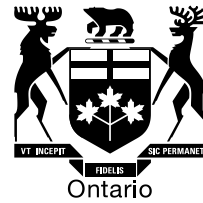


# LICENCE APPEAL TRIBUNAL

## Safety, Licensing Appeals and Standards Tribunals Ontario



Citation: Skyway Travel Inc. v. Registrar, *Travel Industry Act, 2002*, 2017 ONLAT- TIA 10690

Date: 2017- 08-01  
File Number: 10690/TIA

Appeal under section 11(2) of the *Travel Industry Act, 2002*, S.O. 2002, c.30, Sch. D from a Notice of Proposal by the Registrar - to Revoke Registration

### Between:

Skyway Travel Inc.

Appellant

and

Registrar, *Travel Industry Act, 2002*

Respondent

### AMENDED DECISION AND ORDER

Panel: Mary Ann Spencer, Member

### Appearances:

For the Appellant: Karamajit Saini, Agent

For the Respondent: Soussanna Karas, Counsel and Jennifer Shin, Counsel

Place and date of hearing:

Toronto, Ontario  
June 12, 2017

## AMENDED REASONS FOR DECISION AND ORDER

### A. OVERVIEW

- [1] This is a hearing before the Licence Appeal Tribunal (the “Tribunal”) arising out of a Notice of Proposal issued by the Registrar, *Travel Industry Act, 2002* (the “Registrar” and the “Act” respectively). The Notice dated February 22, 2017 proposes to revoke the registration of Skyway Travel Inc. (the “appellant”) as a travel wholesaler and travel agent under the Act.
- [2] The appellant was registered as a travel retailer on September 23, 2002 and as a travel wholesaler on September 30, 2008. Karamajit Saini is the owner of the business. The Registrar alleges that the appellant is not entitled to registration because it cannot reasonably be expected to be financially responsible in the conduct of its business and because the past conduct of its officers or directors provides reasonable grounds for belief that its business will not be carried out in accordance with the law and with integrity and honesty in accordance with sections 8(1)(d)(ii) and (iv) of the Act respectively.
- [3] Specifically, the Registrar alleges that the appellant has failed to file financial statements for its fiscal year ending June 30, 2016 as required by section 22 of Regulation 26/05 (the “Regulation”) and therefore its financial position, including the level of its working capital, cannot be determined. Further, the Registrar alleges that the appellant has not complied with the trust accounting provisions of section 27 of the Regulation.
- [4] The appellant’s position is that it is financially viable but requires an extension of time to produce its financial statements, and that the alleged trust accounting violations were the result of mistakes that were subsequently corrected.
- [5] For the reasons below, I order the Registrar to carry out the Proposal to revoke the appellant’s registration.

### B. PRELIMINARY ISSUES:

- [6] On June 9, 2017, the appellant submitted a request for an adjournment which the Tribunal considered at the beginning of the hearing. Mr. Saini requested that the hearing be adjourned to a date after July 21, 2017 because the appellant’s office manager had failed to return to the country as expected on June 8, 2017 and because the appellant’s accountant was currently too busy to prepare the financial statements. Finally, he advised that his father had become ill over the weekend and he needed to take him to hospital for a medical test.

- [7] Ms Karas opposed the adjournment. She noted that a case conference in this matter was conducted on April 28, 2017 and the Tribunal's Case Conference Order required Mr. Saini to disclose the witnesses he intended to call at the hearing. TICO received no indication that Mr. Saini intended to call either the manager or the accountant as witnesses even though Ms Karas directly contacted Mr. Saini on May 30, 2017 in this regard.
- [8] The allegations before the Tribunal pre-date February 22, 2017, the date of the Registrar's Notice of Proposal. Mr. Saini did not directly answer whether his intention was to call either the office manager or the accountant as witnesses. He confirmed that the health issue his family member experienced on the weekend had not been treated as an emergency. Therefore, I denied the adjournment. However, I advised Mr. Saini that I would accommodate him if his family member's status changed during the hearing.

### **C. ISSUES:**

- [9] The issues to be determined in this appeal are:
- a. Can the appellant reasonably be expected to be financially responsible in the conduct of its business?
  - b. Does the past conduct of its officers or directors afford reasonable grounds for belief that the business of the appellant will not be carried on in accordance with the law and with integrity and honesty?

