



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

**Issued by the Department of Transportation
On the Fifth day of December, 2012**

Vision Airlines, Inc.

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

Docket OST 2012-0002

Served December 5, 2012

CONSENT ORDER

This consent order concerns violations of certain consumer protection provisions of the Department of Transportation's Public Charter regulations by Vision Airlines, Inc., a direct air carrier for a Public Charter program filed by Southern Sky Air & Tours, d/b/a Myrtle Beach Direct Air & Tours (Direct Air). Subsequent to the cessation of Direct Air's operations and in violation of 14 CFR Parts 212 and 380, Vision Airlines 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 Vision Airlines' operated Public Charter flights and whom Vision Airlines 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 Vision Airlines to cease and desist from future violations of section 41712 and the aforementioned Federal regulations and assesses the carrier a compromise civil penalty of \$50,000.

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 380.43, charter flights may not be cancelled less than ten days before the scheduled departure date. Under 14 CFR 212.3(f), the direct air carrier has 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. 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

Vision Airlines was the direct air carrier in the Public Charter program covered by Public Charter Prospectus 12-052, which involved 228 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 March 8, 2012, to April 30, 2012. The Public Charter operator was Southern Sky Air & Tours, d/b/a Myrtle Beach Direct Air & Tours (Direct Air).

On March 13, 2012, Vision Airlines ceased all flights under the Public Charter program. The Office of Aviation Enforcement and Proceedings (Enforcement Office) immediately contacted Vision Airlines about this matter. The Enforcement Office reminded Vision Airlines 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, Vision Airlines failed to ensure the return of stranded passengers.

Mitigation

By way of mitigation and explanation, Vision Airlines believes that it did not cancel flights on less than ten days' notice because Direct Air had already terminated its Public Charter program and notified the public on its website to seek other means of transportation. There were thus, in Vision Airlines' view, no flights left to be cancelled. The carrier maintains that it was otherwise ready, willing, and able to provide return transportation to any passengers that it may have flown on outbound journeys.

In what Vision Airlines states is an industry-standard arrangement in Public Charter operations, Direct Air was responsible for the reservations, customer service, gate staffing, and various airport service functions for Public Charter Prospectus 12-052. On March 12, 2012, Direct Air publicly announced that it was immediately suspending all operations, including the flights it had contracted with Vision Airlines to fly. Vision Airlines states that Direct Air then repeatedly refused to provide Vision Airlines with the passenger details – information that Vision Airlines argues it was not required to maintain – that would have been necessary for the carrier to identify and contact passengers that it had transported on outbound flights. Vision Airlines further states that these actions taken by Direct Air not only demonstrated a callous disregard for its customers but also constituted material breaches of its contract with Vision Airlines that were not reasonably foreseeable. Moreover, Vision Airlines 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 the direct air carriers employed by Direct Air such as Vision Airlines. The Direct Air Chapter 7 bankruptcy litigation is currently pending before a U.S. bankruptcy court and Vision Airlines believes that Direct Air's owners are currently under investigation by the Chapter 7 trustee.

Vision Airlines had been operating under Public Charter Prospectus 12-052 for just six days and had been paid in advance for all flights it conducted. Accordingly, Vision Airlines believes that it satisfied its obligations under the Public Charter rules. Vision Airlines states that even though

it continues to strenuously deny that any violation of Federal law occurred, it has elected to settle this matter with the Enforcement Office rather than engage in costly and protracted litigation.

Decision

The Department takes compliance with the Federal aviation statutes and regulations very seriously. The Enforcement Office has carefully considered the information provided by Vision Airlines but continues to believe that enforcement action is warranted. The Enforcement Office and Vision Airlines have reached a settlement of this matter in order to avoid litigation. Vision Airlines consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR Part 212 and 380 and to the assessment of \$50,000 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 Vision Airlines, 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 Vision Airlines, Inc., transported on his or her outbound flight;
3. We find that Vision Airlines, Inc., violated 14 CFR 380.43 by cancelling charter flights within ten days of the scheduled departure date;
4. We find that by violating 14 CFR Parts 212 and 380, as described in ordering paragraphs 2 and 3, above, Vision Airlines, Inc., engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. We order Vision Airlines, Inc., and all other entities owned or controlled by, or under common ownership and control with Vision Airlines, Inc., and its successors, affiliates, and assignees, to cease and desist from future violations of 49 U.S.C. § 41712 and 14 CFR 212.3(f) and 380.43. Failure to comply with this cease and desist provision shall subject Vision Airlines, Inc., and its successors, affiliates, and assignees to further enforcement action;
6. We assess Vision Airlines, Inc., \$50,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4, above. Of this penalty amount, \$25,000 shall be due and payable within thirty (30)

days of the date of the issuance of this order. The remaining portion of the civil penalty amount shall become due and payable if, within one year of the date of the issuance of this order, Vision Airlines, Inc., violates this order's cease and desist provisions or fails to comply with this order's payment provisions, in which case Vision Airlines, Inc., may become subject to additional enforcement action for violation of the order; and

7. We order Vision Airlines, Inc., 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 compromise penalty assessment as ordered shall subject Vision Airlines, Inc., to an assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible enforcement action for failure to comply with this order.

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:

SAMUEL PODBERESKY

Assistant General Counsel for
Aviation Enforcement and Proceedings

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