

**DECISION 2016-04-22**  
**TRAVEL AGENCY COMMISSIONER – AREA 3**

Jo Foged  
685 Remuera Road,  
Remuera, Auckland 1050,  
New Zealand

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**Applicant:**

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

**Respondent:**

Bestjet Travel Pty Ltd,  
Level 2, 22 Wandoo St,  
Fortitude Valley, QLD 4006,  
Australia.  
Represented by Mrs. Rachel James, Director,.

**The Case and Decision.**

On 19 April 2016 IATA requested a review of the accreditation of the Agent under section 1.8 of Resolution 818g " Prejudiced Collection of Funds". The grounds for seeking such a review was based on the following points:-

1. In March 2016, AFTA confirmed that they would not renew the Agent's membership.
2. Bestjet Travel Pty Ltd applied for an interlocutory injunction from the Supreme Court of Queensland to prevent AFTA from finalising their decision.
3. On 12 April 2016 the Supreme Court refused to grant the interlocutory injunction.
4. Therefore with immediate effect, Bestjet Travel Pty Ltd has been removed from the AFTA membership list and is no longer ATAS ( AFTA Travel Accreditation Scheme) accredited.

That being the case IATA was concerned that this decision could prejudice the BSP Airlines' ability to collect monies for tickets sold by the Agent thus leading to requesting this review.

IATA attached a news article regarding the Court's decision. This article stated that AFTA's refusal to renew the Agent's membership was due to the apparent influence of the Agency owner's husband, who had been the head of an Airline that had failed financially, on the running of the Agency. This statement was denied by the Agency's owner who advised that her husband did not hold a managerial position but was employed as a "fares and pricing analyst" from November 2013 to December 2015. The article went on to advise that the husband was being copied in on emails about company business as recently as January 2016. A Court hearing to determine the parties' rights is pending.

In response to these claims the Agent's Solicitors made the following points:-

"As a threshold matter, we note that the review is said to have been requested under Paragraph 1.8 of attachment A to resolution 818g; we observe that:-

- That Paragraph applies only "*where the ability or intent of an Agent to pay [BSP Airlines' monies] are in doubt.*"
- Paragraph 1.8.1 provides that Paragraph 1.8 is engaged only where IATA "*receives written information, **which shall be substantiated**, ...*" leading to a belief that the ability to collect moneys may be prejudiced; and

The email from Mr Shaikh does not refer to anything which might, in any sense, be regarded as meeting those threshold criteria. The only information referred to is a media article regarding a decision of the Supreme Court of Queensland to decline to grant an interlocutory injunction, and Mr Shaikh's email states that IATA is concerned that "*this decision could prejudice the BSP Airlines ability to collect monies*". As to that:-

Mr Shaikh has acknowledged that there is no connection between IATA and AFTA – presumably, the decision by AFTA not to renew ATAS accreditation (which decision is challenged, and continues to be challenged, by our client) is irrelevant to IATA; and

The decision of the Supreme Court of Queensland not to grant an interlocutory injunction to restrain AFTA from acting upon that decision could not be a sufficient basis, since the decision was not a determination of rights or claims – as Justice Applegarth noted in His Honour's Reasons for Decision:-

*"... it would be wrong for anyone to claim that my refusal to grant an interlocutory injunction represents a vindication of AFTA's position. The parties' rights will be determined at a final hearing if they are not resolved by agreement before then. My decision ... does not involve a determination of which party is correct."*

IATA could not act solely upon the basis of a press article, since any written information "*shall be substantiated*" as required by paragraph 1.8.1.

We also note that IATA is required by paragraph 1.8.1 to notify the Agent “*of the irregularity*” – we are instructed that our client is not aware of any irregularity, and that none has been notified.”

To these points IATA responded as follows:-

- " 1. We believe that decision of AFTA to disaccredit the Agent is sufficient for IATA to invoke provision of resolution 1.8.1 to initiate a review by the Commissioner.
2. Though more stringent measures were provided by this clause, IATA didn't want to invoke such punitive measures [ such as suspension of ticketing], without the outcome from the Commissioner review.

The amended provision that will come into force from 1st June 2016, reads as follows:

*“1.8.1 in the event that the Agency Administrator receives written information, which shall be substantiated, leading to the belief that BSP Airlines' ability to collect monies for STDs may be prejudiced, the Agency Administrator shall notify the Agent ~~of the irregularity~~ and ~~may shall~~ remove all STDs in the Agent's possession;”*

Hence since the adoption of this amendment, the practice of notifying the irregularity [ Issuance of Notice Irregularity] was discontinued, impeding the implementation. This again was not to implement the stringent measure on Agent and it is in Agent's favor.

