

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D.C.**

**Issued by the Department of Transportation
on the twenty-first day of September, 2006**

**Ritetime Aviation & Travel Services,
Inc., and O. Peter Obafemi**

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

Enforcement Proceeding

Docket OST-2006-24628

Served: September 21, 2006

CONSENT ORDER

This consent order concerns activities in connection with a Public Charter program covering flights between the United States and Lagos, Nigeria, by Ritetime Aviation & Travel Services, Inc. ("Ritetime"), under the direction and control of O. Peter Obafemi, that violated certain provisions of the Department's Public Charter regulations (14 CFR Part 380) and 49 U.S.C. §§ 41101 and 41712. This order directs Ritetime and O. Peter Obafemi, individually, to cease and desist from future violations, assesses Ritetime and Mr. Obafemi, jointly and severally, compromise civil penalties of \$220,000, and prohibits O. Peter Obafemi from participating as an officer, principal, or director in any United States or foreign air carrier or United States Public Charter operating within, to or from the United States for one year.

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 the stranding of 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 carrier covering the transportation to be sold (14 CFR 380.25(a), 380.28(a) and 380.28(b)); and 2) the charter operator deposit all of the funds that it receives from passengers for their air transportation in the

designated depository account to be maintained by the bank as escrow holder (14 CFR 380.34), and arrange for the bank to make payment of the total charter price, including payment of the amount for the return portion of the round trip, to the direct air carrier before the scheduled departure of the outbound flight (14 CFR 380.11).

On April 26, 2006, the Office of Aviation Enforcement and Proceedings (Enforcement Office) initiated an enforcement proceeding by filing an Enforcement Complaint and Notice of Enforcement Proceeding against Ritetime and O. Peter Obafemi, alleging violations of 49 U.S.C. §§ 41101 and 41712, and 14 CFR Part 380. According to the formal complaint, Ritetime and O. Peter Obafemi failed to comply with the Department's regulations for Public Charter programs in several respects as detailed below.

Ritime was the charter operator in the Public Charter program covered by Public Charter Prospectus ("PC") 02-249, which involved service between the United States and Lagos that began in May 2003. All significant decisions affecting Ritetime's business as it concerned PC 02-249 were made by or required the approval of O. Peter Obafemi, who also owned Ritetime.¹ World Airways, Inc. ("World") was the direct air carrier. Starting in May 2003, World repeatedly wrote to the Department to cancel program flights, citing nonpayment by Ritetime as the reason. Most of these flights were reinstated once Ritetime made some payment to World, even when the payment was not the entire amount owed. Thus, at numerous times during the program, Ritetime failed to make timely payment of the total charter price for the round-trip transportation of passengers prior to World's commencement of the outbound portion of passengers' trips, in violation of 14 CFR 380.11.

Public Charter Prospectus 02-249 terminated on December 31, 2003. World ceased all flights under the program after the December 31 termination date. When Ritetime asked the Department on December 31, 2003, for expedited consideration of its requested extension, Ritetime was aware that World had not signed a contract with Ritetime to continue the Public Charter program after December 31, 2003. Therefore, Ritetime's statement in its application that such a contract was in place was not true, and the application violated 14 CFR 380.28(a) and (b).

After the program ended on December 31, 2003, large numbers of Ritetime/World passengers were stranded in Lagos, Atlanta and New York

¹ Personal responsibility for corporate liability may attach when an individual's conduct amounts to an "animating force" that causes the violation of a statute and accompanying regulations. *Citronelle-Mobile Gathering, Inc. v Herrington*, 826 F.2d 16 (Temp. Emer. Ct. App., 1987), cert. denied, 484 U.S. 943 (1987). In certain cases, the Department has found individuals who made "day-by-day decisions" on behalf of a corporate entity personally liable for the unlawful conduct of that entity. See, e.g., *Principal Air Services, LLC, and David C. Bernstein*, Order 2006-7-13 (July 11, 2006); *Tropical Airways, Inc., and Larry Singh, Charter Violations*, Order 87-12-43 (Dec. 17, 1987).

awaiting flights to return them to their respective points of origin. The Enforcement Office received an estimate that approximately 1,221 passengers remained in Lagos and 860 in New York awaiting return transportation. The stranding of hundreds of passengers in the airport in Lagos created a chaotic and dangerous situation.²

