



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

Issued by the Department of Transportation  
On the Fourth day of September, 2013

**Valley National Bank**

**Violations of 14 CFR Part 380 and  
49 U.S.C. § 41712**

**Docket DOT OST 2013-0004**

**Served September 4, 2013**

**CONSENT ORDER**

This order concerns violations of 14 CFR Part 380, the Department's rule on public charters, by Valley National Bank (Valley National) in its role as a depository (escrow) bank. In 2011 and 2012, Valley National maintained escrow accounts for two charter operators: Southern Sky Air & Tours, d/b/a Myrtle Beach Direct Air & Tours (Direct Air) and EZjet GT, Inc., d/b/a EZjet Air Services (EZjet). In its management of both depository accounts, Valley allowed a number of disbursements contrary to the requirements of section 380.34. The bank's conduct also constituted an unfair and deceptive practice in violation of 49 U.S.C. § 41712. This order directs Valley National to cease and desist from similar future violations and assesses a civil penalty of \$125,000.

**Factual Background and Applicable Law**

Direct Air provided service primarily between points in the Northeast and Midwest, on the one hand, and Myrtle Beach, South Carolina, and destinations in Florida, on the other. It abruptly ceased operations on March 13, 2012, and shortly thereafter entered liquidation bankruptcy. EZjet, a charter operator which provided charters between New York and Georgetown, Guyana, ceased service in November 2012. Pursuant to the depository agreements attached to prospectuses filed with the Department by Direct Air and EZjet, Valley National agreed to act as depository bank for the two companies and comply with Part 380 for their respective charter programs.

Under 14 CFR 380.34(b)(2), the depository bank is not to disburse funds to the charter operator prior to two days after the completion of each charter flight and then only upon certification by the direct air carrier of the completion date. In addition, section 380.34(b)(2) specifies that the bank must not pay third party vendors (in Valley's case, a fuel contractor) until: (a) the charter price has been paid in full to the direct air carrier; (b) the bank has received invoices from the respective vendors; and (c) the tour operator has certified that the services were in fact rendered.

In some instances, Valley National transferred funds to the operating account of a charter operator, EZjet, from that program's escrow account without receiving verification from the direct air carrier involved that the flight had been completed. In addition, there were two flight certifications missing from another charter operator, Direct Air. In the case of EZjet, payments to the tour operator without appropriate certification from the operating carriers occurred over several months prior to its cessation of operations.

In addition, in the case of Direct Air, the bank transferred funds to the account of ChemOil, the fuel supplier for many of the charter operator's flights, based solely on instructions from the charter operator. These transfers, contrary to the requirements of section 380.34(b)(2), were made without the direct air carriers being paid in full, without documentation identifying fuel costs with specific flights, and without invoices from ChemOil. These unauthorized transfers continued over the period from late 2011 to the carrier's cessation of service.

### **Mitigation**

In mitigation, Valley National denies certain of the assertions made by the Office of Aviation Enforcement and Proceedings (Enforcement Office).

Regarding the alleged instances in the EZjet program of funds being transferred by Valley National to EZjet without receiving verification from that program's air carrier, Valley National asserts that no transfers of funds were made by Valley National to EZjet without any flight certifications on hand.

Valley National maintains that regarding the allegation that two flight certifications were missing in the Direct Air program, the documents provided to the Department were voluminous and detailed, and only two individual flight certifications covering a mere 16 flights for one particular air carrier could no longer be located by Valley National. Valley National states that when compared to the 12 other certifications for this particular air carrier covering over a hundred flights, as well as the several dozen flight certifications on hand for four other direct air carriers covering several hundred flights, the inability of Valley National to locate two certifications is not significant. Valley National claims that because of its practice and procedure, it had these two certifications on hand at the time of payment to the direct air carrier.

Regarding the fuel supplier payments alleged in connection with the Direct Air program, Valley National does not contest that such payments were made by Valley National at

Direct Air's instructions from unrestricted funds. Valley, however, disagrees that the particular section relied upon by the Enforcement Office, 14 CFR § 380.34(b)(v), applies to the transfers to ChemOil, rendering the requirement of receipt of the documents as alleged by the Enforcement Office unnecessary.

### **Decision**

The Enforcement Office has given careful consideration to the information and arguments presented by Valley National, but continues to believe that enforcement action is warranted. The Enforcement Office and Valley National have reached a settlement of this matter in order to avoid litigation and, with respect to Valley National, in accordance with Federal Rule of Evidence 408 and comparable state rules of evidence. Without admitting or denying the violations described above, Valley National consents to the issuance of an order to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR Part 380. The company also agrees to the assessment of \$125,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301.

This compromise assessment is appropriate considering the nature and extent of the violations described herein, and the size and sophistication of the bank, and will serve the public interest. It represents a strong deterrent against future inappropriate disbursements by financial institutions serving as depository banks under Part 380.

This order is issued under the authority contained in 49 CFR Part 1.

### **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 Valley National Bank violated the requirements of 14 CFR Part 380 of the Department's regulations, as described above, by: (a) transferring funds from the escrow accounts maintained on behalf of certain charter operators to their operating accounts without first obtaining certification from the direct air carriers that the pertinent flights in the charter programs had been completed; and (b) paying third party vendors before the flight price had been paid in full to the direct air carrier and without receiving appropriate invoices from the vendors;
3. We find that by engaging in the conduct described in paragraph 2, above, Valley National Bank has engaged in unfair and deceptive trade practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. Valley National Bank and its successors and assigns are ordered to cease and desist from violating 14 CFR Part 380 of the Department's regulations by failing to abide by the depository account requirements of Part 380 and similar violations of 49 U.S.C. § 41712;

5. Valley National Bank is assessed \$125,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2 and 3 above. Of this total penalty amount, \$62,500 shall be due and payable within 15 days from the date of issuance of this order. The remaining portion of the civil penalty amount, \$62,500, shall become due and payable immediately if, within one year of the date of issuance of this order, Valley National violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case Valley National may be subject to additional enforcement action for violations of this order; and

6. Payment shall be made to the account of the U.S. Treasury through the Pay.gov website in accordance with the attached instructions. Failure to pay the penalty as ordered shall subject Valley National 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 motion.

**BY:**

**SAMUEL PODBERESKY**  
**Assistant General Counsel for**  
**Aviation Enforcement and Proceedings**

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