



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

Issued by the Department of Transportation
on the **29th day of, March 2004.**

MM&S Airways, LLC

**Violations of 49 U.S.C. §§ 41101
and 41712**

Docket OST 2004-16943

Served: March 29, 2004

CONSENT ORDER

This consent order concerns unauthorized air carrier operations by MM&S Airways, LLC, which engaged in air transportation without the requisite economic authority from the Department. It directs MM&S Airways to cease and desist from such future unlawful conduct and assesses the company \$20,000 in compromise civil penalties.

Companies engaged in air transportation are required to hold economic authority from the Department under 49 U.S.C. § 41101.¹ A carrier may also operate small aircraft as an air taxi under the exemption authority of 14 CFR Part 298. MM&S Airways is a charter company that operates its own small aircraft. However, it is not registered as an air taxi under 14 CFR Part 298.² Thus, it does not have the economic authority itself to hold out or to provide air transportation, directly or indirectly. MM&S Airways has nonetheless engaged in certain air carrier services. In this regard, since June 1, 2002, MM&S Airways conducted various air carrier charter flights, either contracted by Raytheon Aircraft Management (hereinafter Raytheon) or by the company itself, and many “owner-operator” flights. MM&S Airways’ unlawful operations as an air carrier, in addition to violating the certificate requirements of Title 49, constitutes an unfair and deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

Pursuant to 49 U.S.C. §§ 41101 and 41102, citizens of the United States³ may not engage in air transportation unless they hold a certificate of public convenience and necessity authorizing them to provide air transportation as an air carrier. An “air carrier” means a

¹ Carriers engaged in air transportation must also be certificated by the Federal Aviation Administration (FAA) under 14 CFR Parts 135 or 121. 14 CFR 119.1.

² Additionally, the company does not hold requisite safety certification from the FAA pursuant to 14 CFR Part 135.

³ A “citizen” includes a person, partnership, corporation, or association. 49 U.S.C. § 40102(a)(15).

citizen “undertaking by any means, directly or indirectly, to provide air transportation.” 49 U.S.C. § 40102(a)(2). “Air transportation” includes the transportation of passengers or property by aircraft as a common carrier for compensation between two places in the United States or between a place in the United States and a place outside of the United States. 49 U.S.C. §§ 40102(a)(5), (a)(23), and (a)(25).⁴

From the standpoint of the requirements of § 41101, the holding out of service, as well as the actual operation of air service, constitutes “engaging” in air transportation.⁵ Violations of § 41101 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712. Pursuant to 49 U.S.C. § 46301, each violation of the statutory provisions subjects MM&S Airways, as a small entity, 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 May 2003, MM&S Airways owned one Beechjet 400A. The aircraft is maintained under Raytheon’s Part 135 certificate and air taxi registration. Raytheon maintains a “leaseback” contractual agreement with the company. The “leaseback” agreement allows Raytheon to use the aircraft for charter when it is not being flown by the owner for purposes permitted under 14 CFR Part 91. However, MM&S Airways has actively engaged in the solicitation of air transportation for the aircraft and performed significant air carrier services in its own right.⁶

MM&S Airways markets its air carrier services, using its aircraft, to potential clients directly in the form of a solicitation letter and indirectly via word-of-mouth referrals from previous clients. The company allows its customers the choice of purchasing a minimum of 25 hours of flight time or contracting for air transportation on an on-demand basis. In each case, the contract requires the use of pilots from Professional Pilots, LLC, a company owned by a relative of one of MM&S Airways’ owners, Donald Staszko. MM&S Airways contracts directly with the customers for air transportation and collects all of the monies paid by the entities that ultimately are provided air transportation using

⁴ Common carriage, in the context of air service, consists of the holding out or provision of air transportation to the public for compensation or hire. See, e.g., *Woolsey v. National Trans. Safety Bd.*, 993 F.2d 516 (5th Cir. 1993); *Voyager 1000 v. Civil Aeronautics Bd.*, 298 F.2d 430 (9th Cir. 1973); *Las Vegas Hacienda, Inc., v. Civil Aeronautics Bd.*, 298 F.2d 430 (9th Cir. 1962); *Intercontinental, U.S., Inc., Enforcement Proceeding*, 41 CAB 583 (1965); *Sky King, Inc., Violations of 49 U.S.C. §§ 41101 and 41712*, Order 2002-10-18 (2002); *Airmark Aviation, Inc., Violations of 49 U.S.C. § 1372*, Order 92-2-14 (1992); and *Viscount Air Services, Inc., Violations of Sections 401 and 411 of the Federal Aviation Act and 14 CFR 201.6*, Order 92-8-26 (1992).

