



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

Issued by the Department of Transportation
on the 8th day of July, 2005

Southern Caribbean Air, Inc.

**Violations of 49 U.S.C. § 41712
and 14 CFR 399.84**

Docket OST 2005-20077

Served July 8, 2005

CONSENT ORDER

This consent order concerns unauthorized advertising and sales of charter air transportation by Southern Caribbean Air, Inc. ("Southern Caribbean Air"), a Florida charter operator. The unauthorized holding out by Southern Caribbean Air violates the Department's Public Charter regulations (14 CFR Part 380) and 49 U.S.C. § 41101, and constitutes unfair and deceptive practices in violation of 49 U.S.C. § 41712. This order directs Southern Caribbean Air to cease and desist from future violations and assesses the carrier compromise civil penalties of \$20,000.

Public Charter operators must comply with the requirements of 14 CFR Part 380. Among the most important requirements of 14 CFR Part 380 are the rules designed to prevent economic harm to the charter passengers. These rules include the requirements that 1) no charter flight be sold unless there is in place an approved Public Charter prospectus based upon a contract between the charter operator and a direct air carrier covering the transportation to be sold (14 CFR 380.25(a), 380.28(a) and 380.28(b)); 2) no charter operator shall operate, sell, receive money from any prospective participant for, or offer to sell or otherwise advertise a charter until the Department has accepted a Public Charter prospectus (14 CFR 380.25(a)); 3) all solicitation materials for a Public Charter shall include the name of the charter operator, the name of the direct air carrier and a statement referring to the operator-participant contract for further information about conditions applicable to the charter, or the full text of the operator-participant contract (14 CFR 380.30(a) and (b)); and 4) the charter operator must assure that each prospective participant sign a copy of the operator-participant contract (14 CFR 380.31(a) and (b)).

Southern Caribbean Air was formed in February 2005 to provide charter air transport services between the U.S. and Haiti, chiefly during the summer months. Prior to applying for or receiving authority from the Department, Southern Caribbean Air broadcast advertisements of its service on three radio stations, printed and distributed flyers advertising its charter flights, advertised in the regional Creole-language magazine, *Lakay*, and offered information about its charter flight services on its web site,

www.southerncaribbeanair.com. The firm offered to sell, made reservations, and sold charter trips to numerous consumers long before it applied to the Department for any authority. None of the solicitation materials it used mentioned the operator-participant contract, nor were any copies of such a contract provided to the participants. Southern Caribbean Air thus violated the various provisions of Part 380 noted above.¹

Southern Caribbean Air, by holding out charter service before it filed for and received Public Charter authority in violation of 14 CFR Part 380, also violated 49 U.S.C. § 41101, which prohibits a company from engaging in air transportation without proper economic authority. Its conduct also constituted an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In explanation and mitigation, Southern Caribbean Air states that, at all times, its goal has been to comply with all of the Department's requirements and any violations were unintentional. Southern Caribbean Air explains that it believed that it had taken the necessary steps to obtain the required authority from the Department. According to Southern Caribbean Air, when it learned that it had not obtained all of the necessary authority, it immediately applied for the required Public Charter prospectus from the Department. The firm maintains that it refunded all ticket money that was inappropriately collected, and has now taken the necessary steps to assure that it will fulfill the requirements of the Department's regulations in the future.

The Enforcement Office has carefully considered the information provided by Southern Caribbean Air, but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and Southern Caribbean Air have reached a settlement of this matter. Southern Caribbean Air consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR Part 380, and to the assessment of \$20,000 in compromise of potential civil penalties, of which \$10,000 will be paid according to the schedule stated below.² We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's licensing requirements by Southern Caribbean Air, as well as by other companies engaged in similar air services.

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

¹ Southern Caribbean Air did not file its application for Public Charter authority to conduct charter operations from Fort Lauderdale, Florida, to Cap Haitien and Port-au-Prince, Haiti, until the morning of Wednesday, June 15, 2005. The Department approved its Public Charter Prospectus, (PC) 05-146, covering two flights at midday that day, the first of which Southern Caribbean Air operated that evening.

² The amount of the civil penalty reflects the small size of the respondent, its cooperation, the mitigating circumstances it mentioned regarding the late-filed prospectus, as well as the limited number of consumers affected.

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 Southern Caribbean Air, Inc., violated 14 CFR 380.25(a), 380.28(a) and 380.28(b) by advertising and selling charter air transportation without having in place an approved Public Charter prospectus covering its Public Charter flights;
3. We find that Southern Caribbean Air, Inc., violated 14 CFR 380.30(a) and (b) by not including in its solicitations a statement referring to the operator-participant contract for further information about conditions applicable to the charter, or the full text of the operator-participant contract; and also violated 14 CFR 380.31(a) and (b) by not assuring that each prospective participant signed a copy of the operator-participant contract;
4. We find that, by engaging in the conduct and violations described in paragraphs 2 and 3 above, Southern Caribbean Air, Inc., violated 49 U.S.C. § 41101 and engaged in unfair or deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. Southern Caribbean Air, Inc., and all other entities owned or controlled by Southern Caribbean Air, Inc., and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR Part 380;
6. Southern Caribbean Air, Inc., is assessed \$20,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, of which \$10,000 shall be due and payable according to the following schedule: a first payment of \$2,500 shall be due and payable within 30 days of the service date of this order; three subsequent payments of \$2,500 each shall be due and payable 120 days, 240 days and one year, respectively, following the service date of this order. The remaining \$10,000 of the assessed penalty shall be suspended for one year following the service date of this order and then forgiven, provided that Southern Caribbean Air, Inc., complies with the payment terms of this order, as well as its cease and desist provisions, during the suspension period; if it fails to do so, the entire unpaid balance of the penalty shall become due and payable immediately, and Southern Caribbean Air, Inc., may be subject to further enforcement action; and
7. Failure to pay the compromise assessment as ordered will subject Southern Caribbean Air, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and
8. 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/general/orders/aviation.html>*