

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

Issued by the Department of Transportation  
On the 2nd day of November, 2010

**City Skies, Inc., and**

**Ronald E. Mays**

**Violations of 49 U.S.C. §§ 41101 and 41712  
and 14 CFR Part 380**

**Docket OST 2010-0005**

**Served November 2, 2010**

**CONSENT ORDER**

This consent order concerns the unauthorized advertising, sales, and operation of charter air transportation by City Skies, Inc., (“City Skies”) and Ronald E. Mays (hereinafter collectively referred to as the “Respondents”). Specifically, in the fall of 2009, Ronald E. Mays, through City Skies, over which he exercised primary control and direction, engaged in air transportation as an indirect air carrier without economic authority from the Department. The unauthorized air transportation operations by the Respondents violated 49 U.S.C. § 41101 and the Department’s Public Charter regulations (14 CFR Part 380), and constituted an unfair and deceptive practice in violation of 49 U.S.C. § 41712. This order directs City Skies and Ronald E. Mays, personally, to cease and desist from future violations and assesses Respondents, jointly and severally, a compromise civil penalty of \$30,000. This order also prohibits Ronald E. Mays, personally, for a period of not less than 20 months from the date of issuance of this order from directly or indirectly engaging in air transportation or air commerce, or both, except as an air travel consumer. In addition, the order prohibits Ronald E. Mays from involvement with an air carrier or foreign air carrier or their agents, ticket agents, and with any other entity directly or indirectly engaged or seeking to engage in air transportation or air commerce or both.

In addition to applicable Federal Aviation Administration (FAA) safety-related requirements, in order to engage directly or indirectly in air transportation, citizens of the United States<sup>1</sup> must hold economic authority from the Department, either in the form of a certificate of public convenience and necessity issued pursuant to 49 U.S.C. §§ 41101 and 41102, or in the form of an exemption from the certificate requirement, such as those applicable to direct air carriers operating as air taxis under 14 CFR Part 298 and indirect

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<sup>1</sup> A “citizen” includes a person, partnership, corporation, or association. 49 U.S.C. § 40102(a) (15).

air carriers functioning as public charter operators under 14 CFR Part 380. “Air transportation” includes the transportation of passengers or property by aircraft as a “common carrier for compensation” between two places in the United States or between a place in the United States and a place outside of the United States.<sup>2</sup> “Common carriage,” in the context of aviation, consists of the holding out or provision of transportation by air to the public for compensation or hire.<sup>3</sup> A “direct air carrier” is an entity or person who is directly engaged in the operation of aircraft used to provide air transportation. Entities or persons that are not direct air carriers, but solicit in their own right members of the public to purchase air transportation are “indirect air carriers.”<sup>4</sup>

A person or entity that does not hold economic authority from the Department may not lawfully solicit and contract as a principal in its own right with a charter customer for air transportation and then, as a principal in its own right, solicit and separately contract with a direct air carrier to provide the air service that it has promised to the charter customer. In such instances, the unauthorized indirect air carrier is not acting as an agent for the operating carrier or for the charter customer. Rather, it is acting as a principal in both transactions and, with respect to its relationship to the charter customer, is indirectly engaged in air transportation without economic authority in contravention of the statutory and Departmental licensing requirements.

From the standpoint of the requirements of 49 U.S.C. § 41101, the holding out of service, as well as the actual operation of air service, constitutes “engaging” in air transportation.<sup>5</sup> Violations of section 41101 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.<sup>6</sup>

In addition, Public Charter operators must comply with the requirements of 14 CFR Part 380. Among the most important requirements of 14 CFR Part 380 are the rules designed to prevent economic harm to the charter passengers. These rules include the requirements that 1) no charter flight be sold unless there is in place an approved Public Charter prospectus based upon a contract between the charter operator and a direct air

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<sup>2</sup> 49 U.S.C. §§ 40102(a) (5), (a) (23), and (a) (25).

<sup>3</sup> See, e.g., *Woolsey v. National Trans. Safety Bd.*, 993 F.2d 516 (5<sup>th</sup> Cir. 1993); *SportsJet, LLC, Violations of 49 U.S.C. §§ 41101 and 41712*, Order 2003-12-23 (Dec. 29, 2003).

