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Order 92-8-1

**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 August, 1992

SERVED August 3, 1992

ORIEN L. DICKERSON,
individually and as Vice President of
INDEPENDENT AIR, INC.
Violations of Section 411 of the Federal
Aviation Act and 14 CFR Part 207

CONSENT ORDER

This order concerns violations of certain consumer protection provisions of the Department's regulations applicable to Public Charters and the Federal Aviation Act (Act) during 1990 by Orien L. Dickerson, then-Vice President of Independent Air, Inc. (Independent), a now-defunct direct air carrier. At Mr. Dickerson's direction, Independent improperly withdrew charter participant funds from its escrow account, which was established for consumer protection. This was done in violation of section 411 of the Act, 49 U.S.C. app. § 1381, and the Department's regulations applicable to Public Charters, 14 CFR Part 207. This consent order directs Mr. Dickerson to cease and desist from future violations, pay compromise civil penalties, and refrain from involvement with air carriers, travel agents, or Public Charter operators for 18 months.

Under section 207.17 of the Department's regulations applicable to Public Charters, carriers are prohibited from obtaining participant funds deposited in the direct air carrier's escrow account by the charter operator until after the carrier has certified in writing to the bank that the charter flight to which the escrow funds relate has been completed.¹ (14 CFR 207.17). In addition,

¹ Section 207.17 does allow payment of a specified portion of the escrow funds after the outbound segment of a round-trip charter is completed if the terms of the escrow agreement between the carrier and the bank allows such an arrangement. The depository agreement at

section 411 of the Act prohibits carriers from engaging in deceptive practices with respect to air transportation.

In 1990, Independent, along with two different Public Charter operators, filed two Public Charter prospectuses. The first prospectus, filed with Educational Travel Services, Inc. (ETS) as the operator, covered a total of 12 round trip Public Charter flights to be operated from various points in the United States to Zurich, Switzerland. These flights were to have been conducted between June 5 and September 5, 1990. However, apparently because of mechanical problems with Independent's aircraft, Independent operated only six of the outbound and ten of the inbound flights. The second prospectus, filed with Azores Express (Azores) as the operator, covered a series of round trip Public Charter flights to be operated from Boston to the Azores. These flights were to have been conducted between May 5 and September 29, 1990. However, as with the flights covered by the first prospectus, Independent did not perform all the listed flights. As a result of Independent's failure to perform the flights, the charter operators had to pay other carriers to have stranded participants complete trips and for others to receive trips not yet begun.

On August 27, 1990, in response to an informal complaint, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) wrote to Independent requesting information concerning Independent's use of its escrow account. The Enforcement Office also requested information from Sovran Bank/Central South (Sovran), Independent's escrow depository bank. The Department determined that Independent routinely directed Sovran to transfer money from Independent's escrow account at Sovran to Independent's non-escrow operating account at the bank prior to completion of the flight in question. On at least several occasions, Independent requested and was provided funds from the escrow account for flights long before the planned departure of the flight. For example, on July 18, 1990, Independent directed Sovran to transfer \$103,602 from the escrow account for a flight that did not depart until August 7, 1990. As a further example, on July 25, 26, and August 1, 1990, Independent directed Sovran to transfer a total of \$129,304 from the escrow account for a flight that did not depart until August 14, 1990. At the time the charter programs collapsed, Independent had requested and received escrowed money for flights that had not operated at all and which were never operated by Independent.

By obtaining escrowed funds for certain charter flights prior to completion of those charter flights, Independent violated section 207.17 of the Department's regulations. In addition to violating section 207.17, the practices described above were unfair and deceptive and thus violated section 411 of the Act.

issue here, between Independent and Sovran Bank, only provided for payment upon completion of a roundtrip charter flight.

Although Independent is no longer in operation, Mr. Dickerson, as the then-Vice President responsible for the day-to-day operations of Independent, remains individually responsible for these violations of the Act and the Public Charter rules. In fact, Mr. Dickerson personally signed some of the escrow account withdrawal requests that were submitted to Sovran.

In mitigation, Mr. Dickerson asserts that the charter operators cancelled the charter contracts and that Independent was ready and able to perform its contractual obligations. Mr. Dickerson states that Independent was owed money by Azores and was therefore entitled to at least some of the money deposited in the escrow account for the flights covered by the Azores prospectus. Mr. Dickerson further asserts that Independent had sufficient funds remaining in that escrow account to fully refund money to ETS, after various fees, including cancellation charges, were paid to Independent. Finally, Mr. Dickerson asserts that any escrow funds for the ETS program were used only for the charter program.

