



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

**Issued by the Department of Transportation
On the Seventh day of February, 2013**

Sky King, Inc.

**Violations of 49 U.S.C. § 41712 and
14 CFR Parts 212 and 380**

Docket OST 2013-0004

Served February 7, 2013

CONSENT ORDER

This consent order concerns violations of certain consumer protection provisions of the Department of Transportation's Public Charter regulations by Sky King, Inc., (Sky King) a direct air carrier for a number of Public Charter programs filed by Southern Sky Air & Tours, d/b/a Myrtle Beach Direct Air & Tours (Direct Air). In violation of 14 CFR Parts 212 and 380, Sky King operated numerous Public Charter flights on behalf of Direct Air without first receiving the full charter price for those flights, thereby operating on the basis of prospective payments or credits and it failed to make reasonable efforts to ascertain before undertaking Public Charter flights that the charter operator was in compliance with 14 CFR Part 380. In addition, subsequent to the cessation of Direct Air's operations and in violation of 14 CFR Parts 212 and 380, Sky King cancelled charter flights less than ten days before the scheduled departure date and failed to return to their points of origin all passengers who purchased round-trip transportation on Sky King-operated Public Charter flights and whom Sky King had already transported on their outbound flights. These activities constituted unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs Sky King to cease and desist from future violations of section 41712 and the aforementioned Federal regulations and assesses the carrier a compromise civil penalty of \$500,000.

Applicable Law

Public Charter operators and direct air carriers must comply with the requirements of 14 CFR Parts 212 and 380, which are designed to prevent economic harm to and the stranding of charter passengers. Under 14 CFR 380.34(b)(ii), the Public Charter operator's depository bank must pay to the direct air carrier's depository bank the funds owed to the direct air carrier no more than 60

days prior to the flight's operation. Under 14 CFR 212.3(e) and 380.11, the full charter price must be received by the charter carrier prior to the operation of the pertinent flight. Pursuant to 14 CFR 380.40, "A direct air carrier shall not perform air transportation in connection with such a charter unless it has made a reasonable effort to verify that all provisions of this part have been complied with." *See also* 14 CFR 212.3(d). Moreover, 14 CFR 380.43 prohibits the cancellation of charter flights less than ten days before the scheduled departure date and 14 CFR 212.3(f) charges the direct air carrier with the responsibility of ensuring the return at no additional cost of all U.S.-originating, round-trip passengers whom the carrier has transported on their outbound leg.

In addition, violations of 14 CFR Parts 212 and 380 also constitute violations of 49 U.S.C. § 41712, which prohibits carriers from engaging in unfair and deceptive practices and unfair methods of competition.

Facts and Conclusion

Sky King was the direct air carrier in the Public Charter program covered by Public Charter Prospectus 11-045, which involved 3,052 flights on a variety of routes between cities in the Midwest and Northeast and points in Florida and Myrtle Beach, South Carolina, for the period from September 7, 2011, to November 16, 2012. The Public Charter operator was Southern Sky Air & Tours, d/b/a Myrtle Beach Direct Air & Tours (Direct Air).

Beginning with flights departing on January 18, 2012, sufficient funds were not transferred from Direct Air's escrow account to Sky King prior to the operation of the pertinent flights. Sky King thus had early notice that Direct Air was not complying with the Department's Public Charter regulations. At this time, pursuant to 14 CFR 212.3(d) and 380.40, Sky King should have undertaken reasonable efforts to verify that Direct Air was operating in compliance with Part 380. Rather, Sky King suffered Direct Air's conduct and, in violation of 14 CFR 212.3(e) and 380.11, continued to operate flights listed in Public Charter Prospectus 11-045 without requiring from Direct Air payment in full of the total charter price. By March 13, 2012, Direct Air owed \$951,536 to Sky King for flights Sky King had completed on Direct Air's behalf.

