

**Licence
Appeal
Tribunal**

**Tribunal
d'appel en
matière de permis**



DATE: 2014-02-06
FILE: 8319/TIA
CASE NAME: 8319 v. Registrar, *Travel Industry Act, 2002*

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

974764 Ontario Ltd. o/a Valhalla Travel and Tours

Applicant

-and-

Registrar, *Travel Industry Act, 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Simon Dann, Member

APPEARANCES:

For the Applicant: Birgit Sondrup, Agent

For the Respondent: Soussanna Karas, Counsel

Heard in Newmarket: December 18, 2013, and
January 9, 2014

DECISION AND ORDER

Background

This is a hearing before the Licence Appeal Tribunal (the "Tribunal") arising out of a Notice of Proposal, dated August 14, 2013, to revoke the registration of 974764 Ontario Ltd., o/a Valhalla Travel and Tours (the "Applicant/Valhalla"). The hearing was held in the presence of Birgit Sondrup, Agent, for the Applicant, and Soussanna Karas, Counsel, for the Registrar.

Opening Statements

The Registrar's position is based on concerns about the Applicant's financial responsibility, integrity, and ability to operate with honesty. While the applicant has been licensed since 1993 there have been numerous trust account issues and supplier complaints. The Registrar has worked with the Applicant since 2011 in an effort to remedy the problems.

The Registrar has received non-payment complaints and specifically in June 2013 and in September 2013, when a consumer complained about excess charges to her credit card and having to pay a hotel twice based on non-payment by Valhalla to the supplier.

There has also been the falsifying of bank record documents to show that payments were made to a supplier when the supplier was not actually paid. The Applicant's trust account is in overdraft and is unable to deal with its financial obligations. Therefore the Registrar is asking for the Applicant's registration to be revoked.

The Applicant's agent, Ms. Sondrup, offered no opening statement.

Registrar's Evidence

The Registrar's evidence consisted of a book of documents, a consumer's complaint form and the testimony of Nell Vanderwoude ("NV"), who works with another travel agency. Another witness for the Registrar was Sanja Skrbic, who is a financial inspection supervisor with the Travel Industry Council of Ontario ("TICO").

The witness NV testified that she previously dealt with Valhalla about 8 to 10 years ago when a client wanted to go on a trip to Scandinavia. She booked part of that trip with Valhalla and the balance with another company which is no longer in business.

When her client, "JMH", came back to do the same trip again, she needed flights, and hotels. She said she was having a problem finding a hotel source for her client but then found Valhalla and got the prices for four hotels. On July 14, 2013, the \$17,550.50 cost of the hotels was paid in advance to Valhalla on the client's credit card.

NV's client contacted her at the end of July to say that her credit card had been charged additional amounts over 5 different days for a total of \$13,000 and that she had not authorized those charges.

NV contacted Valhalla immediately and was told there was an error and it would be corrected in early August. It was not until September 11th that the last amount was paid by Valhalla to complete the refund to JMH's credit card (Exhibit 3, Tab 4).

NV testified that, in September, when her client arrived at the Admiral hotel in Copenhagen, and presented the prepaid voucher provided by Valhalla, JMH was told the rooms had been cancelled due to non-payment by Valhalla.

NV acknowledged the hotel provided her clients with rooms and, according to JMH's email to NV, Valhalla had fixed the problem by arranging to pay for the hotel rooms that day by sending over their credit card (Exhibit 4). The hotel rooms should have been paid for in July when JMH made her advance payment.

The client subsequently moved to a second hotel, the D'Angleterre, and emailed NV from Copenhagen to express concern she could be charged a second time for the rooms at this hotel. In October, JMH came in to see NV and showed that her credit card had been charged \$6,500 for the hotel rooms even though she had received a prepaid voucher from Valhalla.

On December 11th, JMH faxed a complaint form to TICO (Exhibit 4) to confirm that she had been charged \$6,500 by the D'Angleterre for the hotel rooms and the charge had come through on her September 30th VISA account statement. JMH provided TICO with copies of her statement and prepaid voucher from Valhalla for the D'Angleterre. As far as NV knows, her client has to date not received a refund for the additional charge of \$6,500 to her credit card.