### **D. EVIDENCE:**

- [10] Sanja Skrbic, TICO's Director of Financial Compliance, testified on behalf of the Registrar. Karamajit Saini testified on behalf of the appellant.
- [11] Ms Skrbic explained that the trust accounting provisions set out in s. 27 of the Regulation are designed to ensure that consumer funds are protected. A registrant is required to designate a bank account as a trust account. All funds received from consumers must be deposited to this account and used to pay for the travel services they purchased. A registrant must ensure these funds are identifiable and is required to perform reconciliations of the trust account; after a consumer's travel services are paid for, any surplus in the account can be transferred to the registrant's general account. A trust account can never be in an overdraft position.
- [12] The Regulation requires a registrant to submit financial statements to TICO within three months after its financial year-end. The appellant's year-end is

June 30<sup>th</sup>; therefore, its financial statements are due by September 30<sup>th</sup> each year. The Regulation also requires a registrant to maintain a specified minimum amount of working capital, the level of which is based on the registrant's total sales. Working capital is a measure of the ability of a registrant to meet its obligations and is calculated by subtracting its current liabilities from its current assets. TICO cannot calculate working capital without a registrant's financial statements.

- [13] Ms Skrbic explained that TICO sends a letter to a registrant 30 days before its year-end reminding it to file its financial statements. If they are not filed by the due date, a second reminder letter is sent and the registrant has two weeks to respond. If the statements are still not received, a letter is sent by the Registrar advising that failure to file could result in further action being taken, including the issuance of a Notice of Proposal to revoke registration.
- [14] Ms Skrbic reviewed the appellant's compliance history. A Notice of Proposal to revoke registration was issued on December 31, 2010 with respect to the appellant's failure to properly maintain trust accounting and to provide trust account reconciliations. This was resolved by a Consent Order of the Tribunal on May 24, 2011.
- [15] A further Notice of Proposal to revoke the appellant's registration was issued on March 20, 2012 after the appellant failed to file trust reconciliations on time, in violation of the 2011 Consent Order, and after TICO had discovered that the appellant had used trust funds incorrectly. A second Consent Order was issued by the Tribunal on July 4, 2012.
- [16] Ms Skrbic testified that the appellant's financial statements for its fiscal year ending June 30, 2013 did not include a trust reconciliation. When it was subsequently received, it showed large lump sums being removed from the trust account, a practice which the Registrar, in a December 11, 2012 letter, had previously advised the appellant was unacceptable and must stop.
- [17] On June 9, 2016, TICO conducted an inspection at the appellant's office to assess the appellant's financial viability and its compliance with trust accounting requirements. Ms Skrbic highlighted that the inspection found that trust reconciliations were not being regularly maintained; transfers were being made from the trust to the general account before the trust position had been calculated; overhead, including payroll, was being paid from the trust account; and, the trust account had been in an overdraft position on a number of occasions.

- [18] The inspector's assessment was that the appellant had a working capital shortage and there was a question with respect to whether it could continue as a going concern; its registration with the International Air Transport Association ("IATA") had been cancelled in March, 2016 when the appellant defaulted on paying its Billing and Settlement Plan ("BSP") balance of \$67,000. The inspector also noted that the appellant's business records were not being maintained at its office and that it had changed its bank account without notifying TICO, each a contravention of regulatory requirements.
- [19] With respect to the appellant's working capital, the inspection report indicates that the appellant had approximately \$400,000 in uncollected accounts receivable as a result of issuing airline tickets before collecting payment for them. The appellant had no documentation to support that payment would be collected. Mr. Saini advised the inspector that he intended shortly to inject \$150,000 capital into the business using proceeds from an equity line of credit. The inspector's conclusion was that the appellant represented a "high risk".
- [20] Mr. Saini testified that the operational payment for payroll remittances made from the trust account was done in error; his staff inadvertently paid from the wrong account and the funds were transferred back. What he described as an 'airline transfer' payment was also an error. The trust account was overdrawn sometimes because NSF cheques were received from customers. The BSP balance has been paid and he expects to reapply for IATA registration although he noted he does not require this in order to operate. He has not applied yet because IATA requires a security deposit. He stated that the appellant has high credibility and that it will be able to get contracts back in the future. While the business may have had past losses, he is hopeful it will recover.
- [21] On June 30, 2016, after further discussions with Mr. Saini, TICO requested proof of the injection of working capital into the business. It also requested that the trust accounting deficiencies be addressed and that written confirmation of the steps that had been taken to address the issues found at the inspection be sent to the Registrar no later than July 14, 2016. On August 29, 2016, the Registrar wrote to Mr. Saini and acknowledged receipt of documentation of a capital injection of \$45,000. However, the letter also noted that a new letter of credit in the amount of \$10,000 as security with respect to the appellant's wholesale business would be required by September 6, 2016. Finally, the letter advised that financial statements for the 2016 financial year needed to be filed no later than September 13, 2016.
- [22] Ms Skrbic testified that a further inspection of the appellant was conducted on August 30, 2016 but the only improvement found was the capital injection of

