



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

Issued by the Department of Transportation
on the 13th day of May, 2004

Premier Aircraft Management, Inc.

**Violations of 49 U.S.C. §§ 41301, 41703,
and 41712 and 14 CFR Part 375**

Docket OST 2004-16943

Served May 13, 2004

CONSENT ORDER

This order concerns unauthorized air service by Premier Aircraft Management, Inc., (PAMI) that violates 49 U.S.C. §§ 41301, 41703, and 41712 and 14 CFR Part 375. This order directs PAMI to cease and desist from further violations of these statutory provisions and assesses a \$175,000 civil penalty in compromise of penalties otherwise due and payable for the violations at issue.

PAMI, an operator of air charters that is incorporated in Nevada, holds a safety certificate issued by the Federal Aviation Administration (FAA) pursuant to 14 CFR Part 125. Authority under Part 125 is strictly limited to private carriage operators using large, U.S. registered aircraft.¹

Under 14 CFR Part 375, foreign civil aircraft² may not engage in "air transportation" within the meaning of 49 U.S.C. § 40102, which requires a foreign air carrier permit issued pursuant to 49 U.S.C. §§ 41301 and 41302.³ Engaging in air transportation by a foreign air carrier without a permit is a violation of Part 375 and 49 U.S.C. § 41301.⁴

¹ 14 CFR 125.11(b) provides that "[n]o certificate holder may conduct any operation which results directly or indirectly from any person's holding out to the public to furnish transportation."

² 14 CFR 375.1 defines a foreign civil aircraft as "an aircraft of foreign registry that is not part of the armed forces of a foreign nation... or a U.S.-registered aircraft owned, controlled, or operated by persons who are not citizens or permanent residents of the United States."

³ 14 CFR 375.2 provides that "[n]othing in this part shall authorize foreign civil aircraft to engage in air transportation nor be deemed to provide for such authorization by the Department" and 14 CFR 375.25 specifically requires a permit for commercial operations of foreign civil aircraft.

⁴ 14 CFR 375.60. Foreign air carriers must also conduct their operations within the United States in accordance with operations specifications issued by the FAA under 14 CFR Part 129.

Any violation of Part 375 or 49 U.S.C. § 41301 also constitutes an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.⁵ Moreover, service by a foreign air carrier between two U.S. points, a practice commonly referred to as cabotage, is a violation of 49 U.S.C. § 41703, which explicitly prohibits such transportation for compensation or hire except under very limited circumstances that do not apply here.⁶ Holding out cabotage service to the public, expressly or by course of conduct, constitutes a separate and distinct violation of 49 U.S.C. §§ 41301 and 41712.⁷

Since it began operations in 1999 with a “VIP-configured” Boeing 737-300, PAMI has entered into contracts for air transportation with a significant number of diverse entities, including numerous air charter brokers that hold out air transportation services to the public.⁸ Pursuant to some of these contracts, the carrier has transported for compensation a significant number of passengers between points wholly within the United States and, in a smaller number of instances, between points in the United States and points outside of the United States. While conducting these operations, a majority of PAMI’s officers and directors were not U.S. citizens, thus making PAMI a non-U.S. citizen under 49 U.S.C.

§ 40102(a)(15) for Departmental licensing purposes and the aircraft it operates a foreign civil aircraft under Part 375.⁹

PAMI points out that it has cooperated fully with the Department throughout the investigation of this matter. PAMI also states it did not intend to engage in common carriage operations and it was unaware of the need to obtain economic authority from the Department. PAMI also points to the fact that it is in the process of placing its aircraft on

⁵ See, e.g., *Pacific Coastal Airlines, Ltd., Violations of 49 U.S.C. §§ 41301 and 41712*, Order 2002-7-19 (2002).

⁶ The pertinent language of 49 U.S.C. § 41703 states that “an aircraft permitted to navigate in the United States under this section... may take on for compensation, at a place in the United States, passengers or cargo destined for another place in the United States only if – (1) specifically authorized under section 40109(g) of this title...”

⁷ See, e.g., *Asiana Airlines, Inc., Violations of 49 U.S.C. §§ 41302, 41703, and 41712, and Order 98-7-22*, Order 2002-10-20 (2002).

⁸ A company may not hold out air transportation services, either directly or indirectly, without appropriate authority. Accordingly, the activities of several of the aforementioned charter brokers are themselves under investigation by the Office of Aviation Enforcement and Proceedings.

⁹ In order for a corporation to be a U.S. citizen under 49 U.S.C. § 40102(a)(15), among other things, at least two-thirds of its board of directors and other managing officers must themselves be U.S. citizens. In addition, during the time period encompassing the conduct in question, the corporation must, in fact, have been controlled by U.S. citizens. See, e.g., *In the Matter of Intera Arctic Services, Inc.*, Order 87-8-43 (1987); *Premier Airlines, Fitness Investigation*, 95 C.A.B. 101 (1982). In keeping with enforcement precedent, Congress recently codified the “actual control” requirement. 49 U.S.C. § 40102(a)(15) as amended by Vision 100—Century of Aviation Reauthorization Act, Pub.L. 108-176, § 807, 117 Stat. 2490 (Dec. 12, 2003).

the certificate of a duly licensed third party, which will operate the aircraft.¹⁰ Moreover, it asserts that it was unaware of the statutory citizenship requirements pertaining to U.S. air carriers and that it has corrected the citizenship problem. We note, however, that even if PAMI were a U.S. citizen, its operations exceeded the scope of its authority to conduct private carriage operations under Part 125 and, therefore, constituted common carriage, which, in the context of air service, consists of the provision or holding out of air transportation to the public for compensation or hire.¹¹

On the question of whether it has held out air transportation, PAMI states that it neither advertised nor directly solicited business. However, even assuming that the carrier did not actively solicit business, its objective conduct involved the provision of air transportation to a significant number of diverse entities and, by doing so, it engaged in a course of conduct evincing a willingness to serve members of the public indiscriminately.¹² In effect, PAMI gained a reputation for a willingness to provide air transportation to at least a class or segment of the public while operating without an effective permit issued under 49 U.S.C. § 41301.¹³ In fact, so well-established was PAMI's reputation that the carrier was frequently approached by air charter brokers who specialize in arranging air transportation services for members of the public.

