

**LICENCE APPEAL
TRIBUNAL**

**TRIBUNAL D'APPEL EN MATIÈRE
DE PERMIS**



**Safety, Licensing Appeals and
Standards Tribunals Ontario**

**Tribunaux de la sécurité, des appels en
matière de permis et des normes Ontario**

Citation: 1897481 Ontario Inc. o/a Moon Travel v. Registrar, *Travel Industry Act, 2002*, 2019 ONLAT TIA 11729

Date: 2019-06-12
File Number: 11729/TIA

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

Between:

1897481 Ontario Inc. o/a Moon Travel

Appellant

-and-

Registrar, *Travel Industry Act, 2002*

Respondent

DECISION AND ORDER

Adjudicator: Marisa Victor, Member

Appearances:

For the Appellant: Aylin Berberian, Counsel

For the Respondent: Tim Snell, Counsel

Heard in Ottawa: April 15, 2019

A. OVERVIEW

- [1] The travel industry in Ontario is governed by the *Travel Industry Act, 2002*, S.O. 2002, c. 20 (the Act) and regulations, including O.Reg 26/05 (the Regulation) that sets out, among other items, financial reporting, trust account and working capital requirements under the Act. In addition, the *Safety and Consumer Statutes Administration Act, 1996*, S.O. 1996, c. 19 grants authority to the Travel Industry Council of Ontario (TICO), to act as the administrator of the industry.
- [2] The appellant, a travel agency operating as Moon Travel, appeals the respondent's Notice of Proposal to Revoke a Licence dated November 6, 2018 (the Proposal) under the Act. The appellant was first registered on January 9, 2014 and is currently registered.
- [3] The respondent alleges in the Proposal that the appellant exhibits a deteriorating pattern of non-compliance, that it fails to comply with trust accounting regulations and that it has acted contrary to its conditions of registration. The respondent states the appellant is not entitled to registration as it is not acting in compliance with the Act, Regulation and conditions of registration. Further the appellant has shown through the past conduct of its Officers or Directors that there are reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty.
- [4] The appellant appeals the Proposal to the Tribunal. It argues that, although late with some of its required filings, it has complied with the Act and Regulation and where it has not, it intends to do so in the future. It states that it is therefore entitled to continued registration.
- [5] The respondent has shown that the appellant fails to comply with trust accounting regulations and that it has acted contrary to the Act, the Regulation, and a signed Trust Declaration. I find that in this situation, it is appropriate to revoke the appellant's registration. The Proposal shall be carried out.

B. ISSUES

- [6] The issue I am required to decide is whether the Registrar has discharged its burden of proving the allegations in its Proposal, and if so, whether the appropriate disposition is revocation of the appellant's licence.
- [7] To decide the issue, I must answer the following questions:

- a. Is the appellant disentitled to registration as a result of the appellant, or an interested person in respect of the appellant, carrying on activities in contravention of the Act and/or Regulation?
- b. Is the appellant disentitled to registration as a result of breaching its conditions of registration?
- c. Does the past conduct of the registrant's officers or directors afford reasonable grounds for belief that the appellant will not carry on business in accordance with the law and with integrity and honesty?

[8] In answering the above questions, I will be looking at the following aspects of the business:

- a. The 2014, 2016 and 2017 inspections carried out by TICO
- b. Missed Financial reporting deadlines
- c. Working Capital
- d. Compensation Fund
- e. Trust Accounting

C. THE LAW AND REGULATIONS

[9] Section 8 of the Act states that a registrant is entitled to registration unless, among other things:

- a. The registrant, or an interested person, is carrying on activities in contravention of the Act or Regulations; or
- b. The registrant is in breach of conditions of registration;
- c. The past conduct of the registrant's officers or directors affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty.

[10] Section 22(2) of the Regulation outlines the obligations of a registrant regarding financial statements. As a registrant, the appellant is required to file financial statements with a review engagement report by a public accountant licensed by

the *Public Accounting Act, 2004* within three months of the end of its fiscal year (November 30).