⁵ Order 2001-9-6. Prior to 1994, when Title 49 was recodified and simplified, 49 U.S.C. § 41101 stated that no carrier could “engage” in air transportation without appropriate authority. Although the wording of § 41101 now states that what is prohibited is “providing” air transportation without authority, Congress made clear when it recodified Title 49 that in doing so it did not intend any substantive change to the statute. Act of July 5, 1994, Pub. L. 103-272, § 6(a), 108 Stat. 745, 1378.

⁶ Whether Raytheon was complicit in MM&S Airway’s unlawful operations, thereby engaging in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712, is the subject of a separate investigation.

the aircraft.⁷ Therefore, it is clear that MM&S Airways has engaged in air transportation without appropriate economic authority and has engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In mitigation, MM&S Airways states it had no intention to engage in air transportation without economic authority and believed it was properly operating under Raytheon's Part 135 certificate. MM&S Airways states that in the future it will not hold itself out as an air charter operator and it will not solicit or advertise air transportation or perform air transportation services. Additionally, MM&S Airways states any request to it for air transportation services will be immediately referred to an authorized charter manager for Raytheon or other air charter company that holds economic authority from the Department of Transportation and is certificated by the FAA. MM&S Airways states that it has taken further corrective action and its web site and any future promotional literature will clearly state that MM&S Airways offers "leasing and aircraft management only" and is not an air charter company. MM&S Airways states that air travel performed by any Part 135 certificated operator with its aircraft will be billed by the operator itself and not by MM&S Airways. Finally, MM&S Airways states its dry leases will permit the use of any pilots, so long as they are type certified, current, qualified, and are approved in advance by the company insuring the aircraft.

We view seriously MM&S Airways' violations of the Department's licensing requirements. We have carefully considered the facts of this case, including the explanation provided by the company, and continue to believe enforcement action is necessary. MM&S Airways, in order to avoid litigation and without admitting or denying the alleged violations, agree to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712 by engaging in air carrier service, and to an assessment of \$20,000 in compromise of potential civil penalties with half of that amount to be forgiven if the carrier refrains from further violations over the next year. 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 air transportation operations without appropriate economic authority by MM&S Airways, as well as other companies.

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 MM&S Airways, LLC, violated 49 U.S.C. § 41101, as described above, by engaging in air transportation as an air carrier without appropriate economic authority;

⁷ Similar unlawful arrangements exist involving Executive Airways, LLC and Professional Airways, LLC, commonly-owned companies that are the subject of separate consent orders being issued together with this order.

3. We find that by engaging in the conduct described in paragraph 2, above, MM&S Airways, LLC, engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;

4. MM&S Airways, LLC, and all other entities owned and controlled by, or under common ownership and control with MM&S Airways, LLC, 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. §§ 41101 and 41712;

5. MM&S Airways, LLC, is assessed \$20,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. Of the assessed penalty, \$2,500 is due and payable within 30 days of the date of the issuance of this order \$2,500 is due and payable within 120 days of the date of the issuance of this order, \$2,500 is due and payable within 210 days of the date of the issuance of this order, and \$2,500 is due and payable within 300 days of the date of the issuance of this order. The remaining \$10,000 shall be suspended for one year following the issuance of this order, and then forgiven, unless, during this time period, MM&S Airways, LLC, 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

6. Payments 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. Failure to pay the penalty as ordered shall also subject MM&S Airways, LLC to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with 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:

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Deputy General Counsel

(SEAL)

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