\$45,000. The inspector noted that the trust account had been overdrawn again in July, 2016. While the appellant provided a list of accounts receivable, no details were provided. And, the inspector could not access the sales records.

- [23] On October 12, 2016, the Registrar again formally requested the letter of credit; proof of working capital injections; proof that trust accounting deficiencies had been addressed; and trust reconciliations for the months of June, July and August, 2016.
- [24] On October 26, 2016, Mr. Saini wrote Ms Skrbic and requested an extension to November 15, 2016 noting that his manager was away and that he himself was recovering from a stroke. Ms Skrbic testified that to date none of the requested information has been received by TICO.
- [25] On April 25, 2017, TICO received a receipt for the deposit of \$100,000 to the appellant's account. Ms Skrbic testified that TICO needs to know the source of these funds and noted that one of the three cheque copies submitted with the deposit receipt has "Loan" written on it. Along with this information, Mr. Saini wrote that the appellant was expecting a credit of \$250,000 from a home equity line of credit very soon.
- [26] Ms Skrbic explained that because she does not have the appellant's financial statements, she cannot calculate its working capital position and therefore does not know if it meets the minimum requirement set out in the Regulation. It is her view that if working capital is deficient there is a risk of consumer funds being misused.
- [27] Mr. Saini testified that the \$100,000 the appellant received was in payment of a debt by Parvasi Entertainment. In 2012, he borrowed \$265,000 from his line of credit to purchase airline tickets for a film festival and Parvasi did not pay him. With interest added, the amount owing grew. He still expects to receive the outstanding balance owed because the principal of Parvasi is his friend, notwithstanding the fact that he signed a full release to Parvasi on receipt of the partial payment. With respect to working capital, he believes he is required to hold \$25,000 in his bank account. His personal mortgage renews at the end of August, 2017 and he intends to switch lenders; he expects he will be able to obtain a new home equity line of credit and will be in a position to inject a further \$250,000 into the business. The appellant is also in the process of setting up a new financial system and Mr. Saini states that there will be no chance of violations in the future.

#### **D. LAW:**

[28] Section 8 of the Act sets out the provisions with respect to registration of applicants. The relevant provisions are as follows:

8. (1) An applicant that meets the prescribed requirements is entitled to registration or renewal of registration by the registrar unless,

(d) the applicant is a corporation and,

(ii) having regard to its financial position or the financial position of an interested person in respect of the corporation, the applicant cannot reasonably be expected to be financially responsible in the conduct of its business

(iv) the past conduct of its officers or directors or of an interested person in respect of its officers or directors or of an interested person in respect of the corporation affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty

[29] The Registrar may revoke a registration under s. 10(1) of the Act if, in the Registrar's opinion, the registrant is not entitled to registration under s. 8 of the Act:

10. (1) Subject to section 11, the registrar may refuse to register an applicant or may suspend or revoke a registration or refuse to renew a registration if, in his or her opinion, the applicant or registrant is not entitled to registration under section 8.

[30] On appeal to the Tribunal, s. 11(5) of the Act states that the Tribunal may "direct the registrar to carry out the registrar's proposal or substitute its opinion for that of the registrar and the Tribunal may attach conditions to its order or to a registration."

