

NO VISA. NO ENTRY

Anthony J Cordato

In this article the author offers an answer to this question: If a travel agent books an international flight, are they legally liable if they fail to advise on the visa requirements for the flight destination?

Introduction

This article is based upon a query submitted to me by a traveller. This is what she said:

“We booked a flight for my baby daughter and I (both Australian passport holders) from Santiago (Chile) to Dublin (Ireland) using [name withheld] Travel Agents in Australia. The agent booked the flight with a 12 hour stop-over in Toronto (Canada), then a connecting flight to Dublin.

In Santiago we were denied boarding as we did not hold an eTA (a Canadian transit visa). We contacted the Travel Agent immediately to seek their help as we had NOT been advised by them that a transit visa was required for the stop-over booked by them, and so had not obtained the visa.

Long story short: we lost the flight (the Travel Agent failed to cancel the flight as we requested) and lost the hotel booking for the stop-over in Toronto. We had to book a full new flight, hotel & luggage allowance. As the new flight was with a different airline it cost around \$1,700.

Before travelling, we had exchanged several emails with the Travel Agent to ensure all was in place; bassinet for the baby booked (they failed to do this as well); luggage allowances; dates; requirements for my baby daughter; etc. We have copies of all emails exchanged.

When we claimed the extra costs of \$1,700, the Travel Agent said that we are bound by their standard disclosure and no compensation is payable:

“I understand it is my responsibility to check visas, immigration, health requirements and that my passport is valid for at least 6 months beyond my return date to Australia.”

They deny liability and will not reimburse the extra costs we had to incur due to the lack of a visa.

We understand it is part of the duty of care of travel agents to advise customers of things such as transit visas. In this case they failed to advise us accordingly and didn't fulfil their duties as travel agents which made us incur the extra costs. We want to pursue this matter and get our extra costs back. Would you be able to advise on what is the best avenue?”

Response

Your question illustrates that there are some travel professionals who still think that they can book an international flight, and leave it to the customer to look after the visa requirements.

They do this even though as travel professionals, they know that without a valid visa the customer will be denied boarding on the flight they have booked, according to IATA rules.

When a compensation claim is made, these travel agents point to their standard disclosure/disclaimer which includes a customer acknowledgement that:

“I understand it is my [the customer's] responsibility to check visas ... “

And by offering help if needed:

“We can help you find out if you need one.”

It's clever, but does it stand up legally?

The Australian Consumer Law, which came into effect on 1 January 2011, imposes a consumer guarantee – a duty of care – upon travel professionals to use due care and skill in dealings with consumers. This is how it reads:

Section 60 Guarantee as to due care and skill

If a person supplies, in trade or commerce, services to a consumer, there is a guarantee that the services will be rendered with due care and skill.

If the services rendered are booking an international flight, then the travel agent's duty is to use due care and skill in making the booking. In my view this includes checking passport validity (at least 6 months from date of return) and if the customer is travelling on an Australian passport, advising visa requirements for the ticketed destination, and any places of transit or stop-over. Otherwise, the customer risks being denied boarding and losing the benefit of the flight they have paid for.

What about the disclosure/disclaimer clause? While it offers sound advice for passport validity, it cannot validly exclude the travel agent's responsibility to use due care and skill in relation to visas. This is because the Australian Consumer law does not allow a disclosure/disclaimer clause to be used to nullify the travel agent's guarantee to use due care and skill:

Section 64 Guarantees not to be excluded etc. by contract

- (1) A term of a contract ... is void to the extent that the term purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying: ...*
- (c) any liability of a person for a failure to comply with a guarantee that applies under this Division to a supply of goods or services.*

As a result of Section 64, the part of the disclaimer that reads *understand it is my responsibility to check visas* is void and cannot be relied upon by the travel agent to exclude your claim for compensation.

If the travel agent does not provide a refund of the extra money you spent, make a claim with NCAT (The New South Wales Civil and Administrative Tribunal). The claim is a financial claim – there is no compensation payable for the failure to book a bassinet.

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