

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



DATE: 2016-09-30  
FILE: 9996/TIA  
CASE NAME: 9996 v. Registrar, *Motor Vehicle Dealers Act, 2002*

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An Appeal from a Notice of Proposal by the Registrar, *Travel Industry Act, 2002*, to Revoke Registration

Canadian Travel Company Limited o/a A2Z Travel, CTCL, Golden Holidays and  
Punjabi Travel

Appellant

-and-

Registrar, *Travel industry Act, 2002*

Respondent

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## REASONS FOR DECISION AND ORDER

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**ADJUDICATOR:** Patricia McQuaid, Vice-Chair

**APPEARANCES:**

**For the Appellant:** Anil Sanduja, Agent

**For the Respondent:** Soussanna Karas, Counsel

**Heard in Toronto:** July 27, 2016

## REASONS FOR DECISION AND ORDER

### BACKGROUND

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 of Proposal dated December 30, 2015 proposed to revoke the registration of Canadian Travel Company Limited o/a A2Z Travel, CTCL, Golden Holidays and Punjabi Travel (the “Appellant”) as a travel agent and travel wholesaler under the Act.

The Appellant has been registered as a travel agent and travel wholesaler since July 2001 and August 2005 respectively. Mr. Sanduja is the principal of the Appellant. The Registrar is of the opinion that the Appellant is not entitled to registration under section 8 of the Act on three grounds:

- it is, and has been, carrying on activities that are in contravention of the Act and Regulation 26/05;
- having regard to its financial position, it cannot reasonably be expected to be financially responsible in the conduct of its business, and
- the past conduct of the Appellant affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty.

There is no evidence of misconduct or misappropriation of consumer funds by the Appellant. Rather, the foundation of the Registrar’s case is the financial position of the Appellant, and its failure to comply with Regulation 26/05 which sets out very detailed obligations on a registrant to file financial statements in a timely manner, to maintain working capital in the appropriate amount based on sales and to maintain proper trust accounts. The Act is consumer protection legislation. These various financial reporting requirements are a means by which the Registrar can monitor a registrant’s financial viability and thereby fulfil that consumer protection mandate.

For the reasons below, the Tribunal finds there has been a consistent and sustained pattern of noncompliance, and this conduct provides reasonable grounds for belief that the business will not be carried on in accordance with the law.

### EVIDENCE

Mr. Sanduja did not dispute the facts provided by the testimony of Sanja Skrbic, the director of financial compliance at the Travel Industry Council of Ontario (TICO), which

administers the Act. He does contest the conclusions that should be drawn from those facts.

Ms Skrbic's role is to ensure that registrants are in compliance with their financial obligations under the Act and to provide educational support to them, as necessary. She explained that the reporting requirements to TICO provide assurance that a registrant's client funds are safeguarded against fraud and misappropriation. A TICO inspector attends at a registrant's premises to check trust accounting compliance – namely, whether customer funds are being deposited into designated and approved accounts – and to assess the financial statement disclosure. The inspector schedules a visit with the registrant and advises which documents he or she wishes to review. Generally, the inspector will look at the registrant's trust balance to determine if there are sufficient funds to cover all consumer liabilities. If there is a working capital shortfall, the registrant will be asked to inject funds to meet the minimum requirement.

The first inspection report reviewed by Ms Skrbic was the report dated December 1, 2009. At this inspection, it was noted that trust accounting was not being performed. The concern that this raises is that the Appellant would not know what its liabilities to its customers were in terms of moneys received for which services had not yet been provided, and therefore would not know whether it had funds sufficient to cover those liabilities. When deficiencies in financial reporting are noted, the registrant is asked to correct the deficiency and provide documentation accordingly. The Appellant was asked to provide monthly trust reconciliations. A bank reconciliation statement was provided in February 2010, but this was not responsive to the requirement – it was not a trust reconciliation. In May 2011, the Registrar was still requesting documentation to address various deficiencies identified in the December 2009 report.

