

Licence  
Appeal  
Tribunal

Tribunal  
d'appel en  
matière de permis



DATE: 2014-06-05  
FILE: 8653/TIA  
CASE NAME: 8653 v. Registrar, *Travel Industry Act, 2002*

---

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

99 Travel & Tours Inc.

Appellant

-and-

Registrar, *Travel Industry Act 2002*

Respondent

---

## REASONS FOR DECISION AND ORDER

---

**ADJUDICATOR:** Laurie Sanford, Vice-Chair

### APPEARANCES:

**For the Appellant:** Trent Knackstedt, Paralegal

**For the Respondent:** Soussanna Karas

Heard in Toronto: June 2, 2014

## REASONS FOR DECISION AND ORDER

This hearing arises from an appeal by 99 Travel & Tours Inc. (“99 Travel”) to the Licence Appeal Tribunal (the “Tribunal”) from a Notice of Proposal issued by Registrar, *Travel Industry Act, 2002* (the “Registrar”) dated February 12, 2014 and a Notice of Further and Other Particulars dated May 21, 2014 which propose to revoke the registration of 99 Travel as a travel retailer under the *Travel Industry Act, 2002* (the “Act”).

### FACTS

99 Travel was registered as a travel retailer in September, 2012. At the time of registration, the company’s financial year end was March 31<sup>st</sup>. Under the Act, 99 Travel was obliged to submit year-end financial statements to the Registrar within 90 days of its year end, that is, by June 30, 2013. The Travel Industry Council of Ontario (“TICO”) which administers the Act and supports the Registrar, notified 99 Travel in advance of its year end that the financial statements would be due by June 30, 2013. In this letter TICO specified what would be required and that the statements must be accompanied by a Review Engagement Report signed by the licensed Public Accountant. During a routine new registrant inspection, 99 Travel was advised of its obligation to submit timely financial statements. 99 Travel did not submit its year-end financial statements. TICO then issued two follow-up letters extending the deadline for filing and advising that there could be administrative consequences, including revocation of 99 Travel’s registration for non-compliance. TICO also made several telephone calls to 99 Travel to follow up. In August, 2013, 99 Travel submitted a copy of their income tax T2 form to TICO. This is not an acceptable form of financial statement for TICO as TICO advised in a telephone conversation and follow-up letter. This third follow-up letter again extended the deadline for filing and advised of the possible consequences for non-compliance.

On September 10, 2013, TICO received a set of financial statements for the period ending December 31, 2012, that is, three months after the registration of 99 Travel. The financial statements were not signed by a licensed Public Accountant as required under the Act but TICO elected to accept them. TICO had several follow-up questions. First, TICO wanted formal notification that 99 Travel’s year end had changed from March 31<sup>st</sup> to December 31<sup>st</sup>. Second, TICO noted that the working capital of 99 Travel was \$594; the minimum working capital required under the Act is \$5,000. TICO advised 99 Travel that it required a working capital infusion of \$4,406 and specified that the money must come from owners or shareholders and must be a new source of funds. TICO required evidence of the source of this infusion of working capital and gave 99 Travel until September 30, 2013 to comply.

TICO did not receive a reply and followed-up by e-mail on October 17, 2013. There was no reply and TICO wrote a letter, the second on the subject of the working capital, on October 24, 2013, again advising of administrative consequences of non-

compliance. Several attempts to reach the principals of 99 Travel by telephone were unsuccessful. TICO visited the premises and hand delivered the letters concerning the working capital to a secretary. One of the two co-owners of 99 Travel telephoned TICO and advised that his co-owner was sick and he would need until December 31, 2013 to comply. TICO responded by letter dated December 2, 2013 advising 99 Travel that it would require internally prepared financial statements as of September 30, 2013 by December 16, 2013. The reason for this requirement, according to the Manager of Financial Compliance of TICO who gave evidence at this hearing, was that TICO had not had an updated set of financial statements from the company in a while and wanted to understand the current financial situation. The letter from TICO also requested, again, documentation supporting the change of year end and proof of shareholder injection of working capital by December 31, 2013. These deadlines were not met. On January 14, 2014, TICO wrote its third follow-up letter requesting proof of adequate working capital. It also requested, for the second time, the internally prepared financial statements as of September 30<sup>th</sup>. 99 Travel was advised that if this information was not provided by the extended deadline of January 28, 2014, a Proposal to Revoke the Registration of 99 Travel would be issued without further notice.

On January 28, 2014, one of the owners e-mailed TICO advising that \$5,113.32 had been transferred by her to 99 Travel, presumably as an injection of working capital. However, the supporting documentation was incomplete; it only provided evidence of a \$1,300 transfer and did not give the source of the funds. On February 3, 2014, the owner provided deposit slips showing several cheques being deposited to 99 Travel's general account, two of which were deposited in December, apparently as working capital injections. However, these slips did not appear to show the full amount of the working capital shortfall, \$4,406, being provided and on February 4, 2014, TICO advised 99 Travel of this and further advised that the September 30<sup>th</sup> financial statements had still not been provided. On February 12, 2014, the Registrar issued his Notice of Proposal to revoke the registration of 99 Travel.

