



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

Issued by the Department of Transportation
on the 17th day of July, 2009

Paragon Air, Inc.

**Violations of 49 U.S.C. § 41712 and 14 CFR
Part 374**

Docket OST 2009-0001

Served July 17, 2009

CONSENT ORDER

This consent order concerns the failure of Paragon Air, Inc., ("Paragon") to comply with (1) the requirement, implemented by 14 CFR Part 374, to make prompt credit card refunds as required by the Consumer Credit Protection Act and Regulation Z of the Board of Governors of the Federal Reserve System, 15 U.S.C. §§ 1601-1693r and 12 CFR Part 226 and (2) Department enforcement case precedent that requires that cash refunds be made within 20 days of receipt of full documentation of such a request.

Applicable Law

Paragon, as an air carrier, is subject to the credit refund requirements of Regulation Z of the Board of Governors of the Federal Reserve System, 15 U.S.C. §§ 1601-1693r. 12 CFR Part 226 and 14 CFR Part 374, which implements Regulation Z, establish that, with respect to refund requests involving airline tickets purchased with a credit card, a creditor—here Paragon—must transmit a credit statement for a passenger refund to the credit card issuer within seven business days of receipt of full documentation for the refund requested. In addition, through its enforcement case precedent, the Department has required that, with respect to tickets purchased with cash, an airline must provide a refund within 20 days of receipt of full documentation of such a request. A failure to provide such refunds within the stipulated time periods is considered to be an unfair and deceptive practice in violation of 49 U.S.C. § 41712.¹

¹ See, e.g., *Northwest Airlines, Inc., Violations of Consumer Protection Regulations*, Order 87-11-33 (November 16, 1987); *Eastern Airlines, Inc., Violations of Consumer Protection Regulations*, Order 89-8-

Background

Paragon was an air taxi operator registered with the Department under 14 CFR Part 298 and held authority from the Federal Aviation Administration (“FAA”) under certificate number DDLA148D. Paragon provided air transportation from its base in Honolulu, Hawaii until September 2008, when the FAA grounded Paragon’s aircraft, a Partenavia P-68, for airworthiness reasons. On April 22, 2009, the FAA terminated Paragon’s operating authority because the carrier failed to provide the FAA with evidence of insurance as required by 14 CFR Part 205 and 14 CFR Part 298.

As a result of consumer complaints filed with its Aviation Consumer Protection Division, the Office of Aviation Enforcement and Proceedings (“Enforcement Office”) conducted an investigation into whether Paragon was failing to provide prompt refunds as required by Regulation Z and Department precedent. That investigation confirmed that the carrier failed to process credit refunds within seven business days and cash refunds within 20 days of the receipt of appropriate documentation for the requested refunds.

The Enforcement Office discovered during its investigation that, in November 2008, Paragon was sold by Mr. Nik Charles to Mr. John Weiser. This information was confirmed in communications with the Hawaii attorney general’s office. Furthermore, Mr. Weiser informed the Enforcement Office that he was not aware of any liabilities in the form of unrefunded tickets owed by Paragon to passengers at the time he purchased the company. According to Mr. Weiser, the previous owner verbally assured him that there were no liabilities owed by Paragon, although he did not provide Mr. Weiser with any business records, bank statements, passenger lists, or evidence regarding completed or scheduled flights.

Mitigation

In mitigation, Paragon asserts that it has cooperated fully with the Enforcement Office’s investigation. Furthermore, Paragon asserts that due to the recent ownership change, it did not know consumers were owed money for flights that were never operated prior to being contacted by the Enforcement Office.

Decision

Paragon Air, Inc.’s failure to process credit and cash refund requests within the period required by Regulation Z and the Department’s enforcement case precedent has harmed consumers and constitutes a violation of 14 CFR Part 374 and an unfair and deceptive practice in violation of 49 U.S.C. § 41712 that subjects Paragon Air, Inc., to civil penalties under 49 U.S.C. § 46301. In this connection and in order to avoid litigation, the

50 (August 31, 1989); *Boston-Maine Airways Corp., Violations of 49 U.S.C. § 41712 and 14 CFR Part 374*, Order 2006-7-7 (July 7, 2006).

Enforcement Office and Paragon Air, Inc., have reached a settlement of this matter. Without admitting or denying the violations described above, Paragon Air, Inc., consents to the issuance of this order to cease and desist from future violations of Regulation Z, 14 CFR Part 374 and related Department enforcement case precedent, and 49 U.S.C. § 41712 with respect to passenger refunds, and to the assessment of a \$25,000 in compromise of potential civil penalties. This amount will be due 90 days following the service date of this order unless, within that 90 day period, Paragon Air, Inc. refunds all monies owed to all known consumers whose flights were not operated, provides the Enforcement Office with the proof of such payments, as outlined below, and complies with the cease and desist provision of this order. If Paragon Air, Inc., fails to do so, the entire unpaid balance of the penalty shall become due and payable immediately, and Paragon Air, Inc., may be subject to further enforcement action. This compromise is appropriate due to the circumstances of this particular case. Furthermore, the Enforcement Office believes this compromise serves the public interest and establishes a deterrent to future similar unlawful practices by Paragon Air, Inc., and other carriers.

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 Paragon Air, Inc., violated 14 CFR Part 374 by failing to process on a timely basis refunds of money paid by credit card to the carrier for certain air transportation, as required by the Consumer Credit Protection Act and Regulation Z of the Board of Governors of the Federal Reserve System, 15 U.S.C. §§ 1601-1693r and 12 CFR Part 226;
3. We find that by engaging in the conduct and violations described in paragraph 2 above, and by failing to process refunds of money paid by cash to the carrier for certain air transportation within 20 days of receipt of complete documentation for such refunds, Paragon Air, Inc., also engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712;
4. We order Paragon Air, Inc., to submit to the Office of Aviation Enforcement and Proceedings within 90 days of the service date of this order, evidence that confirms Paragon Air, Inc. has refunded all monies owed to all known consumers whose flights were not operated and who have filed properly documented refund requests with Paragon Air, Inc. Such evidence must include, but is not limited to: (1) a list of all consumers who received refunds, including their address, phone number, and the amount of the refund received; (2) proof of payment, such as copies of the checks sent to the consumers; and (3) a declaration from Paragon Air, Inc., signed by Mr. John Weiser under penalty of perjury, stating that Paragon Air, Inc. refunded all monies owed to all known consumers whose flights were not operated;

5. Paragon Air, Inc., and all other entities owed and controlled by, or under common ownership and control with, Paragon Air, Inc., and their successors and assignees, are ordered to cease and desist from future violations of Regulation Z, 14 CFR Part 374, and 49 U.S.C. § 41712; and
6. We assess Paragon Air, Inc., a compromise civil penalty of \$25,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3, above. This amount shall be due 90 days following the service date of this order unless, within that 90 day period, Paragon Air, Inc. refunds all monies owed to all known consumers whose flights were not operated, provides the Enforcement Office with the proof of such payments as described in ordering paragraph 4, and complies with the cease and desist provision of this order. If Paragon Air, Inc., fails to comply with this order, the entire \$25,000 civil penalty shall become due and payable immediately, and Paragon Air, Inc., shall be subject to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible additional 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 initiative.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

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