<sup>4</sup> See, e.g., *Bratton v. Shiffrin*, 635 F.2 1228 (7<sup>th</sup> Cir. 1980), cert. denied, 449 U.S. 1123 (1980); *Civil Aeronautics Board v. Carefree Travel, Inc.*, 513 F.2d 375 (2d Cir. 1975).

<sup>5</sup> Prior to 1994, when Title 49 was recodified and simplified, 49 U.S.C. § 41101 stated that no carrier could “engage” in air transportation without appropriate authority. Although the wording of § 41101 now states that what is prohibited is “providing” air transportation without authority, Congress made clear when it recodified Title 49 that in doing so it did not intend any substantive change to the statute. Act of July 5, 1994, Pub. L. 103-272, § 6(a), 108 Stat. 745, 1378.

<sup>6</sup> See, e.g., *DB Air, Ltd., Violations of 49 U.S.C. §§ 41101 and 41712*, Order 2004-2-21 (Feb. 23, 2004).

carrier covering the transportation to be sold (14 CFR 380.25(a), 380.28(a) and 380.28(b)); 2) all payments by charter participants to charter operators be covered in full by a security agreement or by being placed in an escrow account (14 CFR 380.34(a) and 380.34(b)); 3) no charter operator shall operate, sell, receive money from any prospective participant for, or offer to sell or otherwise advertise a charter until the Department has accepted a Public Charter prospectus (14 CFR 380.25(a)); 4) all solicitation materials for a Public Charter shall include the name of the charter operator, the name of the direct air carrier and a statement referring to the operator-participant contract for further information about conditions applicable to the charter, or the full text of the operator-participant contract (14 CFR 380.30(a) and (b)); and 5) the charter operator must assure that each prospective participant sign a copy of the operator-participant contract (14 CFR 380.31(a) and (b)).

City Skies is a Nevada corporation which advertises various travel-related services including a tour operator business and Public Charter program. The company unlawfully engaged in air transportation as a direct air carrier on its website at *www.uflycityskies.com* by referring to itself as the “first air carrier to originate non-stop service to Cancun, post Hurricane Katrina, from beautiful Louis Armstrong International Airport in New Orleans.” In addition, City Skies held itself out as an indirect air carrier and provided air transportation to passengers from New Orleans to Honduras. City Skies also unlawfully performed a flight as an indirect air carrier by utilizing Xtra Airways as its direct air carrier prior to receiving authority from the Department.

Mr. Mays, through City Skies, solicited passengers for the flight from New Orleans to Honduras that departed on September 15, 2009. Respondents then entered into a contract with Xtra Airways, a direct air carrier, to operate the charter flight (the “flight”). Respondents performed these actions without obtaining proper authority from the Department.

The Respondents’ advertising, accepting passenger funds for charter service, and contracting with a direct air carrier to conduct the flight, without receiving Public Charter authority, violated 14 CFR Part 380 and 49 U.S.C. § 41101, which prohibits a company from engaging in air transportation without proper economic authority. Respondents’ conduct also constituted an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712. Pursuant to the provisions of 49 U.S.C. § 46301, violations of the Department’s aviation economic requirements subjects air carriers and their principals<sup>7</sup> to the assessment of civil penalties of up to \$27,500 for each

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<sup>7</sup> Individuals who organize and participate in flight offerings may themselves be regarded as indirect air carriers. See, e.g., *Travel Group, Inc., d/b/a Republic Air Travel and Scot Spencer et. al. Enforcement Proceeding* (Docket OST-1995-272), Order of Administrative Law Judge Denying Complainant’s Motion for Partial Summary Judgment and Denying Respondents’ Cross-Motion for Summary Judgment (June 30, 1998) at 23 citing *CAB v. Carefree Travel, Inc.*, 513 F2d 375, 387-89 (2<sup>nd</sup> Cir. 1975).

violation and \$27,500 for each day each such violation continues.<sup>8</sup> Moreover, Ronald E. Mays committed similar violations in 2007 that resulted in a consent order that directed him to cease and desist from further violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR Part 380. See *Montgomery Jet Center, Inc., Southern Skies, Inc., and Ronald E. Mays*, Docket No. OST-2007-26820-7. Mays' actions in the instant case also violate that order.