- [11] Section 22(6) of the Regulation requires that the financial statements include a balance sheet, an income statement and a reconciliation of trust accounts.
- [12] Section 24 of the Regulation requires a registrant to maintain a prescribed amount of working capital which is calculated based on amount of sales.
- [13] Section 50 of the Regulation requires registrants to contribute to a compensation fund. Section 12(1) of the *Safety and Consumer Statutes Administration Act, 1996* empowers the respondent to require registrants to submit a prescribed form (Form 1) in respect of the fund.
- [14] Section 27 of the Regulation requires registrants to maintain a trust account. This trust account must hold customer funds for travel services. Section 27(6) of the Regulation requires that monies from trust accounts shall not be disbursed or withdrawn except to make payment to a supplier, to provide a refund to a customer or to pay the registrant's commission after the supplier has been paid in full.
- [15] Section 29 of the Regulation requires a registrant to maintain business records including accounting records, banking records and a written record of all payments respecting the purchase and sale of travel services.

D. EVIDENCE

- [16] The parties entered an Agreed Statement of Facts (ASF) as evidence in the hearing. These facts are incorporated into the evidence and analysis below.
- [17] In addition to the ASF, the respondent called Ms. Sonja Skrbic as a witness. Ms. Skrbic is Director of Compliance and Finance and responsible for ensuring financial compliance of registrants with the Act and Regulations. She is responsible for TICO inspectors. She also makes recommendations to the Registrar regarding registrations.
- [18] Mr. Khalil Ahmad testified for the appellant. He has been a Director and Officer since August 10, 2015. He also acts as a ticket seller. Prior to July 8, 2016, the appellant's legal name was Saini Travel Inc. Mr. Abbas Zaher was previously a Director and Officer and has been a manager/supervisor of the appellant since

August 10, 2015.¹ Mr. Iman Nasser has been a Director and Officer at all relevant times. Mr. Zaher and Mr. Nasser did not testify.

[19] Mr. Zahed Abdoul-Kayou also testified for the appellant. He owns his own accounting firm and is a Certified Public Accountant (CPA). He is not a licensed public accountant (LPA). His work for the appellant consists of bookkeeping, data entry, bank account balances and trust reconciliation. He does not perform the annual audit required by the legislation.

a. The 2014 Inspection

[20] Ms. Skrbic testified that it is a TICO policy to inspect new registrants. After that routine inspection, inspections are done on an as-needed basis and in response to red flags.

[21] She reviewed the deficiencies disclosed by the appellant's initial inspection in 2014. The primary deficiencies found were:

- a. Credit card and interac payments need to go directly into the appellant's trust account and not a general account;
- b. Travel supplies need to be paid from the trust account;
- c. There needs to be an appropriate audit trail that shows where money was received from and customer names and invoice numbers need to be on receipts; and
- d. Trust account needed to be reconciled with a proper audit trail and compared to bank balances.

[22] Ms. Skrbic testified that TICO made numerous follow-ups following the inspection of the appellant's business. Information and TICO guidelines were provided to the appellant. Mr. Zaher was the manager who signed the risk assessment form and acknowledged the inspection findings.

[23] Ms. Skrbic reviewed an email chain showing correspondence with the appellant following the inspection. In the emails, Mr. Zaher, on behalf of the appellant, wrote that "as per my accountant, the trust account is now reconciled with

¹ Each travel agency is required to have a designated manager who has passed a specific exam and has travel industry experience.

customer obligation.” Ms. Skrbic testified that registrants are responsible for their accounts and need to understand what is being done.

[24] Mr. Ahmad did not deny any of the allegations against the appellant.

b. The 2016 Inspection

[25] Ms. Skrbic testified that the 2016 inspection was done in response to a red flag when the appellant’s annual filing showed it lacked working capital. The inspection found the same deficiencies as in 2014:

- a. Suppliers needed to be paid from the trust account;
- b. Credit card expenses needed to be reimbursed as a supplier from the trust account;
- c. Trust position needed to be disclosed at year end; and
- d. Commissions were improperly being deposited into the trust account.

