



UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF HEARINGS  
WASHINGTON, D.C.

Issued by the Department of Transportation  
on the ~~11th~~ day of May, 2007

Montgomery Jet Center Inc., Southern Skies,  
Inc., and

Ronald E. Mays

Violations of 49 U.S.C. §§ 41101 and 41712

Docket OST 2007-26820

Served *May 11*, 2007

CONSENT ORDER

This consent order closes an enforcement proceeding involving the unauthorized air carrier operations of Ronald E. Mays, Montgomery Jet Center Inc., and Southern Skies, Inc., (hereinafter collectively referred to as the "Respondents"). Specifically, Mr. Mays, and Montgomery Jet Center through Southern Skies, over which Mr. Mays exercised primary control and direction, engaged in air transportation as an air carrier without economic authority from the Department. The unauthorized air carrier operations and holding out by the Respondents violated 49 U.S.C. § 41101 and constituted an unfair and deceptive practice in violation of 49 U.S.C. § 41712. This order directs Southern Skies, Montgomery Jet Center, and Mr. Mays, personally, to cease and desist from future violations and assesses Respondents, jointly and severally, a compromise civil penalty of \$80,000.

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 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

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

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

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>

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> Violating section 41101 by engaging in air transportation without Departmental authority also constitutes unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.<sup>6</sup>

To engage in air transportation using large aircraft,<sup>7</sup> air carriers must comply with the requirements of 49 U.S.C. § 41101. Among the most important requirements are filing an application providing sufficient data to support a fitness determination and obtaining a Certificate of Public Convenience and Necessity from the Department.

Montgomery Jet Center is an Alabama Corporation which advertises various aviation-related services including sales and management of aircraft, as well as a fractional ownership program. Southern Skies is an Alabama corporation which advertises various aviation-related services, including financing and leasing aircraft, management services, as well as a fractional ownership program. Southern Skies, an affiliate of Montgomery Jet Center, unlawfully engaged in air transportation as a direct air carrier by referring to itself on its website at [www.montgomeryjet.com](http://www.montgomeryjet.com) as an “air carrier,” by referencing aircraft it could provide as “our fleet” and by boasting that it “carr[ies]” the world’s leaders after its Department authority was no longer valid. In addition, Southern Skies held itself out as a direct air carrier to Mr. Alex St. James and the Africa-United States Friendship and Economic Development Group (FED Group) when it contracted with them to provide air transportation to approximately eighty passengers from Baltimore, Maryland, to Monrovia, Liberia, on January 9, 2006.

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<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).

<sup>7</sup> Large aircraft means any aircraft originally designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.

Mr. Mays, through Southern Skies, entered into a contract with the FED Group to provide this air transportation and collected \$40,000 from the FED Group that had been paid to the FED group by passengers who purchased tickets on the flight. Respondents did so without obtaining proper authority from the Department. Mr. Mays and Southern Skies, in turn, entered into contract negotiations with Miami Air International, Inc. (Miami Air), a direct air carrier, to operate the charter flight. Respondents, however, failed to contract with Miami Air or any other carrier for the Liberian Charter flight and retained the \$40,000 in consumer funds paid them toward the flight. As a result, approximately eighty passengers showed up at the Thurgood Marshall Baltimore Washington International Airport (BWI) in Baltimore, Maryland on January 9, 2006, only to find that there was no airline or aircraft to operate the flight. The passengers, many of whom had traveled to BWI from different states around the country, did not receive the transportation for which they paid, and many were in effect stranded without air service to return them to their respective points of origin. Mr. Mays, through Southern Skies, refused to refund the FED Group or the individual charter participants \$40,000 in charter participant funds accepted to operate the flight.

By holding out air transportation as an air carrier without obtaining authority from the Department, Respondents violated 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 subject companies and their principals<sup>8</sup> to the assessment of civil penalties.

In explanation and mitigation, Respondents deny that they held themselves out to be a "direct air carrier." Respondents maintain that Mr. Mays, through Southern Skies, entered into a contract to provide consulting services to Alex St. James and required a \$40,000 deposit for such services. Respondents state that at no time did Mr. Mays, Montgomery Jet Center, or Southern Skies converse with, solicit funds or accept funds from passengers of any sort. Instead, Respondents assert, they were misled by Mr. St. James into believing that the Liberian Charter was a single entity charter for which none of the passengers were paying directly. Respondents state that they repeatedly explained to Mr. St. James and the other organizers that there were insufficient funds available to charter the aircraft in question from Miami Air but that additional funds were never provided by the charter organizers. Respondents state that Mr. St. James also hired Southern Skies to provide consulting services and it believed that the \$40,000 in question was in payment for those consulting services. Respondents state that when the flight did not take place, Southern Skies paid funds directly from its business accounts to cover the cost of several passengers to travel to Liberia. With regard to the website language

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<sup>8</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).

referenced above, Respondents state that they did not believe the statements on the site were misleading, but that they nonetheless have taken steps to clarify any statements that may be inaccurate.

