

DECISION 2016-07-12
TRAVEL AGENCY COMMISSIONER – AREA 3

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

Applicant:

Locale Travel Management Pty Ltd,
Level 5, 39 East Esplanade
Manly NSW 2095
Sydney, Australia
Represented by Mr Nick Haines, Managing Director.

Respondent:

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

The Case and Decision

The Applicant's application for accreditation was disapproved by IATA on 9 June 2016 for the following reasons:-

1. From the information received and on-file we understand that Sporting Solutions holds financial interest in the form of a loan to Locale Travel Management Pty Ltd. Mr Ken O'Brien, a person who holds a position of senior management in Sporting Solutions was a Director and Shareholder of Moves Travel Group Pty Ltd which has been removed from the Agency List and still has outstanding debts with IATA member airlines.
2. You have advised that Mr Kevin Maloney, Director in Locale Travel Management Pty Ltd and the Tulla Group does not have financial interest in the Moves Travel Group, however, a loan from the Tulla Group to Moves Travel Group constitutes financial interest.
3. Records show your principle place of business is located at Level 5, 39 East Esplanade Manly NSW 2095; this differs to what was originally advised in your initial application form and the ASIC Extract submitted.

Points 1 and 2 were considered to be a breach of 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 Applicant contacted this Office on 14 June 2016 with the following rebuttal to the points raised by IATA:-

1. Sporting Solutions is a business owned by Kevin Maloney and minority shareholder of the late John Elliot (who recently passed). Referenced in the disapproval is that Ken O'Brien, former Managing Director of Moves Travel Group is a senior manager of this business. This is false, Ken O'Brien is currently in **Bankruptcy** since the demise of Moves Travel Group and does not hold a senior role in this business. All funding for Locale Travel has come from the Tulla Group & Travelport/Galileo (Locale Travel's GDS Supplier) – Locale Travel/Tulla will provide ALL supporting documentation to IATA on this matter should you wish;

2. Kevin Maloney does not have nor ever has had a "financial interest" in Moves Travel Group. The only involvement he had was as an arms-length loan to Moves Travel through one of the companies within the Tulla Group. When Moves Travel collapsed The Tulla Group suffered the complete loss of its loan advance and accrued interest (same as any bank or Credit Card associated with Moves Travel Group). The Tulla Group is in the same position as IATA/Airlines as a creditor and still has outstanding debt relating to Moves Travel Group – this should and cannot be counted as a "financial interest" against Tulla or Locale Travel, especially as the Tulla Group is in the same position as IATA/Airlines is terms of outstanding debt;

3. Locale's registered/ASIC address remains Bondi Junction, however since our IATA application has been lodged we've located our HQ to Level 5, 39 East Esplanade Manly NSW 2095 – this should not be grounds for disapproval, Locale can and will brand Bondi Junction with our logo and have the sign board in the foyer updated should IATA deem appropriate.

In considering the manner in which these 3 issues should be addressed point 3 can be disposed of by recording the following response from IATA:-

" IATA does not have objections to Locale Travel Management Pty Ltd's relocation, nevertheless such changes must be duly informed to IATA in order to ensure the accuracy of the information provided. Furthermore applicants must ensure to have finalized arrangements of their "place of business" prior seeking the IATA accreditation and to comply with local laws - the Australian Securities and Investments Commission (ASIC) states that all Australian companies must provide ASIC " the address of their registered office and principal place of business". The ASIC extract provided to IATA does not show their current "place of business".

The writer agrees with that position and the Applicant must inform IATA of the actual location for which they wish to have accreditation considered.

With regard to point 1 the Applicant made the following comment on 5 July 2016:-

"SSI was an operational business trading during the 2015 calendar year. The unfortunate death of John Elliot (20% shareholder in SSI) in late 2015 led to the business activities of SSI temporarily ceasing. SSI held funds available that were loaned to Locale Travel. It is the intention that this loan is replaced by a loan from Marley Holdings Pty Ltd as SSI will require repayment of funds to settle matters with the Estate of the Late John Elliot

We are in the process of actioning this now. This will remove the connection between SSI and Locale Travel.

Notwithstanding this, Ken O'Brien was only a consultant to SSI and did not hold a position of management, a position of control, nor has he held a financial interest in SSI."

