



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

Issued by the Department of Transportation
on the 4th day of May, 2004

**Avia Aviation, Ltd.
Violations of 49 U.S.C. §§ 41301
and 41712**

Served: May 4, 2004

OST 2004-16943

CONSENT ORDER

This consent order concerns Avia Aviation, Ltd., (Avia) a foreign air carrier within the meaning of 49 U.S.C. §40102(a)(21), that engaged in air transportation between the United States and Canada without effective economic authority from the U.S. Department of Transportation in violation of 49 U.S.C. §§ 41301 and 41712. This order directs Avia to cease and desist from further violations of these statutory provisions and to pay a compromise civil penalty of \$30,000 (US).

Section 41301 requires that a foreign air carrier hold a permit conferring economic authority from the Department in order to engage in air transportation to or from the United States. Part 294 of the Department's regulations (14 CFR Part 294) provides an exemption for certain Canadian charter air taxis from the permit requirement of section 41301. However, authority under this exemption is contingent upon a carrier's receipt of safety authority from the Federal Aviation Administration (FAA) pursuant to 14 CFR Part 129. Any trans-border air transportation conducted before receipt of this parallel authority would contravene sections 41301 and 41712. The latter provision prohibits carriers from engaging in unfair and deceptive practices and unfair methods of competition.¹

Since June 2003, Avia has specialized in charter air service originating from its base in Calgary, Canada. On July 23, 2003, the Department approved Avia's application to operate charter air service between Canada and the United States pursuant to Part 294. However, this authority did not become effective until February 19, 2004, when Avia received Part 129 operations specification from the FAA. Prior to this date, notwithstanding its lack of effective

¹ 14 CFR 294.3(f) states that a Canadian charter air taxi shall conduct US-Canada trans-border charter service only if it "has been granted Federal Aviation Administration operations specifications required under Part 129 of the Federal Aviation Regulations."

economic authority, Avia conducted a significant number of flights between the United States and Canada for compensation or hire.

In mitigation, Avia asserts that it did not intend to operate in the United States without proper authority from the Department. Rather, the carrier states that it believed that its trans-border flights were private in nature and, therefore, not subject to the licensing requirements applicable to common carriers.² Moreover, while Avia maintains that it did not engage in what it considers to be unfair and deceptive practices and unfair methods of competition, the carrier points out that, at all times in this matter, it has exhibited a cooperative and compliant attitude and has sought advice from the Department to ensure that its future operations comply with the applicable Departmental licensing requirements.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered all of the information provided by Avia, but continues to believe that enforcement action is warranted. In this connection and in order to avoid litigation, the Enforcement Office and Avia have reached a settlement of this matter. Without admitting or denying the violations described above, Avia 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 \$30,000 (US) in compromise of potential civil penalties otherwise assessable. Of this total penalty amount, \$15,000 shall be due and payable within 30 days of the issuance of this order. The remaining \$15,000 shall be suspended for one year following the issuance of this order, and then forgiven, unless Avia violates this order's cease and desist or payment provisions, in which case the entire unpaid portion of this civil penalty shall become due and payable immediately and Avia may be subject to further enforcement action. The Enforcement Office believes this compromise is appropriate, 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 Avia Aviation, Ltd., violated 49 U.S.C. § 41301 by commencing air service to and from the United States prior to obtaining appropriate authority from the Department;
3. We find that, by engaging in the conduct and violations described in paragraph 2 above, Avia Aviation, Ltd., engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;

² The Enforcement Office disagrees with Avia's assertion that its operations constituted private carriage. Rather, the Enforcement Office notes that, among other things, many of the carrier's operations involved repeated "demonstration" flights for the same potential customers of what Avia termed its "fractional ownership program." Moreover, given that the carrier holds a non-scheduled international license from the Canadian Transportation Agency and a commercial air operator certificate from Transport Canada, and has made the aircraft in its "fractional program" publicly available on its Internet website for use in charter operations, whether the Canadian government would accept Avia's characterization of its operation as private is unclear.

4. Avia Aviation, Ltd., and all other entities owned and controlled by, or under common ownership and control with Avia Aviation, Ltd., and their successors and assignees, are ordered to cease and desist from future violations of 49 U.S.C. §§ 41301 and 41712 as described above;

5. Avia Aviation, Ltd., is assessed a civil penalty of \$30,000 in compromise of the civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 above. Of the assessed penalty, \$15,000 shall be due and payable within 30 days of the issuance of this order. The remaining \$15,000 shall be suspended for one year following the issuance of this order, and then forgiven, unless Avia Aviation, Ltd., violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Avia Aviation, Ltd., may be subject to further enforcement action. Failure to pay the penalty as ordered shall also subject Avia Aviation, Ltd., to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and

6. Payment of the civil penalty described above 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 attached instructions.

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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