



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

Issued by the Department of Transportation  
On the Third day of July, 2012

**Bahamasair Holdings Limited**

**Docket OST 2012-0002**

**Violations of 49 U.S.C. § 41712 and  
14 CFR 221.107(d) and Part 374**

**Served July 3, 2012**

**CONSENT ORDER**

This consent order concerns violations by Bahamasair Holdings Limited (Bahamasair) of the Department-enforced laws relating to refund requests involving airline tickets and providing notice of liability limits on flights covered by the Montreal Convention (Convention). It directs Bahamasair to cease and desist from future similar violations and assesses the carrier a compromise civil penalty of \$70,000.

**Refund Requests Involving Airline Tickets**

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 Bahamasair—must transmit a credit statement for a passenger refund to the credit card issuer within seven (7) business days of receipt of full documentation for the refund requested. Pursuant to 14 CFR 221.107(d), air carriers and foreign air carriers must provide passengers with conspicuous written notice, on or with the ticket, or other similar document, of the salient features of any terms that, among other things, restrict refunds of the price of the transportation or impose monetary penalties on customers. A carrier's failure in either regard violates the applicable rule and constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

Based on a consumer complaint alleging a significant delay in processing a refund by Bahamasair, the Office of Aviation Enforcement and Proceedings (Enforcement Office) conducted an investigation of Bahamasair's refund practices and found that in a significant number of cases, Bahamasair failed to forward a credit to the credit card company within seven business days after receiving a complete refund application. Additionally, the Enforcement Office found that Bahamasair charged a processing fee for refunds without providing consumers with conspicuous written notice of those fees on or with the tickets, as required.

### **Notice of Baggage Liability Limits**

Article 24 of the Montreal Convention (Convention) authorizes the International Civil Aviation Organization (ICAO) to adjust for inflation the carrier liability limit under the Convention for *inter alia* loss, damage, or delay of baggage. Accordingly, on June 30, 2009, ICAO notified State Parties that, effective December 30, 2009, the baggage liability limit in Article 22 would increase from 1,000 to 1,131 Special Drawing Rights (SDR). On November 9, 2009, the Enforcement Office published a notice alerting U.S. and foreign air carriers to revise their contracts of carriage, tariffs, required notices, and practices to reflect the increase. The notice also warned carriers that the Enforcement Office would consider failure to do so by the effective date to be an unfair or deceptive business practice in violation of 49 U.S.C. § 41712.

Notwithstanding this notice, Bahamasair failed to revise its contract of carriage to reflect the increased baggage liability limit. Rather, the carrier continued to state that the minimum liability limit for lost, damaged, and delayed baggage was 1,000 SDR for a lengthy period of time.

### **Mitigation**

In mitigation, Bahamasair points out that it is a small airline when compared to other foreign and U.S. airlines that have been subject to comparable enforcement investigations and states that it has very limited budgetary and human resources. Nevertheless, Bahamasair states that it takes its obligations to comply with U.S. laws very seriously. The carrier notes that it has responded cooperatively and promptly during the course of the Enforcement Office's investigation of these matters and all concerns raised by the Department have been addressed. Furthermore, Bahamasair has reaffirmed its commitment to comply with U.S. laws in the future.

With respect to the timely processing of credit card refunds, Bahamasair notes that it responded decisively to the Enforcement Office's investigation by implementing new procedures to ensure future compliance with 14 CFR Part 374. Concerning Bahamasair's alleged failure to provide conspicuous written notice of ticket refund fees, Bahamasair points out that the tickets in question stated that they were non-refundable, but Bahamasair's practice has been to honor refund requests in certain cases subject to refund penalty fees.

With regard to Bahamasair's failure to revise its contract of carriage to reflect the increased baggage liability limit, upon learning of this oversight, Bahamasair states that it promptly corrected the error. Bahamasair states that it is unaware of any complaints from passengers for receiving compensation in an amount less than 1,131 SDR for lost, damaged, or delayed baggage. Moreover, the carrier asserts that there is no evidence that any passenger unilaterally adjusted downward the amount of his or her claim based on the erroneous information in Bahamasair's contract of carriage. The carrier points out that some passengers were compensated more than 1,000 SDR, indicating that Bahamasair did not apply the outdated, lower limit as a matter of course.

### **Decision**

The Enforcement Office has carefully considered the information provided by Bahamasair but continues to believe that enforcement action is warranted. The Enforcement Office and Bahamasair have reached a settlement of this matter in order to avoid litigation. Without admitting or denying the violations described above, Bahamasair consents to the issuance of this order to cease and desist from future violations of Regulation Z, 14 CFR Parts 374 and 221.107(d), and 49 U.S.C. § 41712 and to the assessment of \$70,000 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 serves the public interest. It represents a strong deterrent against future noncompliance by Bahamasair and other carriers and ticket agents.

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

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Bahamasair Holdings Limited 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 Bahamasair Holdings Limited violated 14 CFR 221.107(d) by failing to provide consumers conspicuous written notice on or with the tickets of its applicable refund penalties and fees;
4. We find that by engaging in the conduct described in ordering paragraphs 2 and 3, above, Bahamasair Holdings Limited engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;

5. We find that Bahamasair Holdings Limited engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712 by failing to accurately inform consumers of the liability limits under the Montreal Convention for lost, damaged, and delayed baggage;
6. We order Bahamasair Holdings Limited and all other entities owned or controlled by, or under common ownership and control with Bahamasair Holdings Limited, its successors and assignees, to cease and desist from further similar violations of Regulation Z, 14 CFR Parts 374 and 221.107(d), and 49 U.S.C. § 41712. Failure to comply with this cease and desist provision shall subject Bahamasair Holdings Limited, and its successors and assignees to further enforcement action;
7. We assess Bahamasair Holdings Limited \$70,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 through 5, above. Of this total amount, \$15,000 shall be due and payable within 30 days of the date of issuance of this order, \$10,000 shall be due and payable within 60 days of the date of issuance of this order, and \$10,000 shall be due and payable within 90 days of the date of issuance of this order. The remaining \$35,000 shall be due and payable immediately if Bahamasair Holdings Limited violates this order's cease and desist or payment provisions during the twelve (12) months following the service date of this order; and
8. We order Bahamasair Holding Limited to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payments shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Bahamasair Holding Limited 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:**

**ROSALIND A. KNAPP**  
Deputy General Counsel

(SEAL)

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