

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



DATE: 2014-07-09
FILE: 8646/TIA
CASE NAME: 8646 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

1338771 ONTARIO CORP. o/a YOYO TRAVEL

Appellant

-and-

Registrar, *Travel Industry Act 2002*

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Elizabeth Sproule, Vice-Chair

APPEARANCES:

For the Appellant: Jegarajah Kanagiah, Agent

For the Respondent: Soussanna Karas, Counsel

Heard in Toronto: June 9, 2014

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 February 11, 2014 proposed to revoke the registration of 1338771 Ontario Corp. o/a Yoyo Travel (the “Appellant”), as a travel agent under the Act.

PRELIMINARY MATTERS

Mr. Jegarajah Kanagiah is the spouse of the sole shareholder and director of 1338771 Ontario Corp. He has been the individual who has been operating the business of the Appellant. He advised the Tribunal that his spouse is not involved in the business. He has been the individual who has been responding to all requests of the Travel Industry Council of Ontario (TICO) whether addressed to him or the registered manager (the previous owner). He attended the pre-hearing in this matter as the representative of the Appellant.

This hearing was originally scheduled to proceed on May 27, 2014. On that date Mr. Kanagiah failed to appear. He was contacted by the Tribunal by phone, in the presence of Ms. Karas, and he indicated that he had had a misunderstanding about the necessity of the hearing following the pre-hearing. A new hearing date was then agreed to and he was instructed by the Tribunal to bring written confirmation from his spouse of his authority to act on behalf of the Appellant in this matter. At the outset of these proceedings he provided a letter dated June 6, 2014, which states:

“I Kandasamy Thayaledchumy, authorize Kanagiah Jegarajah to sign pre-discussed legal document (File #8646/TIA) Pre-Hearing Order While He is authorize in our YOYO Travel (1338771 Ontario Corp.) Travel counsellor and supervisor (sic)”.

Before proceeding with the hearing Mr. Kanagiah confirmed that he understood the nature of these proceedings and that his wife, the owner of the Appellant, was aware of the proceedings. He was also asked whether he required the assistance of an interpreter and he indicated that he did not need this service as he understood English well enough. He indicated that his wife was not that proficient in English. Mr. Kanagiah confirmed he was not the registered manager of Appellant. That position was held by the previous owner of the business who had remained in that position to assist with the transition of the business to the new owner, but that he is overseeing the day to day running of the business. He has been the individual with whom TICO has dealt since 2012 in regards to the Appellant.

After considering all the facts above, the Tribunal concluded that Mr. Kanagiah had the apparent authority to act as the Agent of the Appellant in this matter.

FACTS

The evidence of the Registrar consisted of documentation and the testimony of Sanja Skrbic, Compliance Manager, at TICO.

The evidence of the Appellant consisted of documentation and the testimony of Jegarajah Kanagiah.

The Appellant was registered as a travel agency on November 30, 2010. On April 7, 2011, TICO inspectors visited the Appellant and their inspection revealed that it was not in compliance with the trust accounting requirements. On May 4, 2012, a follow-up inspection revealed that some trust accounting deficiencies which were noted in the prior visit had not been corrected by the Appellant. On May 28, 2012, the Appellant filed its February 28, 2012 financial statements which indicated that there was sufficient working capital.

TICO was notified of the change of ownership and control of the Appellant on June 19, 2012. The prior owner remained in the capacity of manager. TICO visited the Appellant on November 15, 2012, and it was noted that the Appellant had not rectified the previously noted trust deficiencies. TICO requested confirmation of the steps taken to correct the deficiencies by letter dated January 3, 2013. This was followed up by TICO with an email January 31, 2013. This correspondence was addressed to the manager.

On February 1, 2013, Mr. Kanagiah advised TICO that the Appellant's manager was sick and not in the office. TICO followed up by email dated February 13, 2013. On March 22, 2013, having received no response, TICO sent a letter indicating that if a response was not received by April 5, 2013, administrative action may result. On April 11, 2013, Mr. Kanagiah advised TICO that the Appellant's manager was still away for another month but that he would send confirmation of the correction, which he did.

On May 28, 2013 the Appellant filed its financial statements. They revealed a negative working capital of \$424. Based on the value of their sales, the Appellant was required to maintain a minimum working capital of \$5000.¹ TICO requested the total shortfall of \$5434 be corrected. Mr. Kanagiah confirmed on July 2, 2013, that \$5,000 had been deposited. It was explained to him that proof of the source of the funds was required and that \$424 more was required. Mr. Kanagiah then provided an undated letter signed by his sister confirming she had provided her brother, who she described as the "General Manager" of Yoyo Travel, with funds which were deposited into the Appellant's regular bank account as follows: \$2,000 on June 20, 2013, and \$5,000 on June 24, 2013. This letter also confirmed that the funds would be left in that account for one year.

