

Licence
Appeal
Tribunal

Tribunal
d'appel en
matière de permis



DATE: 2016-09-06
FILE: 10189/TIA
CASE NAME: 10189 v. Registrar, *Travel Industry Act, 2002*

An appeal of a Decision of the Board of the Travel Industry Council of Ontario to Disallow a Claim

Appellant

Appellant

-and-

Travel Industry Council of Ontario

Respondent

REASONS FOR DECISION AND ORDER

ADJUDICATOR: Patricia McQuaid, Vice-Chair (presiding)
Raymond Ramdayal, Member

APPEARANCES:

For the Appellant: Self-represented

For the Respondent: Soussanna Karas, Counsel

Heard in Toronto: August 19, 2016

REASONS FOR DECISION AND ORDER

This is a hearing before the Licence Appeal Tribunal (the “Tribunal”) arising out of a decision dated April 19, 2016 of the Board of Directors of the Travel Industry Council of Ontario (“TICO”) under the *Travel Industry Act, 2002* (the “Act”) to refuse the Appellant’s claim for compensation, in the amount of \$900, from the Travel Industry Compensation Fund (the “Fund”) pursuant to section 57 of O. Reg. 26/05 (the “Regulation”).

By way of background, TICO’s principal mandate is consumer protection. Administering the Fund is part of that mandate. The Board of TICO reviews claims made to the Fund by “customers” and determines entitlement. That review is based on documents submitted to it. There is no oral hearing. A claimant does, however, complete an affidavit. In this instance, the Appellant in her affidavit stated that she paid a \$900 deposit for travel services to Blue Mountain Travel, specifically to Carolyn (Michele) Solomon on July 28, 2015. The payment was made by debit card onto a Western Union “preferred customer card”. The Board in its decision stated that the proof of payment submitted in support of the Appellant’s claim was not sufficient to allow it to determine that payment was made “to or through a registered travel agent” as required by the Regulation.

The entitlement to claims on the compensation fund, and exclusions, are set out in section 57 of O. Reg. 26/05. Ms Karas, in her submissions, acknowledged that the provisions of this regulation are drafted narrowly. The Board, in its role, has to balance its consumer protection mandate with the requirement that it preserve the Fund, which is essentially monies held in trust, for the benefit of all eligible claimants. The relevant sections of the regulation are set below, in order to give context to the evidence that follows:

Reimbursement of customer

57. (1) A customer is entitled to be reimbursed for travel services paid for but not provided if,
- (a) the customer paid for the travel services and the payment or any part of it was made to or through a registered travel agent;
 - (b) the customer has made a demand for payment from,
 - (i) the registered travel agent and the appropriate registered wholesaler,
 - (ii) any other person who has received the customer’s money, and
 - (iii) any other person who may be legally obliged to reimburse or compensate the customer, including a person obliged under a contract for insurance; and
 - (c) the customer has not been reimbursed by,
 - (i) those of the registered travel agent and the appropriate registered wholesaler, who under section 25 of the Act are liable to make the reimbursement, because they,
 - (A) are unable to pay by reason of bankruptcy or insolvency,
 - (B) have ceased carrying on business and are unwilling to pay, or
 - (C) have ceased carrying on business and cannot be located,
 - (ii) any other person who has received the customer’s money, or
 - (iii) any other person who may be legally obliged to reimburse or compensate the customer, including a person obliged under a contract for insurance. O. Reg.

26/05, s. 57 (1); O. Reg. 161/10, s. 10.

(2) A reimbursement under subsection (1) is limited to the amount paid to or through any registrant for the travel services that were not provided. O. Reg. 26/05, s. 57 (2).

Section 61 of the Regulation sets out the requirement to submit documentation to the Board:

61. (1) The claimant shall provide such documents and other information to the board of directors as the board requires to prove the claim. O. Reg. 26/05, s. 61 (1).

Evidence

The Tribunal heard testimony from the Appellant and Lori Furlan, the Claims Coordinator at TICO. Ms Furlan processes the claims submitted by consumers and prepares the documents for the Board's review. It is not disputed that Business & Vacation Travel Planners, Blue Mountain Travel ("Blue Mountain") was a registered travel agency and that Ms Solomon was an employee. At the relevant time, Blue Mountain was located at 1672 Jane Street, Toronto. Its registration was terminated on July 31, 2015, and it is that failure which triggered claims against the Fund by consumers. Ms Furlan testified that approximately 50 claims have been made, of which approximately 10 have been denied. The Respondent's documents indicate that most of the incidents involving Ms Solomon related to air only bookings, mainly to Caribbean destinations.

The Appellant works near the Blue Mountain location. She had been researching prices for air travel to St. Vincent in December 2015 for herself and her three children. She was planning to travel to St Vincent with her siblings to surprise their parents at Christmas. On July 28, she decided to inquire on prices at Blue Mountain. She spoke to Ms Solomon who quoted a good price to her and told her that an even better price was possible if there were 10 people in their group. While at the Blue Mountain office, the Appellant called her sister and her brother. Her sister immediately agreed to the prices quoted. To secure the price, they were required to make a deposit. Her sister made her own deposit in the amount of \$700 by e-transfer. The Appellant had a debit card with her to make her deposit of \$900. However, Ms Solomon stated that her debit machine (which was on her desk) was not working. She asked the Appellant to make the deposit onto a Western Union preferred customer card. The Western Union office was across the street. The Appellant did so.

