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

Issued by the Department of Transportation
on the 26th day of January, 2004

Coastal Mountain Airways, Ltd.

Violations of 49 U.S.C. §§ 41301 and 41712

Served January 26, 2004

OST 2004-16943- /

CONSENT ORDER

This order concerns unauthorized air transportation by Coastal Mountain Airways, Ltd., (CMA) between Canada and the United States that violates 49 U.S.C. §§ 41301 and 41712. This consent order directs CMA to cease and desist from further violations of these statutory provisions and to pay a compromise civil penalty.

CMA, a foreign air carrier within the meaning of 49 U.S.C. § 40102(a)(21), provides on-demand air taxi services from its base in Pemberton, British Columbia, Canada, using two Cessna aircraft. CMA has never applied for or held economic authority from the Department or safety authority from the Federal Aviation Administration (FAA). Notwithstanding its lack of economic authority, CMA held out and operated charter air service between Canada and the United States in contravention of 49 U.S.C. § 41301, which states that foreign air carriers must obtain permit authority from the Department *prior* to commencing service to the United States.¹ Any violation of 49 U.S.C. § 41301 also constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

In its defense, CMA maintains that it did not intend to violate U.S. law. Moreover, it claims that only two of its operations, in which only two passengers were transported, could actually

¹ Part 294 of the Department's regulations (14 CFR Part 294) provides an exemption for Canadian charter air taxis from the permit requirements of section 41301, but Canadian charter air taxis must register with the Department and must have required liability insurance. The exemption authority conferred under Part 294 is available only to carriers that operate "small" aircraft, which is defined in section 298.2(i) as "any aircraft designed to have a maximum passenger capacity of not more than 30 seats" CMA has not registered under Part 294.

be considered unlawful. CMA also asserts that it is having considerable financial problems, such that a civil penalty would jeopardize its ability to continue operations.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered all of the information provided by CMA, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and CMA have reached a settlement of this matter. Without admitting or denying the violations described above, CMA consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712 and to the assessment of \$2,500 (US) in compromise of potential civil penalties otherwise assessable. Of this total penalty amount, \$500 shall be paid under the terms described below.² The remaining \$2,000 shall be suspended for three years following the issuance of this order, and then forgiven, unless CMA violates this order's cease and desist or payment provisions, in which case the entire amount shall become due and payable immediately and CMA may be subject to additional enforcement action. The Enforcement Office believes this compromise is appropriate and serves the public interest and creates an incentive for all foreign air carriers to comply fully with the requirements of 49 U.S.C. §§ 41301 and 41712.

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 Coastal Mountain Airways, Ltd., violated 49 U.S.C. § 41301 by holding out and operating air service to and from the United States without holding authority from the Department;
3. We find that, by engaging in the conduct and violations described in paragraph 2 above, and by holding out air service to and from the United States, Coastal Mountain Airways, Ltd., engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;
4. Coastal Mountain Airways, Ltd., and all other entities owned and controlled by, or under common ownership and control with Coastal Mountain Airways, Ltd., and their successors and assignees, are ordered to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712;
5. Coastal Mountain Airways, Ltd., is assessed a civil penalty of \$2,500 (US) in compromise of the civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 above. Of the total penalty amount, \$500 (US) shall be due and payable within 30 days of the issuance of this order. The remaining \$2,000 (US) shall be suspended for three years following the issuance of this order, and then forgiven, unless Coastal Mountain Airways, Ltd., violates this order's cease and desist or payment provisions, in which case the entire

² The amount of the paid civil penalty reflects the small number and scope of the violations, in conjunction with the small size of the carrier, its precarious financial status, its positive compliance disposition, and other factors unique to this case.

amount shall become due and payable immediately and Coastal Mountain Airways, Ltd., may be subject to additional enforcement action. Failure to pay the penalty as ordered shall also subject Coastal Mountain Airways, Ltd., to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and

6. 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 transfer shall be executed in accordance with the instructions contained in the Attachment to this order.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own initiative.

BY:

**ROSALIND A. KNAPP
Deputy General Counsel**

(SEAL)

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