NV also testified that on September 30th, when she received her commission cheque from Valhalla, the cheque was returned by her bank because Valhalla's account did not have sufficient funds ("NSF") to cover it (Exhibit 3, Tab 4). NV contacted Ms. Sondrup and requested a bank draft from Valhalla, which she received by courier on October 11th. NV also received an email from Ms. Sondrup, which apologized for the situation and confirmed a new cheque had been sent (ibid).

In cross-examination, when NV was asked if she recalled being told that the Copenhagen hotel had made a mistake with the hotel reservation, NV replied that her client only knew what the hotel had told her.

The witness Sanja Skrbic testified that trust accounts are important because they are a safety guard for consumer funds which should only be paid to suppliers and there must be an audit trail of how the trust funds are expended. Only after a supplier or suppliers have been paid can any excess funds be transferred from the trust account to a general account. If a trip is cancelled then the funds must be paid back to the client.

She testified that if problems emerge about an Applicant, TICO will organize a visit to the Applicant and, if needed, work with the Applicant to provide guidelines and help

them come into compliance.

An inspection report of February 7, 2011 (Exhibit 3, Tab 13) stated that TICO had visited the Applicant for a trust accounting review based on a complaint from an outside sales representative. The complaint concerned a hotel in Switzerland which had not been paid. The inspector reported the hotel was owed \$45,360 Canadian and the Applicant was arranging outside financing to retire this debt.

The report noted that consumer funds which had been received by the Applicant appeared to have been used for other purposes. The inspector also noted the year-end trust reconciliation was inaccurate and that there were other issues as well.

Ms. Skrbic said the risks that come out of these kinds of issues are that client funds are not protected and if there is no audit trail, they cannot tell what funds belong to what program.

She pointed to the inspector's conclusions that the Applicant was deemed at-risk because they were under-capitalized, had misused trust funds under their care, that trade debts were past due and there were other issues of concern.

On March 3, 2011, TICO wrote to the Applicant regarding the complaint of non-payment to the Switzerland hotel and acknowledged their understanding that the hotel had been paid but that the Registrar still had concerns regarding Valhalla's trust accounting practices and working capital position. The Registrar requested additional information and cautioned Valhalla that the failure to provide the information could result in further action on TICO's part (Exhibit 3, Tab 14). Valhalla's financial statement of April 30, 2012 showed they were basically compliant and had the necessary working capital (Exhibit 3, Tab 11).

On April 3, 2013, a TICO inspector visited the Applicant as the result of a NSF cheque complaint from a supplier. The inspector's report of April 22, 2013 noted the trust accounting was not in compliance and that there were prior issues which still needed to be corrected.

The inspector felt the risk level was high due to problems with trust accounting procedures and that working capital levels might be misstated (Exhibit 3, Tab 12). TICO's follow-up letter of April 30, 2013, repeated the concerns expressed in the inspection report and asked Valhalla for specific actions that would be taken to ensure the deficiencies would be corrected.

Ms. Skrbic said she received an e-mail from the Applicant on May 13, 2013 and it advised her Valhalla would be taking steps to do proper trust accounting and a first reconciliation would be filed no later than May 31, 2013.

This was followed by another e-mail from the Applicant outlining eight steps that would be taken to address the Registrar's issues. Ms. Skrbic said this did not alleviate concerns about whether the Applicant was providing accurate information.

On June 3, 2013, the TICO activity report (Exhibit 3, Tab 15) notes that the trust

account reconciliation for April 30, 2013 listed a number of round transfers, deposits, payouts, and an amount for customer deposit liabilities but did not resolve questions about how the numbers balanced. This was followed by a July 4, 2013 note which stated the May trust reconciliation was "okay" and they would be watching for the June trust reconciliation.

