



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

Issued by the Department of Transportation
on the 15th day of December, 2003

Ryan International Airlines, Inc.

**Violations of 49 U.S.C. § 41712
and 14 CFR Part 212**

Docket OST 2003-14194 - 28

Served December 15, 2003

CONSENT ORDER

This consent order concerns violations by Ryan International Airlines, Inc. (hereinafter referred to as Ryan) of 14 CFR Part 212, the Department's charter regulations applicable to direct air carriers, and 49 U.S.C. § 41712, which prohibits unfair and deceptive practices and unfair methods of competition. Ryan entered into contracts with Ascend Aviation Group, LLC and related entities (hereinafter referred to as Ascend) under which Ryan chartered aircraft to Ascend, which in turn engaged in air transportation services as an indirect air carrier, without the requisite economic authority from the Department.

Companies engaged in air transportation are required to hold economic authority from the Department under 49 U.S.C. § 41101.¹ Ryan is an air carrier that holds such economic authority from the Department, together with safety certification from the Federal Aviation Administration under 14 CFR Part 121. However, Ascend, the owner of 13 Boeing 727-200 aircraft, has no economic authority itself to hold out or to provide, directly or indirectly, air transportation using these or any other aircraft. Ascend, in turn, has separately contracted directly with professional sports teams and other entities that are the ultimate customers seeking air service, promising to provide them air transportation. As a result, there is no privity of contract between the sports teams or other entities and Ryan. Accordingly, Ryan has allowed Ascend to be the principal in the transaction to which the ultimate customers look for performance of their contracts for air transportation. Thus, Ryan, which was or should have been aware of Ascend's conduct and the fact that it is not a certificated air carrier, facilitated Ascend's engaging in significant indirect air carrier service without any economic authority from the

¹ A carrier may also operate small aircraft as an air taxi under the exemption authority of 14 CFR Part 298. Carriers engaged in air transportation must also be certificated by the Federal Aviation Administration under 14 CFR Parts 135 or 121. 14 CFR 119.1.

Department. Ryan's conduct constitutes an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

In its arrangement with Ascend, Ryan engaged in unauthorized charter operations in violation of 14 CFR 212.4, which specifies the charter types air carriers are authorized to conduct. Because no privity of contract exists between Ryan and the ultimate customer, Ryan is not engaged in single entity charters with respect to the operations in question and no other authorized charter type is remotely similar to the contractual arrangement between Ryan and Ascend. Therefore, Ryan engaged in a non-authorized charter type, in violation of 14 CFR 212.4. In addition, even assuming that Ryan and Ascend had maintained a proper "charter to charterer" relationship, Ryan was not properly escrowing the monies received from Ascend, in violation of 14 CFR 212.8. Pursuant to 49 U.S.C. § 46301, violations of 49 U.S.C. § 41712 and 14 CFR 212.4 and 212.8 subject Ryan to the assessment of civil penalties of up to \$2,500 for each violation and \$2,500 for each day such violation continues.

As of July 2003, Ascend had dry leased four of its aircraft to Ryan. Ryan, in turn, chartered the aircraft back to Ascend. Under the companies' arrangement, Ascend paid all of the expenses incurred by Ryan in placing the aircraft on Ryan's Part 121 Operations Specifications. Furthermore, Ascend paid all of the expenses incurred by Ryan in operating the aircraft, such as the loading and unloading fees, power carts, air startups, pushback fees, ramp charges, landing fees, all baggage fees, all taxes relating to operation of the aircraft, passenger facility charges, and all security fees. Under the arrangement, the aircraft were maintained for the exclusive use of Ascend and Ryan was forbidden from using Ascend's aircraft without Ascend's permission.

Ryan was aware that Ascend marketed charters using the aircraft to potential clients directly. Ascend entered into contracts to provide air transportation using the aircraft with numerous entities, including the L.A. Dodgers, Racing Logistics, Rogers Blue Jay Partners, DB Air, the Arizona Diamondbacks, the San Francisco Giants, and the Oakland Athletics. These contracts for air transportation, to be conducted by Ryan, ranged from single flights to operations over an entire professional sports season of several months. It was thus Ascend that contracted directly with the customers for air transportation and Ascend that collected and held all of the monies paid by the entities that ultimately were provided air transportation using Ascend's aircraft that Ascend paid Ryan to operate. Ascend did not act as an agent for Ryan or for the ultimate charter customers that Ryan transported. Therefore, the Office of Aviation Enforcement and Proceedings (Enforcement Office) believes Ryan facilitated Ascend's unlawful operations as an indirect air carrier.

