

LICENCE APPEAL TRIBUNAL  
Safety, Licensing Appeals and  
Standards Tribunals Ontario

TRIBUNAL D'APPEL EN MATIÈRE DE  
PERMIS  
Tribunaux de la sécurité, des appels en  
matière de permis et des normes Ontario



Citation: Travel Mix Inc. v. Registrar, Travel Industry Act, 2002, 2017 ONLAT TIA 10772

Date: 2017-12-04

File Number: 10772 TIA

Appeal from a Notice of Proposal of the Registrar, *Travel Industry Act, 2002*, S.O.2002  
c.30, Sch.D. to Revoke Registration

**Between:**

Travel Mix Inc.

Appellant

-and-

Registrar, *Travel Industry Act, 2002*

Respondent

**DECISION**

**Adjudicator:** Harriet Lewis, Member

**Appearances:**

For the Appellant: no appearance

For the Respondent: Timothy Snell, Counsel

Hearing held in person, November 6, 2017

## REASONS FOR DECISION AND ORDER

### A. OVERVIEW:

- [1] This is a hearing requested by Travel Mix Inc. (“Travel Mix”) pursuant to a Notice of Proposal to Revoke Registration (“Notice of Proposal”) issued by the Registrar, *Travel Industry Act 2002* (“the Registrar” and “the Act”) to revoke the travel agency licence of Travel Mix Inc. Mr. Boris Golan (“Mr. Golan”) is the President, Director, Manager and sole shareholder of Travel Mix.
- [2] The Notice of Proposal was issued on April 12, 2017. It states that “the intention and objective of the Act is to regulate the travel industry in the interest of the travelling public”, and notes that the Act requires registrants to be “financially responsible in the conduct of business; and that they carry on business in accordance with the law and with integrity and honesty”.
- [3] Mr. Golan, on behalf of Travel Mix, filed a Notice of Appeal on April 24, 2017, thereby requesting a hearing. Travel Mix takes the position in its Notice of Appeal that all requirements of the Act and Regulation have been met and that any financial reporting deficiencies, problems with managerial oversight, trust irregularities and other problems were corrected if and when the Registrar notified Travel Mix of an issue.
- [4] The Registrar’s position is that from the outset of registration, Travel Mix has failed to follow the timelines, financial management practices and other requirements of the Act or to keep to the Terms and Conditions of Registration established by the Travel Industry Council of Ontario (TICO). It is argued that Travel Mix’s habitual non-compliance with the legally prescribed filing, disclosure, advertising, trust accounting and working capital requirements of the Act and Ontario Regulation 26/05, (the “Regulation”) demonstrates “a systematic and flagrant lack of governability, respect for, and the fundamental management required by the Act and Regulation”, such that the Registrar has reasonable grounds for belief that the business will not be carried on “in accordance with the law and with integrity and honesty”.
- [5] I concur with the position of the Registrar that Travel Mix’s license should be revoked.

### B. PRELIMINARY ISSUES:

- [6] A hearing of this matter was first scheduled for August 9, 2017 at 9:30 a.m. No one appeared for Travel Mix, but Mr. Golan was contacted and connected to the

proceeding by telephone. He requested an adjournment on the grounds that he could not take time away from another of his businesses due to an emergency trip by the only other employee. Counsel for the Registrar did not consent to the adjournment, but acknowledged that Travel Mix had recently filed additional documentation and there appeared to be some potential for resolution of some issues between the parties. The member presiding at the hearing on that day, ordered the matter be adjourned to October 5 at 9:30 a.m., a date agreed to by the parties.

