



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 25th day of August, 2006

Kazar Construction Limited d/b/a Sifton Air

Violations of 49 U.S.C. §§ 41301 and 41712

Served August 25, 2006

OST 2006-23528

CONSENT ORDER

This order concerns unauthorized air transportation by Kazar Construction Limited d/b/a Sifton Air between Canada and the United States in violation of 49 U.S.C. §§ 41301 and 41712. It directs Sifton Air to cease and desist from further violations of these statutory provisions and assesses a compromise civil penalty of \$10,000 (US).

Sifton Air, a foreign air carrier within the meaning of 49 U.S.C. § 40102(a)(21), provides charter air service from its base in Haines Junction, Yukon, Canada. At all times relevant to the violations described herein, Sifton Air did not hold economic authority from the Department or safety authority from the Federal Aviation Administration (FAA). Notwithstanding its lack of economic authority, Sifton Air operated air service between Canada and Dry Bay, Alaska, in contravention of 49 U.S.C. § 41301, which requires that foreign air carriers obtain permit authority from the Department prior to commencing service to the United States.¹ Violations of section 41301 also constitute an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation, Sifton Air states that, in its view, prior to commencing its trans-border operations, it made every reasonable effort to obtain the necessary approval to operate into the

¹ Part 294 of the Department's regulations (14 CFR Part 294) provides an exemption for "Canadian charter air taxis" from the permit requirements of section 41301, provided that such carriers register with the Department and have the requisite level of liability insurance. The exemption authority conferred under Part 294 is available only to carriers that operate "small" aircraft, which is defined in section 298.2(i) as "any aircraft designed to have a maximum passenger capacity of not more than 30 seats" On July 31, 2006, Sifton Air applied to the Department for economic authority to operate to and from the United States as a Canadian charter air taxi pursuant to Part 294. As of the date of issuance of this order, its application is still pending.

United States. This included contacting several U.S. government agencies. However, it did not include contacting the FAA or the Department, the two agencies with jurisdiction over the air service that Sifton provided. Nevertheless, Sifton maintains that its efforts in this regard are evidence of its intent to comply fully with the U.S. law. Sifton also points out that it has cooperated with the Office of Aviation Enforcement and Proceedings (Enforcement Office) and that it has begun the process of obtaining economic authority from the Department.

The Enforcement Office has carefully considered all of the information provided by Kazar Construction Limited d/b/a Sifton Air, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Kazar Construction Limited d/b/a Sifton Air have reached a settlement of this matter. Without admitting or denying the violations described above, Kazar Construction Limited d/b/a Sifton Air agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712 and to the assessment of \$10,000 (US) in compromise of potential civil penalties otherwise assessable. Of this amount, \$5,000 shall be paid under the terms described below. The remaining \$5,000 shall be suspended for 12 months following the service date of this order and then forgiven unless Kazar Construction Limited d/b/a Sifton Air violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Kazar Construction Limited d/b/a Sifton Air may be subject to additional enforcement action. The Enforcement Office believes this compromise is appropriate in view of the nature and extent of the violations in question², serves the public interest, and creates an incentive for all foreign air carriers to comply fully with the requirements of 49 U.S.C. §§ 41301 and 41712.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest.
2. We find that Kazar Construction Limited d/b/a Sifton Air violated 49 U.S.C. § 41301 by operating air service between Canada and the United States without economic authority from the Department.
3. We find that, by engaging in the conduct and violations described in paragraph 2, above, Kazar Construction Limited d/b/a Sifton Air engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.
4. We order Kazar Construction Limited d/b/a Sifton Air and all other entities owned and controlled by, or under common ownership and control with Kazar Construction Limited d/b/a Sifton Air and their successors and assignees, to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712.
5. We assess Kazar Construction Limited d/b/a Sifton Air a compromise civil penalty of \$10,000 (US) in lieu of civil penalties that might otherwise be assessed for the violations

² This compromise of civil penalties otherwise due and payable takes into account, among other factors, the carrier's size and ability to pay.

found in paragraphs 2 and 3, above. Of this amount, \$1,250 shall be due and payable on October 5, 2006, January 5, 2007, April 5, 2007, and July 5, 2007, respectively. The remaining \$5,000 shall be suspended for 12 months after the service date of this order, and then forgiven unless Kazar Construction Limited d/b/a Sifton Air violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Kazar Construction Limited d/b/a Sifton Air may be subject to additional enforcement action.

6. Payments required by this order shall be made by wire transfers through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfers shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Kazar Construction Limited d/b/a Sifton Air to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible enforcement action for failure to comply with this order.

This order will become a final order of the Department ten days after its service unless a timely petition for review is filed or the Department takes review on its own initiative.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

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