

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

RAY HOUSTON

FAA Order No. 94-37

Served: December 9, 1994

ORDER

On August 29, 1994, Chief Administrative Law Judge John J. Mathias received a motion from Ray Houston requesting that the civil penalty action against him be combined with an action against Johnson County Aerial Services, Inc. Rather than rule on that motion, the law judge referred the motion to the Administrator.¹ After due consideration of the meager record in this case, this matter is remanded to the administrative law judge to make findings consistent with this order.

Mr. Houston is the principal officer of Johnson County Aerial Services. Mr. Houston asserts in the motion that he filed a request for hearing in the civil penalty action against Johnson County Aerial Services, intending that that document also serve as a request for hearing in the civil penalty action against him individually. When the agency attorney did not receive a request for hearing in the Houston civil penalty action, the agency attorney issued an order assessing civil penalty against Mr. Houston. Because he had received a request for hearing in the Johnson County Aerial Services case, the agency attorney filed a complaint in that

¹ A copy of the law judge's Order Referring Respondent's Motion to FAA Decisionmaker dated September 2, 1994, is attached.

action. Chief Judge Mathias, who is the law judge assigned to the Johnson County Aerial Services case, found that the Houston civil penalty action was not before him, and thus referred Mr. Houston's motion to the Administrator. The agency attorney handling both of these cases has filed a response requesting that the Houston matter be remanded to the law judge with instructions to dismiss this motion, because it is a de facto request for hearing.

The civil penalty actions at issue here are based upon the failure of Mr. Houston and Johnson County Aerial Services to surrender their certificates immediately when ordered to do so by the Administrator. The Federal Aviation Administration (FAA) revoked Johnson County Aerial Services' air agency certificate by emergency order. The FAA also revoked Mr. Houston's pilot certificate by emergency order. Mr. Houston and Johnson County Aerial Services appealed from these emergency orders of revocation to the National Transportation Safety Board (NTSB). Upon motion of the FAA attorney, the two cases were consolidated for hearing. The hearing was held before an NTSB law judge, who affirmed the order of revocation of Mr. Houston's pilot certificate and reduced the order of revocation of Johnson County Aerial Services' air agency certificate to an 8-month suspension.

The subsequent history of these civil penalty actions, as can be pieced together from the few documents available to the Administrator for review, is as follows:

Houston case -- Case No. 94SO110009

10/28/93 Notice of Proposed Civil Penalty issued against Mr. Houston
 1/20/94 Informal conference held
 2/23/94 Final Notice of Proposed Civil Penalty issued against
 Mr. Houston
 4/7/94 Order Assessing Civil Penalty against Mr. Houston

Johnson County Aerial Services case -- Case No. 94SO110016

4/13/94 Request for Hearing received by the Hearing Docket

5/5/94 Complaint issued against Johnson County Aerial Services

The request for hearing was signed by Mr. Houston but referred solely to FAA Case No. 94SO110016, which is the case number assigned to the Johnson County Aerial Services civil penalty action. Mr. Houston asserts that he thought that he was requesting a hearing in both civil penalty actions, not realizing that the two civil penalty actions were entirely separate. He claims not to have realized that there were two separate civil penalty actions because the certificate action cases had been consolidated before the NTSB. On remand, the law judge should determine whether that mistake was a reasonable one, in light of the NTSB case history, and such other factors as may be relevant. These factors may include the degree to which the notices or final notices of proposed civil penalty against Mr. Houston and Johnson County Aerial Services are similar, and the chronology of the issuance of the pre-complaint documents in the two civil penalty cases.

Even if the request for hearing is construed as a request for hearing in both civil penalty actions, it appears to be late-filed with regard to the Houston action. The request for hearing in the civil penalty action against Mr. Houston individually was due within 15 days after Mr. Houston received the Final Notice of Proposed Civil Penalty,² which was issued on February 23, 1994. The date on which Mr. Houston received the Final Notice of Proposed Civil Penalty in the action against him individually is not in the record before the Administrator. However, it would appear likely that more than 15 days elapsed between the date on which Mr. Houston received the Final Notice of Proposed Civil Penalty and April 9, 1994,

² 14 C.F.R. § 13.16(e)(2)(ii) provides that:

Not later than 15 days after receipt of the final notice of proposed civil penalty, the person charged with a violation shall do one of the following --

- (ii) Request a hearing in which case a complaint shall be filed with the hearing docket.

the postmark date on the envelope in which he mailed the request for hearing to the Hearing Docket. Hence, if the law judge determines that the request for hearing should be regarded as a request for hearing in both civil penalty actions, then he probably will also have to determine whether there is good cause for the late-filing of the request in the case against Mr. Houston individually. If good cause is found, then the law judge shall give the agency attorney a reasonable length of time in which to file a complaint in the Houston matter.

In the response to the law judge's order referring Mr. Houston's motion to the Administrator, the agency attorney argues that Mr. Houston's motion should be considered a late-filed request for hearing. The agency attorney appears to have missed the point of Mr. Houston's motion. Mr. Houston is arguing that his request for hearing in the Johnson County Aerial Services case was intended to be a request for hearing in both civil penalty actions, and then he requests that the two civil penalty actions be consolidated. If the law judge construes the request for hearing in the Johnson County Aerial Services case as a request for hearing in the Houston case as well, and he finds that the request was timely (or that good cause exists to excuse the lateness), then he must rule on the motion to consolidate.

Finally, the agency attorney argues that an untimely request for hearing and the issuance of an order assessing civil penalty divest the law judge and the Administrator of jurisdiction, and therefore, the Administrator should remand the matter to the law judge with instructions to dismiss. However, as explained above, the question of the timeliness of the request for hearing -- if indeed, there was a request for hearing in the Houston case -- remains at issue. In other words, the law judge has jurisdiction to determine whether a request for hearing was late-filed³

³ On their face, the Rules of Practice do not provide for review by the law judge of the appropriateness of the issuance of an order assessing civil penalty. However, under 14 C.F.R. § 13.218(f)(2)(i), the law judge may rule upon a motion to dismiss a late-filed request for hearing. Under that rule, the agency attorney may file such a motion instead of a

and, therefore, whether the agency attorney issued an order assessing civil penalty in accordance with 14 C.F.R. § 13.16(b)(2).

Accordingly, this matter is remanded to the law judge for further proceedings consistent with this order.



DAVID R. HINSON, ADMINISTRATOR
Federal Aviation Administration

Issued this 9th day of December , 1994.

complaint when he or she considers the request for hearing to have been late-filed. The agency attorney should not have the power to cut off the law judge's jurisdiction to review the timeliness of the filing of a request for hearing simply by issuing an order assessing civil penalty.

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OFFICE OF THE CHIEF OF BUREAU OF TRANSPORTATION SAFETY

U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, D.C.

JOHNSON COUNTY AERIAL SERVICES, INC.

FAA DOCKET NO. CP94SO0101
(Civil Penalty Action)

ERRATUM

The Order Referring Respondent's Motion to FAA Decisionmaker dated September 1, 1994, inadvertently omitted two lines on the top of page two. The following was omitted: "...the fact that preceding cases against him and his company before the NTSB were combined for hearing on motion by FAA Counsel. He....".

Accordingly, attached is the corrected order.


John J. Mathias
Chief Administrative Law Judge

Attachment - Service List