On March 13, 2012, Sky King ceased all flights under the Public Charter program. The Office of Aviation Enforcement and Proceedings (Enforcement Office) immediately contacted Sky King about this matter. The Enforcement Office reminded Sky King of the carrier's obligations under 14 CFR 380.43 to not cancel charter flights less than ten days before the scheduled departure date and under 14 CFR 212.3(f) to return all passengers who had purchased round-trip transportation and whom it carried on their outbound journeys. Nevertheless, Sky King failed to ensure the return of stranded passengers.

Mitigation

By way of mitigation and explanation, Sky King states that it believes that a large-scale fraud has been committed by Direct Air and its managers and owners on a whole variety of parties, including, among others, all of the Direct Air passengers, the U.S. government and its various fee and taxing agencies, various local governments and airport authorities, as well as many commercial creditors, including the direct air carriers employed by Direct Air such as Sky King.

As a direct result of the alleged illegal activities of Direct Air and its owners and managers, Sky King states that it suffered substantial financial losses causing Sky King to file for Chapter 11 bankruptcy court protection. The Direct Air Chapter 7 bankruptcy liquidation is currently pending before a U.S. bankruptcy court and Sky King states that it believes that the activities of Direct Air's owners and managers are currently under investigation by the Chapter 7 trustee.

In the week immediately following the Direct Air collapse, Sky King states that it attempted repeatedly to establish a schedule of flights to repatriate stranded Direct Air passengers; however, Direct Air failed to respond to any of Sky King's attempts to communicate with it, and because Sky King lacked access to passenger information required by the Transportation Security Administration (TSA), Sky King was unable to operate the repatriation flights, except for one flight on the day of the Direct Air collapse for which Sky King did have the TSA-required passenger information.

As a result of Direct Air's alleged misconduct and that of its managers and owners, in addition to being obliged to seek Chapter 11 bankruptcy court protection and the instant Department action, Sky King asserts that it has suffered substantial financial loss. In addition, according to Sky King, further harm to the carrier occurred when the majority of Sky King's small fleet of aircraft had liens placed on them by another Direct Air creditor rendering Sky King in default on its aircraft leases, making its fleet subject to seizure at any time.

Decision

The Department takes compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office has carefully considered the information provided by Sky King but continues to believe that enforcement action is warranted. The Enforcement Office and Sky King have reached a settlement of this matter in order to avoid litigation. Sky King consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR Parts 212 and 380 and to the assessment of \$500,000 in compromise of potential 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 to future noncompliance with the Department's Public Charter requirements.

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 Sky King, Inc., violated 14 CFR 212.3(d) and 380.40 by failing to make reasonable efforts to ascertain before undertaking Public Charter flights that the charter operator was in compliance with 14 CFR Part 380;

3. We find that Sky King, Inc., violated 14 CFR 212.3(e) and 380.11 by transporting passengers without having first received from the charter operator full payment of the total charter price;
4. We find that Sky King, Inc., violated 14 CFR 380.43 by cancelling charter flights less than ten days before the scheduled departure date;
5. We find that Sky King, Inc., violated 14 CFR 212.3(f) by failing to return to his or her point of origin each passenger who purchased round-trip transportation on its Public Charter flights, and whom Sky King, Inc., transported on his or her outbound flight;
6. We find that by violating 14 CFR Parts 212 and 380, as described in ordering paragraphs 2, 3, 4, and 5, above, Sky King, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
7. We order Sky King, Inc., and all other entities owned or controlled by, or under common ownership and control with Sky King, Inc., and its successors, affiliates, and assignees, to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR Parts 212 and 380. Failure to comply with this cease and desist provision shall subject Sky King, Inc., and its successors, affiliates, and assignees to further enforcement action; and
8. We assess Sky King, Inc., \$500,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, 4, 5, and 6, above. The total penalty amount of \$500,000 shall be included in any proof of claim filed by the U.S. Department of Transportation in the Sky King, Inc., bankruptcy case.

This order will become a final order of the Department ten days after its service date unless a timely petition for review is filed or the Department takes review on its own initiative.

BY:

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Assistant General Counsel for
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