TICO does not dispute that the Appellant paid \$900 onto a Western Union card or her evidence that Ms Solomon requested that she do so. The Appellant provided TICO with a statement of her bank account activity which shows that she made a withdrawal of \$900 on July 28 by debit card. The issue for the Board is that it cannot trace the \$900 which was loaded onto the Western Union card to Blue Mountain, the registrant. It does not, they submit, prove a payment to Blue Mountain for travel services. The Blue Mountain records reviewed by Ms Furlan do not show receipt of a payment from the Appellant on July 28. Inquiries were

made to Western Union by both the Appellant and Ms Furlan on behalf of TICO to find out whose name was attached to the preferred customer card. However, Western Union would not disclose that information due to privacy laws. The Appellant was told that the card had regular use with payments in and out.

When the Appellant made her payment, she did not get a receipt from Western Union, but she testified that she was given a receipt by Ms Solomon. This document was contained in the Respondent's book of documents. It does not provide much detail. It records two amounts – \$900 paid by the Appellant and \$700 paid by e-transfer by her sister. The Appellant identified her signature on the document. No itinerary was given to the Appellant; nor did she expect to receive one at that stage as full payment did not have to be made until November 15, one month before the anticipated travel date.

In August 2015, the Appellant learned of the issues with Blue Mountain and Ms Solomon, first from a friend which she then confirmed after seeing a Global News story. At around this time, TICO also issued a bulletin to the travel industry as Ms Solomon was continuing to present herself as a travel agent which she was not permitted to do given the termination of the Blue Mountain registration. She was not registered to act as a travel agent.

The Appellant went to the Blue Mountain office and was told by Ms Solomon that she would get a refund. Ms Solomon wrote a note to that effect on a copy of the receipt that the Appellant had been given on July 28. Ms Solomon kept the original receipt. No refund was forthcoming despite the fact that the Appellant went to the Blue Mountain office on several occasions. The Appellant stated that every time she went, she met people there in situations similar to hers. It was around this time that she learned about TICO and the possibility of getting a refund through the Fund.

The Tribunal recognizes that the TICO Board has a balancing act to perform; it requires supportive documentation to ensure that only eligible claimants are paid, thereby preserving the Fund in an appropriate manner; yet it also has a consumer protection mandate. Ms Karas stated that s. 57 of the Regulation is drafted narrowly, apparently to ensure that the Fund is disbursed appropriately. She also stated that the Board has developed a policy that funds paid by a consumer must be traceable to the travel agency to show that the claim was made "to or through a registered travel agency". The policy enables the Board to maintain a consistent and reliable approach to the payment of claims. Ms Karas also stressed in her submissions that the Tribunal must take heed of the documentary requirements set out in the regulation. While the Tribunal agrees with this, it is not, however, bound by TICO policy.

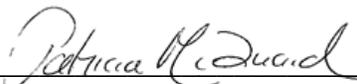
The Board when making its decision has an affidavit from claimants, though it is not clear how much weight is given to this sworn document. It does not have the benefit of the oral evidence which can give important context to the documents submitted by a claimant and sometimes the dearth of documents submitted.

The evidence outlined above provides important context to the Appellant's claim. The Tribunal found the Appellant to be credible. She gave her evidence in a firm and straightforward manner. She was one of almost 50 people who booked travel services – apparently most of which were for airline tickets to the Caribbean, as was hers. The Appellant did not receive an itinerary on July 28, 2015 for her December travel since her tickets had not yet been fully paid for. She was paying for the four tickets for herself and her children by instalments, which did not have to be completed until November 15. She did get a receipt from Ms Solomon in the amount of \$900. It was given to her at the Blue Mountain office. There is no question that it does not show much detail, but the manner in which it was completed (and the manner by which Ms Solomon requested that payment be made so that it did not show on the Blue Mountain books) likely says more about Ms Solomon's questionable business practices – for which she is being prosecuted – than it does about the lack of veracity to the Appellant's claim. The Appellant's efforts to get a refund from Ms Solomon, including several attendances at the office, after learning about the Blue Mountain problems support her evidence that she understood that she had made partial payment to Ms Solomon, and hence Blue Mountain Travel, for airline tickets to St Vincent.

In this appeal, the Tribunal stands in the place of the Board of TICO. The Tribunal finds that the Appellant's evidence is corroborative of the documents provided by the Appellant in support of her claim against the Fund. To suggest that the Appellant's payment was not to Ms Solomon who was on July 28, 2015 the employee and public face of Blue Mountain, is to narrowly and unreasonably construe the legislative intent of consumer protection in favour of preservation of the Fund.

ORDER

By authority of subsection 71(6) of the Regulation, Tribunal directs TICO to pay the Appellant the amount of \$900 as reimbursement for money paid to or through Blue Mountain Travel for travel services that were not provided.



Patricia McQuaid – Vice-Chair



Raymond Ramdayal, Member

Released: September 6, 2016