Regardless of Independent's contractual claims against the two Public Charter operators with which it filed prospectuses, Mr. Dickerson and Independent have violated the Public Charter regulations concerning escrow accounts. Side agreements between Public Charter operators and carriers are irrelevant where protection of participant funds is involved.

Mr. Dickerson and the Enforcement Office have entered into a settlement agreement regarding the matters discussed in this order. Mr. Dickerson consents to the issuance of this order, which includes a compromise civil penalty assessment of \$20,000. The order also directs Mr. Dickerson to refrain from gainful involvement with air carriers, travel agents, or Public Charter operators for 18 months.² Of the total penalty assessment amount, Mr. Dickerson shall pay \$5,000 according to the schedule set forth below.³ The remaining \$15,000 will be forgiven unless Mr. Dickerson commits other violations of section 411 of the Act or Part 207 of the Department's regulations within two years of the date of issuance of this order, or becomes involved with air carriers, travel agents, or Public Charter operators during the 18-month debarment period. These settlement provisions will provide the public additional assurance that Mr. Dickerson will abide by the Department's Public Charter regulations in the future and will provide a strong deterrence from future violations for Mr. Dickerson and other direct air carriers and their officers.

² The 18-month debarment period will be considered to have commenced on November 21, 1991, the date on which Mr. Dickerson left the employment of Airline of the Americas, Inc.

³ In determining the civil penalty assessment amount and payment terms, the Enforcement Office has considered Mr. Dickerson's financial condition.

This order is issued under authority contained in 49 CFR 1.57a and 14 CFR 385.22.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as in the public interest;
2. We find that Orien L. Dickerson violated 14 CFR 207.17 by obtaining escrowed funds for certain charter flights prior to completion of those flights;
3. We find that by engaging in the conduct and violations described in paragraph 2 above, Orien L. Dickerson also engaged in unfair and deceptive practices or unfair methods of competition in violation of section 411 of the Act;
4. Orien L. Dickerson, and all other entities wholly or partially owned or controlled by him, and his successors and assignees, are ordered to cease and desist from violating section 411 of the Act and 14 CFR Part 207;
5. Orien L. Dickerson is ordered to refrain from gainful involvement with air carriers, travel agents, or Public Charter operators for 18 months (i.e., until May 20, 1993);⁴
6. Orien L. Dickerson is assessed \$20,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 of this order. Of the total penalty amount, \$1,000 shall be due within 30 days of the date of issuance of this order. In addition, \$4,000 shall be payable in four installments of \$1,000 each, due within 120, 210, 300, and 390 days, respectively, of the date of issuance of the order. The remaining \$15,000 shall be forgiven unless Mr. Dickerson fails to comply with the payment provisions of this order, commits other violations of section 411 of the Act or Part 207 of the Department's regulations within two years of the date of issuance of this order, or becomes involved with air carriers, travel agents, or Public Charter operators during the 18-month debarment period, in which case the unpaid portion of the \$20,000 assessed penalty shall become due and payable immediately. Failure to pay the penalty as ordered will also subject Orien L. Dickerson to an assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and

⁴ See footnote 2, *supra*.

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 Attachment 1.

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 motion.

BY:

Rosalind A. Knapp
Deputy General Counsel

(SEAL)

Attachment

	1	2	
To	Type		
021030004			
From		4	5
Ref		Amount	
3			
Ordering Bank and Related Data			
6			
7/8	TREAS NYC/CTR/OST		
9	BNF=/AC-69010005 OBI=		
10	Payor		
11			

1. Treasury Department Code—Provided.
2. Type Code—To be provided by Sending Bank.
3. Sending Bank's Code—(ABA #).
4. Reference Number—Optional number, entered if Sending Bank desires to number transaction.
5. Amount—Include dollar sign and punctuation including cents digits.
6. Sending Bank Name—Telegraphic abbreviation corresponding to Item 4
- 7/8. Entire line provided precisely as shown.
9. Entire line provided precisely as shown.
10. Enter name of air carrier or other payor (as shown on order).
11. Identify Payment (maximum 80 digits). Enter order number (if any), issue date, and state "installment" or "full payment."

NOTE: Questions about these instructions should be directed to Yash Parekh (M-86.2) (202) 366-5760. To ensure proper credit, Mr. Parekh should be notified when each payment is made.

(Effective 10/1/91)