

the Los Angeles International Airport on June 7, 1989. When she went through the security checkpoint, x-ray inspection of her purse revealed an undeclared and unloaded .22 caliber revolver. The weapon was small, fitting in a pouch that measured only four inches by four inches. The gun weighed less than a pound.

At the hearing, Respondent testified that the gun was a birthday gift she had received from a friend the day before her trip. Respondent had other items in her purse that were about the same size as the gun, including her makeup bag. She testified that she put the gun in a side compartment in her purse that she did not use very much and zipped the compartment. She packed a number of other things in the middle portion of her purse, including about four eight-millimeter video cassettes and several electric cords for the video recorder she was carrying. Her purse was very full. There were enough other things in the purse that the weapon was not readily distinguishable within the purse by feel or by weight.

At the time of the incident, permanent signs were posted at the ticket counters and security checkpoints warning passengers about attempting to carry firearms on board aircraft. Respondent testified, however, that she did not recall seeing them. Respondent admitted that she was aware that guns are not permitted in airports. Nevertheless, she had "totally forgotten" that the gun was in her purse. Tr. 66. She was on

her first out-of-town business trip, and was very nervous about the presentation she would be making. Also, it was her first time going alone to the Los Angeles Airport, and she was worried about parking.

Although it was not Respondent's habit to carry guns, she testified that she was very comfortable with guns, having been taught at a young age to handle a gun for hunting and target practice. In addition, guns were a constant presence at her workplace. For these reasons, Respondent testified, guns did not impress her as they might impress others.

The law judge decided the case in Respondent's favor, finding that Complainant had failed to show that Respondent either knew or should have known that the gun was in her purse. The law judge relied on the following factors to support his finding: first, the small size and weight of the gun; second, Respondent's habit of not carrying a gun; and finally, the stress Respondent was under at the time of the incident. The law judge added that he found Respondent to be a very credible witness and had given her testimony full credence.

On appeal, Complainant argues that the factors cited by the law judge cannot overcome the fact that Respondent placed the gun in her purse herself only the day before she was to travel. It is inconceivable, says Complainant, that a passenger who places a deadly and dangerous weapon in her belongings can the very next day claim that she neither knew

nor should have known of its presence. In reply, Respondent argues that the Administrator does not have the authority to overturn the law judge's decision because it is based on credibility determinations that are the particular province of the law judge.

The law judge erred in failing to find that Respondent should have known that the gun was in her purse. None of the law judge's credibility determinations need be, or have been, disturbed in arriving at this conclusion. Accepting all of Respondent's testimony as true, it nevertheless must be found, as a matter of law, that Respondent should have known that the gun was in her purse, because Respondent packed the gun herself.^{3/} Respondent's forgetting that the gun was in her purse is not excused by the stress Respondent was under, the small size and weight of the gun, Respondent's habit of not carrying a gun, or even the combination of all of these factors. Complainant is correct that it is reasonable to expect one who packs his or her own bag to know the contents of that bag, particularly if the contents include a deadly or dangerous weapon.

^{3/} Indeed, even in cases where respondents did not themselves pack the gun, it has been held that they should have known of the gun's presence. See In the Matter of Koblick, FAA Order No. 92-51 (July 23, 1992) (where respondent did not know that his gun was in his carry-on luggage because his wife had packed for him); and In the Matter of Degenhardt, FAA Order No. 90-20 (August 16, 1990) (where respondent's friend had given him a wrapped package containing a gun to carry as a wedding gift).

As previously held, passengers have a duty to know the contents of the items they intend to carry on board a plane. In the Matter of Koblick, FAA Order No. 92-51 at 3 (July 23, 1992). Individuals who carry personal firearms have a duty to ensure that they do not inadvertently bring those weapons on board an aircraft. Id., citing In the Matter of Schultz, FAA Order No. 89-5 at 8-9 (November 13, 1989).

As for the sanction, the amount of \$1,000 sought by Complainant reflects the inadvertent nature of the act and is consistent with previous cases involving unloaded weapons and the absence of accessible ammunition. See In the Matter of Sutton-Sautter, FAA Order No. 92-46 (July 22, 1992); In the Matter of Trujillo, FAA Order No. 91-30 (August 2, 1991). A higher sanction would have been appropriate if, for example, ammunition was accessible, the gun was loaded, or Respondent intentionally concealed the gun to avoid detection. FAA Order 2150.3A, Compliance and Enforcement Program, Enforcement Sanction Guidance Table, Appendix 4 at 20-21. Finally, while financial hardship is a proper basis for reducing a civil penalty,^{4/} there is no evidence in the record indicating that Respondent is unable to pay the civil penalty sought by

^{4/} In the Matter of Lewis, FAA Order No. 91-3 at 9 (February 4, 1991).

Complainant. Therefore, a civil penalty of \$1,000 is assessed.^{5/}


THOMAS C. RICHARDS, ADMINISTRATOR
Federal Aviation Administration

Issued this 15th day of October, 1992.

^{5/} Unless Respondent files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. App. § 1486), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1992).