraph 1.2.2.1 of Resolution 820e and as required by sub paragraph 2.3 of the same Resolution both Parties were placed on notice that in the writer's judgement an oral hearing was not necessary and that a decision would be based on the written information submitted.

This is another case where complications have arisen as a result of IATA insisting on the use of its own BG template. As recorded in other decisions involving this issue, the IATA template does not have Resolution mandate and at this time is only an IATA Management objective published in the IATA Standard Operating Procedures Manual. It is not possible for a third Party to require the entity providing the financial surety to conform to the third Party's idea of a desirable BG template. Equally, it is not reasonable for IATA to suggest, as was the case in this matter, that an Agent acquires a BG from a Bank willing to use the IATA BG template. A Bank would not do so unless it had a commercial relationship with the Agent, which would require the Agent to switch its business to the new Bank, an onerous move bearing in mind the minor cause for such an action.

The Agent advises that it was new to having to acquire a BG and sought advice from its Bank on the procedure. While initially the advice was that it was a simple process the reality proved it to be different. The Chinese New Year celebration also added to the business time available.

The writer is aware of sub paragraph 2.2.4 of Resolution 818g and would observe that in this case, to the best of the writer's knowledge, formal notification of the sanction proscribed therein has not been made.

Under these circumstances, and bearing in mind that the Agent persuaded HSBC to adopt the IATA BG format on 12 March 2015, and that this issue should not arise next time, it is hereby decided as follows:-

1. The Agent is granted interlocutory relief until Thursday 26 March 2015.

Decided this 17th day of March 2015 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 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.