In explanation and mitigation, the Respondents state that City Skies had ceased any actions which might be interpreted as "holding out" as a provider of any type of tour operations or any related services prior to the receipt of the written notification from the Department. Respondents further state that City Skies' website has been taken down, reviewed, and revised. Respondents also point out that they made efforts to comply with the applicable statutory and Departmental requirements applicable to the flight operated as an indirect air carrier, even though Respondents did ultimately fail to comply with the regulatory requirements applicable to such flight. In this regard, the Respondents note that certain public charter documents were submitted to the Department by the Respondents in connection with the flight in question; however, those documents were never approved and no public charter number was ever issued by the Department in connection with the flight. Finally, Respondents point out that they have fully cooperated with the Enforcement Office's investigation of this matter.

The Enforcement Office has carefully considered all of the information in this matter, including that provided by the Respondents, as well as its cooperation in the investigation of this matter, but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and the Respondents have reached a settlement of this matter.

The Respondents, including Ronald E. Mays personally, consent to the issuance of an order to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR Part 380, and to the assessment, jointly and severally, of \$30,000 in compromise of potential civil penalties. This order also directs City Skies, Inc., and Mr. Ronald E. Mays to cease and desist from future violations of 49 U.S.C. §§ 41101 and 41712 and 14 CFR Part 380. It further directs Mr. Mays, in his individual capacity, to cease and desist for a period of not less than 20 months from the date of issuance of this order from directly or indirectly engaging in air transportation or air commerce, or both, except as an air travel consumer. In addition, the order prohibits Ronald E. Mays from involvement with an air carrier or foreign air carrier or their agents, ticket agents, and with any other entity directly or indirectly engaged or seeking to engage in air transportation or air commerce or both.

We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's

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<sup>8</sup> The maximum civil penalty per violation per day is \$2,500 if the offending entity is an individual or a "small business concern" as defined in 15 U.S.C. § 632.

licensing requirements by the Respondents, as well as by other companies engaged in similar unlawful charter activities.

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

**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 City Skies, Inc., and Ronald E. Mays, personally, violated 49 U.S.C. § 41101, as described above, by advertising and engaging in air transportation as an air carrier without appropriate economic authority;
3. We find that City Skies, Inc., and Ronald E. Mays, personally, violated 14 CFR Part 380 by advertising and selling charter air transportation without having in place an approved Public Charter prospectus covering the Public Charter flight;
4. We find that City Skies, Inc., and Ronald E. Mays, personally, by engaging in the conduct and violations described in paragraphs 2 and 3 above, engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
5. We find that by engaging in conduct described in paragraphs 2, 3, and 4 above, Ronald E. Mays violated Department Order OST-2007-26820-7;
6. We find that City Skies, Inc., was at all times relevant herein under the leadership, direction and control of Ronald E. Mays and that Ronald E. Mays made all significant decisions with respect to the conduct described in paragraphs 2 and 3 above, and is therefore personally responsible for the violations found in paragraphs 2 and 3 above;
7. We order Ronald E. Mays, personally, and City Skies, Inc., and all other entities owned and controlled by, or under common ownership and control with City Skies and their successors and assignees, as well as the owners and officers of all such companies to cease and desist from further violations of 14 CFR Part 380 and 49 U.S.C. 41101 and 41712;
8. We order Ronald E. Mays to cease and desist for a period of not less than 20 months from the date of issuance of this order from directly or indirectly engaging in air transportation or air commerce, or both, except as an air travel consumer. In addition, we order Ronald E. Mays to refrain from involvement with an air carrier or foreign air carrier or their agents, ticket agents, and with any other entity directly or indirectly engaged or seeking to engage in air transportation or air commerce or both.

9. Ronald E. Mays, personally, and City Skies, Inc., are jointly and severally assessed \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4 above. This penalty shall be due and payable as follows:
  - a. \$15,000 shall be due and payable in five equal installments to be paid on November 30, 2010, December 30, 2010, January 30, 2011, February 28, 2011, and March 30, 2011; and
  - b. The remaining \$15,000 shall become due and payable immediately if, within one year following the date of issuance of this order, City Skies, Inc., or Ronald E. Mays violates this order's cease and desist or payment provisions, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and City Skies, Inc., and Ronald E. Mays may be subject to additional enforcement action for failure to comply with this order;
10. Payments shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfers shall be executed in accordance with the instructions contained in the Attachment to this order; and
11. Failure to pay the civil penalties as ordered shall subject Ronald E. Mays and City Skies, Inc., jointly and severally, to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible 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:**

**ROSALIND A. KNAPP**  
**Deputy General Counsel**

**(SEAL)**

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