



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

Issued by the Department of Transportation
On the Tenth day of August, 2007

Private Jet Services Group, Inc.

Violations of 49 U.S.C. § 41712

Docket OST 2007-26781
Served August 10, 2007

CONSENT ORDER

Summary

This consent order concerns a violation by Private Jet Services Group, Inc., (PJS) an air charter broker, of 49 U.S.C. § 41712, which prohibits air carriers and ticket agents from engaging in unfair and deceptive practices and unfair methods of competition. The violation arose from PJS's marketing and sale of air transportation services ultimately operated by a company that did not hold proper authority from the Department. This order directs PJS to cease and desist from such conduct and assesses PJS a compromise civil penalty of \$55,000.

Applicable Law

Citizens of the United States¹ are required under 49 U.S.C. § 41101 to hold economic authority² from the Department, either in the form of a "certificate of public convenience and necessity" or an exemption³ from the certificate requirement, in order to engage

¹ A "citizen of the United States" includes a corporation organized in the United States that 1) meets certain specified numerical standards regarding the citizenship of its president, officers and directors, and holders of its voting interests and 2) is under the actual control of citizens of the United States. 49 U.S.C. § 40102(a)(15).

² This authority is separate and distinct from any safety authority required by the Federal Aviation Administration.

³ Such exemptions, for example, may take the form of direct air carrier authority as an air taxi pursuant to 14 CFR Part 298 (limited to aircraft originally designed for 60 passenger seats or less) or indirect air carrier authority as a public charter operator pursuant to 14 CFR Part 380. A person or other entity that is directly engaged in the operation of aircraft that are used to provide air transportation is a "direct air carrier." A person or other entity that is not a direct air carrier, but that solicits in its own right members of the public to purchase air transportation is an "indirect air carrier." See, e.g., *Bratton v. Shiffren*, 635 F.2 1228 (7th Cir. 1980), cert. denied, 449 U.S. 1123 (1980); *Civil Aeronautics Board v. Carefree Travel, Inc.*, 513 F.2d 375 (2d Cir. 1975).

directly or indirectly in air transportation⁴. “Air transportation” is the transportation of passengers or property by air as a common carrier between two places in the United States or between a place in the United States and a place outside of the United States or the transportation of mail by air.⁵ In the context of aviation, a “common carrier” is a person or other entity that, for compensation or hire, holds out and/or provides to the public transportation by air between two points.⁶

Operating as a common carrier, i.e., engaging directly or indirectly in air transportation, without economic authority, i.e., a certificate or an exemption, violates 49 U.S.C. § 41101.⁷ A company or carrier that does not hold economic authority may not carry traffic derived from the holding out of air transportation by a third party, such as another air carrier or an air charter broker, agent, or affiliated company.⁸ The Department has found entities that have facilitated the unlawful common carriage operations of third-parties to have themselves engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712 when they knew or should have known that the unlicensed entities lacked economic authority.⁹

Background

PJS is an air charter broker incorporated in New Hampshire that specializes in arranging single-entity¹⁰ charter air transportation. Generally, in conducting its business since 2003 and currently, PJS acts as an agent for charterers, i.e., persons or entities seeking charter air transportation for themselves. However, on May 26, 2006, PJS entered into a “charter marketing agreement” (“Agreement”) with IDM Corporate Aviation Services, LLC,

⁴ From the standpoint of the requirements of section 41101, the holding out of air service, as well as the actual operation of that service, constitutes “engaging” in air transportation. Prior to 1994, when Title 49 of the United States Code 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 section 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.

⁵ 49 U.S.C. §§ 40102(a)(5), (a)(23), and (a)(25).

⁶ *Woolsey v. National Trans. Safety Bd.*, 993 F.2d 516, 522-23 (5th Cir. 1993).

⁷ See, e.g., *Contract Air Cargo, Inc., Violations of 49 U.S.C. §§ 41101 and 41712*, Order 2005-3-39 (Mar. 30, 2005).

⁸ See, e.g., *Principal Air Services, LLC, and David C. Bernstein, Violations of 49 U.S.C. §§ 41101 and 41712*, Order 2006-7-13 (Jul. 11, 2006).

⁹ See, e.g., *Platinum Jet Management, LLC, et al, Violations of 49 U.S.C. §§ 41301, 41703, and 41712*, Order 2006-6-14 (June 12, 2006) and *Darby Aviation, Inc., d/b/a AlphaJet International, Violations of 49 U.S.C. § 41712*, Order 2005-12-1 (Dec. 1, 2005).

¹⁰ A single-entity charter is a charter for the entire capacity of the aircraft, the cost of which is borne by the charterer and not directly or indirectly by the individual passengers.

(IDM) a carrier that owns and operates a single executive-configured Boeing 737 (N64SW) pursuant to 14 CFR Part 125, a Federal Aviation Administration (FAA) regulation reserved for non-common carriers using U.S. registered aircraft with passenger seating configurations of 20 or more or a maximum payload capacity of 6,000 lbs. or more.¹¹

At the time PJS entered into the Agreement, PJS knew that IDM did not have economic authority, but PJS states that it believed that under an aircraft management agreement executed on May 15, 2006, between IDM and a fully certificated air carrier, IDM would soon place N64SW on the FAA-issued operations specifications of a carrier that did have economic authority, which would then operate any flights aboard N64SW that PJS arranged. As the parties worked toward that end and pursuant to the Agreement, PJS then proceeded to hold out to the public, on IDM's behalf, air transportation specifically aboard N64SW. Shortly thereafter, PJS was contacted by the representative of a well-known folk rock band looking to charter an aircraft for its summer 2006 North American tour. PJS offered the band a choice of several aircraft, including N64SW. The band ultimately selected N64SW and, through its representative, entered into a charter contract with IDM, through its agent, PJS.