Ms. Skrbic testified the financial statements for 2013 showed a profitable year and that the working capital appeared good but there was a government debt on the statement which should have reduced the working capital and, in that case, the working capital would be offside. She said the financial statements in conjunction with what TICO knew about other issues left them with continuing concerns.

Ms. Skrbic reviewed the complaint received from the managing director ("LT") of Robinson Scandinavia in late July. He advised TICO that Valhalla had booked hotel rooms for 16 persons but had not paid for the group and they would soon be arriving. He said he would have to cancel the tour but he had no direct contact information to let the 16 people know there were no rooms for them and they should not come.

Valhalla claimed they had made the payment and sent TICO a copy of a Western Union payment confirmation. Robinson Scandinavia claimed they had not received payment. The last email received from Valhalla, by Ms. Skrbic, stated that Valhalla "was in contact with the wholesaler" (Exhibit 3, Tab 18).

Ms. Skrbic said the next trust reconciliation received from Valhalla was a cut and paste electronic bank statement, which showed a July 24, 2013 payment to Custom House, of \$26,369.18 (Exhibit 3, Tab 18, pg 3), which was supposed to have been wired to Robinson. Valhalla was advised this kind of statement copy was not acceptable and that it would have to be a PDF or print screen version of the original trust account statement.

Prompted by Robinson Scandinavia's complaint of non-payment, TICO followed up with an inspection visit to Valhalla on August 6th (Exhibit 3, Tab 6). The inspector's summary conclusion was that based on his findings, the situation of payment to the supplier was assessed at high risk. His review of the previous three months sales invoices showed that 90% of payments for travel services were by credit card and the payments were passed directly to the suppliers. The report contained no comment about the remaining 10%.

On August 7, 2013 TICO wrote to Valhalla about the inspection findings and that it appeared the \$26,369.19 payment to Custom House, which had originally been presented in the cut-and-paste bank statement, was non-existent and that the transactions had been manually inserted in an attempt to deliberately mislead TICO. In effect, the supplier had not received payment and there was evidence of other trust accounting deficiencies. TICO closed the letter (Exhibit 3, Tab 15) with a request for the following information:

1. Explanation of what customer monies have been used for.
2. Documentary proof the consumers have been advised in writing that their trip has been cancelled and that they had been offered a replacement trip or refund.

3. Trust reconciliation as of August 7, 2013 showing all current and future bookings by customer name and invoice number, including details of outstanding payment to all suppliers and all receipts from customers.
4. Copy of all invoices provided to consumers with respect to the tour including all details of bookings such as air and hotels if applicable.
5. The year-end financial statements for April 30, 2013 disclose a long term government remittance payable in the amount of \$8,043. Please provide correspondence from the government showing payment schedules you are required to make in the future.

Valhalla replied to the questions and it was learned the group had been switched to another supplier (away from Robinson) but provided no further details. Payment was made to the new supplier but there was no information where the money for payment came from or what had happened to client deposits.

Ms. Skrbic said that on September 30, 2013, Valhalla provided a trial balance (Exhibit 3, Tab 3) which was not helpful in determining Valhalla's financial position. In addition, the trust reconciliation report showed a prepaid travel amount but did not identify the clients.

Ms. Skrbic testified that when she compared the statement page the TICO inspector obtained with the page provided by Valhalla, which had the inserted payment to Custom House for the July 17 to July 24 period, the information did not make sense because the trust account balance should have been zero. TICO's position is that no satisfactory explanations were provided for the identified issues.

Complaint documents and Visa statements from JMH (Exhibit 4) were reviewed and confirmed the testimony of NV. There has been no explanation from Valhalla about the \$13,000 where it is or where it went and Valhalla's trust account statement does not show how JMH was refunded but does show there were never enough funds to cover the amount.

Ms. Skrbic said the numerous issues include what trust procedures are in place, information about where client funds went, and understanding Valhalla's financial viability or the status of their working capital. The additional issues of supplier complaints about not being paid and falsified information has led to a loss of trust in the Applicant.