#### **D. SUBMISSIONS:**

[31] Ms Karas submitted that the appellant has a history of non-compliance and its registration should be revoked. The Act is a consumer protection statute and TICO must regulate industry participants equally and transparently. The issues with trust accounting which led to Notices of Proposal to revoke the appellant's registration in 2010 and 2012 persist and there is no indication that any proactive steps have been taken to address them. The Registrar cannot determine the financial health of the Appellant because of its failure to file its 2016 financial statements and TICO has still not received the \$10,000 letter of credit required as security for the appellant's wholesale operation. The Registrar has no basis on which to trust that the appellant will comply in the future.

[32] Mr. Saini submitted that the appellant's business has been conducted in a professional manner. He admitted that there has been negligence in the past, apologized, and stated that there will be no further issues; the appellant will comply with TICO's requirements in the future. He has the ability to invest in the business. The airline industry trusts the appellant. Its operations are honest and sincere and these qualities will pay off in the long run. He requested the Tribunal give the appellant until the end of July to file its financial statements.

## **E. ANALYSIS:**

[33] It is the responsibility of the Registrar to prove to the Tribunal that the appellant's registration should be revoked. The appellant is entitled to registration unless one of the grounds in s. 8 of the Act applies. The Tribunal must make an independent assessment as to whether or not those grounds have been proven.

### **Issue 1: Financial Responsibility**

[34] The first issue to be addressed is whether, with respect to its financial position, the appellant cannot reasonably be expected to be financially responsible in the conduct of business.

[35] Section 22(1) of the Regulation requires the registrant to file annual financial statements. There is no dispute that the appellant has failed to file its financial statements for its year ending June 30, 2016. The statements, due by September 30, 2016, are now almost nine months overdue.

[36] The appellant's past financial statements indicate that its sales have steadily declined from \$8.3 million in 2011 to \$4.8 million in 2015, when it operated at a loss of approximately \$10,000. While declining sales and operating losses are warning signs, working capital is a more robust indicator of the financial viability of a business because it provides a measure of its ability to meet its obligations; this is recognized by the fact that s. 24 of the Regulation establishes minimum levels of working capital that registrants must maintain. The amount is determined by a registrant's sales levels; based on the appellant's 2015 financial statements, it must maintain a minimum \$25,000 working capital.

[37] The June 9, 2016 TICO inspection identified that the appellant had liquidity issues. The inspection report notes "the registrant admitted it is currently struggling to pay its suppliers and attributed this to approximately \$400,000 of uncollected accounts receivable due from Parvasi Entertainment."



- [38] I accept that Mr. Saini injected \$45,000 into the business in July 2016 and, that in April 2017, the appellant received \$100,000 as partial payment of the Parvasi account. Mr. Saini testified that he expects to collect the balance owed by Parvasi. However, I assess this as an unreasonable expectation given Mr. Saini signed a full release on receipt of the partial payment. I note that Ms Skrbic questioned this deposit given one of the cheque copies submitted indicates “loan” on it which could indicate the appellant must pay it back. Mr. Saini stated that the issuer borrowed the money in order to pay the appellant. Mr. Saini submitted this cheque copy with a deposit slip and the release document as proof that the \$100,000 had been received. Therefore, I accept his explanation that the funds form part of the settlement and are not a loan to the appellant.
- [39] Mr. Saini testified that he intends to obtain and use a personal equity line of credit to inject further capital into the business. I note that he first indicated his intent to personally finance the business ‘shortly’ at the June 9, 2016 inspection. His testimony is that he now intends to do this after the end of August, 2017.
- [40] The last financial reporting the appellant produced was as at June 30, 2015. Therefore, I cannot determine whether the injection of \$45,000 and the \$100,000 payment are sufficient to address its financial difficulties. However, the fact that Mr. Saini testified that he intends to inject more capital into the business persuades me that the funds received to date are not sufficient.
- [41] There is other evidence before the Tribunal to indicate that the appellant is experiencing financial difficulty. It lost its IATA registration in March, 2016 because it could not pay its BSP balance. Mr. Saini testified that the balance has been paid but also stated that while he intends to reapply for registration, he cannot do so at this time because IATA requires a security deposit.
- [42] The evidence also indicates that the appellant used its trust account to pay operational expenses. While Mr. Saini’s testimony was that this was a one-time mistake, I note that multiple instances were found at the June 6, 2016 and the August 30, 2016 inspections. Further, the June 6, 2016 inspection reveals that the trust and general accounts were variously in deficit positions at month end in March, April and May of 2016, which indicates customer funds are at risk. The August inspection found a trust account deficiency “due to extended credit to customers and transferring funds from trust account to general account to cover his overhead expenses”.
- [43] In summary, the appellant has failed to submit financial statements as of June 30, 2016 and I cannot determine whether the appellant is maintaining the