- [7] On October 5, I was the presiding adjudicator. At the appointed starting time, no one had appeared for Travel Mix. At approximately 9:45, at my request, Tribunal staff reached Mr. Golan by telephone who again asked that the matter be adjourned. A hearing of the request for adjournment was held with Mr. Golan participating by teleconference.
- [8] Mr. Golan said he was unable to attend because he had been summoned to criminal court in Waterloo as a witness and was about to travel to that court appearance. After consideration of the circumstances, counsel for the Registrar consented to the further adjournment but asked that Mr. Golan provide the Registrar with a copy of the summons to witness, which Mr. Golan agreed to do.
- [9] This being a second adjournment I approved it on two conditions: that Mr. Golan deliver to the Registrar, a copy of the summons which required him to attend criminal court, and that the adjourned date be peremptory for Travel Mix. I explained to Mr. Golan that “peremptory” meant that if he did not appear, the matter would proceed without him, and he indicated that he understood. The parties agreed to a new hearing date of November 6, 2017 at 9:30 a.m. The conditions of delivery of the summons and the peremptory attendance by Mr. Golan were contained in my adjournment order of October 17.
- [10] At 9:30 on November 6 no one appeared for Travel Mix. At 9:45 Tribunal staff were able reach Mr. Golan by telephone. The Case Management Officer who spoke with Mr. Golan advised me that Mr. Golan said he was in Israel and had provided all material to the Registrar. He believed that therefor no hearing was necessary.
- [11] Before proceeding, I enquired of the Registrar’s counsel whether the summons and more financial documentation had been received, and was advised that while some long overdue financial information had been filed, the Registrar had not received the summons to witness. I was advised by counsel that the Registrar would not agree to a further adjournment.

[12] There being no further consent to adjournment and the date having been agreed to and made peremptory for Travel Mix, I proceeded with the hearing.

### **C. ISSUES:**

[13] The issue I am required to decide is whether on the evidence before me, and on the grounds provided in the Act and Regulation, the Registrar is justified in revoking Travel Mix's licence to act as a travel agent in Ontario.

[14] More specifically, is the Registrar's evidence of late filings and improperly completed financial statements; the failure to maintain minimum working capital; the failure to comply with disclosure, advertising, invoicing and trust accounting requirements over the period of registration enough to meet the test that there are "reasonable grounds for belief" that Travel Mix's business "will not be carried on in accordance with the law, and with integrity and honesty" as is required by the legislation?

[15] On the other hand, does the fact that at this time and over time Travel Mix has filed required documentation and corrected many of the discrepancies, sufficient to entitle it to continued registration?

[16] The burden of proof in this appeal is on the Registrar to show that the nature and extent of the many delays, improper or insufficient financial reporting and other poor management practices by Travel Mix, taken as a whole, illustrate on the balance of probabilities, a course of conduct that falls sufficiently below the standards and requirements of the Act and Regulation as stated in [14] above, so as to justify a revocation of Travel Mix's licence.

### **D. LAW AND REGULATORY FRAMEWORK:**

[17] As noted, the travel industry in Ontario is governed by the Act and the Regulation. In addition, the *Safety and Consumer Statutes Administration Act* 1996, S.O. 1996 c. 19 provides the authority for the designation of The Travel Industry Council of Ontario ("TICO") to act as the administrator of the industry. Both the Act and the Regulation are very detailed, but the relevant sections are described and quoted in part below, and referred to in this decision.

[18] The Act prohibits a corporation from acting as a travel agent or wholesaler unless registered (S.4). Section 8 of the Act provides for registration 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 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...
  - (f) the applicant is in breach of a condition of registration
- [19] Section 10 of the Act gives the Registrar the right to “suspend or revoke a registration...if in his or her opinion the applicant or registrant is not entitled to registration under Section 8.”
- [20] Section 11 describes the authority for giving a Notice of Proposal and provides a right to a hearing. It also creates this tribunal’s jurisdiction as follows:
- (1) The registrar shall notify an applicant or registrant in writing if he or she proposes to...
    - (b) suspend or revoke a registration.
  - (2) The notice of proposal shall set out the reasons for the proposed action and shall state that the...registrant is entitled to a hearing by the Tribunal if...the registrant mails or delivers, within 15 days after service of the notice, a written request for a hearing to the registrar and to the Tribunal.
  - (5) If a hearing is requested, the Tribunal shall hold the hearing and may by order 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
- [21] Section 17 provides for the appointment of inspectors who may:
- conduct an inspection and may, as part of that inspection, enter and inspect at any reasonable time, the business premises if a registrant...for the purpose of:

- (a) ensuring compliance with this Act and the regulations;
- (b) dealing with a complaint under section 16;
- (c) ensuring the registrant remains entitled to registration”.