Ms Skrbic then reviewed the Appellant's April 30, 2013 financial statements. The Appellant's year end is April 30. Financial statements must be filed with TICO within 90 days of year end, so for the Appellant, by July 31 of each year. The annual statements serve as an independent review by a licensed public accountant. TICO relies on these to gauge the financial health of a registrant and compliance with the requirements prescribed in the Act. Ms Skrbic explained that, under the Act, the Appellant was required to have a minimum working capital of \$35,000, based on its previous year's sales of between \$5 - 10 million. Working capital is an indication of financial health and the registrant's ability to pay off its debt. A registrant's required working capital may change from year to year depending on the previous fiscal year's sales.

The April 2013 statements showed a working capital of \$25,000, which was a shortfall of \$10,000. In a letter to the Appellant on August 9, 2013, TICO noted the shortfall as well as the fact that the trust fund reconciliation was not clearly disclosed. The financial statements are required to disclose the balance in the trust account, any customer deposits held and any pre-paid travel services relating to the customer deposits as at the balance sheet date. Following this letter from TICO, Mr. Sanduja corrected the working capital shortfall with an injection of new investment into the company in the amount of \$12,000.

Another inspection took place in March 2014, the purpose of which was to ensure that the shareholder injection had not been removed. A follow up inspection in these circumstances was not unusual. TICO was not able to determine with any certainty that the shareholder injection had not been removed because of the many transfers in and out of the trust and general accounts. There was no clear audit trail; no back up documentation could be provided to the TICO inspector.

The inspector did note that the Appellant was processing non-trust related transactions from trust accounts. It was explained to Mr. Sanduja again that he must maintain customer funds in the trust account and could not withdraw those funds until the supplier of the travel service was paid. The TICO inspector assessed the risk as “high,” given that the Appellant’s trust position had not been disclosed in the financial statements in the preceding three years. The Appellant was given a copy of the inspection findings at the time of the inspection.

The Registrar communicated the deficiencies noted on the inspection to Mr. Sanduja by letter dated April 2, 2014. He was asked to provide written confirmation of the steps taken to ensure the deficiencies were corrected by April 16, 2014 and to provide the monthly trust reconciliations for March, April and May within 30 days of his year end.

This information was not submitted despite several reminders from TICO. On July 28, 2014, the Registrar requested that the outstanding issues be addressed by August 11, 2014, failing which administrative action, including a notice of proposal to revoke registration, may result. This was followed by another letter on September 18, 2014 in which Mr. Sanduja was given a further extension to October 2, 2014. Mr. Sanduja did respond. While the documents submitted still showed that Mr. Sanduja was not preparing trust reconciliations accurately – for example, business expenses were reflected in the trust account and transfers were made out of the trust account without supporting documentation – Ms Skrbic did “sign off” on his submission. At this time, Mr. Sanduja requested that TICO do another audit to ensure that he was in compliance. He also attended a financial seminar that Ms Skrbic conducts for registrants to educate them on TICO’s filing requirements.

The Appellant filed its April 2014 financial statements late, on September 15, 2014. At this time, its sales were less than \$5 million. As a result, its working capital requirement was reduced to \$25,000. However, it was operating at a loss of \$32,000, therefore its working capital required a correction of \$57,000. Its shareholder loans had been reduced by almost \$60,000, which meant there had been a pay out to shareholders. The net result of the financial situation reflected in the statements was that TICO had concerns about the Appellant’s financial viability. The Appellant’s accountant had noted that the company’s continuance, as a going concern, was dependent upon its ability to obtain adequate financing and to reach profitable levels of operation, all of which was impossible to predict.

TICO did not do another inspection until September 2015. Again, the trust accounting was not in compliance. The Appellant had not filed its financial statements for the period

ending April 30, 2015. Mr. Sanduja advised the inspector that IATA, which is the licensing body which allows a travel agent to issue airline tickets directly, had suspended his registration for failing to provide financials and had requested an additional security deposit of \$35,000. An IATA suspension would reduce the Appellant's profit margin even more.

Clearly this was a difficult time for Mr. Sanduja. He was required to finance continued losses through shareholder injections. He told the inspector that he may have to shut down the business location altogether. By November 2015, based on the April 30, 2015 financial statements, a correction in working capital of approximately \$112,000 was required. The statements revealed that the company had a negative working capital of approximately \$87,000. Mr. Sanduja was continuing to make transfers from his trust account without preparing a trust reconciliation. Shareholder injections were not catching up with his losses. Sales were about 1/3 of the previous years.