[26] As of 2016, TICO’s risk assessment showed the appellant was now a high-risk registrant.

[27] Ms. Skrbic testified that Mr. Khalil signed the 2016 inspection report, acknowledging its receipt. He later wrote to TICO on January 23, 2017 stating that the appellant had decided to cancel all use of the credit card except for airlines who only accept credit cards.

[28] Mr. Ahmad did not deny any of the allegations against the appellant.

c. The 2017 Inspection

[29] Ms. Skrbic testified that TICO inspected the appellant again in 2017. She stated that as of the 2017 inspection, the appellant had an even higher high-risk score. The 2017 inspection found:

- a. The registrant pays suppliers from the general account (repeat issue);
- b. The registrant reimburses the credit card via lump sum transfer resulting in a poor audit trail;

- c. The registrant transfers funds from the trust to general account prior to reconciling the trust account (repeat issue); and
 - d. The registrant deposits supplied commissions to the trust account (repeat issue).
- [30] Ms. Skrbic testified to the correspondence received by the appellant, noting that its position was that the audit happened at the wrong time and that Mr. Zaher had been in a car accident and was therefore not available during the inspection. Therefore, the appellant wrote, it did not have time to prepare its documents. Ms. Skrbic testified that the respondent expects its registrants to be in compliance every day of their operation, they are supposed to know where their documents are and that there is no requirement to give advance notice of an inspection.
- [31] Mr. Ahmad was particularly upset about an inspection which did not occur on the date it was anticipated. He stated he was planning to be out of the country when they had one or two days' notice of the inspection. The documents requested were in the hands of the Mr. Zaher who was out of the country. Mr. Ahmad had to postpone his own planned trip in order to assist with the inspection, but he was not the right person to do this. At the time he considered closing the business.
- [32] Mr. Ahmad testified that he no longer wishes to close the business. He stated the company has taken full responsibility for items not followed through on and wishes to continue operating.

d. Financial Reporting Deadlines

- [33] The appellant's fiscal year ends November 30. According to the ASF the following deadlines were missed:
- a. For fiscal year 2014, the 2014 financial statements were not filed by the due date of February 28, 2015. TICO sent a reminder letter and a warning letter. The 2014 financial statements were filed late on March 31, 2016.
 - b. For fiscal year 2015, the 2015 financial statements were filed late on March 31, 2016.
 - c. For fiscal year 2016, the 2016 financial statements were filed late on March 21, 2017.

- d. For fiscal year 2017, the 2017 financial statements were filed late on July 18, 2018.
- [34] During her testimony, Ms. Skrbic was asked if the Act allows for extensions for financial reporting. She stated that the Act does not allow for extensions, however as a courtesy, some are allowed. She stated that the appellant was not proactive in informing the respondent of late filings, but instead asked for “permission” once the deadline had already passed.
- [35] In cross-examination, Ms. Skrbic stated that the Registrar takes late filings into account when reviewing registration. Further, if a registrant asks to file late, the Registrar may consider that proactive. Nevertheless, even a week late is a concern.
- [36] Mr. Ahmad attributed the late and incomplete filings to mistakes and to the audit company they hired. He also maintained that in the case of late filings, permission was sought to file late.

e. Working Capital

- [37] The ASF showed working capital shortfalls in 2014, 2015 and 2016:
- a. The 2014 financial statements showed a working capital deficiency; \$13,618 less than the minimum required of \$15,000. This was corrected.
 - b. The 2015 financial statements showed a working capital deficiency; \$2,143 less than the minimum required of \$20,000. This was corrected.
 - c. The 2016 financial statements showed a working capital deficiency; \$4,879 less than the minimum required of \$20,000. This was corrected.
- [38] Ms. Skrbic testified that the Registrar is concerned the appellant is not in compliance with legislation. In past experience, registrants not in compliance run a risk of misusing customer funds especially when there is a working capital shortage.
- [39] Mr. Ahmad testified that the short working capital issue had been rectified once it had been brought to their attention. He said it had also been caused by the fact that their sales had increased suddenly one year and therefore the working capital they had in reserve was not enough.

f. Compensation Fund

[40] Pursuant to the Act and regulations, the appellant is required to submit a completed Form 1 form together with its fund contributions twice yearly by August 30 and February 28. The appellant was late at the 2016 half-year, 2016 year-end, 2017 half-year and 2018 half-year filings.

