



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

Issued by the Department of Transportation
on the 3rd day of January, 2003

North Vancouver Airlines, Ltd.

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

Served: January 3, 2003

OST 2003-14194

CONSENT ORDER

This order concerns unauthorized air service by North Vancouver Airlines, Ltd., d/b/a North Vancouver Air (NVA), between various cities in Canada and the United States that violates 49 U.S.C. §§ 41301 and 41712. This consent order directs NVA to cease and desist from further violations of these statutory provisions and to pay a compromise civil penalty.

Since 1994, NVA, a Canadian charter air taxi operator registered pursuant to 14 CFR Part 294 of the Department's regulations, has specialized in charter flights between Seattle (Boeing Field), Washington, and Vancouver and Tofino, British Columbia. Foreign carriers operating under Part 294 are limited to charter operations. In August 2002, NVA filed an application with the Department to conduct scheduled service to and from the United States. However, prior to receiving this Departmental authority, NVA operated a number of flights pursuant to a published schedule between Boeing Field and Vancouver and Tofino in violation of 49 U.S.C. § 41301, which requires that foreign air carriers obtain permit authority from the Department *prior* to commencing scheduled service to the United States. Moreover, NVA held out such service via a broad range of media, including signage at its Boeing Field ticket counter and listings on its and the Official Airline Guide's Internet webpages. Any violation of 49 U.S.C. § 41301 also constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation, NVA states that it did not intend to operate in the United States without proper authority from the Department. Rather, NVA represents that it believed that the "safety" authority it received from the Federal Aviation Administration pursuant to 14 CFR Part 129 and the air transport license it received from the Canadian government were sufficient, from the standpoint of the U.S. government, to lawfully hold out and operate scheduled flights into the United States. NVA also asserts that, upon being contacted by the Office of Aviation

Enforcement and Proceedings (Enforcement Office), it removed any reference to scheduled service to Boeing Field from its Internet website and promised to refrain from holding out such service via the Official Airline Guide. Moreover, NVA asserts that, while adamantly maintaining that it did not engage in any deceptive practices or unfair methods of competition, it has exhibited a cooperative and compliant attitude and has sought advice from the Department to ensure that its future operations are fully compliant with 49 U.S.C. §§ 41301 and 41712.

The Enforcement Office has carefully considered all of the information provided by NVA, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and NVA have reached a settlement of this matter. Without admitting or denying the violations described above, NVA consents 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 US\$30,000 in compromise of potential civil penalties otherwise assessable. Of this total penalty amount, \$15,000 shall be paid under the terms described below. The remaining \$15,000 shall be suspended for two years following the issuance of this order, and then forgiven, unless, during this time period, NVA violates this order's cease and desist or payment provisions, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately and NVA may be subject to further and more stringent enforcement action. The Enforcement Office believes this compromise is appropriate and 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 North Vancouver Airlines, Ltd., violated 49 U.S.C. § 41301 by commencing scheduled air service to and from the United States prior to obtaining permit authority from the Department;
3. We find that, by engaging in the conduct and violations described in paragraphs 2 above, North Vancouver Airlines, Ltd., engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. North Vancouver Airlines, Ltd., and all other entities owned and controlled by, or under common ownership and control with North Vancouver Airlines, Ltd., and their successors and assignees, are ordered to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712;
5. North Vancouver Airlines, Ltd., is assessed a civil penalty of US\$30,000 in compromise of the civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 above. Of the assessed penalty, \$15,000 shall become due and payable as follows: \$1,000 shall become and payable within 30 days of the date of issuance of this order, \$1,000 shall become and payable within 60 days of the date of issuance of this order, \$1,000 shall become due and payable within 90 days of the date of issuance of this order, \$2,000 shall

become due and payable within 120 days of the date of issuance of this order, \$2,000 shall become due and payable within 150 days of the date of issuance of this order, \$2,000 shall become due and payable within 180 days of the date of issuance of this order, \$3,000 shall become due and payable within 210 days of the date of issuance of this order, and \$3,000 shall become due and payable within 240 days of the date of the issuance of this order. The remaining \$15,000 shall be suspended for one year following the issuance of this order, and then forgiven, unless, during this time period, North Vancouver Airlines, Ltd., violates this order's cease and desist or payment provisions, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately. Failure to pay the penalty as ordered will subject North Vancouver Airlines, Ltd., 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; and

6. Payment of the civil penalty described above 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 attached instructions.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own initiative.

By:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

(SEAL)

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