



Citation: World Travel Inc. v. Travel Industry Council of Ontario, 2023 ONLAT TIA 14426

Licence Appeal Tribunal File Number: 14426/TIA

In the matter of an appeal from a Notice of Proposal and Order of the Registrar, *Travel Industry Act, 2002*, to revoke registration and immediately suspend registration under the *Travel Industry Act, 2002*, S.O. 2002, c. 30. Sched. D

Between:

World Travel Inc.

Appellant

and

Registrar, *Travel Industry Act, 2002*

Respondent

DECISION

VICE-CHAIR: Colin Osterberg

APPEARANCES:

For the Appellant: Jenny Ai, Director and Officer of appellant

For the Respondent: John Park, Counsel

HEARD: January 24-30, 2023

A. OVERVIEW

- [1] Pursuant to a Notice of Proposal dated November 1, 2022 (“NOP”), as modified by a Notice of Further or other Particulars dated January 13, 2023 (“NFP”), the Registrar, *Travel Industry Act, 2002* (“Registrar”) proposes to revoke the registration of World Travel Inc. (the “appellant”) under the *Travel Industry Act, 2002*, S.O. 2002, c. 30. Sched. D (the “Act”).
- [2] The Registrar bases the NOP on its allegation that the past conduct of Jenny Ai, the appellant’s sole officer and director, 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.
- [3] Ms. Ai argues that the appellant is entitled to registration in accordance with s. 8 of the *Act* and the appellant requested a hearing by the Tribunal pursuant to s. 11 of the *Act*.
- [4] Under s. 11(5) of the *Act*, after a hearing the Tribunal may direct the Registrar to carry out the NOP or substitute its opinion for that of the Registrar and may attach conditions to its order or to a registration.

B. ISSUES

- [5] The first issue to be decided is whether the past conduct of Ms. Ai 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.
- [6] If so, then the second issue to be decided is whether the public interest can be adequately protected through the registration of the appellant with conditions.

C. RESULT

- [7] I find that the Registrar has satisfied the onus on it to show that the past conduct of the appellant’s officer and director 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 appellant is therefore disentitled to registration pursuant to s. 8(1)(d)(iv) of the *Act*.
- [8] I also find that that there are no terms and conditions that would sufficiently protect the public should the appellant be registered under the *Act*, and I direct the Registrar to carry out the NOP.

D. ANALYSIS

The past conduct of Ms. Ai

- [9] I find that the past conduct of Ms. Ai 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.
- [10] Section 8(1)(d)(iv) of the *Act* provides that a corporation is entitled to registration unless the past conduct of its officers or directors affords reasonable grounds for belief that its business will not be carried on in accordance with the law and with integrity and honesty.
- [11] To establish that the appellant is disentitled to registration, the onus is on the Registrar to prove reasonable grounds for belief. The Registrar does not have to show that Ms. Ai's past conduct makes it more likely than not that the appellant's business will not be carried out as required, but only that its belief to that effect is based on more than mere suspicion and on compelling and credible information: see *Ontario (Alcohol and Gaming Commission of Ontario) v. 751809 Ontario Inc.*, 2013 ONCA 157 at paras. 18-19; and *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para. 114.
- [12] Further, the Registrar must also show that there is a nexus between the past conduct and the appellant's ability to conduct business under the *Act* serving the interests of the public: see *CS v. Registrar, Real Estate and Business Brokers Act, 2002*, 2019 ONSC 1652 at para. 32
- [13] The Registrar alleges that Ms. Ai acted illegally, dishonestly and without integrity based on her treatment of four consumers, her mishandling of money she was holding in trust, her failure to comply with the *Act's* record-keeping requirements, and her failure to cooperate with inspectors assigned by the Travel Industry Council of Ontario ("TICO") pursuant to the *Act*.
- [14] Ms. Ai denies the allegations of misconduct. She says that she was honest in her dealings with the appellant's customers. She denies that she mishandled trust money and says that her failure to cooperate with the TICO inspector was justified in the circumstances.

i) Consumer complaints

- [15] At the hearing, the Registrar presented evidence with respect to four consumer complaints, all of which relate to conduct which took place in 2022. The evidence presented satisfies me that Ms. Ai undertook to purchase airline tickets for the appellant's customers then failed to purchase those tickets, advised customers tickets had been purchased when that was not true, provided falsified documents to customers showing that tickets had been purchased when that was not true, and

sent a fake email, which was made to appear to be from Air Canada, and which contained falsified documents, to a TICO representative.