required amount of working capital. While some funds have been received, Mr. Saini's stated intent to inject further capital into the business suggests continuing financial instability as does the evidence that the appellant has not reapplied for its IATA registration because it cannot pay the required security deposit and the evidence that it has failed to produce the \$10,000 letter of credit for its wholesale operation which is required in accordance with s. 25 of the Regulation. Trust accounting irregularities were found in June and August of 2016 and the appellant has not submitted any trust reconciliations to indicate that these have been resolved and have not been repeated.

[44] Based on this evidence, in accordance with section 8(1)(d)(ii) of the Act, I find that the financial position of the appellant is such that it cannot reasonably be expected to be financially responsible in the conduct of business.

## **Issue 2: Past Conduct**

[45] The second issue is whether the past conduct of the appellant's officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty.

[46] Mr. Saini does not dispute that the appellant has failed to submit its 2016 financial statements as required by s. 22 of the Regulation. The statements were due September 30, 2016. I acknowledge that Mr. Saini suffered a stroke in September, 2016. However, the evidence is that his health permitted him to write to Ms Skrbic on October 26, 2016 and commit to submitting the statements by November 15, 2016. To date, they have not been received.

[47] Section 27 of the Regulation sets out the requirement for a registrant to maintain a trust account. Section 27(1)(6) restricts its use:

27 (1) (6) No registrant shall disburse or withdraw any money held in a trust account under subsection (1), except,

(a) to make payment to the supplier of the travel services for which the money was received;

(b) to make a refund to a customer; or

(c) after the supplier of the travel services has been paid in full, to pay the registrant's commission

[48] The evidence is that the appellant made payments from its trust account for operating expenses. Mr. Saini testified that this was a mistake made once by an employee who selected the wrong account when making remittance payments to the federal government. I do not find this testimony credible. The June 9, 2016 inspection report indicates that it was not only federal remittances which were paid from the trust account and states "the registrant makes

transfers from the trust account to the general account without calculating the trust position” and “the registrant pays general overhead costs from its trust account”.

- [49] The inspection report also notes that the trust account was in an overdraft position on numerous occasions and several instances of NSF cheques were noted, the latter as a “repeat issue”. The June 9, 2016 inspection found that the trust account was in a month-end deficit position on more than one occasion. The August 30, 2016 inspection also found a deficiency in the trust account. As Ms Skrbic testified, this cannot happen if the trust account is properly managed.
- [50] Other irregularities were found at the June 9, 2016 inspection; the appellant’s business records were not on its premises in violation of s. 29(1) of the Regulation, and the appellant changed its bank account without obtaining the approval of the Registrar as required by s. 17(1)(3) of the Regulation.
- [51] This appellant is operating under a Consent Order of the Tribunal. Mr. Saini signed Minutes of Settlement on June 29, 2012 in which he agreed to submit the appellant’s financial statements within three months after the end of its fiscal year which were to include disclosure of the trust position. He agreed to advise TICO of any changes as set out in sections 16 and 17 of the Regulation and to maintain the minimum working capital required by the Act. He further agreed that if the Registrar found working capital deficiencies that they would be corrected within 30 days. Finally, he agreed to respond to all TICO inquiries and requests in a timely manner.
- [52] The evidence is that on June 30, 2016, the Registrar requested proof of an injection of capital to address working capital deficiencies; submission of a Notice of Business Change with respect to bank account changes; and, trust reconciliations for the months of June, July and August, 2016. Written confirmation of the steps being taken to address the deficiencies found was requested by no later than July 14, 2016. On July 14, 2016, Mr. Saini wrote TICO staff and requested a two-week extension to prepare the June trust reconciliation. TICO sent a further letter on August 29, 2016 which noted not only that the trust reconciliations had not been produced but that the appellant needed to provide a new letter of credit with respect to its wholesale operations by September 13, 2016. TICO sent a further letter requesting the same items on October 16, 2016.
- [53] The appellant failed to provide the required information. The financial statements, the trust reconciliations, the letter of credit and the business change form are still outstanding. The only explanation offered by Mr. Saini at this hearing for the appellant’s failure to submit its financial statements was that his accountant was currently busy with tax filing. He offered no explanation as