By fax received March 26, 2014, Mr. Knackstedt, the licensed paralegal representing 99 Travel, provided TICO with several bank statements. By letter dated March 31, 2014, TICO advised Mr. Knackstedt of deficiencies in the material provided and of questions TICO had about them. TICO noted that a trust account referenced in one of the statements was not the trust account registered with TICO. Under the Act, TICO must be notified of any customer trust account maintained by a registrant. Also on March 26<sup>th</sup>, Mr. Knackstedt provided TICO with financial statements of 99 Travel for December 31, 2013. These show working capital of \$3,482 and a shortfall of \$1,518 to reach the minimum working capital of \$5,000. Subsequently, 99 Travel provided satisfactory evidence that the \$1,518 working capital shortfall has been made up. 99 Travel also provided satisfactory evidence of the change in its year end.

By letter dated April 3, 2014, Mr. Knackstedt provided further documentation. There was an explanation given for the change of trust account, which TICO accepts. The explanation given for the various infusions of working capital differed from those given by the co-owner of 99 Travel in her January correspondence. TICO requested

clarification. Specifically, Ms. Karas, Counsel for the Registrar, requested back-up for the two cheques which were alleged to be working capital infusions made in December, 2012 and the amount allegedly transferred in January as working capital. TICO was advised that the two cheques referred to as being infusions of working capital were “not ledgered properly”. Concerning the January injection of working capital, 99 Travel provided back-up bank statements. However, one of these statements contained balances that did not accord with the transactions listed. TICO requested further clarification. The original bank statement was provided and it showed that several transactions had been deleted from the statement provided earlier in May.

One of the co-owners testified. She has extensive experience in the travel business, although 99 Travel is the first travel business she has owned. She works five days a week for an airline and her usual work day is seven to twelve hours, usually starting at noon. Her co-owner is a young man with little travel industry experience. He is responsible for the accounting and financial side of the business. The co-owner conceded that mistakes have been made by 99 Travel in its dealings with TICO and the Registrar. However, she testified that if she is given a second chance, she will do better. She will become more involved in the business, although she is not yet in a financial position to leave her job with the airline.

## **DECISION**

The Registrar cites three grounds for the proposed revocation of 99 Travel’s registration. First, the Registrar cites subparagraph 8(1)(d)(ii) of the Act which provides that an applicant is entitled to registration unless:

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

Second, the Registrar relies on subparagraph 8(1)(d)(iv) which provides that an applicant is entitled to registration unless:

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

The co-owners are “interested persons” in 99 Travel as persons who have a beneficial interest in the company. One or both may also be officers.

Third, the Registrar is concerned that if the registration is not revoked, 99 Travel will be carrying on business in violation of the Act, a grounds for revocation under subparagraph 8(1)(e).

The Tribunal is concerned about the ability of 99 Travel to comply with the Act. Despite repeated follow-up letters, warnings, telephone calls, e-mails and visits by TICO, it was

not until the Notice of Proposal had been issued that the most recent year-end financial statements were provided. After the Notice of Proposal, the Registrar learned that some of the financial information previously provided as evidence of working capital infusions was false or was contained in bank documents which had been altered. Both co-owners were involved in this conduct. The female co-owner misrepresented two December cheques as injections of working capital and the male co-owner altered his bank statement by deleting items. Ms. Karas notes that an overt redaction of line items not related to TICO's requests might well be acceptable on the grounds of privacy. However, this was a covert attempt to remove data while submitting the document as complete.

Mr. Knackstedt submitted that 99 Travel was now in compliance with the financial requirements of the Act and that it was unfair to now be raising issues of honesty and integrity. However, it is the entirety of the past conduct of 99 Travel and its officers and interested persons that the Tribunal must consider. The fact that 99 Travel has been in business for less than two years and already has a sorry track record of ignoring the Registrar's legitimate requests for compliance with the Act is telling. Based on the past conduct of the co-owners of 99 Travel in repeatedly failing to comply with the Act and in twice providing incomplete or false information, the Tribunal has reasonable grounds to believe that 99 Travel will not bring itself into compliance with the Act on an ongoing basis if permitted to continue in business. Therefore, there are reasonable grounds to believe that 99 Travel will not carry on its business in accordance with the law.

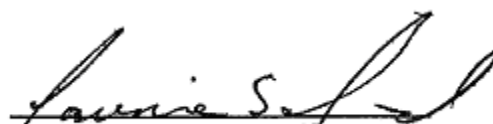
The co-owner who testified asked for a "second chance". However, 99 Travel has had repeated chances to comply with the Act. The Registrar has shown extraordinary patience in repeatedly extending deadlines for 99 Travel to comply, only to have his requests repeatedly ignored. Moreover, the co-owner was not specific about what she would do differently to ensure compliance with the Act in future. A general statement that she would do better is simply not good enough to give the Tribunal any assurance that 99 Travel can remain in compliance with the Act.

The evidence of financial irresponsibility in the running of the business is not persuasive. Mr. Knackstedt notes that there have been no customer complaints and there is no known irregularity in the trust accounting. Nor is it clear that either co-owner is in such dire financial straits as to increase the risk of financial impropriety. There is no evidence of prior financial distress on the part of either owner. The evidence that 99 Travel is or will be carrying on activities in contravention of the Act is a natural extension of the Tribunal's concerns but there is no evidence that 99 Travel is currently in violation. For these reasons, the Tribunal bases its decision to revoke on the past conduct of 99 Travel, its officers, directors or interested persons. The Tribunal concludes that the registration of 99 Travel must be revoked under subparagraph 8(1)(d)(iv).

**ORDER**

By authority of subsection 11(5) of the Act, the Tribunal directs the Registrar to carry out his Proposal to revoke the registration of 99 Travel.

LICENCE APPEAL TRIBUNAL

  
Laurie Sanford, Vice-Chair

*Released: June 5, 2014*