Consumer Ye Qing Xu

- [16] Ye Qing Xu did not testify at the hearing. The facts relating to his involvement with the appellant come from his written complaint which was received by TICO and which was presented in evidence by Dorian Werda, TICO's vice president of operations and Deputy Registrar, who was investigating the complaint, and who testified at the hearing. Ms. Ai does not dispute the facts set out in the written complaint. Rather, she says there is an innocent explanation for the events set out in that complaint.
- [17] It is admitted, and I accept that, on July 20, 2022, Ye Qing Xu retained the appellant to purchase tickets to China for himself and his wife. He paid the full cost of the tickets to the appellant. On July 30, 2022, the appellant provided Mr. Xu with a Booking Confirmation document which appeared to be prepared by Air Canada and which, on its face, confirmed Mr. Xu's booking including flight numbers, meal plan, and assigned seat numbers.
- [18] It is not disputed, and I accept that, on several occasions, Mr. Xu contacted Air Canada to confirm that his tickets had been secured only to be told by Air Canada that no tickets had been purchased. On these occasions, Mr. Xu contacted Ms. Ai and she told him that the tickets had been purchased and sent him more Booking Confirmation documents which appeared to be from Air Canada. Ms. Ai sent such documents to Mr. Xu on September 18, 2022, September 19, 2022, and September 28, 2022. Each time, Mr. Xu contacted Air Canada only to be told that the appellant had not purchased the tickets for him.
- [19] Mr. Xu complained to TICO on October 3, 2022 and submitted a completed complaint form along with the Air Canada documents provided to him by the appellant. The complaint form and the Booking Confirmation documents were presented in evidence through Ms. Werda. Ms. Ai agreed that the Booking Confirmation documents that were submitted were sent by her to Mr. Xu as described above.
- [20] According to Ms. Werda, because some of the information on the Booking Confirmation documents did not appear to be similar to documents she has seen in the past which were produced by Air Canada, she suspected that those documents may not be authentic. She contacted Lisa Pierce, a vice-president in Air Canada's sales department, and she advised Ms. Werda that the Booking Confirmation documents provided to Mr. Xu by the appellant were not created by Air Canada and were not authentic.
- [21] On October 25, 2022, Ms. Werda received an unsolicited email directly from an email address "Air Canada<confirmation@aircanada.ca>", which states in its subject line "AIRCANADA (sic) is sending you the itinerary for your next trip from Toronto to

Shanghai” and which encloses some of the same Booking Confirmation documents which the appellant had previously given to Mr. Xu and which Air Canada previously advised were not authentic. Lisa Pierce advised Ms. Werda in an email that the Booking Confirmation documents were not authentic and that the email sent to Ms. Werda was fake and did not come from Air Canada.

- [22] Ms. Ai insists the email from Air Canada sent to Ms. Werda is authentic and that the Booking Confirmation documents were also authentic. I do not accept her evidence about this. Air Canada says the documents were not authentic. Mr. Xu confirmed several times with Air Canada that the tickets were never purchased. Ms. Ai gave no reasonable explanation for why Air Canada would have sent the email in question to Ms. Werda or produced Booking Confirmation documents showing that tickets had been issued when they had not been. Finally, the email sent to Ms. Werda attached the same Booking Confirmation documents Ms. Ai sent to Mr. Xu, documents which Air Canada says are not authentic. The most likely explanation for this is that Ms. Ai sent the email to Ms. Werda and contrived to make it look like it came from Air Canada.
- [23] I find that Ms. Ai misrepresented to Mr. Xu that she purchased tickets for him when they had not been purchased, provided Mr. Xu with Booking Confirmation documents which were not authentic, and arranged to have an email which was made to appear as if it came from Air Canada, and to which the fake Booking Confirmation documents were attached, sent to Ms. Werda.
- [24] I find these actions to be dishonest, lacking integrity, and likely illegal. In my view, they are sufficient in themselves to afford reasonable grounds for belief that the appellant’s business will not be carried on in accordance with the law and with integrity and honesty.