We believe that there exists a credible case for a review, especially in absence of a Financial Security by Agent. "

The Agent's Solicitor replied in part as follows:-

" Mr Shaikh has referred to a proposed amendment to Paragraph 1.8; neither our client, nor we, are aware of that proposed amendment which is said to be due to come into force from 1 June 2016. It is not in force presently, and therefore we expect it is accepted by IATA that any decision is to be made by reference to Paragraph 1.8 in its current form.

It is clear that Paragraph 1.8 is only engaged if:-

- The ability or intent of an Agent to pay BSP Airlines' monies are in doubt;

- IATA receives written information leading to a belief that the BSP Airlines' ability to collect monies may be prejudiced; and
- That written information is substantiated.

The only written information mentioned in any correspondence from IATA is the media article. IATA have clarified that it is the decision of AFTA not to renew Bestjet's ATAS accreditation that IATA considers is sufficient to invoke Paragraph 1.8. IATA have not said how that leads to a belief that BSP Airlines' ability to collect monies may be prejudiced, nor that any information has been substantiated. Indeed, IATA have said in their second email of 19 April 2016 that the purpose for requesting the review was only "*so that IATA has a better understanding of the facts.*"

In that same email, IATA have confirmed that there is no connection between IATA and AFTA. That is not surprising; there are many Agents who are IATA accredited but who are not accredited by AFTA under ATAS. We do not understand IATA to suggest that ATAS accreditation is necessary for IATA accreditation, and we and our client would therefore be most surprised if IATA were to suggest that not renewing ATAS accreditation *of itself* could prejudice BSP Airlines' ability to collect monies, since such a suggestion would be illogical.

The decision of AFTA not to renew Bestjet's ATAS accreditation was based entirely upon the relationship between Bestjet's Managing Director and her husband, and a change in the ATAS Charter implemented after Bestjet's application to renew was made, and very shortly before the decision to decline renewal was made; that is clear from the AFTA decision itself, and was recited in the decision of Justice Applegarth in the Queensland Supreme Court. The decision of AFTA ultimately was that the husband of our client's Managing Director "*may be in a position to have authority over Bestjet*" – AFTA did not consider that he *did* have such authority, nor did AFTA say that it considered that there was any other basis for declining our client's application to renew accreditation.

These matters are now on the public record. None of them could, in our client's submission, possibly give rise either to any prejudice or doubt within the meaning of Paragraph 1.8. The decision by AFTA is being challenged by Bestjet in proceedings that are ongoing.

Our client therefore fails to see how the decision of AFTA not to renew Bestjet's ATAS accreditation (AFTA did not decide to "disaccredit" our client) could be sufficient to engage Paragraph 1.8. It could not reasonably, or even arguably, give rise to the "doubt" or "belief" as to an ability to pay monies, that is the threshold question under Paragraph 1.8.

If a review were to be undertaken, then the Commissioner is required to review "*such written information ...*" but here, there is no such written information. If a review were to be undertaken, our client wonders what would be reviewed, and what would be benchmarks for the review?

In the circumstances, our client submits that Paragraph 1.8 has not been engaged."

Having described the background and recorded the position taken by the parties it is my role to determine, based on the evidence provided by IATA, whether or not the Agent continues to comply with the criteria for accreditation. In that context the following factors come to mind:-

To clarify the contention made by the Agent's Solicitors, where a request for review is made by the Agency Administrator ( preamble in Section 1.3 of Resolution 820e) the Commissioner has no discretion as to whether or not such a review will be allowed, it must move forward within 3 working days from the request by the Administrator.

It is the case that AFTA membership is not a criteria for IATA accreditation.

Under sub paragraph 2.7 of Resolution 820e it states that " in making each decision, the Commissioner shall be bound by the provisions of the applicable Resolutions, and may only make findings of fact and conclusions in accordance with those Resolutions." There is no provision in said Resolutions that disqualifies an Agent for employing a person who was managerially involved in a failed business other than if that business was an IATA Accredited Passenger Sales Agent which had been removed from the Agency List ( sub paragraph 2.1.8 of Resolution 818g) .

Therefore, at this time, the Agent continues to qualify under the accreditation criteria published in Resolution 818g. If IATA has concerns it can consider acting under sub paragraphs 2.2 and 2.2.1.1 of Resolution 818g which essentially allows IATA to examine the financial standing of an Agent annually or " for cause at any time " and to seek a financial security for the sales at risk subject to complying with certain criteria.

Furthermore, any Airline that considers that its moneys for sales made by the Agent are at risk, can remove its appointment of the Agent.

As far as has been made known to me the Agent has a an unblemished record for settling BSP billings on the due date.

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

The Agent complies with the accreditation criteria published in section 2 of Resolution 818g.

Decided this 22nd day of April 2016 in Auckland.

**Jorgen Foged**  
**Travel Agency Commissioner Area 3**

**Notes:**

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.

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.