

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

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Served: March 11, 1992

FAA Order No. 92-19

ACC-10

In the Matter of:)

DAVID LLOYD CORNWALL)

) Docket No. CP90AL0295
)
)
)

ORDER DENYING MOTION TO DISMISS APPEAL

At the conclusion of the hearing held in this matter on October 23, 1991, the law judge issued an oral initial decision affirming the complaint in part^{1/} and reducing the civil penalty from \$1000 to \$500. Both David Cornwall ("Respondent") and Complainant filed timely notices of appeal from the initial decision. Under 14 C.F.R. § 13.233(c) (1991),^{2/} the parties were required to perfect their cross-appeals by filing appeal briefs by December 12, 1991. Both parties filed their appeal briefs on December 12, 1991.^{3/}

^{1/} It was alleged in the complaint that Respondent violated 14 C.F.R. §§ 91.75 and 91.9 (1988). The law judge held that Respondent had violated Section 91.75 but not Section 91.9.

^{2/} Section 13.233(c) of the Rules of Practice, 14 C.F.R. § 13.233(c) provides: "Unless otherwise agreed by the parties, a party shall perfect an appeal, not later than 50 days after entry of the oral initial decision on the record...."

^{3/} Respondent's appeal brief, dated December 11, 1991, does not have a certificate of service. The envelope in which this brief was mailed is postmarked "December 12, 1991." Under 14 C.F.R. § 13.210(b), the filing date was December 12, 1991.

On January 13, 1992, Complainant filed a motion to dismiss Respondent's appeal. It was stated in the motion that Respondent informed Complainant's counsel on December 10, 1991, that Respondent was no longer represented by counsel and that he intended to prepare and file an appeal brief by December 12th. Complainant alleged in the motion that it had not been served with any document by Respondent since that conversation. Complainant's counsel wrote further that "[t]o the best of counsel for Complainant's knowledge and belief, Respondent has not filed an appeal brief with the FAA decisionmaker or a request for extension of time to file a brief." Motion to Dismiss Appeal at 2. Respondent has not filed a reply to the motion to dismiss.

Complainant's motion to dismiss is denied because Respondent did perfect his appeal by filing an appeal brief with the Appellate Docket by December 12, 1991. Apparently, however, Respondent disregarded Section 13.233(d) of the Rules of Practice, 14 C.F.R. § 13.233(d), which provides that "[a] party...shall serve a copy of the appeal brief on each party."^{4/}

A copy of Respondent's appeal brief is enclosed with Complainant's copy of this order.^{5/} If Complainant decides

^{4/} Also, 14 C.F.R. § 13.211(a) (1991) provides that "[a] person shall serve a copy of any document filed with the Hearing Docket on each party at the time of filing."

^{5/} Respondent attached to his brief a microcassette labelled as follows: "CP90AL0295 -- Interview w/ FAA Ref

(Footnote 5 continued on next page.)

to file a reply brief, its reply brief is due 35 days from the date of service of this order.^{6/}

Although I am denying Complainant's motion to dismiss, I am nonetheless disturbed by Respondent's failure to serve a copy of the appeal brief on Complainant. As illustrated by this case, such failures to comply with Section 13.233(d) lead to needless and, indeed, inexcusable delays in the adjudication process.

Therefore, Complainant's Motion to Dismiss Appeal is denied, and Complainant's reply brief is due to be filed within 35 days of the date of service of this decision.



BARRY LAMBERT HARRIS
Acting Administrator
Federal Aviation Administration

Issued this 9th day of March, 1992.

(Footnote 5 continued from previous page.)

Minimum Safe Altitudes 12/11/91. Both congested & uncongested areas. Side A." I will not consider the content of this microcassette because it appears to contain information recorded after the hearing. Consequently, this tape is outside of the exclusive record of this proceeding. 14 C.F.R. § 13.230 (1991). I am not providing a copy of this tape to Complainant. Also, the Rules of Practice do not appear to allow tape recordings instead of, or as supplements to, written briefs. See 14 C.F.R. §§ 13.210(c) & 13.233 (1991).

^{6/} Respondent has not filed a reply brief in response to Complainant's appeal brief. Respondent's reply brief would have been due January 21, 1992. This order does not grant Respondent additional time in which to file a reply brief.