

DECISION 2015-04-14
TRAVEL AGENCY COMMISSIONER – AREA 3

Jo Foged
685 Remuera Road
Remuera, Auckland 1050
New Zealand

Applicant:

Goldgum Pty Ltd.
Suite 208 Eastside
232 Robina Town Centre Drive
Robina, Queensland 4226
Australia
Represented by Mr. Roy Merricks, Director

Respondent:

Agency Administrator, International Air Transport Association, IATA
Geneva, Switzerland
Represented by Mr. Nawaz Shaikh, Manager Agency Risk Management Asia/Pacific,
IATA, Singapore.

The Case and Decision.

On 29 March 2015 the Agent's Accountants, with the authority to act on its behalf granted by the Agent, contacted this office with a request for interlocutory relief as a consequence of IATA's requirement for the submission of an AUD10m financial security following a change of ownership by the Agent.

An internal ownership restructure had occurred such that the prior owner of Goldgum Pty Ltd (being Merricks Enterprises Pty Ltd ATF the Merricks Family Trust) had interposed two entities between itself and Goldgum Pty Ltd. The ownership structure is now:

- Goldgum Pty Limited is now owned 100% by MTA - Mobile Travel Agents Pty Ltd;
- MTA - Mobile Travel Agents is owned 100% by Mobile Travel Holdings Pty Ltd;
- and,
- Mobile Travel Holdings Pty Ltd. is owned 100% by Merricks Enterprises Pty Ltd. ATF (the Merricks Family Trust).

Merricks Family Trust maintained control of Goldgum Pty Ltd both before the restructure and after the restructure (albeit after the restructure, through 2 interposed entities). The ultimate proprietorship of the IATA license does not change in this process. Thus, the Agent's representative argued, there had been no

change to the beneficial ownership of the Agent and therefore the financial security should not be required.

In its response to the Agent's assertion IATA stated it had reviewed the Agent's situation and had also received additional information from its Australian office, and in view of the creation of a new ACN under MTA – Mobile Travel Agents Pty Ltd, and based on the current Resolution 818g Local Financial Criteria – Australia, this action constituted a Change of Ownership. As per the criteria, in the process of a Change of Ownership, MTA – Mobile Travel Agents Pty Ltd was required to submit a set of Audited Financial Accounts and also a financial security in the form of a Bank Guarantee.

Clause 2.2 of the Local Financial Criteria for Australia (Resolution 818g) states the following:-

"If the Agent or parent company undergoes a significant change in ownership, defined as 50% or more, Financial Security must be provided for the amount of "Sales at Risk", unless the entity is publicly listed on the Australia Securities Exchange Limited (ASX) and following the change in ownership, remains a public company on the ASX or a wholly owned subsidiary of a public listed company on the ASX".

In considering this matter note must be taken of IATA's position that the change of ownership is "significant" as the yardstick of more than a 50% change is involved and hence the terms of the Financial Criteria for Australia, which was developed jointly by Agents and Airlines in Australia, must be followed. This calls for a financial security to be provided for the amount of sales at risk and this has been determined to be AUD10m. The Criteria do not allow considerations beyond those recorded therein even though that might not cover all situations. It is, for the sake of simplicity, a "one size fits all" approach.

While this position may not appear reasonable to the Agent it is in total conformity with the terms and conditions forming the Local Financial Criteria for Australia developed by the Agency Programme Joint Council-Australia consisting of Agency and Airline representatives.

In apparent acceptance of this situation, the Agent has sought interlocutory relief until 31 December 2015 in order that the Agency's Directors can seek legal, accounting and financier advice to manage the provision of the Bank Guarantee with proper governance. An important step in this process is that the overall position can be best assessed on completion of the 30 June 2015 audited financial statements which are completed by 30 September each year. At that point these statements can be provided to financiers to assist in placing the financial security in favour of IATA. On being requested to consider that period of relief IATA advised that it was agreeable to allowing relief until the time of the next Annual Financial Review which

would take place in September 2015. If the next assessment, after the restructuring, entailed the submission of a financial security the deadline would be 30 days from the date when IATA would request the financial security. That date, potentially, would be the 1st week of November 2015 and IATA could accept that as the period of interlocutory relief. On being made aware of that position the Agent found that to be reasonable.

As required by sub paragraph 2.3 of Resolution 820e both Parties were placed on notice that in the writer's judgement an oral hearing was not considered necessary and that the decision would be based on the written information submitted.

Therefore, having considered the foregoing, it is hereby decided as follows:

1. The Agent is granted interlocutory relief until Friday 6 November 2015.
Decided this 14th day of April 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.