In cross-examination, Ms. Skrbic was asked if she had received the statements and trust reconciliations showing credit card transactions which Ms. Sondrup said had been sent to the Registrar's counsel on December 3, 2013. Ms. Skrbic replied that she did not have that documentation.

At this point, the Tribunal determined that documents which Ms. Sondrup considered important to her evidence were not available for her reference. The Tribunal adjourned the hearing in the interest of ensuring the Applicant, as an unrepresented party, had every reasonable opportunity to fully and fairly present their case.

Upon continuation of the hearing, each of the parties confirmed the documents referred to by Ms. Sondrup at the conclusion of the Registrar's evidence, had been received.

Applicant's Evidence

Ms. Sondrup testified that the Robinson Scandinavia tour group was made up of 16 people and she had relied on past experience with Robinson who usually received their money about one week before client departure. On this occasion, it turned out that Robinson contacted TICO at an earlier point to complain they had not been paid. When Valhalla found out about the cancellation by Robinson, Valhalla's solution was to re-book the group with another tour operator.

Regarding the situation with NV's client, Ms. Sondrup said it was a bit of a mix-up with the credit card and acknowledged JMH had been charged twice but she had provided proof that the money was returned.

Ms. Sondrup said that Valhalla has had a bit of a late payment problem due to a \$40,000 loss which was caused by an agent with another agency. That loss was covered by Valhalla and it is now on its way to recovery.

Ms. Sondrup said she has taken a mortgage to cover the \$40,000 loss and to arrange a line of credit. She said her son is now going to operate the business and if the decision is to revoke Valhalla's registration, it would put them in dire straits.

Cross-examination confirmed that the group of 16 people scheduled for the Robinson tour paid Valhalla a total of \$43,705. This amount represented credit card payments to Valhalla over a number of months but despite these collections by Valhalla, there is no evidence of deposit payments made to Robinson.

Ms. Sondrup's reply was that perhaps the monies were used for something else, as collections for other tours may have been put to other use. She agreed that in July, when Robinson asked Valhalla for payment, Valhalla could not make the payment.

When she was asked to confirm that Robinson has never received any payment, Ms. Sondrup replied that they are not owed any money.

Ms. Sondrup admitted that JMH was charged twice but was not sure how the overcharge happened. She acknowledged that somehow the charge was put in two times and somehow double invoiced.

When Ms. Sondrup was asked if Valhalla was using the additional monies from JMH for other bookings, she acknowledged that was probably right and that other consumers' prepayments had been used to repay other situations or arrangements.

Ms. Sondrup also stated that her son, who is 42 years of age, has taken accounting courses and the TICO exam, is going to take over the company. He currently does bookings, looks after the advertising, and handles all the IT work.

Ms. Sondrup added that ever since Valhalla was left with the \$40,000 debt in 2009, it has been one problem after another and if Valhalla's registration is revoked, they will have to go bankrupt.

Closing Submissions

In closing, Ms. Karras, the Registrar's counsel, submitted that the evidence shows the Applicant cannot reasonably be expected to be financially responsible in the conduct of its business.

The Applicant has been an Applicant since 1993 and should have the knowledge and capabilities to conduct its business in accordance with the law, integrity and honesty. TICO has worked with the Applicant since 2011 to ensure proper trust accounting and protection of consumer funds but the evidence shows the problems have remained the same.

The Applicant acknowledged a falsification of records to show payments were made when they were not and the Registrar's position is that there was also a deliberate overcharge in the amount of \$13,000, which amount was then used for other bookings. It took two months to resolve the obligation and suggests that Valhalla is "financially starved".

The Applicant's trust fund shows a constant overdraft, or a no money position when there should be funds in the trust account to reflect customer prepayments. The documents submitted by the Applicant were difficult to sort out and the record keeping is almost non-existent. Ms. Karas submitted that the records for the 16 person group travelling to Scandinavia were too difficult to understand.

The Applicant said problems began for Valhalla with the \$40,000 loss and while that happened 4 or 5 years ago, the problems did not get cleared up even though there were several capital injections.