The Enforcement Office's investigation of this situation showed that Ritetime had been advertising on its web site, Flyritetime.com, and selling tickets for round-trip air travel to passengers with return flight dates after December 31, 2003, even though Ritetime knew it had no approved Public Charter prospectus in place, in violation of 14 CFR 380.28(a)(1)(iii) and 380.30(a). While Ritetime may have undertaken to provide certain stranded passengers with funds to purchase return transportation and others with tickets on other flights at no additional cost to the passengers, hundreds of passengers were, at a minimum, inconvenienced by Ritetime's failure to comply with Part 380.

The Enforcement Office's investigation also confirmed that Ritetime had failed throughout the period of the Public Charter program to place consumer payments in its escrow account as required under 14 CFR 380.34. Ritetime generally deposited the funds in two non-escrow accounts at another bank in the United States that it maintained.

Ritime's operation of its Public Charter program in violation of Part 380 also violated 49 U.S.C. § 41101, which prohibits the sale of air transportation without authority, and constituted an unfair or deceptive trade practice and an unfair method of competition in violation of 49 U.S.C. § 41712.³

In mitigation, Ritetime states that it never intended to violate any of the Department's rules or statutes. Ritetime contends that World was actively negotiating the renewal of their contract to continue the Public Charter program, and that it believed that World had, in essence, already agreed to the renewal when Ritetime sold tickets to travelers that included return travel in 2004. Ritetime also asserts that World Airways improperly demanded cash payments from Ritetime, thereby making it impossible for Ritetime properly to escrow the payments. Moreover, Ritetime states, when World abruptly terminated the business agreement with Ritetime at the end of December 2003, Ritetime moved as quickly as possible to provide financial and in-kind assistance to stranded passengers and thereby mitigate any harm to the

² World agreed with the Enforcement office to settle any potential violations of Title 49 and Department regulations on its part, and entered into a consent order under which it was found to have violated 14 CFR Parts 380 and 212, and 49 U.S.C. § 41712. The order directed the carrier to cease and desist from further violations and assessed the carrier \$350,000 in compromise civil penalties. Order 2005-11-1 (issued November 1, 2005).

³ O. Peter Obafemi, being responsible for all significant decisions involving Ritetime, including those discussed above, was the animating force behind Ritetime's conduct and, thus, is individually responsible for the violations noted above. Accordingly, this order's assessed civil penalty and its cease and desist provisions bind O. Peter Obafemi.

traveling public. Ritetime recounts that it purchased tickets on other airlines, and provided cash to travelers in Nigeria and the United States. Without these efforts, the charterer notes, these passengers would have undergone further inconvenience.

Notwithstanding the mitigating factors described above, Ritetime's actions constituted serious violations of the statutes and the Department's Public Charter rules, and caused significant consumer harm.

The Deputy General Counsel and Ritetime and O. Peter Obafemi have reached a settlement in this matter. In order to avoid litigation, and without admitting or denying the alleged violations, Ritetime and O. Peter Obafemi accept the findings and conclusions of this order and agree to its issuance. Under this order, Ritetime and O. Peter Obafemi are ordered to cease and desist from future violations of 14 CFR Part 380, and 49 U.S.C. §§ 41101 and 41712. O. Peter Obafemi, individually, is prohibited from participation as an officer, director or principal in any U.S. or foreign air carrier or U.S. Public Charter program operating within or to or from the United States for one year.⁴ Ritetime and O. Peter Obafemi are assessed jointly and severally \$220,000 in compromise of potential penalties otherwise assessable under the provisions of 49 U.S.C. § 46301.

Of the total penalty amount, \$110,000 shall be due according to the schedule described in the ordering paragraphs below. The remaining \$110,000 shall be suspended for 2 years and 6 months after the date of issuance of this order, and then forgiven, unless Ritetime or Mr. Obafemi violates this order's cease and desist provisions, this order's one-year prohibition from participation in aviation, described immediately above, or this order's payment provisions, in which case the entire sum will become due and payable immediately. 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 effective deterrent to such conduct in the future by Ritetime, Mr. Obafemi and other charter operators.