The Enforcement Office is particularly concerned about Ryan's operations because its arrangement with Ascend bypassed the protections put in place by the Department to afford the public a measure of financial protection where charter flights are involved. With respect to traditional single-entity charters using large aircraft, Department rules require a direct air carrier that engages in charter air transportation to maintain a bond, in an unlimited amount, to guarantee performance of all charter flights for which it has contracted, or to maintain an escrow account into which it must deposit immediately all

payments received for charter flights until after the flight has been operated.² Not only did Ryan not escrow the money received from Ascend, it was Ascend, not Ryan, that entered into contracts with the ultimate charter customers for charter air transportation. Therefore, Ryan's relationship with Ascend would not even qualify as a single entity charter. Ryan's operations were not only unlawful, but also created an unacceptable risk to the public's funds that 49 U.S.C. § 41101 and Department regulations, where followed, are designed to preclude.

In Summary, therefore, we believe that Ryan has allowed Ascend to unlawfully conduct air transportation services and, thus, it has engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712. Additionally, Ryan has violated 14 CFR 212.4 and 212.8 by conducting a non-authorized charter type and by failing to escrow funds it received from Ascend.

In mitigation, Ryan states that it disagrees that it violated 49 U.S.C. § 41712 or the charter rules, or allowed Ascend's illegal activities, as the Enforcement Office recognizes it was Ascend that contracted directly with customers for the flights and it was Ascend that collected and held all of the funds paid by the entities. Any noncompliance with the Department's charter rules was inadvertent, and Ryan has already revised its procedures to comply fully with Part 212. Ryan points out that it routinely escrows funds received for Public Charters until the flights are operated, and attempted to determine whether similar requirements applied to the Ascend-arranged charters and had a miscommunication with counsel about the requirements. Ryan states that it has been properly escrowing funds related to charter flights arranged by Ascend since June 13, 2003, and it has instructed its personnel that no single entity passenger charter flights are to be conducted unless Ryan has a contract with the charterer or a party who documents that it is acting as agent for the charterer. Ryan has also discontinued operations for Ascend until that company demonstrates that it is in compliance with the Department's rules. Similarly, Ryan states that it will make efforts to ensure that other charterers with which it contracts meet applicable requirements of Part 212.

Ryan has cooperated fully with the Department's investigation of Ascend's activities and has regularly updated the Department about the status of the flights at issue. Moreover, Ryan asserts that it has taken extraordinary steps to ensure that no charter passengers would be stranded and that no sports schedules would be disrupted. In this regard, after Ascend stopped paying Ryan to operate flights for the charters at issue, Ryan continued to operate charters. Ryan's president and other personnel personally contacted sports teams to ensure that they had alternative sources of air transportation. Finally, when the Department advised Ryan about additional unauthorized solicitations purporting to offer flights by Ryan, Ryan cooperated with the Department's efforts to ensure that the potential charterer was not harmed.

² This rule is specified in 14 CFR 212.8. Similar protections exist for public charter flights, with the authorized indirect air carrier required to have a bond or other security arrangement and to escrow payments from charter participants until payment is made to the airline's own escrow account. 14 CFR 380.34.

We view seriously Ryan's violations. We have carefully considered the facts of this case and continue to believe enforcement action is necessary. Ryan, in order to avoid litigation and without admitting the alleged violations, agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 212.4 and 212.8 and to an assessment of \$60,000 in compromise of potential civil penalties. This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. This settlement, moreover, represents a deterrent to future similar unlawful operations by Ryan and other carriers without appropriate economic authority.

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 the order as being in the public interest;
2. We find that Ryan International Airlines, Inc., violated 14 CFR 212.4 by operating charter flights not authorized by that section;
3. We find that by failing to properly escrow funds received for charter flights, Ryan International Airlines, Inc., violated 14 CFR 212.8;
4. We find that Ryan International Airlines, Inc., by facilitating unauthorized operations by Ascend Aviation Group, LLC and its related companies and by violating 14 CFR 212.4 and 212.8, engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
5. Ryan International Airlines, Inc., and all other entities owned and controlled by, or under common ownership and control with Ryan International Airlines, Inc., and their successors and assignees, as well as the owners and officers of all such companies, are ordered to cease and desist from further violations of 49 U.S.C. § 41712 and 14 CFR 212.4 and 212.8;
6. Ryan International Airlines, Inc., is assessed \$60,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4, above. Of the assessed penalty, \$30,000 is due and payable within 30 days of the date of the issuance of this order. The remaining \$30,000 shall be suspended for one year following the issuance of this order, and then forgiven, unless, during this time period, Ryan International Airlines, Inc., 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 Ryan International Airlines, Inc., 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

7. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order.

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

BY:

**ROSALIND A. KNAPP
Deputy General Counsel**

(SEAL)

*An electronic version of this document is available on the World Wide Web at
<http://dms.dot.gov>*