Ms. Karas argued that trust funds were constantly misused and suppliers were not paid on time. Since the Applicant claims they could go bankrupt if their registration is revoked, it confirms that consumer funds are at risk and TICO does not see how the Applicant can be brought into compliance. She submitted that this is a very clear situation about risk to consumer funds and the Registrar's proposal to revoke the registration should be confirmed.

Ms. Karras cited case law *Ontario (Registrar of Alcohol and Gaming Commission) v. 751809 Ontario Inc.* to point out that the Registrar simply needs to show the Applicant's past and present conduct provides reasonable grounds for belief that they will not carry on business in accordance with the law and integrity and honesty.

Ms. Sondrup's closing submission acknowledged that they were guilty of misusing trust funds but the agency was not guilty of the hotel error because it was the hotel's mistake. She submitted they do know what is going on but have been in survival mode for some time but are now out of it. She stated her son would be looking after the business and the agency can continue.

The \$40,000 loss started the problems that followed but that is not the problem today, it was the start. She argued that if they are closed down then they would need to go into bankruptcy because they would be unable to continue the business and earn an

income.

In reply, Ms. Karas submitted the Applicant can become an outside sales agent or represent a branch where another agency will be responsible for the administration of the business.

Ms. Karas expressed doubt that anything would change and submitted that the Applicant's son has no outside experience and has worked at the same agency for 15 years. While he has some accounting education, there is no documentation regarding his qualifications.

THE LAW

The Act provides in part as follows:

- 8.(1) An applicant that meets the prescribed requirements is entitled to registration or renewal of registration by the registrar unless,
- (a) the applicant is not a corporation and,
 - (i) having regard to the applicant's financial position or the financial position of an interested person in respect of the applicant, the applicant cannot reasonably be expected to be financially responsible in the conduct of business, [or]
 - (ii) the past conduct of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty

By virtue of section 10 of the Act, the grounds for refusal to register or renew registrations are applicable to revocations.

ANALYSIS

The Registrar's evidence was comprised of a book of documents and the testimony of two witnesses. The Applicant's evidence was comprised of some explanation regarding the allegations of over-charging and non-payment to suppliers but there was no material evidence to support the explanations or to show the status of its financial position.

The principal issue in this matter is whether the Applicant can reasonably be expected to be financially responsible in the conduct of its business and operate with honesty and integrity.

The Applicant, through her direct testimony, acknowledged that funds which should have been deposited to the trust account may have been used for other purposes instead of for payment to designated suppliers. The Tribunal noted Ms. Sondrup's comment that if the registration were revoked, it would leave them in dire straits and facing bankruptcy.

Considering all the evidence, and the specific situations brought forward by the

Registrar's counsel as the basis of its Proposal, the Tribunal has focused its attention to those situations and finds as follows:

1. Valhalla over-charged a customer's credit card in the amount of \$13,000 and failed to immediately refund the money as soon as it was advised of the situation; the charges occurred in late July 2013 and the refund was not completed until September 11, 2013;
 - a. The delay in providing the refund, and the absence of any material explanation as to why, leads the Tribunal to conclude that on a balance of probabilities, Valhalla did not have sufficient funds to immediately refund the money; there was also Ms. Sondrup's testimony that perhaps the \$13,000 was used for other purposes.
2. Regarding the question of whether or not the Copenhagen hotel rooms were cancelled by the hotel, due to non-payment, prior to the consumer JMH's arrival in September, the Tribunal's finding is that on a balance of probabilities, Valhalla failed to forward payment to the hotel in July and by implication, misused the funds paid in trust; Valhalla may, in fact, still owe JMH a refund for the extra payment to the D'Angleterre hotel;
 - a. The Tribunal bases its finding on (i) the Applicant's failure to provide any evidence of communication with the hotel to show there was an error on the hotel's part to show payment actually occurred in advance; (ii) while JMH was not present at the hearing to present her evidence, Ms. Sondrup did not offer any testimony to dispute JMH's email information that Valhalla was sending its credit card to pay for JMH's rooms on the day of her arrival in September; (iii) there is no evidence to show the additional \$6,500 charge from the D'Angleterre to JMH's credit card had been refunded by Valhalla; (iv) and lastly, Ms. Sondrup's admittance in her testimony that perhaps monies collected from customers were used for other trips than the ones for which the payments were intended.

