



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

Issued by the Department of Transportation  
on the 22<sup>nd</sup> day of January, 2015

Application of

**AERODYNAMICS INCORPORATED**

for a certificate of public convenience and necessity under  
49 U.S.C. § 41102 to engage in interstate scheduled air  
transportation of persons, property, and mail

**Docket DOT-OST-2014-0114**

**ORDER TO SHOW CAUSE**

**SUMMARY**

By this order, the Department proposes to (1) deny the application filed by Aerodynamics Incorporated (“ADI”) for a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail, and (2) revoke its certificates to conduct interstate and foreign charter air transportation of persons, property, and mail. Our review of the record in this case indicates that ADI does not possess the managerial competence necessary to oversee its current charter and proposed scheduled passenger operations, nor does it have the proper compliance disposition and regard for the laws and regulations governing its services.

**STATUTORY STANDARD**

Section 41110(e) of Title 49 of the United States Code (the “Transportation Code”) provides that the requirement that air carriers be “fit” to perform air transportation services is a continuing one and that an air carrier’s authority shall be amended, modified, suspended, or revoked if it fails to remain fit, willing, and able to provide the air transportation authorized by its economic authority, which includes failure to comply with the regulations governing its operations. In addition to being a U.S. citizen, the three areas of inquiry that must be addressed in order to determine a company’s continued fitness are whether the company continues to demonstrate that it has (1) the managerial skills and technical ability to conduct its operations, (2) access to resources sufficient to continue operations without posing an undue risk to consumers or their funds, and (3) the proper regard for the laws and regulations governing its services, including compliance with the Transportation Code and regulations imposed by Federal and State agencies.

**THE APPLICATION**

On June 25, 2014, ADI filed an application in Docket DOT-OST-2014-0114 requesting a certificate of public convenience and necessity to the extent necessary to permit it to operate interstate

scheduled air transportation. ADI accompanied its application with information required by 14 CFR § 204.3 of our regulations.<sup>1</sup>

No answers opposing ADI's application were filed. However, as discussed below, the information provided by the applicant does not demonstrate that it continues to meet our fitness requirements. Therefore, the Department proposes to deny ADI's application for a certificate of public convenience and necessity to engage in interstate scheduled transportation of persons, property, and mail, and revoke its certificates for interstate and foreign charter air transportation. Interested parties will have an opportunity to show cause why we should not adopt as final our tentative conclusion that ADI is not fit, willing, and able to conduct interstate scheduled passenger air transportation nor is it fit to continue to conduct interstate and foreign charter air transportation.

## **BACKGROUND**

ADI is currently incorporated in the State of Michigan with a corporate office in Beachwood, Ohio, and an operations office in Kennesaw, Georgia. ADI is a wholly owned subsidiary of ADI Holdings, Inc. ("ADI Holdings"), a Georgia corporation. ADI Holdings is, in turn, a wholly owned subsidiary of Aviation Capital Partners, LLC ("ACP"), a Delaware limited liability company. ACP's membership interests are owned by Mr. Scott A. Beale (80 percent) and Mr. Robert J. Ward (20 percent), both of whom are U.S. citizens. Mr. Beale is also ADI's Chief Executive Officer ("CEO") and a member of ADI's Board of Directors. Mr. Ward is the air carrier's President and also a member of the Board of Directors. The air carrier holds a Federal Aviation Regulation ("FAR") Part 121 certificate issued by the Federal Aviation Administration ("FAA") and currently conducts charter passenger operations with a fleet of five Embraer aircraft each configured for 50 passengers.

By Order 2003-9-29, issued September 30, 2003, the Department found ADI fit to engage in interstate and foreign charter air transportation of persons, property, and mail, and issued to the air carrier certificates of public convenience and necessity authorizing such operations.

On October 15, 2012, ADI ceased air transportation operations due to financial pressure. On January 7, 2013, ADI filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code and subsequently emerged from bankruptcy on August 12, 2013. On March 12, 2014, ADI filed a request to resume operations, along with updated fitness information supporting such a request. Upon review, the Department, on April 25, 2014, granted oral authority to ADI to resume its certificated charter operations.<sup>2</sup>

On June 25, 2014, ADI filed the above mentioned application in Docket DOT-OST-2014-0114 requesting an interstate scheduled certificate to operate 10 weekly round trip flights between Youngstown-Warren Regional Airport ("YNG") and Chicago O'Hare International Airport ("ORD"), utilizing one of its 50-seat Embraer aircraft. ADI provided information supporting its continued fitness, identifying a pending civil case, wherein Mr. Scott Beale, ADI's CEO and

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<sup>1</sup> Additional information supplementing ADI's application was filed on August 28, October 13, October 16, November 3, November 19, and November 26, 2014.

<sup>2</sup> See Notice for resumption of certificated operations, dated July 3, 2014, in Dockets DOT-OST-2001-10985 and DOT-OST-2001-10986.

majority shareholder (80 percent), was named a defendant in a lawsuit filed by Flight Test Aviation, Inc. (“FTA”).<sup>3</sup>

## ISSUE OF CONCERN

During the pendency of ADI’s application, the Department became aware of new developments concerning the civil matter against Mr. Beale. On November 17, 2014, the Department learned from media reports that the case between FTA and Mr. Beale had gone to a jury trial on July 14-15, 2014, and Mr. Beale was found to have committed fraud. More specifically, according to court documents, Beale solicited funds from FTA and made false statements to an agent of FTA to induce him to give ADI \$500,000 in investment capital, as part of an agreement to support charter flights pursuant to a guaranteed revenue contract with a third party company. Contrary to Mr. Beale’s statement, no such contract existed. On October 24, 2014, Mr. Beale appealed the July verdict, but a judge denied the appeal and reaffirmed the jury’s decision. The court awarded FTA \$500,000 in compensatory damages and \$100,000 in punitive damages.