Based on the foregoing, the Office of Aviation Enforcement and Proceedings (Enforcement Office) believes that PAMI has engaged in air transportation without a foreign air carrier permit in violation of 49 U.S.C. § 41301 and 14 CFR Part 375. PAMI's holding out of air transportation without the requisite permit is also an unfair and deceptive practice and unfair method of competition prohibited by 49 U.S.C. § 41712. In addition, PAMI's transportation of passengers or cargo wholly within the United States constitutes cabotage in violation of 49 U.S.C. § 41703. PAMI's holding out of cabotage service also constitutes a separate and distinct violation of 49 U.S.C. §§ 41301 and 41712.

¹⁰ In this connection, PAMI represents that it will no longer hold out or engage in air transportation with respect to these or any other aircraft.

¹¹ *Woolsey v. National Trans. Safety Bd.*, 993 F.2d 516 (5th Cir. 1993); *Voyager 1000 v. Civil Aeronautics Bd.*, 298 F.2d 430 (9th Cir. 1973); *Las Vegas Hacienda, Inc., v. Civil Aeronautics Bd.*, 298 F.2d 430 (9th Cir. 1962); *Intercontinental, U.S., Inc., Enforcement Proceeding*, 41 C.A.B. 583 (1965); *SportsJet, LLC, Violations of 49 U.S.C. §§ 41101 and 41712*, Order 2003-12-23 (2003).

¹² A holding out of common carriage may occur when a carrier engages in a course of conduct such that it gains a reputation for having a willingness to serve the public. *Woolsey*, 993 F.2d at 524 n.24; *Arrow Aviation, Inc., v. Moore*, 266 F.2d 488, 490 (8th Cir. 1959); *Alaska Air Transport, Inc. v. Alaska Airplane Charter Co.*, 72 F.Supp. 609, 610-11 (D. Alaska 1947); *Intercontinental*, 41 C.A.B. at 601; *SportsJet* at 3.

¹³ The fact that a carrier "may limit its service to a class or segment of the general public... does not detract from [its] status as a common carrier so long as it indicates a willingness to serve all within the class." *Intercontinental*, 41 C.A.B. at 601. See also *Woolsey v. National Trans. Safety Bd.*, 993 F.2d 516 (5th Cir. 1993) (carrier that held out its service only to rock and country music stars was nevertheless engaged in common carriage).

The Enforcement Office views seriously PAMI's longstanding unlicensed common carriage and cabotage operations. We have carefully considered the facts of this case, including PAMI's mitigating statement, and continue to believe that enforcement action is necessary. PAMI, in order to avoid litigation and without admitting or denying the alleged violations, agrees to the issuance of this order to cease and desist from future violations of 49 U.S.C. §§ 41301, 41703, and 41712 and 14 CFR Part 375 and to an assessment of \$175,000 in compromise of potential civil penalties. Of this total penalty amount, \$87,500 shall be paid under the terms described below. The remaining \$87,500 shall be suspended for two years following the issuance of this order, and then forgiven, unless PAMI violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and PAMI may be subject to further enforcement action. The Enforcement Office believes that this compromise is appropriate, serves the public interest, and creates an incentive for all carriers to comply fully with the requirements of 49 U.S.C. §§ 41301, 41703, and 41712 and 14 CFR Part 375.

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 Premier Aircraft Management, Inc., violated 49 U.S.C. § 41301 and 14 CFR Part 375, as described above, by engaging in air transportation without appropriate economic authority;
3. We find that Premier Aircraft Management, Inc., violated 49 U.S.C. §§ 41301 and 41703, as described above, by holding out and performing air transportation for compensation or hire between points entirely within the United States;
4. We find that by engaging in the conduct described in ordering paragraphs 2 and 3, Premier Aircraft Management, Inc., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
5. Premier Aircraft Management, Inc., and all other entities owned and controlled by, or under common ownership and control with Premier Aircraft Management, Inc., and their successors and assignees, are ordered to cease and desist from engaging in air transportation without appropriate authority and, in particular, further violations of 49 U.S.C. §§ 41301, 41703, and 41712 and 14 CFR Part 375 ;
6. Premier Aircraft Management, Inc., is assessed \$175,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2, 3, and 4, above. Of this total penalty amount, \$45,000 is due and payable within 30 days of the date of issuance of this order and \$42,500 is due and payable on August 1, 2004. The remaining \$87,500 shall be suspended for two years following the issuance of this order, and then forgiven, unless Premier Aircraft Management, Inc.,

violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Premier Aircraft Management, Inc., may be subject to further enforcement action. Failure to pay the penalty as ordered shall also subject Premier Aircraft Management, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to enforcement action for failure to comply with this order; and

7. 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 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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