- [22] The Regulation sets out in seventy-five sections the process and requirements for, among other things: obtaining registration, providing information, filing financial statements, maintaining working capital and providing security for the working capital, maintaining bank and trust accounts, keeping business records, making representations relating to travel services, using photographs, dealing with customers and issuing statements, invoices and receipts.
- [23] As the designated administrator, TICO creates standards for and registers agents, provides compliance webinars, has a code of ethics, requires registrants to enter into a written Terms and Conditions document and administers a consumer compensation fund.

## **E. EVIDENCE:**

### **The Registrar’s Evidence:**

- [24] The Notice of Proposal to Revoke Registration issued by the Registrar outlines in detail the history and particulars leading to the decision to revoke Travel Mix’s licence. The material filed by the Registrar in support of its position includes extensive documentation of the continuing attempts to both encourage and demand Travel Mix’s compliance with the Act and Regulations and the TICO Terms and Conditions Agreement. Through its witness, Ms. Sanja Skrbic CA, TICO’s Director of Financial Compliance, the Registrar tendered and elaborated on the documentary record.
- [25] Prior to registration, in May 2012, Travel Mix and Mr. Golan were convicted of operating as a travel agent without registration, contrary to s. 4(1) of the Act.
- On September 10, 2012 Mr. Golan registered Travel Mix with TICO and signed the TICO Terms and Conditions document, committing as a registrant to:
- Comply with the working capital requirements of the legislation.
  - Be responsible for the actions of its employed counsellors and Outside Sales Representatives.

- File a FORM 1 as required for participation in the Compensation Fund, on or before the due date.
- Ensure its invoices and representations comply with the law.
- File financial statements as legally required.
- File its financial statements for the year ending October 31, 2012 by January 2013.
- Ensure that its trust accounts are maintained in accordance with the law.

Travel Mix was also required and agreed to file trust account statements for the two months prior to its registration (July and August 2012) “within 30 days of those month’s ends”.

### **Registrar’s Issue 1: Non-Compliance with Financial Statement Filing Obligations**

- [26] The appellant has routinely not complied with the requirements of filing its financial statement on time, nor providing the required detail in the financial statements.
- [27] TICO considers the filing of financial statements to be the mechanism through which it assesses the business viability of registrants and identifies problems which may allow it to work with registrants to avoid or mitigate risks to the public. Almost immediately on registration, issues arose with Travel Mix in respect to filing proper statements on time.
- [28] Section 22(2) of the Regulation requires a registrant with Ontario sales of less than ten million dollars during the previous fiscal year to file audited or certified financial statements within three months of fiscal year end. Travel Mix’s sales put it in that category. Section 22(6) mandates the required content of the statements including a statement of sales, a balance sheet, an income statement and a trust account reconciliation.
- [29] Travel Mix’s 2012 statements were due January 31, 2013. On the due date, when an inspector visited the premises, Mr. Golan told him that the statements were not ready. Extensions were given: first to February 28, and when they were not filed then, to March 31. Travel Mix missed the second deadline and filed its 2012 statements on April 5, two months after the first deadline and a week after the last. The filed statements were not only late but they were also deficient because they did not show the trust account balances or customer deposits at year end.

- [30] The 2013 statements were filed on time, but the 2014 statements were received three months late, on April 20, after two extensions on the grounds that Travel Mix was changing accountants.
- [31] Following a similar pattern, the 2015 statements were received even later, (on May 3, 2016), but they too failed to disclose the reconciliation of the trust account and the trust balance at year end.
- [32] In each year and in the case of each failure to file by a deadline, the Registrar first reminded, then warned in writing, that the law requires the time limits to be met. Most recently, despite advance notice given of the January 2017 deadline for the 2016 statements, followed by the usual letter of warning that Travel Mix's licence would be in jeopardy, the statements were filed only on June 12. This was almost six months late and one month after the Notice of Proposal was issued. Even though filed, the statements were deficient because they did not contain the trust account balance as required.

