



**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 December, 2005

Capital Airways, Inc.

Served December 29, 2005

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

OST 2005-20077

CONSENT ORDER

This order concerns unauthorized air transportation by Capital Airways, Inc., between Canada and the United States in violation of 49 U.S.C. §§ 41301 and 41712. It directs Capital Airways to cease and desist from further violations of these statutory provisions and assesses the carrier a compromise civil penalty of \$18,000 (US).

Capital Airways, a foreign air carrier within the meaning of 49 U.S.C. § 40102(a)(21), provides charter air transportation from its base in Lincoln, New Brunswick, Canada. At all times relevant to the violations described herein, Capital Airways did not hold economic authority from the Department or safety authority from the Federal Aviation Administration (FAA). Notwithstanding its lack of economic authority, Capital Airways has held out and, on a several occasions, operated charter air transportation between Canada and the United States in contravention of 49 U.S.C. § 41301, which requires that foreign air carriers obtain a permit from the Department prior to commencing service to the United States.¹ Holding out, as well as the actual operation, of such unauthorized air transportation violates section 41301. Violations of section 41301 are also considered to constitute an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.

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 December 12, 2005, Capital Airways 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.

In mitigation, Capital Airways states that it did not intend to violate the Departmental permit requirement. It asserts that, to this end, it consulted various U.S. government officials regarding the requirements to engage lawfully in foreign air transportation between the United States and Canada. Furthermore, the carrier points out that, at all times in this matter, it has cooperated fully with the Office of Aviation Enforcement and Proceedings (Enforcement Office).

The Enforcement Office has carefully considered all of the information provided by Capital Airways, Inc., but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Capital Airways, Inc., have reached a settlement of this matter. Without admitting or denying the violations described above, Capital Airways, Inc., 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 \$18,000 (US) in compromise of potential civil penalties otherwise assessable. Of this amount, \$9,000 shall be paid under the terms described below. The remaining \$9,000 shall be suspended for 12 months following the service date of this order and then forgiven unless Capital Airways, Inc., violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately, and Capital Airways, Inc., 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 Capital Airways, Ltd., violated 49 U.S.C. § 41301 by holding out and operating air service to and from 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, Capital Airways, Inc., engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.
4. We order Capital Airways, Inc., and all other entities owned and controlled by, or under common ownership and control with Capital Airways, Inc., and their successors and assignees, to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712.
5. We assess Capital Airways, Inc., a compromise civil penalty of \$18,000 (US) in lieu of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3, above. Of this amount, \$2,250 shall be due and payable on January 15, 2006, April 15, 2006, August 15, 2006, and December 15, 2006, respectively. The remaining \$9,000 shall be

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

suspended for 12 months after the service date of this order, and then forgiven unless Capital Airways, Inc., violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Capital Airways, Inc., may be subject to additional enforcement action. Failure to pay this penalty as ordered shall also subject Capital Airways, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act.

6. We order Capital Airways, Inc., to pay the compromise civil penalty assessed in ordering paragraph 5, above, in accordance with the schedule of payments in that paragraph. Said 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. Failure to pay the penalty as ordered shall subject Capital Airways, 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.

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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