On 6 July 2016 the Applicant advised that the loan agreement between Marley Holdings and Locale had been implemented and loan funds had been advanced. These funds had been used to repay all money owing to Sporting Solutions International, removing Sporting Solutions International from its connection to the Applicant.

In its point 1 IATA concluded that Mr O'Brien, MD and Shareholder of failed IATA Agent Moves Travel Group, had a financial interest in the Applicant by virtue of the loan from Sporting Solutions International (SSI) of which he was designated as its Chief Operating Officer which runs contrary to the Applicant's statement that he was a "consultant" to that entity. At this point it is unclear as to whether or not Mr O'Brien currently holds a position of senior management in SSI and if he did to what extent could he influence the direction of the Applicant company through the AUD250,000 loan extended by SSI to the Applicant.

However based on the post-application development where the SSI loan has been replaced by one from a company connected to the Tulla Group I accept that a connection no longer exists between SSI and the Applicant thus removing any ambiguity and the issue identified under point 1.

With regard to point 2 IATA states that the loan of AUD600,000 by Tulla Group, of which Mr Maloney is Chairman, to the failed IATA Agent Moves Travel Group and the majority shareholding by Mr Maloney in the Applicant constitutes a financial interest by Mr Maloney in "an Agent which has been removed from the Agency List... and still has outstanding commercial debts" and is a breach of sub paragraph 2.1.8 of Resolution 818g.

On that point the Applicant argues as follows:-

"We understand that IATA maintains that Tulla Group / Kevin Maloney held a financial interest in Moves Travel. There appears to be no definition of Financial Interest within the IATA Regulations. We continue to maintain that the position of Tulla Group was a debt provider, no different to a bank, or perhaps a supplier including the airlines, providing credit terms

Tulla Group held no equity position in Moves Travel, nor did it hold any management position or decision making power. Tulla Group is in the business of lending money, and its business model involves providing short term working capital funding and long term investment capital across multiple industries.

Notwithstanding this, if IATA maintains that Tulla Group's position was a financial interest in Moves Travel, we maintain that Kevin Maloney and/or Tulla Group were not responsible for the acts and omissions that caused the original default by Moves Travel. The operations of Moves Travel were owned and managed independently of Tulla Group, and Tulla Group suffered a loss at the same time as all creditors of Moves Travel."

The writer has focused on that issue viz did the loan from Tulla Group to Moves Travel Group equate to Tulla Group having a " financial interest" in Moves Travel Group. There is no definition of that term in any IATA Resolution so the term is subject to interpretation. The question is, were the providers of that loan responsible in any way for the financial collapse of Moves Travel Group? Mr Maloney was not on the Board of the failed IATA Agency and held no shares therein so how could he have influenced its demise?

The writer agrees with the view recorded by the Applicant that the loan to Moves Travel Group and Mr Maloney's shareholding in the Applicant company does not breach sub paragraph 2.1.8 of Resolution 818g.

IATA sought evidence that Tulla Group was recorded as a creditor in the liquidation of Moves Travel Group. The Applicant provided sufficient information for the writer to conclude that that was the case.

The Agent has complied with sub paragraph 1.2.2.1 of Resolution 820e and has lodged its request for a review within the 30 day time frame allowed and both parties were alerted, as required by sub paragraph 2.3 of the same Resolution, that

in the writer's judgement an oral hearing is not necessary and that the decision would be based on the written information submitted.

Based on the foregoing and in connection with the 3 objections specified by IATA it is hereby decided as follows:-

Point 1 - any suggestion that a breach of sub paragraph 2.1.8 of Resolution 818g is in play has been removed as a consequence of the post-application action by the Applicant in removing SSI as a creditor of the Applicant.

Point 2 - common sense must be applied to the interpretation of the term " financial interest" in the context of sub paragraph 2.1.8. It has not been proven that Mr Maloney was responsible in any way for the demise of Moves Travel Group hence a breach of sub paragraph 2.1.8 of Resolution 818g has not occurred.

Point 3 - the Applicant has been remiss in not identifying the correct location for which accreditation is sought and must correct that situation.

IATA will decide whether or not a new application is required due to the factors identified in Points 1 and 3 above.

Decided this 12th day of July 2016 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.