The evidence elicited from the documents shows that Mr. Sanduja appeared to want to become compliant. On December 8, 2015, he met with the Registrar and Ms Skrbic to discuss TICO's continuing and increasing concerns. As a result of that meeting, Mr. Sanduja undertook to do several things: to provide TICO with a \$25,000 bank draft as security by December 18th, to provide an update of all future bookings by December 18th, and to make an injection of \$110,000 to the Appellant's account by March 31, 2016. Mr. Sanduja was also to request a return of the Appellant's security deposit from IATA in the amount of \$35,000, also by March 31<sup>st</sup>. This amount would then be used as part of the required injection of \$110,000. Finally, Mr. Sanduja was to provide updates on the status of the sale of a commercial building he owned and which he expected to sell by March 31, 2016. With respect to trust accounting issues, TICO requested that Mr. Sanduja provide monthly trust reconciliations on an ongoing basis. All of this was confirmed in a December 11, 2015 letter from TICO to Mr. Sanduja. In that letter, the Registrar also stated that repeat trust accounting deficiencies could result in further administrative action, including a Notice of Proposal to revoke registration.

The bank statement provided by Mr. Sanduja in December 2015 continued to show that a proper audit trail was not being maintained – transfers out of the trust account were occurring without the appropriate documentation. Business expenses were being paid out of the trust account.

On December 30, 2015, the Registrar served the Notice of Proposal to revoke the Appellant's registration.

Mr. Sanduja's mother died in December, which meant he had to travel to India. He was out of the country until early January 2016. This personal issue explains some of the delay in meeting the deadlines agreed to in December. By mid-March 2016, the Registrar received the \$25,000 security requested to offset the working capital shortfall of \$112,000, leaving a shortage of approximately \$87,000. In March, Mr. Sanduja advised that the return of the security held by IATA would not be released until June 30, 2016. The trust reconciliation for December 2015 and January 2016 had not been

submitted to TICO. TICO asked that draft year-end financial statement be provided in June so that the Registrar could assess the situation again, before the Tribunal hearing which had at that point been scheduled. In early May, Mr. Sanduja advised TICO that he had nothing further to address the working capital shortfall but that he would be preparing the trust reconciliation as required. No updates were provided regarding the sale of the Appellant's commercial building. There was no injection of funds into the company.

In her testimony, Ms Skrbic stated that the Registrar's continuing concern is that the Appellant has still not provided a firm date by which the working capital shortfall will be corrected. The trust accounting is still not in order, which means that there is no way to determine if the Appellant is in compliance or not and thus there can be no assurance that consumer funds are being protected. She stated that the issue with a large working capital shortfall is that if there are insufficient funds to pay expenses, a registrant is tempted to use consumer funds to cover operating expenses.

In his evidence, Mr. Sanduja explained that he is making progress in modifying his business to a tour business. His specialty is selling tours and he believes that this is where he will be able to become profitable. He has reduced his staff considerably, from a high of 20 people to two currently. He has been attempting to sell the retail (airline ticket sales) side of the business. He simply wants more time to build his business, noting that in over 15 years there have been no consumer complaints. He stated that he understands that TICO must insist on compliance with the reporting requirements, yet at the same time, he felt he had built a relationship with TICO, and as a result, he thought they would show more empathy and support. Mr. Sanduja stressed that he has been trying his best. He did concede that as of the hearing, he had not filed his draft April 30, 2016 financial statements, but stated that the statements would be filed shortly.

Mr. Sanduja testified that his accountant told him that the business will have made a profit of \$40,000 this past year, but he still does not have the funds to inject into the business to deal with the working capital shortfall. The accountant did not testify at the hearing. Mr. Sanduja is still in negotiations to sell the business, but could not provide any update. He does not want to close his account with IATA (and thereby get the return of his security) because the business will lose value on a sale without it.

