

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

Served: October 3, 1991

FAA Order No. 91-48

In the Matter of:)
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_____)

MICHAEL EDWARD WENDT

Docket No. CP89GL0084

ORDER ACCEPTING RESPONDENT'S APPEAL BRIEF AND
GRANTING EXTENSION OF TIME TO FILE COMPLAINANT'S REPLY BRIEF

Complainant has moved for an order to show cause why this case should not be dismissed in view of Respondent's failure to seek the Administrator's consent to an extension of time for the filing of Respondent's appeal brief. Complainant also requests an extension of time to file its reply brief, if such a brief is necessary. As discussed below, the motion for an order to show cause is denied and the motion for extension is granted.

On July 11, 1991, the Administrator's delegate granted Respondent's written request for an extension of time to file his appeal brief. Pursuant to that extension of time, which was agreed-to by Complainant's counsel, the appeal brief was due on August 8. Respondent filed his appeal brief on August 12. Although the record contains no written request for an extension of time past August 8, Respondent states in

his brief that he "obtained an extension of time up to August 12, 1991 to file this brief." Indeed, Complainant admits in its motion that on August 8, Respondent's counsel sought and obtained Complainant's counsel's agreement to an additional 4-day extension of time for the filing of the appeal brief, and that Respondent's counsel sent Complainant's counsel a confirming letter. Respondent states in his opposition to Complainant's motion that a copy of this confirming letter was sent to the Docket Section, and that this was indicated on the face of the letter. However, no such letter has ever been filed in the official record of this case, nor has either side submitted a copy of the letter in connection with the instant motion.

The Rules of Practice in FAA Civil Penalty Actions provide that "[t]he parties may agree to extend the time for perfecting the appeal with the consent of the FAA decisionmaker," and "[i]f the FAA decisionmaker grants an extension of time to perfect the appeal, the appellate docket clerk shall serve a letter confirming the extension of time on each party." 14 C.F.R. §13.233(c)(1). Although the four-day uncontested extension of time was not officially granted in this case, it likely would have been if Respondent's letter had been received by the Appellate Docket Clerk, as Respondent apparently thought it had. Accordingly, I find that good cause exists for accepting Respondent's appeal brief as

properly filed. Complainant shall have 35 days from the date of service of this order to file a reply brief.

JAMES B. BUSEY, ADMINISTRATOR
Federal Aviation Administration



by: JAMES S. DILLMAN*
Assistant Chief Counsel

Issued this 4th day of October, 1991.

* Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by Memorandum dated January 29, 1990, pursuant to 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202. See 55 Fed. Reg. 15094 (April 20, 1990).