

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Served: October 20, 1993

FAA Order No. 93-28

In the Matter of:)
)
)

RAYMOND B. STROHL)
)
)
_____)

Docket No. CP93GL0046

ORDER REQUESTING FURTHER BRIEFING

This case is in a highly unusual posture. It appears that Respondent Raymond B. Strohl sent a timely request for hearing to the agency attorney.^{1/} Nonetheless, Complainant

subsequently issued an order assessing civil penalty for \$15,000 against Respondent, contrary to 14 C.F.R.

§ 13.16(b)(2).^{2/} Although the procedural rules do not contemplate any proceedings following the issuance of an order assessing civil penalty,^{3/} Complainant, 2 days later, filed a

^{1/} See 14 C.F.R. § 13.16(e)(2)(ii), which provides that a person charged with a violation shall request a hearing not later than 15 days after receipt of the final notice of proposed civil penalty.

^{2/} See 14 C.F.R. § 13.16(b)(2), which provides that an order assessing civil penalty may be issued if a person charged with a violation fails to request a hearing in accordance with 14 C.F.R. § 13.16(e)(2)(ii).

^{3/} See 14 C.F.R. §§ 13.16(b), 13.202 (definition of order assessing civil penalty), 13.232(d), 13.233(j)(2). See also In the Matter of Costello, FAA Order No. 92-1 at 4 (January 9,

[Footnote continues on next page]

complaint in this matter with the Hearing Docket. Complainant then withdrew the complaint, and the law judge dismissed the case with prejudice.^{4/} Respondent then filed a "complaint," under 14 C.F.R. § 13.208, even though that rule provides for the filing of complaints only by an agency attorney.^{5/} If Respondent intended the "complaint" to serve as a notice of appeal from the law judge's order, it may not have been filed on time.^{6/} Complainant filed a motion to dismiss Respondent's "complaint."

Because this case raises numerous questions that cannot be resolved based on the very meager record, the parties are ordered to provide information, and are given an opportunity to submit briefs as explained further in this decision.

The procedural history of this civil penalty action appears to be as follows:

[Footnote continued from previous page]

^{3/}1992); and In the Matter of Rocky Mountain Helicopters, Inc., FAA Order No. 90-16 at 1 (April 5, 1990) (both stating that the Rules of Practice do not contemplate appeals from orders assessing civil penalty).

^{4/} 14 C.F.R. § 13.215.

^{5/} Section 13.208(a) of the Rules of Practice, 14 C.F.R. § 13.208(a), provides in pertinent part:

The agency attorney shall file the original and one copy of the complaint with the hearing docket clerk ... not later than 20 days after receipt by the agency attorney of a request for hearing.

^{6/} See 14 C.F.R. § 13.233(a), which provides that "[a] party shall file the notice of appeal not later than 10 days after ... service of the written initial decision on the parties"

December 28, 1992 Final Notice of Proposed Civil Penalty issued by Complainant.

January 4, 1993^{7/} Request for Hearing prepared by Respondent (received by Complainant on January 27, 1993, according to the date-stamp on the document contained in the record).

January 27, 1993 Order Assessing Civil Penalty issued by Complainant.

January 29, 1993 Complaint filed by Complainant.^{8/}

March 3, 1993 Complaint withdrawn by Complainant.

March 17, 1993 Order Dismissing the Case with Prejudice issued by Law Judge.

Subsequently, Respondent filed the document purporting to be a "complaint." Although the "complaint" is dated April 28, 1993, the postmark on the envelope addressed to the Hearing Docket is dated July 10, 1993. Under 14 C.F.R.

^{7/} January 4, 1993, is the date on Respondent's request for hearing. The record does not contain other indicia of the actual mailing date. The record contains only a copy of the request for hearing that was sent to Complainant. Respondent was required to file the request for hearing with the Hearing Docket and send a copy to the agency attorney. 14 C.F.R. § 13.16(f).

^{8/} Paragraph 1 of the complaint filed by Complainant on January 29, 1993, states that Complainant advised Respondent through a Final Notice of Proposed Civil Penalty dated January 27, 1993, that the FAA proposed to assess a \$25,000 civil penalty. This appears unlikely because: (1) an order assessing civil penalty, dated January 27, 1993, was issued; (2) the request for hearing is dated January 4, 1993; and (3) the order assessing civil penalty refers to a Final Notice of Proposed Civil Penalty issued on December 28, 1992. The record does not contain a copy of the Final Notice of Proposed Civil Penalty.