⁴ The Department has, in the past, prohibited individuals from engaging in certain types of air transportation. See, e.g., *Principal Air Services, LLC, and David C. Bernstein*, Order 2006-7-13 (July 11, 2006); *In the matter of Ascend Aviation Group, LLC, et al.*, Enforcement Proceeding, DOT Docket 2004-17846-47, Order Granting Default Judgment (August 23, 2005) (ordering individual to "permanently cease and desist from marketing or other involvement in air transportation operations"); *Robert O. Nay, et al.*, Enforcement Proceeding, *Robert O. Nay, Emerald Tours, Ltd. (Virginia), World Classics, Ltd., and Emerald Tours Ltd. (Illinois)*, Enforcement Proceeding, DOT Docket 45663, Initial Decision of Administrative Law Judge Ronnie A. Yoder (Nov. 178, 1991), rev'd in part on other grounds, order 92-9-48 (Sep. 28, 1992) (ordering company president in his personal capacity to cease and desist from operating public charters for a period of five years); *Orien L. Dickerson, and Independent Air, Inc.*, *Violations of Section 411 of the Federal Aviation Act and 14 CFR Part 207*, Order 92-8-1 (Aug. 3, 1992) (ordering company vice president in his personal capacity to refrain from "gainful involvement" with air carriers, travel agents or public charter operators for 18 months).

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 Ritetime Aviation & Travel Services, Inc., violated 14 CFR 380.25(a), 380.28(a) and 380.28(b) by selling and advertising charter air transportation without having in place an approved Charter Prospectus covering such Public Charter flights or a contract with a direct carrier to conduct such Public Charter flights;
3. We find that Ritetime Aviation & Travel Services, Inc., violated 14 CFR 380.34 by failing to place in a proper depository account the funds it collected from passengers for Public Charter air transportation;
4. We find that Ritetime Aviation & Travel Services, Inc., violated 14 CFR 380.11 by failing to make payment of the total charter price, including payment of the amount for the return portion of the round trip, to the direct air carrier, before the scheduled departure of the outbound flight;
5. We find that, by engaging in the conduct and violations described in paragraphs 2 through 4 above, Ritetime Aviation & Travel Services, Inc., violated 49 U.S.C. § 41101 and engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
6. We find that O. Peter Obafemi, as the owner and animating force behind the conduct of Ritetime Aviation & Travel Services, Inc., described herein, is responsible for all of the actions of Ritetime Aviation & Travel Services, Inc., and is individually responsible for each of the violations of 14 CFR Part 380 and 49 U.S.C. §§ 41101 and 41712 found in paragraphs 2 through 5 of this order;
7. Ritetime Aviation & Travel Services, Inc., and all other entities owned and controlled by, or under common ownership and control with Ritetime Aviation & Travel Services, Inc., and O. Peter Obafemi, and their successors and assignees, are ordered to cease and desist from future violations of 14 CFR Part 380 and 49 U.S.C. §§ 41101 and 41712;
8. O. Peter Obafemi is prohibited from participation as an officer, director or principal in any U.S. or foreign air carrier or U.S. Public Charter program operating within or to or from the United States for one year from the date of issuance of this order;
9. Ritetime Aviation & Travel Services, Inc., and O. Peter Obafemi, jointly and severally, are assessed \$220,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2

through 5 of this order. Of the total penalty amount, \$110,000 shall be due according to the following schedule: a payment of \$15,000 shall be due within 15 days of the date of issuance of this order; in addition, nine payments of \$10,000 each shall be due quarterly, that is, within 3, 6, 9, 12, 15, 18, 21, 24, and 27 months of the date of issuance of this order. A final payment of \$5,000 shall be due within 30 months of the date of issuance of this order. The remaining \$110,000 shall be suspended for two years and six months after the date of issuance of this order, and then forgiven, unless Ritetime or O. Peter Obafemi violates this order's cease and desist provisions, its one-year prohibition on O. Peter Obafemi's participation in aviation, as described above, or its payment provisions, in which case the entire sum will become due and payable. Failure to pay the compromise assessment as ordered will subject Ritetime Aviation & Travel Services, Inc., and O. Peter Obafemi, 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; and

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 transfer shall be executed in accordance with the instructions contained in the Attachment to 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

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