

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

In the Matter of:

ALPHIN AIRCRAFT, INC.

FAA Order No. 97-10

Served: February 20, 1997

Docket No. CP94EA0183

**DECISION AND ORDER**

This case involves a repair station's alleged failure to detect and document items needing repair on an aircraft operated by a Part 135 scheduled air carrier. Respondent Alphin Aircraft, Inc. (Alphin Aircraft), a repair station, has appealed from the initial decision<sup>1</sup> of Chief Administrative Law Judge John J. Mathias assessing a \$1,500 civil penalty for violations of Sections 43.13(a),<sup>2</sup> 43.13(b),<sup>3</sup>

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<sup>1</sup> A copy of the portion of the hearing transcript containing the law judge's oral initial decision is attached.

<sup>2</sup> Section 43.13(a), 14 C.F.R. § 43.13(a) (1993) provides, in relevant part, that:

[e]ach person performing maintenance . . . on an aircraft . . . shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by the manufacturer, or other methods, techniques, and practices acceptable to the Administrator . . . .

<sup>3</sup> Section 43.13(b), 14 C.F.R. § 43.13(b) (1993) provides, in relevant part, that:

[e]ach person maintaining [an aircraft]. . . shall do that work in such a manner and use materials of such a quality, that the condition of the aircraft . . . will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibrations and deterioration, and other qualities affecting airworthiness).

145.45(a),<sup>4</sup> and 145.45(d)<sup>5</sup> of the Federal Aviation Regulations (FAR). This decision affirms the law judge's decision.

The facts of this case are as follows. On May 3, 1993, the nosegear collapsed on a Piper Navajo PA-31 aircraft operated by WRA, Inc., (WRA) (1 Tr. 177), which was a Part 135 scheduled air carrier at the time, damaging the aircraft's nose section and propellers. (1 Tr. 25-26, 38-44; Complainant's Exhibit 1-4.) WRA hired Alphin Aircraft, a repair station based at Hagerstown, Maryland, to repair the damage to the nose section and to perform a propeller strike inspection to determine whether the nosegear collapse had damaged the engines. (1 Tr. 44-47; Complainant's Exhibit 2-4.) On June 23, 1993, WRA flew the aircraft to Alphin Aircraft on a ferry permit. (1 Tr. 44-47; Complainant's Exhibit 2-4.) After completing its work on the aircraft, Alphin Aircraft released the aircraft to WRA on August 17, 1993, and a WRA pilot flew the aircraft back to WRA's base in Richmond, Virginia.

When the WRA pilot attempted to land the aircraft at the airport in Richmond, the right main gear indicator light failed to show that the gear was down and locked, leading the pilot to declare an emergency. (Complainant's Exhibit 5.)

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<sup>4</sup> Section 145.45(a), 14 C.F.R. § 145.45(a) (1993), provides as follows:

An applicant for a repair station certificate, and rating or for an additional rating, must have an inspection system that will produce satisfactory quality control and conform to paragraphs (b) to (f) of this section.

<sup>5</sup> Section 145.45(d), 14 C.F.R. § 145.45(d) (1993), provides as follows:

The applicant must provide a system of preliminary inspection of all articles he maintains to determine the state of preservation or defects. He shall enter the results of each inspection on an appropriate form supplied by it and keep the form with the article until it is released to service.

Fortunately, however, the plane landed safely, and it was later determined that the indicator light was simply malfunctioning.

FAA Inspector John A. Wager inspected the aircraft with WRA's Director of Maintenance after the incident. During this inspection, Inspector Wager found that the nosegear uplock microswitch had masking tape wrapped around the switch plunger,<sup>6</sup> and the wing fairing to the right engine was missing. (Complainant's Exhibits 8, 17.)

WRA returned the aircraft to Alphin Aircraft on August 23, 1993, under a special flight permit requiring the landing gear to remain extended. (1 Tr. 26-27, Complainant's Exhibit 9, 10.) Alphin Aircraft repaired the right main gear "down and lock" light and replaced the wing fairing. At the same time, Alphin Aircraft also repaired several other discrepancies found by WRA,<sup>7</sup> and again, Alphin Aircraft released the aircraft to WRA.

About a week later, on September 1, 1993, Inspector Wager and his supervisor found the following discrepancies during an inspection of the aircraft, which they documented by way of videotape and photographs:

- The left propeller governor control cable rod end was rubbing the engine baffling;
- The aircraft left oil cooler was loose;
- The aircraft left engine air box was cracked and lacked a fastener;  
and

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<sup>6</sup> Complainant did not allege that this discrepancy caused the malfunction in the right main gear indicator light.

<sup>7</sup> In response to discrepancies noted by WRA, Alphin Aircraft lubed the cable for the right engine RPM indicator, replaced the probe for the right EGT, and installed a new nose wheel tire. (1 Tr. 67-69; Complainant's Exhibit 11-2.)