Consumer Yu Qi Lin

- [25] Yu Qi Lin testified that she retained the appellant to book a trip to China for her parents. The Lins paid the appellant \$7,300 in October 2022, by e-transfer. Ms. Ai then sent the Lins a Booking Confirmation document for a flight departing December 23, 2022, with China Southern Airlines. On December 21, 2022, the Lins were unable to locate their reservation on the China Southern Airlines website and contacted the airline by email to inquire about the status of the tickets. China Southern Airlines responded that the tickets did not exist and told them to check with their travel agent.
- [26] Although Ms. Lin’s father did not testify, Ms. Lin and Ms. Ai agree that Ms. Lin’s father spoke with Ms. Ai who told him the December 23, 2022 flight was no longer available and Mr. Lin ultimately agreed to change the day of the flight to December 30, 2022. On December 26, 2022, Ms. Ai sent a Booking Confirmation document to the Lins for the December 30, 2022 flight. The Lins again contacted China Southern Airlines to confirm the tickets had been purchased and were told on December 28, 2022 that the tickets were not issued due to non-payment.

- [27] The Lins then demanded that their payment to the appellant of \$7,300 be refunded. The appellant did not refund the Lins' money, but instead provided them with a written promise to refund the amount claimed by March 31, 2023.
- [28] I find that Ms. Ai misrepresented to the Lins that their flight was booked for departure on December 23, 2022 and provided them with false documents in support of that misrepresentation. I find that Ms. Ai misrepresented to the Lins that their flight was booked for departure on December 30, 2022 and provided them with false documents in support of that misrepresentation. These actions afford reasonable grounds for belief that the appellant's business will not be carried on in accordance with the law and with integrity and honesty.

Consumer Yangkey Dolma

- [29] Yangkey Dolma testified that she purchased four tickets to Kathmandu from the appellant on May 5, 2022. The purchase price was paid. Ms. Dolma stated that she received booking confirmation numbers from the appellant but when she called Air Canada she was told that no ticket had been purchased. Ms. Dolma eventually purchased her tickets from another agent and asked Ms. Ai to return the money that was paid to the appellant. It took about a month for the appellant to refund the money.
- [30] I find that Ms. Ai misrepresented to Ms. Dolma that tickets had been purchased when they had not and that this conduct is dishonest and lacks integrity.

Consumer Zhenbo Zhao

- [31] According to his signed complaint form, Zhenbo Zhao retained the appellant to purchase Air Canada tickets for his mother and paid the ticket price. The flight was scheduled for September 24, 2021. Shortly after the booking, Mr. Zhao learned from the Air Canada website that the tickets he had purchased from the appellant were cancelled by the appellant. Mr. Zhao contacted Ms. Ai who told him the tickets would be rebooked. After receiving booking confirmations from the appellant, Mr. Ai checked with Air Canada and found that the booking was again cancelled. This occurred a total of sixteen times according to Mr. Zhao.
- [32] Eventually, Mr. Zhao purchased the tickets himself directly from Air Canada and, in October 2021, asked the appellant to give him a refund. The appellant failed to refund Mr. Zhao's money until May 2022 after a formal consumer complaint was filed with TICO.
- [33] According to Ms. Ai, all of the flight cancellations were done at the request of Mr. Zhao or his mother.
- [34] Mr. Zhao did not testify at the hearing. I am unable to determine whether his flights were cancelled by the appellant and Ms. Ai or whether Mr. Zhao requested those cancellations. It is difficult to accept that Mr. Zhao continued to ask the appellant to rebook flights for him sixteen times only to have them cancelled by the appellant

before he decided to purchase his own tickets. In my view, it is likely that it was Mr. Zhao who was responsible for most, if not all, the cancelled tickets.

I do not accept the evidence of Ms. Ai with respect to the consumer complaints

- [35] Ms. Ai gave evidence which she says provides innocent explanations for the above events which I do not find to be reasonable and which I do not accept.
- [36] Ms. Ai alleges that the tickets which she was purchasing for these customers were “group rate” tickets and that the customers were all told this when the tickets were purchased. Ms. Ai alleges that the customers kept cancelling their tickets and this resulted in bookings being cancelled. Ms. Ai alleges that some of the complainants were “not real customers” and that they were part of a scheme to discredit her and the appellant. Finally, Ms. Ai takes the position that the customers’ complaints were resolved prior to the hearing and so TICO is precluded from relying on them as grounds to revoke the appellant’s registration.
- [37] Ms. Ai’s argument regarding group rate ticket purchases is that she was able to determine the discount that airlines were offering for tickets purchased by groups of ten or more persons. She then offered that discount to persons who were not part of a group of that size in the expectation that she would find enough other people who wanted to take the same flight in order to purchase the tickets at that group discount.
- [38] Ms. Ai testified that she would only arrange for the individual tickets to be issued to the customers once the group purchase was confirmed with the airline, and that could be up to a week before the flight’s departure date. She stated she told her customers this and that they should not have been surprised when they called the airline more than a week in advance only to be told that there were no tickets purchased in their names.
- [39] I do not accept this explanation for a number of reasons. First, this explanation is not consistent with the Booking Confirmation documents which were provided to the customers in question. Those documents show the issuance of tickets to the individual customers, not groups, by airlines and appear to have been documents created by the airlines themselves, not the appellant.
- [40] Second, it does not explain why Ms. Ai would send several false Booking Confirmation documents purporting to be from the airlines to her customers indicating that tickets had been purchased. This conduct indicates an intention by Ms. Ai to convince the customers those tickets had been purchased, not that they were to be issued at a later date.
- [41] Third, it does not explain why the appellant caused an email falsely originating from Air Canada to be sent to TICO’s inspector, Ms. Werda, confirming that tickets had been purchased. This conduct indicates an intention by Ms. Ai to convince TICO that tickets had been purchased, not that they were to be issued at a later date.