[41] Mr. Ahmad testified that the compensation fund filing has now been rectified.

g. Trust Accounting

[42] The ASF contained the following evidence:

- a. As a condition of its registration, Mr. Zaher and Mr. Nasser signed a Trust Declaration on behalf of the appellant (the Trust Declaration) on January 3, 2015. The Trust Declaration stated that they undertake to comply with the provisions of the Act, the Regulations, TICO Guidelines and terms of the Trust Declaration.
- b. In 2014, a TICO inspection revealed four violations of the Trust Declaration. The appellant was notified and indicated it undertook to comply with rectifying the issues.
- c. In 2016, a TICO inspection revealed three violations of the Trust Declaration, some of which repeated the 2014 issues. The appellant was notified and indicated it undertook to comply with rectifying the issues.
- d. In 2017, a TICO inspection revealed five violations of the Trust Declaration, some of which repeated the previous issues.
- e. The appellant was notified regarding the 2017 trust accounting deficiencies on numerous occasions. In particular, TICO requested trust reconciliations for December 2017 to February 2018. On March 28, 2018, Mr. Ahmad wrote to TICO and advised he would send the information as soon as his accountant was done. On May 14, 2018, TICO repeated its request for the three months of trust reconciliations. On May 28, 2018, Mr. Ahmad said, among other things that his accountant was working on the financial statements and would send them shortly. On July 31, 2018, TICO sent a first warning letter

requesting among other things, the three months of trust reconciliations and a confirmation of correction of trust deficiencies by August 14, 2018. On September 12, 2018, TICO sent a final warning letter.

- [43] Ms. Skrbic testified regarding trust accounting follow-up requests made following the 2017 inspection. She stated that TICO never received the requested trust reconciliations. It did, however, receive trust reconciliation details for October, November and December 2018. Ms. Skrbic testified that these trust reconciliations lacked names and invoice numbers and the outstanding trust account liability. She stated that the filings do not meet the requirements of trust reconciliation required by the Regulations and the TICO Guidelines and do not comply with the Trust Declaration.
- [44] Ms. Skrbic also testified that the bank account reconciliations also filed at that time also did not meet regulatory and TICO Guideline requirements as they lacked customer deposit liability listing and showed a large surplus.
- [45] Ms. Skrbic confirmed that there were no consumer complaints. However, the Registrar is concerned the appellant is not in compliance with legislation, the TICO Guidelines and the Trust Declaration. In this case, the trust account has not been consolidated so the respondent is unable to determine if the appellant has misappropriated customer funds.
- [46] Ms. Skrbic stated that TICO has tried every tactic including letters, providing support, inspections and warnings, but none have brought the appellant into compliance.
- [47] Mr. Zahed Abdoul-Kayou testified that after he completed the bookkeeping he would send it to the audit company for third party verification. He agreed that trust reconciliation is often delayed by two months. He stated he does the reconciliation once he receives the bank account statements. At one point in testimony he placed the blame on the appellant, at another time on the supplier. In cross-examination he stated that his reconciliation is limited to the summaries he receives from the appellant. He does not receive invoices or customer receipts. He agreed this was his only travel agency client.
- [48] Mr. Ahmad stated that they try and follow the requirements of the Act. He stated that the bank teller may be making mistakes. When questioned about the trust account, he did not respond but instead referred back to the working capital issue.

