



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

**Issued by the Department of Transportation  
On the 3rd Day of April, 2009**

**Turismo Tony Perez**

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

**Docket: OST 2009-0001**

**Served: April 3, 2009**

**CONSENT ORDER**

This consent order concerns violations of certain consumer protection provisions of the Department's Public Charter regulations during 2008 by Turismo Tony Perez (Turismo), a Public Charter Operator that sold Public Charter flights directly to the public. Turismo failed to properly maintain an escrow account and improperly used and handled charter participant funds in violation of 14 CFR Parts 380. These activities also constituted an unfair and deceptive practice in violation of 49 U.S.C. § 41712. This order directs Turismo to cease and desist from future similar violations and directs Turismo to pay a compromise civil penalty of \$40,000.

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 charter passengers. These rules include the requirement that the charter participants' funds must be deposited into an escrow account required by Department rules at a designated depository bank that will maintain a separate accounting for each charter group. 14 CFR 380.34. One purpose of this requirement is to ensure that there are sufficient funds in a particular depository account for that account's particular flight and, if there is not, that passenger funds paid toward other flights are not used for flights for which there are insufficient funds. *See Liberty State Bank v. BankAmerica National Trust Company*, 1996 WL 343048 (S.D.N.Y.)

In 2008 Turismo filed a public charter prospectus that covered flights from San Juan, Puerto Rico (SJU) to Punta Cana, Dominican Republic (PUJ) and SJU to Orlando, Florida, that were scheduled to operate from May 2008 to January 2009. Turismo was authorized pursuant to PC No. 08-44 to operate the flights. However, after the

bankruptcy of the direct air carrier operating its flights, Turismo abruptly canceled its program in October 2008<sup>1</sup>.

During a review of Turismo's program, the Office of Aviation Enforcement and Proceedings (Enforcement Office) discovered a number of irregularities in Turismo's escrowing activities. Specifically, Turismo deposited passenger funds directly into its operating account at Banco Popular. Although Banco Popular and Turismo signed a Public Charter Depository agreement stating they had established a depository account meeting the requirements of 14 CFR 380.34, which was submitted to the Department, no such account was in fact established. Turismo did not present Banco Popular with a flight by flight accounting in order for Banco Popular to properly segregate the funds nor did Turismo submit the required certifications of flight completions to Banco Popular as required by section 380.34 in order to receive payment after the completion of each flight. In addition, Turismo advanced payments to Sky King Airlines, the direct air carrier that was involved, in advance of flights in contravention of the Department's rule prohibiting direct air carriers from being paid earlier than 60 days prior to departure. 14 CFR 380.34. The violations committed by Turismo had the potential to cause significant consumer harm. By engaging in the conduct described above, Turismo violated 14 CFR 380.34 and engaged in an unfair and deceptive practice in violation of 14 CFR 380.27 and 49 U.S.C. § 41712.

In mitigation, Turismo asserts that it has been in the tour operator business in Puerto Rico for 12 years and has a clean compliance record. Turismo states that at no time were any charter passenger funds in jeopardy but rather they were placed in the bank as received, all passengers were flown, and there was no loss of passenger funds. Turismo also states that there are no outstanding claims for passenger refunds. Finally, Turismo maintains that while the customers' funds were not properly segregated nor were the required certifications of flight completions submitted, the funds for all the trips and all the passengers were available throughout the program to provide the consumer protections intended by Part 380.

The Enforcement Office has carefully considered the facts in this case, including the information provided by Turismo Tony Perez, but continues to believe that enforcement action is warranted. Turismo Tony Perez, in order to avoid litigation and without admitting or denying the alleged violations, agrees to the issuance of this order, which includes a compromise civil penalty assessment of \$40,000. This order also directs Turismo to cease and desist from future violations of 49 U.S.C. § 41712, and 14 CFR Part 380. This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest as a deterrent to future public charter violations by Turismo Tony Perez, as well as by other similarly situated companies and persons.

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<sup>1</sup> Turismo maintains that no consumers were harmed by its early cancellation of PC No. 08-44 because all passengers who purchased tickets for that program were accommodated on a different direct air carrier and no additional tickets were sold after its cancellation.

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 the order as being in the public interest;
2. We find that Turismo Tony Perez violated 14 CFR Part 380 by failing to properly maintain a Public Charter escrow account and improperly using and handling participant funds;
3. We find that Turismo Tony Perez violated 14 CFR 380.34 by paying the Public Charter direct air carrier more than 60 days prior to the scheduled day of flights;
4. By engaging in the conduct described in ordering paragraphs 2 and 3 above, Turismo Tony Perez engaged in an unfair and deceptive practice and an unfair method of competition in violation of 14 CFR 380.27 and 49 U.S.C. § 41712;
5. We order Turismo Tony Perez and all other entities owned or controlled by or under the common ownership of Turismo Tony Perez and its successors and assignees to cease and desist from further violations of 14 CFR Part 380 and 49 U.S.C. § 41712;
6. Turismo Tony Perez is assessed \$40,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 through 4 above. Of this total penalty, \$20,000 shall be due and payable within 30 days of the effective date of this order. The remaining \$20,000 shall become due and payable immediately if Turismo Tony Perez violates this order's cease and desist provision within one year following the date of issuance of this order, or it fails to comply with the order's payment provisions;
7. Failure to pay the compromise assessment as ordered will subject Turismo Tony Perez 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 and may be subject to further enforcement action; and
8. Payment 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 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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