### **Registrar's Issue 2: Working Capital Requirements and Financial Viability Concerns**

- [33] Section 24 of the Regulation establishes minimum working capital requirements for registration on a sliding scale based on Ontario sales in the previous year. The explanation given for the requirement by the Registrar is that it protects consumers by helping ensure that businesses are able to render the services they are contracted for.
- [34] The 2014 financials indicated that Travel Mix's sales exceeded two million dollars which according to the scale, requires working capital of a minimum twenty-five thousand dollars. Travel Mix stated its working capital was just under five thousand dollars which is well below the minimum required by the Regulation. TICO provided Travel Mix with detailed instructions on how the shortfall should and could be corrected and gave a deadline of August 11, 2015. The required funds were finally deposited on August 13, 2015, six months into the next fiscal year.



**Registrar's Issue 3: Trust Accounting**

- [35] Travel Mix has had a history of failure to comply with trust accounting practices and despite extensions and warning letters, still fails to file trust reconciliation statements accurately or in a timely fashion.
- [36] All money received from clients for travel services must immediately be placed in a trust account per s. 27 of the Regulation, and may only be withdrawn (a) to pay a supplier for travel services, (b) to make a refund to the customer, or (c) after the supplier has been paid in full, to pay any commission. The trust account is to be reconciled regularly and balances reflected in the financial statements. The TICO Terms and Conditions contain an obligation to follow proper trust accounting measures. To advise and assist agencies with proper trust accounting, TICO has established guidelines and posted them on their website.
- [37] When Travel Mix became registered in September 2012, it was in breach of these obligations and despite advice as well as reminder letters, followed by a warning, it did not correct deficiencies until late August 2013. In June 2015, an inspector again found several deficiencies in the trust account practices, which led to the inspector identifying Travel Mix as a "medium risk". At that time, the inspector reviewed proper practice with Mr. Golan and Travel Mix received and extension of time to comply with the trust deficiencies. However, a follow-up inspection in December 2015 revealed repeated and additional infractions. This resulted in the identification of Travel Mix as "high risk". Again Mr. Golan was given compliance advice, then written reminders and warnings that a deadline of April 2016 was in place. Regardless of these reminders, Travel Mix did not respond. When the Notice of Intention to Revoke was issued on April 12, 2017, trust reconciliations for December 2015 and January and February 2016 remained outstanding.

**Registrar's Issue 4: Form 1 Filing**

- [38] Travel Mix has consistently failed to comply with the requirements established by Section 50 of the Regulation. Section 50 is a consumer protection provision which requires that all registrants must participate in a fund ("the Fund") created to compensate claimants for services contracted for, but not provided. TICO holds and administers the Fund. The TICO Terms and Conditions require registrants to file a "Form 1" twice a year, on or before a due date, outlining its sales in the previous fiscal year. The amount of contribution required is based on the amount of sales. In each year Travel Mix's first Form 1 filing deadline is the same date as the deadline for its financial statement: January 31. The second deadline is 6 months later: July 31.

[39] Despite reminders, warnings and extensions and conversations with Mr. Golan on the subject, Travel Mix has repeatedly failed to file its Form 1 and/or make contributions to the Fund on a timely basis. For example:

- The January 2013 filing was received April 17, unaccompanied by the required payment which did not come until May.
- The July 2014 filing was received on September 19.
- The January 2015 filing was received on April 10 and the July filing on September 3.
- The January 2016 filing was received April 20 and the July filing on September 21.

### **Registrar's Issue 5: Invoicing**

[40] Travel Mix has consistently failed to comply with Section 38 of the Regulation and provide proper invoices to its customers. Section 38 specifies the type, form and content to be provided to customers on their statement, invoice or receipt. This is intended to ensure that consumers are clear about the terms and conditions of the travel services they have purchased. TICO has created an invoicing guideline and checklist and has posted them and a sample invoice on its website.