¹ Section 23(2) Ontario Regulation 26/05 under the Act

On October 23, 2013, TICO inspected the Appellant and it was revealed that the total amount of the capital injection had in fact been withdrawn by two payments made to Mr. Kanagiah, \$2,000 on July 16, 2013 and \$5,000 on July 30, 2013.

After a number of further letters from TICO, Mr. Kanagiah informed TICO that he had made the necessary capital injection on January 14, 2014, in the amount of \$5,258. This amount however was \$176 short of the amount required and TICO also required proof of the source of the \$5,258. He provided a letter dated June 6, 2014, signed by his wife indicating that she had borrowed \$5,258.77 from her brother which would be returned after one year. A copy of a cheque made payable to the Mr. Kanagiah's brother-in-law from State Farm was submitted as proof. The back of the cheque was endorsed but there was no other notation on the cheque. As of the time of this hearing, TICO had not, in its opinion, been provided with proper proof of the correction of working capital.

The Appellant's 2014 Financial Statements was provided to TICO on June 6, 2014. Ms. Skrbic testified that despite Mr. Kanagiah's claims that his wife has made a capital injection, the long-term liability figure has not increased by \$5,000 which would be expected given Mr. Kanagiah's evidence of a capital injection. The concern for TICO is that there has been a withdrawal by the shareholder, and this is the main reason for the working capital shortage. The Tribunal noted that the Financial statements were for the year end of February 28, 2014. Ms. Skrbic also noted that the Appellant had a net loss for the year of \$3,956. The concern is that consumer funds may be at risk.

When the shares of the Appellant were sold to Ms. Kandasamy, on March 1, 2012, the former manager/supervisor remained as the manager/supervisor of the Appellant. On June 3, 2013, TICO received a Registration Renewal Form in which the ownership and the manager/supervisor of the Appellant still remained unchanged. According to TICO records Mr. Kanagiah passed the combined Travel Counsellor/Manager exam and is employed as a Travel Counsellor with the Appellant. The inspection report of November 15, 2012, indicates that Mr. Kanagiah met with the inspector and advised that he would be taking over the manager position. In an email message from Mr. Kanagiah, from the registered manager's email address, on February 1, 2013, Mr. Kanagiah indicated to Ms. Skrbic that the manager still had the flu and was not able to come to the office on a regular basis and for that reason he would apply to be the manager. He stated that he would send the documents to TICO 'next week'.

On October 23, 2013, Mr Kanagiah again reported to a TICO inspector that he is to be designated as the new manager and that TICO would be informed. To date Mr. Kanagiah has not made application for approval as a manager/supervisor of the Appellant.

The Appellant's fiscal year-end is February 28. The Appellant's registration is to be renewed no later than 90 days after its year-end. A renewal form was sent to the Appellant but had not been received by TICO as of May 30, 2014.

Appellant's Evidence

Mr. Kanagiah addressed what he identified as the three major concerns of TICO. With respect to misleading TICO regarding the manager, he indicated he thought he was already registered. He had sent in the forms to be registered as the manager almost two years ago, but did not get any confirmation.

He testified that the registered manager had been present at the inspection in October 2013 and that he had explained at that time that he had sent in a letter. He had no explanation as to why the inspection report indicates that he was the only individual present at the time of the inspection. He indicated that he is not a director of the Appellant as he wanted to open the business for his wife and that he has other part-time employment.

Mr. Kanagiah testified that the registered manager does not get paid a salary as he does, but she does get paid commission. However, he went on to testify that last year she did not make any sales although she continued to come in 2-3 times a week to help. It was his evidence that in 2013 she worked for free, and that in 2012 she received commissions but he did not remember how much. He also indicated she is retired and she is a friend and that is why she was willing to work for free.

With respect to financial statements, Mr. Kanagiah testified that the statements were submitted to TICO on time for the first year of his wife's ownership, but that the second year was slightly delayed. He pointed out there had been no customer complaints.

With respect to trust account issues, he indicated that 99.9% of the clients pay with credit card therefore there are no trust funds.

Mr. Kanagiah expressed some confusion as to what other documentation was required with respect to the most recent working capital injection.

THE LAW

The Act states, in part, as follows:

- 8(1) (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).

Interested person

8 (5) For the purposes of this section, a person shall be deemed to be an interested person in respect of another person if the person is associated with the other person or if, in the opinion of the registrar,

- (a) the person has or may have a beneficial interest in the other person's business;
- (b) the person exercises or may exercise control either directly or indirectly over the other person;
or
- (c) the person has provided or may have provided financing either directly or indirectly to the other person's business. 2002, c. 30, Sched. D, s. 8 (5); 2004, c. 19, s. 23 (10).

Associated Person is defined in section 1(2) of the Act as:

- (d) One person is a corporation that is controlled directly or indirectly by the other person;

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.

