

DECISION 2018 - 03-19A
TRAVEL AGENCY COMMISSIONER – AREA 3

Jo Foged
685 Remuera Road
Remuera, Auckland 1050
New Zealand

Applicant:

Wynyard Travel Pty Ltd. ("the Agent")
IATA Code 02-3 1474
Sydney, Australia

Respondent:

Agency Administrator, International Air Transport Association ("IATA")
Singapore.

The Case and Decision:

Following a financial review the Agent was required to submit a further financial security of AUD 2,678,000, which would create a total security of AUD 4,745,000. The Agent disputed the manner in which IATA was calculating the amount at risk and had determined that a total of AUD 2,253,313 was required thus making the "top up" amount AUD 187,000.

Without going into the detail of how IATA calculated the "amount at risk " it was a formula uniformly and consistently applied to all Agents in Australia, hence, the Agent seeking a review was not being discriminated against.

A further issue was the expiry date of the 2-year "probationary" period during which a new Agent must furnish a financial security. The Agency had gone through a total change of ownership and, hence, was considered to be "new". The Agent considered this to be July 2018 while IATA's approval date was 26 December 2016, thus, making the probationary period expiry date 26 December 2018.

The reason for IATA's expiry date, and the writer agrees that the date must be tied to the "approval" date and not the "change submission" date, as exposed by the Agent, is that following the change of ownership application in July 2016 the Agent followed this up with a change of name application on 26 September 2016.

In that connection IATA explained as follows:

"Since we received the change of name application on 26th Sep 2016, before the approval of change of ownership, we processed the application as a multiple change to avoid the Agent being billed for the change of name application. If we had completed the change of ownership earlier than the change of name, Agent will be billed again for the change of name application.

In normal circumstances, we would have completed the change application within the 10 working days upon receipt of the bank details form which is the final document required to complete the change (with an update of the banking system, and validation of the change of ownership/name by the Supervisor before final approval) on 14-Dec-2016, however, due to year activity there was a delay, which we much regretted."

Returning to the amount of additional financial security required IATA advised that should the Agent continue to prepay its BSP billing on a Friday rather than the standard Monday the amount required would be AUD 1,966,500.

The Agent advised that it was in discussions with its Bank on which financial security amount option was feasible and requested a submission date of 16 April 2018.

The writer notes the cordial tone of the communications between the Agent and IATA and has reached a decision based thereon.

The Parties have complied with the terms of Resolution 820e and were placed on notice that in the writer's judgement an oral hearing was not necessary and that this decision would be based on the written information submitted.

Therefore, based on the foregoing it is hereby decided as follows:

1. The Agent is to submit a further amount of financial security as follows:
 - (a) if the standard settlement date of Monday is chosen
AUD 2,678,000
 - (b) if the advance settlement date of Friday is chosen AUD 1,966,500
2. The Agent is granted interlocutory relief until 16 April 2018 to submit the chosen settlement date/ financial security amount option
3. The expiry date for the 2-year "probationary" period is 14 December 2018.

This Decision is effective as of today.

Decided this 19th day of March 2018 in Auckland.

Jorgen Foged
Travel Agency Commissioner Area 3

The following sub paragraph of Resolution 820e is brought to the attention of the Parties:

"2.10 - within 15 days after the receipt of the decision, a party, with notice to the other parties , may request that the Commissioner gives an interpretation of the decision or correct in the decision any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the Commissioner considers that the request is justified, he shall make the interpretation or correction within 15 days of receipt of the request. The interpretation or correction shall form part of the decision."

In this particular case the 15 day time frame expires on 3 April 2018.

If after having pursued this process a Party still considers itself aggrieved by this Decision the Party has the right to seek review by arbitration as detailed in Resolution 824, Section 14.

Finally I seek your authority for this Decision to be posted on the private pages of the Travel Agency Commissioner website which can only be accessed by the 3 TACs and the 12 members of the Passenger Agency Programme Global Joint Council. In the absence of advice to the contrary by 4 April 2018 I will assume that there is no objection to that action being taken.