- [42] I find the circumstances establish that Ms. Ai was actively trying to deceive the appellant's customers, and TICO, into thinking that tickets had been purchased when they had not.
- [43] With respect to the allegation that customers kept cancelling their tickets, the evidence demonstrates that no actual tickets were ever purchased for these customers. Ms. Ai's explanation does not explain why false documents were provided to the appellant's customers and to TICO. In any event, it is an allegation that is not supported by the evidence presented at the hearing.
- [44] With respect to the allegation that some of the above complainants were intentionally trying to discredit the appellant and Ms. Ai, and that they must be connected to another travel agency who would benefit from the de-licensing of the appellant, there was no evidence presented in support of that allegation and I do not find it to be a reasonable one.
- [45] Finally, the appellant takes the position that most of the complaints have been resolved and that TICO's file should be closed as it no longer has the authority to base its NOP on those complaints. This argument is without merit. TICO's complaints process is a separate matter from its registrant compliance function and this latter function does not end when a complaint is resolved.

ii) Failing to properly handle clients' monies held in trust

- [46] According to s. 27 of O. Reg 26/05 under the *Act* (the "regulation"), a registrant is required to pay into its trust account all money received from customers for travel services. The registrant is prohibited from disbursing or withdrawing any money held in a trust account except to make a payment to the supplier of the travel services for which the money was received, to make a refund to the customer, or after the supplier of the travel services has been paid in full, to pay the registrant's commission.
- [47] I find that Ms. Ai withdrew clients' money held in trust and used that money for purposes other than those allowed by s. 27 of the regulation. The facts established at the hearing in support of this finding are as follows.
- [48] In the case of each of the consumers described above, a request was made that the appellant refund the money that had been paid to the appellant. After each of those requests for refund was made, there was a significant delay in providing that refund.
- [49] In the case of Mr. Xu, \$7,514.42 was paid to the appellant in July 2022. No tickets were ever purchased, and the money was refunded some time after November 2022. In the case of Ms. Lin, the appellant was paid \$7,300 in October 2022 and that money has not yet been refunded. In the case of Ms. Dolma, the appellant was paid \$6,960.80 in May 2022. That money was refunded at the end of July 2022. In the case of Mr. Zhao, the money was paid to the appellant in June 2021 and only fully refunded in May 2022.

- [50] Ms. Ai testified that, in each case, the customer's money was withdrawn immediately and used for the appellant's operating expenses and to pay for travel services purchased for other customers.
- [51] Ms. Ai has been a travel agent for more than ten years and has an obligation to know how to handle money the appellant was holding in trust for its customers. By using it in the way she did, she failed to ensure that the appellant satisfied its obligations to its customers as set out in the *Act* and regulation.
- [52] I find that Ms. Ai's mishandling of money the appellant was holding in trust for its customers is evidence that the appellant's business will not be carried on in accordance with the law and with integrity and honesty.

