

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



DATE: 2013-06-16
FILE: 8292/TIA
CASE NAME: 8292 v. Registrar, *Travel Industry Act, 2002*

A Motion to Stay the Decision of the Licence Appeal Tribunal directing the Registrar, *Travel Industry Act, 2002*, S.O. 2002, c. 30, Sch. D to Revoke a Registration

2363495 Ontario Inc. o/a Performance Travel Solutions

Applicant

-and-

Registrar, *Travel Industry Act 2002*

Respondent

MOTION

ADJUDICATOR: Laurie Sanford, Vice-Chair

APPEARANCES:

For the Applicant: Timothy J. Law, Counsel
Assunta Mazzotta, Counsel

For the Respondent: Soussanna S. Karas, Counsel

Heard by teleconference: May 30, 2014

MOTION

On May 22, 2014, the Tribunal released a Decision and Order (the “Decision”) directing the Registrar, *Travel Industry Act, 2002* (the “Registrar”) to revoke the registration of 2363495 Ontario Inc. o/a Performance Travel Solutions (“PTS”) under the *Travel Industry Act, 2002* (the “Act”). PTS appealed this Decision to the Divisional Court on May 26, 2014 and brought this motion to stay the implementation of the Decision pending the outcome of the appeal. The Registrar opposed the motion.

After reviewing the material filed by the parties and hearing the submissions of Counsel, the Tribunal orally granted the motion and directed the Registrar to stay the implementation of the Decision with written reasons to follow. These are the reasons for granting the motion.

The parties agree that the Tribunal has the jurisdiction to decide this motion under Section 11(9) of the Act. The parties further agree that the test to determine whether or not a stay ought to be granted is set out in the Supreme Court of Canada decision in *RJR-MacDonald Inc. v. Canada (Attorney General)* [1994] 1 S.C.R. 311. In that case, the Supreme Court adopted a three part test.

First, the applicant must establish a serious question to be tried. Ms. Karas, Counsel for the Registrar submitted that the appeal would deal primarily with findings of fact or mixed fact and law. Ms. Mazzotta, counsel for PTS, submitted that this first part of the test was not a high threshold. Ms. Mazzotta also submitted that the issues in this case go beyond questions of fact. Mr. Law, counsel for PTS, submitted that at issue was the interpretation of Subsections 5(4) and 5(6) of Ontario Regulation 26/05. These subsections have not previously been judicially interpreted and the issue raised about its interpretation meets the first part of the test. The statutory interpretation involved goes beyond a question of fact. It may, as Ms. Karas submits, involve a question of mixed fact and law, but that does not affect the conclusion that it is a serious issue raised in the appeal.

The second part of the test is whether irreparable harm will result if the stay is not granted. In this case, PTS, acting to comply with the Registrar’s revocation direction, transferred its premises and unpaid customer bookings to an arms-length travel agency on May 28, 2014. Ms. Karas submitted that if there were irreparable harm, it has already occurred. It is too late, in Ms. Karas’ submission, for PTS to resume business. Ms. Mazzotta submitted that the matter is urgent but that PTS would still be able to resume its business if the stay were granted. The business has not been sold. It is still being operated at the same premises with the same customers and the same staff. If, however, the stay is not granted, PTS will be forced out of business by the time the appeal is heard in Ms. Mazzotta’s submission and the appeal would be moot. The Tribunal agrees that if PTS cannot continue to operate pending the appeal, it will be forced out of business. PTS would lose its staff, its premises and its current customer bookings and customer relations. From PTS’ perspective, the appeal would be rendered moot. In the circumstances of this case, this is irreparable harm.


The third part of the test is that the applicant must show that the balance of inconvenience to the parties lies in the making of the stay order. Ms. Mazzotta submits that the balance of convenience favours a stay. Not granting the stay forces PTS out of business. Granting the stay, in Ms. Mazzotta's submission, causes neither the Registrar nor the public appreciable inconvenience. The Registrar is still able, indeed obliged, to monitor and regulate PTS. During the hearing, the Registrar expressly abandoned the allegation that PTS was carrying on activities that would be in violation of the Act. Thus the public interest is not at risk by PTS continuing in operation pending the outcome of the appeal, in Ms. Mazzotta's submission. Ms. Karas submitted that the travel industry as a whole has an interest in the outcome of this matter as the case involves a substantial amount paid from the compensation fund administered by the Travel Industry Council of Ontario. Further, Ms. Karas submitted, the public interest ought to be given paramount consideration for two reasons: first, because the Act exists for the purposes of public protection, and second, because one basis for the Tribunal's decision was the past conduct of the man who was and remains in *de facto* control of PTS.

The Tribunal is mindful that the Act is for the regulation of the travel industry to protect the public. However, in this case, the Registrar did not prove that PTS was operating in contravention of the Act. The Decision was based, in part, on the past conduct of the man in control of PTS and the reasonable grounds this conduct gave for the belief that he would not in future conduct his business in accordance with the law. The Registrar remains able to monitor the conduct of PTS and remains able to take administrative and legal action if he finds PTS is in contravention of the Act. The interest of the industry in the outcome of this matter is relevant. However, this interest is not thwarted by granting this stay, it is merely postponed. It is also relevant to note that the travel industry also has an interest in knowing that registrants have a meaningful avenue of appeal from decisions of the Registrar and of this Tribunal. In this case, the balance of convenience lies with the granting of the motion.

ORDER

By authority of subsection 11(9) of the Act, the Tribunal directs the Registrar to stay the implementation of the Tribunal's Decision until the disposition of the appeal.

LICENCE APPEAL TRIBUNAL



Laurie Sanford, Vice-Chair