As the start date for the tour drew closer, it became apparent that N64SW could not be added to the operations specifications of the duly licensed carrier in time for the carrier to fly the band. Rather than breaking or seeking modification of the contract that PJS had entered into on IDM's behalf with the band, IDM operated the flights itself. In addition, in July 2006, IDM transported the staff and guests of a foreign embassy for compensation pursuant to a separate contract PJS entered into on IDM's behalf with representatives of the embassy.

Conclusion

At all times relevant to this matter, IDM did not hold economic authority as a direct or an indirect air carrier, a fact of which PJS was aware. As an unlicensed carrier, IDM cannot legally carry traffic derived from its own marketing efforts or those of a third party, such as PJS. Notwithstanding this proscription, IDM entered into a marketing agreement with PJS, pursuant to which PJS held out N64SW on IDM's behalf as being available to the public for charter.

The Department has found entities that facilitated the unlawful common carriage operations of other entities to have themselves engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712 when they knew or should have known that the unlicensed entities lacked economic authority. In the instant case, IDM's unauthorized common carriage operations were the fruit of PJS's marketing efforts, which PJS undertook with knowledge that IDM did not have economic authority.¹² Thus, PJS was an instrument of IDM's illegal activity.

¹¹ 14 CFR 125.1.

¹² IDM's involvement in this matter was the subject of a separate consent order. *IDM Corporate Aviation Services, LLC, Violations of 49 U.S.C. §§ 41101 and 41712*, Order 2007-2-6 (Feb. 5, 2007).

Accordingly, we find that PJS has facilitated IDM's unlawful conduct and has, therefore, engaged in an unfair and deceptive trade practice and an unfair method of competition in violation of section 41712.

Mitigation

PJS states that it did not intend to facilitate the unlicensed common carriage operations of IDM. PJS states that it relied on the assurances of IDM, the duly licensed carrier that was to operate the flights, and IDM's and the carrier's key technical personnel that the subject aircraft, N64SW, would be placed on the FAA operations specifications of the licensed air carrier in time for the carrier to operate the flights for IDM's customers. PJS states that such reliance was reasonable given that 1) the licensed carrier was already an operator of large aircraft in charter service and 2) N64SW was already covered under the duly licensed carrier's master insurance policy. Furthermore, PJS asserts that IDM advised it that IDM could, under FAA regulations, lawfully operate the flights as demonstration flights. PJS states that it accepted IDM's advice in light of IDM's experience and a key circumstance, i.e., that both charterers had expressed interest in future use or purchase of the aircraft. Thus, in PJS's mind, the concept of demonstration flights by IDM made sense. PJS states that it was only after the flights operated that it became aware that the flights it had arranged could not be operated as demonstration flights. At all times during this matter, PJS has exhibited a cooperative attitude toward the Department and has taken steps to ensure that there is no recurrence of the events that led to this consent order. PJS has not previously been the subject of enforcement action and the Department has no record of consumer complaints against PJS before or after the events discussed in this order.

Decision

After a careful examination of the available information, including that provided by PJS, the Office of Aviation Enforcement and Proceedings (Enforcement Office) continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and Private Jet Services Group, Inc., have reached a settlement of this matter. Without admitting or denying the violations described herein, Private Jet Services Group, Inc., agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and to the assessment of \$55,000 in compromise of potential civil penalties otherwise assessable. Of this total amount, \$27,500 shall be paid under the terms described below. The remaining \$27,500 shall be suspended for 15 months following the date of issuance of this order and then forgiven, unless Private Jet Services Group, Inc., violates this order's cease and desist, reporting, or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Private Jet Services Group, Inc., may be subject to further enforcement action. This compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and establishes a deterrent to future similar unlawful conduct by air charter brokers when dealing with entities that lack the appropriate economic authority to engage in air transportation.

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 Private Jet Services Group, Inc., by facilitating unauthorized common carriage by IDM Corporate Aviation Services, LLC., as described above, engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712.
3. We order Private Jet Services Group, Inc., and all other entities owned and controlled by or under common ownership and control with Private Jet Services Group, Inc., and their successors and assignees to cease and desist from facilitating unauthorized common carriage in violation of 49 U.S.C. § 41712.
4. We order Private Jet Services Group, Inc., 13 months after the date of issuance of this order, to submit to the Office of Aviation Enforcement and Proceedings a sworn statement from a responsible company official attesting to the fact that the Private Jet Services Group, Inc., has not marketed or otherwise facilitated the unauthorized operations of an air carrier or any other entity in the past 13 months and at that time to provide such other information relevant to confirmation of that statement as is requested by the Office of Aviation Enforcement and Proceedings.
5. We assess Private Jet Services Group, Inc., a compromise civil penalty of \$55,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraph 2, above. Of this total amount, \$27,500 shall be due and payable 30 days from the issuance date of this order. The remaining \$27,500 shall be suspended for 15 months following the date of issuance of this order and then forgiven unless Private Jet Services Group, Inc., violates this order's cease and desist, payment, or reporting provisions, in which case the entire unpaid amount shall become due and payable immediately and Private Jet Services Group, Inc., may be subject to additional enforcement action for failure to comply with this order. Failure to pay the penalty as ordered shall also subject Private Jet Services Group, 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.
6. We order Private Jet Services Group, Inc., to pay the compromise civil penalty assessed in ordering paragraph 5, above, 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 initiative.

BY:

**ROSALIND A. KNAPP
Deputy General Counsel**

(SEAL)

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