Section 15 of O. Reg. 26/05, provides:

- (2) A travel agent shall ensure that,
 - (a) each office operated by the travel agent is managed and supervised, throughout its hours of operation, by a person who,
 - (i) meets the conditions set out in subsection (2.1), or
 - (ii) meets the conditions set out in subsection (3); and
 - (b) at least one person who has obtained the required certification for being a travel counsellor from the administrative authority is available at each office operated by the travel agent, throughout its hours of operation.,
- (2.1) The conditions referred to in subclause (2) (a) (i) are that the person,
 - (a) has obtained from the administrative authority the required certification for being,
 - (i) a travel counsellor, and
 - (ii) a travel supervisor/manager within six months of being employed by the travel agent as a supervisor/manager; and
 - (b) in the registrar's opinion, has sufficient experience with and knowledge of the business of selling travel services to ensure that the office is managed in compliance with the Act and this Regulation.
- (3) The conditions referred to in subclause (2) (a) (ii) are that the person,

- (a) on June 30, 2009, managed and supervised an office operated by a travel agent;
- (b) has obtained from the administrative authority the required certification for being a travel counsellor; and
- (c) in the registrar's opinion, has sufficient experience with and knowledge of the business of selling travel services to ensure that the office is managed in compliance with the Act and this Regulation. O. Reg. 26/05, s. 15 (3); O. Reg. 278/07, s. 1; O. Reg. 161/10, s. 2 (4).

ISSUES

Does the past conduct of the Appellant's officer or director or of an interested person in respect of its officer or director or of an interested person in respect of the corporation afford reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty?

Having regard to the Appellant's financial position or the financial position of an interested person in respect of the corporation, can the Appellant reasonably be expected to be financially responsible in the conduct of its business?

APPLICATION OF LAW TO FACTS

Based on the evidence presented, the Tribunal finds that Mr. Kanagiah has been the de facto manager of the Appellant Yoyo Travel since at least February of 2013. It is unclear why Mr. Kanagiah has not taken the necessary steps to obtain the required certification from the administrative authority but the Tribunal finds that he has not done so to date. His explanation that he sent in the documents almost 2 years ago and assumed it was looked after is not accepted. The inspection reports which detail the monitoring of this issue by TICO, appear reliable and provide a sensible explanation as to why Mr. Kanagiah is not an approved manager: notwithstanding the fact that he knew it to be an issue; he simply has not taken the necessary steps.

Mr. Kanagiah's evidence that the past registered manager has continued to attend to the business for at least a year for free is not credible. The facts are that it has only been Mr. Kanagiah replying to all notices, inquiries and attendances, however sent and for Mr. Kanagiah to suggest someone else has been acting as the manager is disingenuous and misleading, in the Tribunal's opinion.

There have been ongoing issues with respect to maintaining the required level of working capital. The fact that this issue has not been dealt with in a timely manner is a concern, but even more so is the evidence that the Registrar was intentionally misled in July of 2013. The Registrar was led to believe that a capital injection had been made when in fact the funds had been immediately withdrawn. Presently, Mr. Kanagiah has provided some evidence that additional capital has been injected; however, the Registrar is not satisfied as to what the repayment terms are in fact, nor is the Tribunal, and given what occurred in July of 2013, the Registrar's concern and lack of confidence that the capital injection will remain in place is justified.

The financial statements of the Appellant for the year ending February 28, 2014, provided to TICO just prior to these proceedings, indicate that the Appellant had a net loss for the year of \$3,956. The total deficit at the end of the year was \$29,471.00. The working capital as of the end of year was -\$595, meaning that the working capital shortage was \$5,595. This would mean that the amount the shareholder currently borrowed from her brother, \$5,258.77, is still insufficient to meet the working capital requirement. Mr. Kanagiah did not address this fact. It is not clear to the Tribunal that Mr. Kanagiah has a solid understanding of working capital and the requirements under the Act. It is the conclusion of the Tribunal that the Appellant has failed to ensure that its business is managed and supervised in accordance with the Act. Mr. Kanagiah is managing the business without the required certification to do so and he has provided misleading information to the Registrar and the Tribunal so as to disguise this fact.


The Tribunal finds that Mr. Kanagiah is an interested party in respect of the Appellant, and his past conduct of acting as a manager without certification and of misleading the Registrar as to the working capital of the Appellant in June of 2013, affords reasonable grounds for belief that the Appellant's business will not be carried on in accordance with the law and with integrity and honesty.

The Tribunal also finds, based on the Appellant's financial position as set out in those most recent financial statements and its apparent inability to maintain working capital, that the Appellant cannot reasonably be expected to be financially responsible in the conduct of its business.

ORDER

Pursuant to the authority vested in it under the provisions of the Act, the Tribunal directs the Registrar to carry out the Proposal.

LICENCE APPEAL TRIBUNAL


Elizabeth L. Sproule, Vice-chair

Released: July 9, 2014

http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_02t30_e.htm is the URL for the Act