## **THE LAW**

Section 8 of the Act sets out the provisions with respect to registration. Section 10 states that a ground for refusal of registration as set out in section 8 is also a ground to revoke an existing registration. The applicable 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,
    - (i) Repealed: 2010, c. 16, Sched. 5, s. 5.

- (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,
  - (iii) having regard to the financial position of its officers or directors or of an interested person in respect of its officers or directors, 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, or
  - (v) an officer or director of the corporation makes a false statement or provides a false statement in an application for registration or for renewal of registration;
- (e) the applicant or an interested person in respect of the applicant is carrying on activities that are, or will be if the applicant is registered, in contravention of this Act or the regulations, other than the code of ethics established under section 42;
- (f) the applicant is in breach of a condition of the registration; or
- g) the applicant fails to comply with a request made by the registrar under subsection (1.1).

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. 2004, c. 19, s. 23 (12).

## ANALYSIS

In her submissions, Ms Karas stated that TICO has made every effort and given considerable time to bring the Appellant into compliance. Yet, Mr. Sanduja has still not provided trust reconciliations and has not corrected the working capital deficiency. The lack of trust accounting compliance is noted in every inspection report. The fact that the risk to consumers has not yet crystallized is not the point; the Registrar believes that the risk is “palpable”. The “going concern” notes on the annual statements that have been filed indicate that the business is in financial distress. Furthermore, with a hearing looming over him, and the risk of losing his registration, Mr. Sanduja has not even provided interim financial statements. His lack of communication, she submits, only exacerbates the Registrar’s concern. The fact that Mr. Sanduja only advised TICO at the hearing that he did not intend to relinquish his IATA registration is reflective of the failure to communicate.

Mr. Sanduja explained that he has been travelling in an effort to build his market in the tour business, all of which has left him with little time to prepare his trust reconciliations. This may explain why these documents are not currently available, but the evidence is that they have historically, and consistently, been unavailable. The promise that the working capital shortfall will be reduced because of profit that will be revealed in the current financial statement is not supported by any documentation. The lack of

substantiation, in the face of previous noncompliance, understandably leads the Registrar to question this assertion.

The Tribunal agrees with the Registrar; other than providing the \$25,000 security in March 2016, the Appellant has made many promises but has done little to show, in a concrete way, that he is bringing the company into compliance. For over two years, TICO has asked the Appellant to provide basic documents. When Mr. Sanduja has responded and made corrections, these have not been sustained. The Appellant has been given a generous amount of time.

The Registrar has proved, on a balance of probabilities, that the financial position of the Appellant is such that it cannot be expected to be financially responsible, and the facts support the conclusion that the Appellant is in contravention of the regulatory requirements to file financial statements within 90 days of the financial year-end and to maintain the minimum level of working capital required for its level of sales. Therefore, having regard to section 8(1)(d) (ii) of the Act, the Tribunal finds that the Appellant cannot reasonably be expected to be financially responsible in the conduct of its business. Furthermore, in view of the consistent and sustained pattern of non-compliance in this case, the Tribunal finds that, in accordance with the provisions of section 8(1)(d)(iv) of the Act, the conduct of the Appellant affords reasonable grounds for belief that the business will not be carried on in accordance with the law.

The Tribunal recognizes that the Appellant has been in business for 15 years, and that Mr. Sanduja has expressed an intention to be compliant. He has attended educational sessions given by TICO; Ms Skrbic has worked with him. However, the evidence shows that his stated intention has not translated into actual compliance. This is not a situation where conditions on a registration can be considered as an effective compliance tool. In December 2015 when he knew his registration was at risk, Mr. Sanduja did not follow through on what he had undertaken to do, even when allowing for a period of time when he was out of the country due to his mother's passing. The existing pattern of noncompliance has only been highlighted in the past year, and the financial position of the Appellant has worsened.

There is a risk that flows to the public from a finding that the financial position of the Appellant is such that it cannot reasonably be expected to be financially responsible in the conduct of its business. Therefore, the Tribunal finds that the Appellant's registration must be revoked.



**ORDER**

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar to carry out the Notice of Proposal to Revoke Registration dated December 30, 2015.

LICENCE APPEAL TRIBUNAL



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Patricia McQuaid, Vice-Chair

*Released: September 30, 2016*