- [49] With regard to late filing of trust accounting, Mr. Ahmad stated that Mr. Zaher had been in a car accident and Mr. Abbas was out of the country for over two months. When asked in cross-examination why it had been over a year and the requested documents had still not been provided, Mr. Ahmad blamed the audit company.
- [50] When further questioned about specific trust accounting for October 2018, Mr. Ahmad was unable to understand the question regarding overall liability.

E. ANALYSIS

- [51] I find that the respondent has proven that the appellant is not acting in compliance with the Act, the Regulation and its conditions of licensing. I further find that the licence should be revoked.
- [52] The appellant admitted to non-compliance with the Act and Regulations. The appellant also failed to comply with the Trust Declaration, a condition of its registration. It admitted non-compliance at the hearing and through the ASF. Mr. Ahmad said that the appellant takes full responsibility for its actions and argued that in the future it will try to do better. Unfortunately, this is not sufficient.
- [53] The appellant has had multiple inspections, has been provided with guidance and many chances to rectify continuing problems. While the issue with working capital shortages and compensation fund reporting seem to have been resolved, there are outstanding problems with its financial reporting. In particular, the appellant's trust accounting procedures and filings remain insufficient and incomplete. I find that the appellant has still not complied with the request made following the 2017 inspection for the December 2017 to February 2018 trust reconciliations. The outstanding liability of the trust account remains unknown. The appellant has had years to rectify this problem. This contravenes the Regulation and the Trust Declaration which was a condition of licencing.
- [54] The appellant has been provided guidance regarding the financial and trust reporting obligations. Neither Mr. Ahmad nor the bookkeeper seemed aware of these obligations. The continued inability to comply with these requirements puts consumers at risk. Even though there is no evidence of consumer complaints, the purpose of the Act is to avoid problems before they arise.
- [55] In *Ontario (Registrar of Real Estate and Business Brokers) v. Vogelsberg*, [1994] O.J. No. 226, the Ontario Divisional Court held that interfering with a trust account is a wrongful act and the fact that no one was hurt makes no difference. I

find that this decision is instructive here where there is no evidence of harm to consumers.

- [56] All of the explanations offered by the appellant contradict its stated defence that it is taking full responsibility for its actions.
- [57] Mr. Ahmad blames others for the repeated accounting problems, including their audit company and travel suppliers. However, the appellant is responsible for its own accounting. Mr. Ahmad also states that delays were caused by the manager being away, or employees being injured, or away on vacation. The timings of these absences do not account for the extended and repeatedly late and incomplete filings.
- [58] The appellant also blames TICO for conducting an inspection without warning. I accept that there is no requirement in the Act to provide advance notice. In any event, the appellant was unable to rectify the problems found within a short time after the inspection. This indicates that even advance notice of the inspection would not have resulted in a different findings at the 2017 inspection. The Act requires the appellant to maintain business records and to make them available for review by the Registrar.
- [59] The respondent has met its burden to show that the appellant has repeatedly failed to comply with the Act, the Regulation, and the conditions of licensing. I must now consider whether revocation of the licence is appropriate under the circumstances.
- [60] The Tribunal has the power to exercise its discretion to order the revocation of the licence or to permit the appellant to continue operating with further conditions placed upon its licence. The respondent stated on a without prejudice basis that if the appellant was to remain licensed, it would be appropriate to place conditions on it that its financial statements are filed on time, that the Form 1 is filed on time and that detailed provisions of the trust accounting are provided together with six further months of trust accounting.
- [61] Considering that the appellant currently has conditions on its licence which have not been complied with despite guidance, inspections and warning letters, I do not believe that the conditions now are reasonable or sufficient. I therefore use my discretion to order the Registrar to carry out its Proposal to revoke the appellant's registration.

[62] Based on the above decision, I do not need to determine if the past actions of the Directors and Officers provide reasonable grounds for belief that the appellant will not conduct business in accordance with the law and with integrity and honesty.

F. ORDER

[63] I order and direct the Registrar to carry out its proposal to revoke the appellant's licence.

Licence Appeal Tribunal



Marisa Victor, Member

Released: June 12, 2019