§ 13.210(b),^{9/} because there was no certificate of service attached to this "complaint," the postmark date (July 10, 1993) is considered to be the date of filing.

In his "complaint," Respondent alleges that he is currently subject to a civil penalty of \$15,000 that was imposed without a proper hearing and procedure. He alleges that the \$15,000 civil penalty stems directly from the complaint filed by the FAA that the law judge dismissed. He contends that both Respondent and the FAA have agreed to a settlement, and that he has served, and continues to serve, the suspension of his commercial pilot's certificate.^{10/} Respondent requests that an order granting the following relief be issued:

[T]hat the FAA withdraw any civil penalty which they are trying to attach to the Respondent, that they order all the licensers (sic) to be updated accordingly as the Respondent applies for the same, and that all licenses be returned to the Respondent within the time period assessed by this Court.

^{9/} 14 C.F.R. § 13.210(b) provides:

A document shall be considered to be filed on the date of personal delivery; or if mailed, the mailing date shown on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

^{10/} This civil penalty action arises from Respondent's failure to surrender his commercial pilot certificate, which was suspended in an action before the National Transportation Safety Board (NTSB). It is unclear whether the settlement to which Respondent refers was of the underlying NTSB action or the FAA civil penalty action.

In his cover letter, Respondent further requests that an order be issued:

to terminate or limit and/or restrain the FAA and any of their subsidiary organizations from instituting any civil penalties against Mr. Strohl or ruining his credit lying (sic) on his property.

Complainant has moved to dismiss Respondent's "complaint" with prejudice on the following grounds: (1) that the attorney who filed Respondent's "complaint" no longer represents him and has no authority to act for him;^{11/} (2) that counsel for Respondent has no standing to file a complaint because Section 13.218 of the Rules of Practice permits only agency attorneys to do so; and (3) that Respondent's request for return of his licenses is not "within the jurisdiction of this body." Complainant also states that the civil penalty of \$15,000 referred to by Respondent's counsel in the "complaint" was assessed in an order dated January 27, 1993. Respondent has not filed a response to Complainant's motion to dismiss.

The FAA Docket Clerk forwarded Respondent's "complaint" and Complainant's Motion to Dismiss to the law judge, but the law judge's clerk returned it, explaining that the law judge had no apparent jurisdiction. The law clerk suggested that the Docket Clerk forward these documents to the Administrator.

^{11/} Complainant states that it bases this belief on information provided by Respondent's current attorney. However, Respondent has filed no document with the Hearing Docket to indicate that he has new counsel.

Before a decision can be made regarding how to dispose of the "complaint" and the motion to dismiss, additional information is needed. Hence, the parties are directed to provide a complete procedural history of the case, along with copies of all relevant documents, including the Notice of Proposed Civil Penalty and the Final Notice of Proposed Civil Penalty. The parties are also ordered to answer the following questions:

1. Does the Administrator have jurisdiction over this case? If Respondent's "complaint" were to be construed as a notice of appeal from the law judge's decision, would it be untimely under 14 C.F.R. § 13.233(a), which requires the notice of appeal to be filed within 10 days of the law judge's decision? If so, should it be dismissed, or is there good cause for the untimeliness?
2. If the law judge's dismissal of the case was based on erroneous information from Complainant (specifically, the statement in the complaint dated January 29, 1993, that only a final notice of proposed civil penalty had been issued on January 27, 1993, when in fact an order assessing civil penalty had been issued on that day), would the law judge then have jurisdiction over this case and authority to reopen it?
3. Is the Order Assessing Civil Penalty of January 27, 1993, valid, given that Respondent apparently filed a timely request for hearing on January 4, 1993?
4. Did the parties settle this civil penalty action--to be distinguished from the underlying certificate action at the NTSB--and if so, do the terms of that agreement eliminate the need for further proceedings in this matter?

The parties are directed to file their responses to this order with the Appellate Docket Clerk within 30 days of the date of service of this order at the following address: Federal

Aviation Administration, 800 Independence Ave., SW, Room 924A,
Washington, DC 20591, Attention: Appellate Docket Clerk.



DAVID R. HINSON, ADMINISTRATOR
Federal Aviation Administration

Issued this 19th day of October, 1993.