- The rubber cushion was missing on the engine mount oil breather tube clamp.

(1 Tr. 26-27, 71-75, 78-83, 85-100; Complainant's Exhibits 12, 14, 23.) Alphin Aircraft had not provided WRA, the aircraft operator, with a discrepancy list containing any of these items. (1 Tr. 115, 117-18, 120-21; Complainant's Exhibits 16, 21.)

Complainant initiated the instant civil penalty action against Alphin Aircraft, seeking a \$2,000 civil penalty. Complainant did not contend that the regulations required Alphin Aircraft to repair the discrepancies. Complainant contended only that the regulations required Alphin Aircraft to conduct preliminary and hidden damage inspections per its Inspection Procedures Manual, and to detect and record the discrepancies, making the aircraft operator aware of them. (1 Tr. 147-48, 161-64.)

After a hearing, the law judge found that Alphin Aircraft violated each of the four regulations alleged in the complaint: Sections 43.13(a), 43.13(b), 145.45(a), and 145.45(d).<sup>8</sup> (2 Tr. 191-93.) The law judge noted that there was no substantial dispute regarding the existence of most of the alleged discrepancies.<sup>9</sup> Rather, the major dispute was whether Alphin Aircraft had a duty to find the discrepancies and record them on the appropriate form. (2 Tr. 184.)

The law judge based his finding that Alphin Aircraft had such a duty on Alphin Aircraft's Inspection Procedures Manual (Complainant's Exhibit 19, 20),

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<sup>8</sup> For the text of these regulations, *see supra* notes 2-5.

<sup>9</sup> According to the law judge, Complainant did not establish that the right landing gear malfunction existed when Alphin Aircraft released the aircraft on August 17, 1993 (2 Tr. 181-82).

which contains the requirements for the preliminary and hidden damage inspections. (2 Tr. 184.) He rejected Alphin Aircraft's argument that the regulations did not require it to conduct a hidden damage inspection.

The law judge also rejected Alphin Aircraft's argument that Section 145.45(a) and Section 145.45(d) do not apply to Alphin Aircraft. (2 Tr. 185-86.) The law judge found that the discrepancies should have been detected in an adequate inspection because they were "adjacent to the work areas" in which Alphin Aircraft was charged to perform repairs, within the meaning of Alphin Aircraft's Inspection Procedures Manual. (2 Tr. 186.) The law judge further found that Alphin Aircraft neither entered nor listed the discrepancies on its work order or other form as required by its manual and the regulations. (2 Tr. 187.)

The law judge imposed a \$1,500 civil penalty, \$500 less than the \$2,000 requested by Complainant. The law judge explained his decision to reduce the civil penalty as follows: although a significant portion of Complainant's case addressed whether Alphin Aircraft had improperly certified the aircraft for return to service, suggesting that the issue played a part in Complainant's computation of the penalty, there was no corresponding charging paragraph in the complaint. (2 Tr. 193.) Complainant has not filed an appeal challenging the law judge's reduction of the sanction.

On appeal, Alphin Aircraft argues that the law judge erred in finding violations of Sections 145.45(a) and 145.45(d)<sup>10</sup> because both sections expressly apply only to applicants, and Alphin Aircraft has held its repair station certificate

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<sup>10</sup> For the text of these regulations, *see supra* notes 4 & 5.

since 1972 (2 Tr. 46). According to Alphin Aircraft, the regulations in Part 145 specifically distinguish between applicants for, and holders of, a repair station certificate. As an example, Alphin Aircraft points out that Section 145.3<sup>11</sup> prohibits an applicant from advertising as a certificated repair station, while Section 145.25<sup>12</sup> contains the advertising restrictions that apply to certificated repair stations. Alphin Aircraft also argues that where drafters of a statute or regulation used different terms, the presumption is that they intended different meanings to apply. (Appeal Brief at 8.)

Although Alphin Aircraft's argument has a superficial appeal, ultimately, it lacks persuasiveness. Could the drafters of Part 145 have intended that repair stations have inspection systems only as long as they hold "applicant" status? No.<sup>13</sup>

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<sup>11</sup> Section 145.3, 14 C.F.R. § 145.3 (1993), provides as follows:

No person may operate as a certificated repair station without, or in violation of, a repair station certificate. In addition, an applicant for a certificate may not advertise as a certificated repair station until the certificate has been issued to him.

<sup>12</sup> Section 145.25, 14 C.F.R. § 145.25 (1993), provides as follows:

- (a) Whenever the advertising of a certificated repair station indicates that it is certificated, it must clearly state its certificate number.
- (b) Paragraph (a) of this section applies to advertising in--
- (1) Business letterheads;
  - (2) Billheads and statements;
  - (3) Customer estimates and inspection forms;
  - (4) Hangar or shop signs;
  - (5) Magazines, periodicals, or trade journals; or
  - (6) Any form of promotional media.