## DISCUSSION

In light of the outcome of this civil matter, the Department, in carrying out its responsibilities under 49 U.S.C. § 41110(e), reexamined ADI’s continued fitness to conduct its operations. Given Mr. Beale’s significant positions within ADI (*i.e.*, majority shareholder, CEO, and Board member) and his ability to influence and control the decisions of the air carrier, the Department focused its review on the company’s compliance disposition and managerial competency.

The purpose of evaluating a company’s compliance disposition is to ensure that the company and the personnel running and controlling the company do and will abide by the laws, rules, and regulations governing the air carrier’s operations and that management will be diligent in maintaining safe operations. When determining a company’s compliance disposition, the Department reviews the company’s record to determine if its owners and/or managers have a history of safety violations, fraudulent business activities, or activities that would indicate that the company or its key personnel are unlikely to comply with government laws, rules and directives. Section 204.3 (p) of the Department’s regulations (14 CFR § 204.3 (p)) specifically requires applicants for authority to submit a description of all charges within the past 10 years of fraud, felony, or antitrust violations, or of unfair, anticompetitive or deceptive business practices, including their final disposition or current status of each such proceeding.

In addition, regarding an air carrier’s management and compliance disposition, the Department has long held that violations that have occurred under an executive’s leadership can support a finding that he or she lacks an adequate compliance disposition.<sup>4</sup> Moreover, “a carrier’s key personnel are responsible for conducting its operations in a way so as to ensure that reasonably expected compliance problems do not occur.”<sup>5</sup>

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<sup>3</sup> See Flight Test Aviation, Inc. v. Beale, No 1:2013cv00145 (E.D. Va. 2014).

<sup>4</sup> See ATX, Inc., Fitness Investigation, Docket 48780, Opinion and Order on Review, issued April 5, 1994, at 7.

<sup>5</sup> *Id.*, citing Yute Air Alaska, Order 89-11-48.

In this case, Mr. Beale, as ADI's CEO, majority shareholder, and one of the company's three Board members, is ultimately responsible for ensuring the air carrier has the managerial competency to conduct its operations, and the proper regard for the laws and regulations governing its services. In fact, Mr. Beale's resume states he provides "general oversight of all company departments to include direct reports from the President/COO; CFO; Vice President of Business Development; Vice President of Operations; and Vice President of Government Services."<sup>6</sup> The court found that Mr. Beale committed fraud while soliciting funds for ADI from an investor and expended those funds in a manner which was not consistent with the agreement between the parties. Mr. Beale's actions indicate a disregard for the law. Thus, Mr. Beale's ownership and positions of influence at the air carrier raise serious questions as to ADI's ability to satisfy the Department's requirements that an air carrier must possess a positive compliance disposition and the requisite competency to oversee its operations.<sup>7</sup>

Exacerbating this issue is the fact that ADI failed to notify the Department regarding the outcome of this civil matter as required by 14 CFR § 204.3 (l) and (p) at any point during the pendency of its application. Each applicant must submit timely updates to its application regarding changes in management, operating plans, financial condition, compliance disposition, or ownership, all which could affect its fitness while its application is under review. Failure to do so indicates ADI's lack of regard for the regulations and raises further concerns about its ability to report information on an ongoing basis, as required by the Department.

### **TENTATIVE DECISION**

After careful review of the record and based on the totality of the circumstances, it is the Department's tentative conclusion that ADI has failed to demonstrate it continues to be fit to operate as an air carrier under Mr. Beale's direction and control. We tentatively find that ADI's application for interstate scheduled passenger authority should be denied and its interstate and foreign charter passenger certificates should be revoked. The Department's review indicates that ADI does not possess the managerial competency necessary to oversee its current charter and proposed scheduled passenger operations, nor does it have the proper compliance disposition and regard for the laws and regulations governing its services with the continued involvement of Mr. Beale.

### **OBJECTIONS**

The Department will give interested persons 14 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 7 days thereafter. We expect such persons to direct their objections, if any, to the application and points at issue and to support such objections with detailed economic analyses. If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary, and what material issues of decisional fact the objector would expect to establish through a hearing or discovery that cannot be established in written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so,

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<sup>6</sup> See Application of Aerodynamics Incorporated, dated June 25, 2014, Attachment F.

<sup>7</sup> See Boston-Maine Airways Corp., Show Cause Order 2008-2-3, issued February 1, 2008.

the type of procedure should be specified (*See* Part 302, Rules 19 and 20); if not, the reasons why not should be explained. The Department will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to ADI's fitness and certification.

**ACCORDINGLY,**

1. The Department directs all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above to deny the interstate scheduled passenger application filed by Aerodynamics Incorporated and revoke its certificates of public convenience and necessity authorizing it to engage in interstate and foreign charter passenger air transportation.
2. The Department directs any interested persons having objections to the issuance of an order making final any of the proposed findings and conclusions set forth here to file them with Department of Transportation Dockets, 1200 New Jersey Avenue, SE, Washington, D.C. 20590, in Docket DOT-OST-2014-0114 and serve them upon all persons listed in Attachment A no later than 14 days after the service date of this order; answers to objections shall be filed no later than 7 days thereafter.
3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.<sup>8</sup>
4. In the event that no objections are filed, the Department will consider all further procedural steps to be waived and will enter an order making final our tentative findings and conclusions.
5. The Department will serve a copy of this order on the persons listed in Attachment A.
6. The Department will publish a summary of this order in the Federal Register.

By:

**BRANDON M. BELFORD**  
Deputy Assistant Secretary  
for Aviation and International Affairs

*An electronic version of this document is available on the World Wide Web at:*  
<http://www.regulations.gov>

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<sup>8</sup> Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

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