to why he failed to provide them by the November 15, 2016 date he set out in his e-mail to Ms Skrbic. He also offered no explanation for the failure to submit the requested trust reconciliations or the replacement letter of credit. With respect to the change of bank account, he indicated that he had put the proper information on his Application for Renewal of his registration.

[54] Participants in the travel industry have a responsibility to act with honesty and integrity when dealing with both TICO and the consumer. Registrants are obligated to meet all regulatory requirements. Based on the evidence set out above of the appellant's failure to comply with the regulatory requirements, which also represents a failure to comply with the 2012 Consent Order of the Tribunal, I find, in accordance with the provisions of s. 8(1)(d)(iv) of the Act, that the past conduct of the appellant's officers and directors affords reasonable grounds for belief that the business of the appellant will not be carried out in accordance with the law or with integrity and honesty.

## **F. CONCLUSION**

[55] Grounds for revoking the registration of the appellant under s. 10(1) of the Act have been made out. I have found that the appellant cannot reasonably be expected to be financially responsible in the conduct of business and that, based on the past conduct of its officers and directors, there are reasonable grounds for belief that the business of the appellant will not be carried out in accordance with the law and with integrity and honesty. However, the Tribunal has the power under s. 11(5) of the Act to substitute its opinion for that of the Registrar. Accordingly, I must consider the appropriate action to direct the Registrar to take, which may, in appropriate cases, include approving the registration with conditions as an alternative to revocation.

[56] In this case, the appellant has a history of non-compliance. Issues with trust accounting date back to 2010 when the first of two previous Notices of Proposal to revoke registration was issued. When the appellant failed to meet its obligations with respect to trust accounting under the first Consent Order, a further Notice of Proposal to revoke registration was issued and the second Consent Order was issued by the Tribunal on July 4, 2012.

[57] The appellant has been in business since 2002. I acknowledge that no issues were found with the appellant's financial reporting in its 2012, 2014 and 2015 financial years. If the failure to submit the 2016 financial statements were the only issue before me, I could consider a lesser penalty than revocation. However, in this case, there is evidence of a lack of financial viability and there are multiple instances of violations of trust accounting requirements for which

Mr. Saini offered little explanation. Since June 2016, the appellant has failed to provide the information requested by the Registrar in spite of being given numerous extensions and opportunities to comply.

[58] The Act is consumer protection legislation. It sets out requirements for travel industry participants to ensure a fair marketplace where consumers can have confidence in their travel purchases. By failing to comply with the financial reporting and trust accounting provisions of the regulatory regime, the appellant has put consumers at risk.

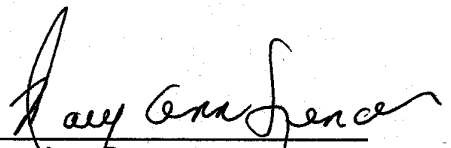
[59] While Mr. Saini testified that he will put in a new financial system, he offered no details on this or on how it will address his reporting issues. In his closing submission, he acknowledged past negligence and committed to operating in a professional manner in the future. However, I note that he made the same commitment in his October 26, 2016 e-mail to Ms Skrbic. This appellant has been operating under a Consent Order of this Tribunal since 2011; Mr. Saini knew or ought to have known the importance of compliance. The Notice of Proposal to revoke registration before me was issued in February 2017; the appellant has had ample time to demonstrate a commitment to compliance since that date but has failed to do so.

[60] There is no convincing evidence before me to indicate that the future operations of the appellant will differ from those which led to the issuance of the Notice of Proposal to revoke registration. Therefore, I find that the appellant's registration should be revoked.

## ORDER

Pursuant to the authority under section 11(5) of the Act, the Tribunal orders the Registrar to carry out the Proposal to Revoke Registration dated February 22, 2017.

LICENCE APPEAL TRIBUNAL

  
Mary Ann Spencer,  
Member

*Released: August 1, 2017*