[41] In 2013 an inspector found that Travel Mix's invoices were not compliant with the Regulation and in an effort to assist Travel Mix to become compliant, it was provided with a sample invoice. Again in June 2015 an inspection determined that the invoices were not compliant in a number of respects and that previously required changes had not been made. TICO provided an invoicing check list to Mr. Golan after which Travel Mix submitted a draft amended form of invoice which still contained deficiencies. In a further attempt to ensure compliance TICO provided Travel Mix with a detailed explanation of what was required to bring the draft into compliance, and set a deadline of March 8, 2016 to review the draft. Travel Mix provided a TICO with a new draft on March 16, but that draft was still not compliant because it did not contain the customer's address.

### **Registrar's Issue 6: False and Misleading Representations**

[42] The Registrar takes the position that Travel Mix has made false representations or allowed its employees to make false representations about its business. Section 28 of the Act and Sections 31 and 32 of the Regulation address the requirement that registrants must act honestly and with integrity in all dealings with the consuming public. To assist registrants in meeting this obligation, TICO

has set advertising guidelines which Travel Mix received at the time of its first inspection in January 2013. The Registrar's Notice of Proposal and the oral evidence addressed two instances of non-compliance with advertising standards and the subsequent delay in complying with warnings to meet the standards as follows:

- In 2016 Travel Mix's web site did not show its registration number. It also advertised an Owen Sound address although Travel Mix did not have a branch office there. In June, Travel Mix was told in writing to correct the information and given a deadline of July 9. Mr. Golan requested and received an extension until August 12 but the corrections were not confirmed to have been made until October 16, 2016.
- In late 2016 a Travel Mix Outside Sales Representative ("OSR") breached s. 31 of the Regulation because her Facebook page and website did not contain her business address, business telephone number or TICO registration number. Travel Mix was required to ensure that the OSR made the appropriate corrections and to confirm to TICO that they were done by January 30, 2017. TICO contacted the OSR directly to ensure the changes were made, but Travel Mix did not provide the confirmation until February 6, 2017.

### **Registrar's Issue 7: Failure to Provide Information re Employees**

- [43] Travel Mix has not properly disclosed information about its employees. Section 12(4) of the Regulation requires all travel counsellors to be certified by TICO. Section 15(4) of the Regulation requires that in order to be eligible for annual licence renewal a registrant must provide a list of the names and addresses of its travel agents and OSRs. The requirement of a list of employees is a measure to ensure that customers are receiving travel services from qualified individuals. TICO verifies that the persons listed by registrants have passed its travel counsellor exam and are thus certified.
- [44] In its applications for renewal in 2015 and 2016, Travel Mix failed to properly or accurately disclose the required employee information. Specifically:
- During a June 2015 inspection Mr. Golan advised that he employed seven OSRs and ten travel counsellors. In December of that year he advised that he had eighteen travel counsellors. However, his renewal form did not list any counsellors or OSRs although he certified that "all information...is true, correct and complete".

- The 2017 renewal form did not contain a list of employees, but rather the words “same as last year”. However, no names had been provided the previous year.

- [45] In addition to the evidence tendered on the foregoing issues, Ms. Skrbic testified that many other attempts had been made by TICO representatives to assist Mr. Golan to align Travel Mix’s business practices with the requirements of the legislative and regulatory framework. She testified that notwithstanding incidents of non-compliance, it is the practice of the Registrar and TICO, wherever possible, to work with registrants to assist them to meet the many requirements and that this leads to compliance “if they take their obligations seriously”. She referred to the precedents, checklists, guidelines and seminars available through TICO which allow registrants to educate themselves. She noted that Travel Mix’s delays in meeting filing deadlines had become longer over time and expressed the opinion that in the case of Travel Mix there was “nothing further they could offer”.
- [46] Ms. Skrbic estimated that in each year, of approximately 1800 registrants, there are between ten and fifteen proposals to revoke a licence, but only in two or three cases do they proceed to revocation. She is of the opinion that Travel Mix and Mr. Golan are ungovernable and therefore this is one of those few instances where revocation is warranted.
- [47] Both the witness and counsel acknowledged that at the date of hearing, the financial material noted as outstanding at the time of the Notice of Proposal had been filed, although some not until this proceeding had been instituted and twice adjourned. They did not indicate whether the material so filed was compliant or not. They did confirm that the summons to witness which was to be filed as a condition of the second adjournment, had not been received.

