



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

Issued by the Department of Transportation
On the Eleventh day of March, 2014

**Charter by the Seat LLC
Violations of 49 U.S.C. § 41712 and
14 CFR Part 380**

Served: March 11, 2014

Docket OST-2014-0001

CONSENT ORDER

This consent order concerns violations by Charter by the Seat LLC of certain consumer protection provisions of the Department's public charter regulations during 2013. Charter by the Seat was a public charter operator that sold public charter flights directly to the public. Charter by the Seat failed to properly maintain an escrow account and improperly used and handled charter participant funds in violation of 14 CFR Part 380. These activities also constituted an unfair and deceptive practice in violation of 49 U.S.C. § 41712. This order directs Charter by the Seat to cease and desist from future similar violations and assesses the operator \$30,000 in civil penalties.

Applicable Law

Public charter operators must comply with the requirements of 14 CFR Part 380. Among the most important requirements of Part 380 are the rules designed to prevent economic harm to charter participants. These rules include the requirement that charter participants' funds be deposited into an escrow account at a designated depository bank that will maintain a separate accounting for each charter group. 14 CFR 380.34. One purpose of this requirement is to ensure that there are sufficient funds in a particular depository account for that account's particular flight and, if there is not, that passenger funds paid toward other flights are not used for flights for which there are insufficient

funds.¹ A public charter operator's failure to comply with 14 CFR Part 380 also constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712.

Facts and Conclusions

Charter by the Seat filed a public charter prospectus on December 11, 2012, and received approval to conduct public charter operations on December 17, 2012. That prospectus, PC No. 12-218, authorized flights between Florida and the Bahamas with Pioneer Air Service LLC listed as the direct air carrier. These flights were scheduled to operate from December 2012 to December 2013.

During a review of Charter by the Seat's program, the Office of Aviation Enforcement and Proceedings (Enforcement Office) discovered a number of irregularities in Charter by the Seat's escrowing activities. Specifically, although Charter by the Seat signed a Public Charter Depository Agreement stating that it had established a depository account meeting the requirements of 14 CFR 380.34, which was submitted to the Department, the account was never utilized for passenger funds. Charter by the Seat did not present its depository bank with a flight-by-flight accounting in order for it to properly segregate charter participant funds nor did Charter by the Seat submit the required certifications of flight completions to the bank as required by section 380.34 in order to receive payment after the completion of each flight. Instead, charter participant funds were deposited directly into an operating account maintained by Pioneer Air Service, the direct air carrier. On August 12, 2013, Charter by the Seat's escrow account was closed due to inactivity.

Charter by the Seat's failure to adhere to the escrow requirements of 14 CFR 380.34 had the potential to cause significant consumer harm. By engaging in the conduct described above, Charter by the Seat violated section 380.34 and engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712.

Mitigation

In mitigation, Charter by Seat states that it did not intend to violate the Department's public charter regulations and has not conducted any public charter operations since receiving the Department's initial investigation letter. Charter by the Seat states that in response to the Department's investigation, it has implemented several internal mechanisms designed to avoid any future violations of the Department's public charter regulations. Specifically, Charter by the Seat states that it has designated an individual as the company's "quality assurance manager" who will obtain specialized training in the rules pertaining to public charters and who will review the handling of all monies related to public charter operations. In addition, Charter by the Seat states that it will conduct

¹ See *Liberty Bank v. BankAmerica National Trust Co.*, 1996 WL 343048 (S.D.N.Y.), and *Valley National Bank, Violations of 14 CFR Part 380 and 49 U.S.C. § 41712*, Order 2013-9-2 (Sept. 4, 2013).

quarterly audits of its public charter finances in order to ensure continued compliance with 14 CFR Part 380.

Decision

We view seriously Charter by the Seat's violations of 49 U.S.C. § 41712 and 14 CFR Part 380. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. By this order, the Department finds that Charter by the Seat failed to adhere to the Department's public charter regulations and the statutory prohibition on unfair and deceptive practices.

In order to avoid litigation, Charter by the Seat has agreed to settle this matter with the Enforcement Office and enter into this consent order directing Charter by the Seat to cease and desist from future similar violations of 49 U.S.C. § 41712 and 14 CFR Part 380, and assessing \$30,000 in compromise of potential civil penalties otherwise due and payable. The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents a strong deterrent to future similar unlawful practices by Charter by the Seat and other public charter operators.

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 Charter by the Seat LLC violated 14 CFR 380.34 by failing to properly maintain a public charter escrow account and by improperly using and handling charter participant funds;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, Charter by the Seat LLC engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;

4. We order Charter by the Seat LLC and all other entities owned or controlled by, or under common ownership and control with Charter by the Seat LLC, its successors, affiliates, and assigns, to cease and desist from further violations of 49 U.S.C. § 41712 and 14 CFR Part 380;
5. We assess Charter by the Seat LLC \$30,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above. Of this total penalty amount, \$5,000 shall be due and payable within thirty (30) days of the date of issuance of this order; \$5,000 shall be due and payable within sixty (60) days of the date of issuance of this order; and \$5,000 shall be due and payable within ninety (90) days of the date of issuance of this order. The remaining portion of the civil penalty amount, \$15,000, shall become due and payable immediately if, within one year of the date of issuance of this order, Charter by the Seat LLC violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case Charter by the Seat LLC may be subject to additional enforcement action for violation of this order; and
6. We order Charter by the Seat LLC to remit the payment assessed in paragraph 5, above, within 30 days of the issuance of this order. Payment shall be made through Pay.gov to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Charter by the Seat LLC to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing 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:

BLANE A. WORKIE
Acting Assistant General Counsel for
Aviation Enforcement and Proceedings

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