Notwithstanding the mitigating factors described above, Respondents' actions constituted serious violations of applicable statutes and caused significant consumer harm. The Deputy General Counsel and Respondents have therefore reached a settlement in this matter. Montgomery Jet Center Inc., Southern Skies, Inc., and Mr. Ronald E. Mays, personally, in order to settle the matter, agree to the issuance of this consent order, which includes an order to cease and desist from engaging in air transportation as an air carrier without appropriate economic authority and to the assessment of civil penalties in the amount of \$80,000. Of this total penalty amount, \$40,000 shall be paid, subject to an offset, under the terms described below. The remaining \$40,000 shall be suspended for two years following the issuance of this order, and then forgiven, unless Montgomery Jet Center Inc., Southern Skies, Inc., or Mr. Ronald E. Mays, personally, violate this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Respondents may be subject to further enforcement action. This compromise assessment is appropriate in view of the nature and extent of the violations in question and serves the public interest. This settlement, moreover, represents an adequate deterrence to such conduct in the future by the Respondents, as well as by other companies and individuals engaged in similar activities.

#### **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 Ronald E. Mays, Montgomery Jet Center Inc., and Southern Skies, Inc., violated 49 U.S.C. § 41101, as described above, by engaging in air transportation as an air carrier without appropriate economic authority;
3. We find that Ronald E. Mays, Montgomery Jet Center Inc., and Southern Skies, Inc., by engaging in the conduct and violations described in paragraph 2 above, engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We find that Montgomery Jet Center Inc., and Southern Skies, Inc., were 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 ordering paragraphs 2 and 3, and is therefore personally responsible for the violations found in those paragraphs above;
5. We order Ronald E. Mays, personally, Montgomery Jet Center Inc., and Southern Skies, Inc., and all other entities owned and controlled by, or under common ownership and control of Ronald E. Mays, Montgomery Jet Center Inc., or Southern

Skies, Inc., and their successors and assignees, as well as the owners and officers of all such companies, to cease and desist from further violations of 49 U.S.C. §§ 41101 and 41712;

6. We order Ronald E. Mays, personally, to cease and desist for a period of 5 years from the date of the issuance of this order from unlawfully being involved in direct air carrier operations;
7. We order Montgomery Jet Center Inc., and Southern Skies, Inc., to cease and desist for a period of 5 years from the date of the issuance of this order from unlawfully being involved in direct air carrier operations;
8. Ronald E. Mays, personally, and Montgomery Jet Center Inc., and Southern Skies, Inc., are jointly and severally assessed \$80,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 above, of which:
  - a. \$40,000 shall be due and payable. Of that \$40,000, \$4,800 shall be credited to Ronald E. Mays, and Montgomery Jet Center Inc., and Southern Skies, Inc., as an offset for the cost of alternate air transportation they provided to Liberia to three consumers who had paid for transportation on Liberia Charter 109;
  - b. The remaining \$35,200 shall be due and payable under the following schedule: \$6,000 is due and payable within 30 days of the effective date of this order, \$3,000 is due and payable on June 30, 2007, \$3,000 is due and payable on July 30, 2007, \$3,000 is due and payable on August 30, 2007, \$3,000 is due and payable on September 30, 2007, \$3,000 is due and payable on October 30, 2007, \$3,000 is due and payable on November 30, 2007, \$3,000 is due and payable on December 30, 2007, \$3,000 is due and payable on January 30, 2008, and \$3,000 is due and payable on February 28, 2008, and \$2,200 is due and payable on March 28, 2008;
  - c. Up to \$35,200 shall be credited to Ronald E. Mays, and Montgomery Jet Center Inc., and Southern Skies Inc., as an offset for establishing an escrow account into which the payments described in paragraph 8b above shall be deposited for the sole benefit of the consumers of Liberia Charter 109. The funds deposited into this escrow account shall be used solely to pay the bona fide claims of consumers who purchased air transportation on Liberia Charter 109 and who have not received a refund or substitute air transportation to Liberia, and reasonable expenses of the bank or escrow agent in connection with consumer refunds paid from this escrow account. The bank or escrow agent shall report to the Office of Aviation Enforcement and Proceeding within 30 days of being contracted to manage the reimbursement process, and each 90 days thereafter it shall

report on the funds received and disbursed including dates, amounts, and claimant names;

- d. Any funds remaining in the escrow account on May 30, 2008, shall be paid as a civil penalty by June 30, 2008;
- e. The remaining \$40,000 of the \$80,000 civil penalty shall be suspended for two years following the service date of this order and then forgiven, provided that Montgomery Jet Center Inc., and Southern Skies, Inc., and Ronald E. Mays, do not violate this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Montgomery Jet Center Inc., and Southern Skies, Inc., and Ronald E. Mays may be subject to further enforcement action;
- f. Any payment required under paragraphs 8.d. and e. 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 transfer shall be executed in accordance with the instructions contained in the Attachment to this order; and
- g. Failure to pay the civil penalties as ordered shall subject Ronald E. Mays, Montgomery Jet Center Inc., and Southern 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 is issued under the authority contained in 14 CFR 385.11(d) and will become a final order of the Department 30 days after its service unless a timely petition for review is filed or the Department takes review on its own motion.

**BY:**

  
**Isaac D. Benkin**  
**Administrative Law Judge**

**(SEAL)**

**Attachment – Service List**

*An electronic version of this document is available  
on the World Wide Web at  
<http://dms.dot.gov>*

**SERVICE LIST**

**ORIGINAL AND ONE COPY**

U.S. DOT Dockets  
U.S. Department of Transportation  
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**ONE COPY**

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