#### **Travel Mix’s Evidence:**

- [48] Because Travel Mix did not appear at the hearing, the only evidence tendered on its behalf is contained in the Notice of Appeal. In the Notice of Appeal, Mr. Golan addresses three issues as follows:
- Financial materials: The Notice of Appeal addresses those financial materials which were outstanding from Travel Mix at the date of the Notice of Proposal. Mr. Golan does not deny that a financial statement was overdue, but says that it takes a long time for the CA firm to prepare the required documentation. He states that he always replies to TICO’s letters when received, and asks for extensions when needed.

- Working capital deficit: Mr. Golan does not deny that his working capital account is short “about \$5,000” but states that his CA has treated the \$10,000 security payment which TICO has held since registration as part of the working capital.
- Mr. Golan acknowledges that one of the Travel Mix agents was not in compliance with advertising standards in respect to material posted on Facebook. He says that after being told by TICO to remove it “we told the agent and it was removed immediately”.

## F. ANALYSIS AND CONCLUSION

- [49] I find that notwithstanding that at the time of the hearing of this matter, Travel Mix may have been up to date in its filings and therefore compliant or close to compliant with the requirements of the Act and Regulation, the Registrar’s Proposal should succeed.
- [50] The Registrar’s evidence clearly illustrates that throughout the period of registration, Travel Mix has failed to meet the many requirements which the Act, the Regulation and the TICO Terms and Conditions have set for registrants. Each of the conditions and requirements, though numerous, are there to ensure that the travel customer is protected when dealing with a registered agency and certified travel counsellor. The working capital requirement, the Fund and the trust account requirements are more than just rules to be obeyed; they provide assurance for the would be traveller, that what is contracted for can and will be delivered, or compensation will be paid.
- [51] Timeliness and accuracy are essential elements of the travel industry. There are very good reasons for the strict observance of the time lines and detailed reporting requirements set out in the administrative regime. Mr. Golan and Travel Mix have repeatedly failed to provide timely and accurate information as is required, to a degree that indicates a lack of respect for the framework of the Act and Regulations.
- [52] The many extensions given by the Registrar illustrate a real and sustained effort over the period of Travel Mix’s registration period to allow time for Mr. Golan to bring his business practices routinely in line with requirements. He has shown himself unable or unwilling to do so.
- [53] Accuracy is also a necessity, and in this case a weakness. Even after detailed instructions, precedents etc. were provided to Travel Mix, there continued to be discrepancies and errors in filed forms, in calculations and in information provided to the potential customers.

[54] I could conclude from the evidence that Mr. Golan's failure to meet the time lines that he suggested, to meet commitments that he made or to provide accurate financial accounting is not merely ignorance or carelessness, but rather a strategy to avoid or delay meeting his obligations. Without making such a finding, it is my opinion that his conduct illustrates disrespect for the regulatory framework in which his business is situated by law, as well as financial irresponsibility.

[55] I find that a degree of compliance by Travel Mix achieved at the date of the hearing does not override its failures during the full period of its registration. These demonstrate un-governability and an absence of respect for the management required by the Act and Regulation such that there are reasonable grounds for belief that the business will not be carried on in accordance with the law and with integrity and honesty in the future.

**G: ORDER**

[56] I order and direct the Registrar to carry out its proposal to revoke the licence of Travel Mix Inc.

License Appeal Tribunal



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Harriet Lewis, Member