These are issues which raise grave doubt about Valhalla's financial position and ability to operate with honesty and integrity.

3. Based on the absence of any explanation, or dispute, about why NV was provided with an NSF cheque by Valhalla, the Tribunal finds that Valhalla had not preserved funds which it was obligated to maintain for supplier payments; this is found to constitute a misuse of trust funds and also questions the status of the agency's working capital - the fact the NSF cheque was quickly replaced is not seen to mitigate the situation since this was not the only complaint.
4. Regarding the 2011 complaint by the Switzerland hotel about non-payment: while the hotel appears to have been subsequently paid, there is no evidence to explain why this occurred, whether it was accidental or a misunderstanding... therefore, the Tribunal accepts the TICO inspector's 2011 conclusion as fact, that the Applicant was deemed at risk of being under-capitalized, and there were trust fund management and accounting records issues.
5. Regarding the 2013 non-payment complaint by Robinson Scandinavia, the evidence is that Valhalla had provided TICO with a falsified document to show payment had been wired from their account to Robinson when in fact the funds were not in their account and payment had not been sent; the TICO inspector

who followed up on the Robinson complaint concluded there was a lack of clarity about whether the tour supplier would be paid and no audit trail was available for the advance payments from the 16 consumers;

6. The Tribunal finds the Applicant collected payments far enough in advance to make timely payment to Robinson and therefore (i) these trust funds have been misused and, (ii) there was a failure to maintain, or produce, proper accounting records (audit trail for the payments made in trust to Valhalla by the 16 consumers).

In summary, the evidence which has been of most influence to the Tribunal are the falsified bank statement, credit-card over charges to JMH, the outstanding debt of \$6,500 to JMH, the issues with trust accounting, and the acknowledgements by Ms. Sondrup that advance or trust payments by one consumer may have been used for other customer trips. Importantly, there has been a failure to provide any evidence that could provide a reasonable explanation for the non-payments and over-charges, or that the Applicant has the financial capital to operate the business in full compliance with the Act and Regulations.

Ms. Sondrup stated the problem started with a past \$40,000 loss and it appears the business was not able to overcome that loss - there is no evidence to the contrary.

As a result, and based on its conduct and the evidence of the TICO inspections, the Tribunal finds the Applicant is under-capitalized and cannot reasonably be expected to be financially responsible in the conduct of its business.

While the Tribunal recognizes that the Applicant has been in business since 1993 and that in the majority of time, there is no evidence of problems, the Tribunal finds it disconcerting that the Applicant provided no material evidence to counter the allegations or to show examples of their trust account management procedures and financial health. In fact, Ms. Sondrup's reference to bankruptcy as the likely outcome of a registration revocation, rather than simply closing the business or attempting to sell it, could reasonably be taken to confirm the Registrar's concern about Valhalla being under-capitalized and placing future consumer pre-payments at risk of loss.


Considering the Applicant has been given opportunities to address the Registrar's concerns over the 2011 to 2013 period, and the problems have continued, the Tribunal has nothing upon which to have confidence that the Applicant will be able to bring itself into compliance with the requirements of the Act and Regulations.

Therefore, the Tribunal finds the Registrar has proven on the balance of probabilities that the past conduct of the Applicant gives reasonable grounds for the belief they will not carry on the business in accordance with law or with integrity and honesty.

DECISION

Pursuant to the authority vested in it by section 11. (5) of the Act, the Tribunal orders the Registrar to carry out the Proposal dated August 14, 2013 to revoke the registration of the Applicant.

LICENCE APPEAL TRIBUNAL



Simon Dann, Presiding Member

Released: February 6, 2014