

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

In the Matter of:

ALPHIN AIRCRAFT, INC.

FAA Order No. 95-22

Served: October 13, 1995

Docket No. CP93EA0334

**ORDER DISMISSING APPEAL**

A hearing was held in this matter, FAA Docket No. CP93EA0334, before Administrative Law Judge Ronnie A. Yoder on January 18-19, 1995. At the conclusion of the hearing, the law judge set a briefing schedule for the filing of written briefs in lieu of oral closing arguments. On June 16, 1995,<sup>1</sup> the law judge issued a written initial decision, finding that Respondent Alphin Aircraft had violated 49 C.F.R. §§ 43.13(a) and (b), and imposing a \$6000 civil penalty.

On June 23, 1995, Alphin Aircraft filed a notice of appeal. In this notice, Thurman S. Alphin, the president of Alphin Aircraft, wrote as follows: "Please accept this as notice of appeal. FAA Docket No. CP93EA03~~24~~ decision dated January 20, 1995."<sup>2</sup> (Emphasis added). As Mr. Alphin subsequently explained in a

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<sup>1</sup> See Errata dated June 20, 1995, to Initial Decision of Administrative Law Judge Ronnie A. Yoder, in which the law judge corrected the date underneath his signature. The the law judge signed the initial decision in this matter is June 16, 1995, not June 19, 1995.

<sup>2</sup> Complainant brought two separate civil penalty actions against Alphin Aircraft: FAA Docket Nos. CP93EA03~~24~~ and CP93EA03~~34~~. The hearings in these two cases were held over a 3-day period, January 18-20, 1995.

The hearing in Docket No. CP93EA0334 (which is the subject of this order) was held on January 18-19, 1995. As explained in the text above, a written decision was issued on June 16, 1995.

letter dated July 25, 1995, he had inadvertently requested an appeal of the decision rendered in FAA Docket No. CP93EA0324 in the June 23, 1995, notice of appeal, instead of in FAA Docket No. CP93EA0334. Mr. Alphin has requested that the June 23, 1995, letter be construed as the notice of appeal of the law judge's written initial decision issued in FAA Docket CP93EA0334. This request is granted,<sup>3</sup> and the notice of appeal dated June 23, 1995, is construed as the notice of appeal in FAA Docket No. CP93EA0334. Moreover, because Alphin Aircraft filed that notice of appeal within 7 days after the issuance of the law judge's written initial decision, the notice of appeal was timely filed. See 14 C.F.R. §§ 13.233(a), 13.210(e) and 13.212(c).<sup>4</sup>

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The hearing in Docket No. CP93EA0324 began during the afternoon of January 19, 1995, and ended on January 20, 1995. The law judge rendered an oral initial decision on January 20, 1995, at the conclusion of that hearing. The June 23, 1995, notice of appeal specifying FAA Docket No. CP93EA0324 was dismissed as late-filed by FAA Order No. 95-15 (July 19, 1995). Alphin Aviation has presented no justification for reversing that order.

To add to the confusion, when the transcripts of the hearings were issued originally, there were two typographical errors on the title page of the second volume of the hearing in FAA Docket No. CP93EA0324. The title page incorrectly indicated that the hearing was held on Wednesday (rather than Friday) January 20, 1995, and had the incorrect docket number (CP93EA0334, rather than CP93EA0324). See letter by Greg Smith, Olender Reporting Company, to Stephanie McClain, FAA Docket Clerk, dated February 13, 1995.

In light of the similarity of the docket numbers in these two cases, the fact that the hearings were held back-to-back, and the typographical errors on the transcript, Alphin Aircraft's mistake in its notice of appeal is understandable.

<sup>3</sup> See footnote 2.

<sup>4</sup> Complainant filed a document entitled "Agency's Motion to Dismiss Notice of Appeal" in FAA Docket No. CP93EA0334. In this motion, Complainant wrongly regarded Alphin Aircraft's letter dated July 25, 1995 (which requested that the notice of appeal dated June 23, 1995, be construed as the notice of appeal in FAA Docket No. CP93EA0334) as the notice of appeal. Complainant argued that the notice of appeal was late-filed.

Complainant would be correct if the July 25, 1995, letter was the notice of appeal in this case. However, the June 23, 1995, letter has been construed as the notice of appeal in this matter, and as has been explained in the text above, the June 23, 1995, notice of appeal is timely. Consequently, Complainant's motion to dismiss is denied.

However, Alphin Aircraft has failed to perfect its appeal by filing an appeal brief. Under 14 C.F.R. § 13.233(c), a party shall perfect an appeal by filing an appeal brief with the Administrator no later than 50 days after the service of the written initial decision. Alphin Aircraft's appeal brief was due on August 10, 1995 pursuant to 14 C.F.R. §§ 13.233(c) and 13.211(e). To date, Alphin Aircraft has filed neither an appeal brief nor a request for an extension of time. Consequently, Alphin Aircraft's appeal is dismissed under 14 C.F.R. § 13.233(d)(2).<sup>5</sup>

DAVID R. HINSON, ADMINISTRATOR  
Federal Aviation Administration



VICKI S. LEEMON<sup>6</sup>  
Manager, Adjudication Branch

Issued this 13th day of October, 1995.

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<sup>5</sup> Section 13.233(d)(2), 14 C.F.R. § 13.233(d)(2) provides: "The FAA decisionmaker may dismiss an appeal, on the FAA decisionmaker's own initiative or upon motion of any other party, where a party has filed a notice of appeal but fails to perfect the appeal by timely filing an appeal brief with the FAA decisionmaker."

<sup>6</sup> Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by Memorandum dated October 27, 1992, under 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202 (see 57 Fed. Reg. 58,280 (1992)) and redelegated by the Assistant Chief Counsel for Litigation to the Manager, Adjudication Branch, by Memorandum dated August 6, 1993.