



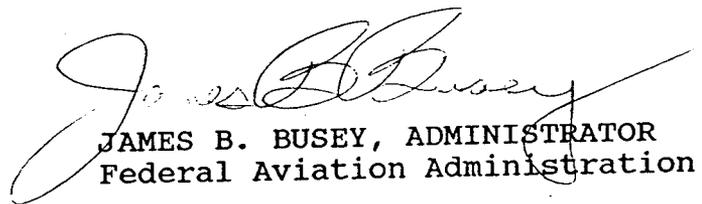
the law judge, asserting that the Amended Order Assessing Civil Penalty did not accurately reflect the settlement agreement because, Respondent argued, he never admitted that he had committed the violations alleged in the complaint. The law judge issued an order on June 25, 1991, in which he found that Respondent's denial of the alleged violations was inconsistent with the stated terms of the settlement. He held that he approved of, and was adopting, the Amended Order Assessing Civil Penalty, and that Respondent's appeal was dismissed with prejudice.

On July 3, 1991, Respondent filed a notice of appeal with the Administrator, challenging the law judge's order. Respondent asserted that "[i]n reading the settlement into the record, Counsel Barbieri [the agency attorney] slipped in the phrase 'the violations to remain the same' which phrase the defendant, due to his lack of knowledge of legalese, failed to fully understand, and would not have agreed to." On August 23, 1991, Respondent served his appeal brief.

On September 10, 1991, Complainant filed the Motion to Dismiss and Motion for Extension of Time, arguing that Respondent's appeal should be dismissed because the notice of appeal and the appeal brief were filed late. In the alternative, Complainant sought an extension of time in which to file the reply brief until after the Administrator determines whether to dismiss Respondent's appeal.

Section 13.233(a) of the Rules of Practice provides that "[a] party shall file the notice of appeal not later than 10 days after entry of the oral initial decision on the record . . . ." 14 C.F.R. § 13.233(a) (1991). Additionally, "a party shall perfect an appeal, not later than 50 days after entry of the oral initial decision on the record . . . ." 14 C.F.R. § 13.233(c) (1991). Respondent did not file his notice of appeal or his appeal brief until long after these time periods had expired. Nonetheless, under the circumstances of this case, in which a genuine question appears to exist regarding whether the settlement agreement entered into by the parties truly reflects a meeting of the minds of the parties, I find that good cause exists to excuse the lateness of the notice of appeal and the appeal brief.<sup>2/</sup>

Consequently, the motion to dismiss is denied. Respondent is granted 35 days from the service date of this order to file its reply brief.

  
JAMES B. BUSEY, ADMINISTRATOR  
Federal Aviation Administration

Issued this 9<sup>th</sup> day of October, 1991.

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<sup>2/</sup> I am very concerned about this situation because of the potential for unfairness to both parties. I strongly suggest that in the future, when parties settle their case at a hearing, they reduce their agreement into a written consent order, and that law judges not dismiss such a case until a written consent order is agreed upon.