iii) Non-compliance with record-keeping requirements

- [53] I find that the appellant failed to comply with its statutory record-keeping obligations and failed to cooperate with inspectors assigned by the Travel Industry Council of Ontario ("TICO") as she was required to do under the *Act*.
- [54] Section 29 of the regulation requires registrants to maintain business records, including accounting records and banking records, at its principal place of business. Section 17 of the *Act* provides that TICO inspectors may conduct an inspection of a registrant's business in order to ensure compliance with the Act and regulations or in dealing with a complaint concerning a registrant. In carrying out an inspection, an inspector may require the registrant to produce all documents and records that are relevant to the inspection. Section 17(5) provides that no person shall obstruct an inspector conducting an inspection or withhold from him or her any documents or records that are relevant to the inspection.
- [55] Maria Descours, a TICO inspector, testified at the hearing and says that, on October 28, 2022, she attended the appellant's premises to conduct an inspection after TICO received a complaint from a consumer related to the appellant's handling of money paid for travel services. Ms. Descours requested that the appellant produce its banking statements, including those related to its trust account. Ms. Ai told Ms. Descours that the books and records were not available at that time and so Ms. Descours gave Ms. Ai until October 31, 2022, to make them available.
- [56] On October 30, 2022, Ms. Ai texted Ms. Descours saying that she would not be providing the requested records due to concerns she had about security. Ms. Descours offered to come and pick up copies of the records, but Ms. Ai failed to produce them. To the date of the hearing, the records requested by Ms. Descours had not been produced to TICO.
- [57] According to Ms. Ai, she did not produce the records to Ms. Descours because she did not consider it to be her obligation to do so and she was concerned that her banking records would not be secure. She said that TICO was obligated to ask for the records itself on TICO letterhead so that she could know that it was TICO that was requesting the documents.

[58] I find that Ms. Ai's conduct is in breach of the *Act* and regulation. I do not accept her explanation for failing to produce the requested documentation. She had met Ms. Descours on a previous inspection and knew she was a TICO inspector. She had an obligation to produce the records for inspection on October 28, 2022 when she was asked for them. If she did not believe Ms. Descours was actually a TICO inspector then she could have produced the records directly to TICO and should have done so on October 31, 2022, as she agreed to do with Ms. Descours. Ms. Ai provided no explanation as to why she did not produce them up to the time of the hearing when she knew that was one of the grounds listed in the NOP for revocation of her licence.

[59] I find that Ms. Ai knowingly refused to comply with her obligations under the *Act* to provide the requested documentation to TICO. She did not provide a satisfactory reason for this conduct and I find that it provides reason for belief that the appellant's business will not be carried on in accordance with the law and with integrity and honesty.

Conclusion regarding entitlement to registration

[60] The evidence presented at the hearing demonstrates that Ms. Ai undertook to purchase airline tickets for the appellant's customers then failed to purchase those tickets; she advised customers that tickets had been purchased when that was not true; she provided falsified documents to customers showing that tickets had been purchased when that was not true; she falsified an email to a TICO representative which contained falsified documents; she used customers' money which was required by the *Act* and regulation to be held in trust, for improper purposes; and she failed to comply with a TICO investigator's request for documentation the appellant was required to produce.

[61] Ms. Ai's conduct, lacks integrity, is dishonest, and is probably illegal. It provides strong evidence that the appellant, which she controls, will not act in accordance with the law and with honesty and integrity if it is granted registration. Ms. Ai did not present any evidence at the hearing which suggested she is prepared to take responsibility for this conduct or that there is any reason to believe she will act differently in the future.

[62] I find that the Registrar has satisfied its onus to prove that the past conduct of Ms. Ai affords reasonable grounds for belief that the appellant will not carry on business in accordance with the law and with honesty and integrity. The appellant is not entitled to registration under the *Act*.

Appropriate Outcome

[63] Having found that there are reasonable grounds to believe that the appellant will not carry on business in accordance with the law, and with integrity and honesty, I must now consider the appropriate remedy. The Registrar and the Tribunal have the statutory discretion to consider the appellant's circumstances and determine

whether the public interest requires outright refusal to licence or whether the public interest can be adequately protected through granting a licence with conditions.

- [64] I do not find that this is an appropriate case for conditions. The appellant has presented insufficient evidence to satisfy me that she has changed and that the concerns noted above are no longer an issue. Also, the effectiveness of conditions on the appellant's licence is dependant, at least in part, on the appellant adhering to those conditions which, in turn, requires that the appellant act in accordance with the law and with honesty and integrity. The evidence presented at the hearing does not support a finding that the appellant can be relied on to comply with conditions.
- [65] I find that there is insufficient evidence before the Tribunal to suggest that conditions would be appropriate. I decline to impose conditions on the ground that I am not satisfied conditions would sufficiently protect the public.

E. ORDER

- [66] The Tribunal directs the Registrar to carry out its NOP to revoke the appellant's registration.

LICENCE APPEAL TRIBUNAL



**Colin Osterberg,
Member**

Released: February 23, 2023