<sup>13</sup> To support the continuing nature of Section 145.45's inspection requirements, the law judge pointed out that Section 145.1(a) provides: "This part prescribes the requirements for issuing repair station certificates . . . and prescribes the general operating rules for the holders of these certificates." (Emphasis added.)

In addition, Section 145.45(d) provides:

The applicant must provide a system of preliminary inspection for all articles he maintains to determine the state of preservation or defects. *He shall enter* (Continued on next page.)

Could Alphin Aircraft have believed reasonably that its obligation to have an inspection system ended in 1972 when it obtained its repair station certificate? No. The only reasonable conclusion one can reach is that the requirements in Section 145.45 for an inspection system are continuing in nature.

Alphin Aircraft also argues that the law judge erred in finding that its Inspection Procedures Manual required it to inspect the aircraft for hidden damage.

The law judge based this finding on the following provisions:

**ALPHIN AIRCRAFT, INC.  
REPAIR STATION - INSPECTION PROCEDURES MANUAL**

**PRELIMINARY INSPECTION:**

A preliminary inspection of all work shall be made and any items needing service or replacement shall be noted on the work sheet.

...

**INSPECTION FOR HIDDEN DAMAGE:**

The preliminary inspection is not limited to the area of obvious damage or deterioration, but includes a thorough and searching inspection for hidden damage in areas adjacent to the damaged area and/or in the case of deterioration, a thorough review of all similar materials or equipment in a given system or structural area. The

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*the results on an appropriate form supplied by it and keep the form with the article until it is released to service.*

14 C.F.R. § 145.45(d) (emphasis added). As Complainant notes in its reply brief, an applicant has no need and could not "enter the results [of a preliminary inspection] on an appropriate form supplied by it . . . ." because an applicant cannot legally perform the inspection. Section 145.3 provides that "[n]o person may operate as a certificated repair station without . . . a repair station certificate. . . ." 14 C.F.R. § 145.3.

Moreover, though it does not directly address the issue, a legal interpretation issued by the FAA's Chief Counsel suggests that Part 145 regulations that refer solely to applicants may also apply to holders of repair station certificates: "[W]ith respect to repair stations, the requirements of 14 C.F.R. §§ 145.47 and 145.49 [Section 145.49, like Section 145.45, refers only to the "applicant"] would be applicable. . . ." Letter to Margaret A. Freeston from Bert E. Goodwin, Chief Counsel (April 7, 1977), in 1 Federal Aviation Decisions, at I-172, I-173 (Clark Boardman Callaghan 1993).

Finally, at least one Federal court has stated that Section 145.45(e), which also refers only to the "applicant," requires *repair stations* to follow their inspection systems. United States v. Kal-Aero, Inc., 1988 U.S. Dist. LEXIS 17866 at \*1, n.1 (W.D. Mich. 1988).

scope of this inspection will be governed by the type of unit involved with special consideration accorded previous operating history, Malfunction or Defect Reports, service bulletins and AD notes applicable to the unit involved. The inspector is responsible for listing (sic) all discrepancies noted during inspection on the work order prior to release for return to service. . . .

(Complainant's Exhibits 19, 20.)

Alphin Aircraft concedes that, under the circumstances of this case, its Inspection Procedures Manual required it to inspect the aircraft for hidden damage.<sup>14</sup> Indeed, Alphin Aircraft's General Manager for Quality Assurance, Tracey Potter, testified that he performed a hidden damage inspection on the aircraft. (2 Tr. 185.) Nevertheless, Alphin Aircraft argues that it need not comply with its Inspection Procedures Manual because there is no regulation expressly requiring it to do so. (Appeal Brief at 10.)

Section 145.45(f) provides that at the time of application, applicants for a repair station certificate must provide an Inspection Procedures Manual and maintain it in current condition at all times. It also provides that repair stations are responsible for ensuring that all inspection personnel thoroughly understand the manual.<sup>15</sup> In effect, Alphin Aircraft asks the Administrator to conclude that

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<sup>14</sup> In its appeal brief, Alphin Aircraft writes, "[w]e concede that the provisions pertaining to preliminary inspections and inspections for hidden damage are contained in Complainant's Exhibits 19 and 20." (Appeal Brief at 10.)

<sup>15</sup> Section 145.45(f), 14 C.F.R. § 145.45(f) (1993), provides:

At the time he applies for a repair station certificate, the applicant must provide a manual containing inspection procedures, and thereafter maintain it in current condition at all times. The manual must explain the internal inspection system of the repair station in a manner easily understood by any employee of the station. It must state in detail the inspection requirements in paragraphs (a) to (e) of this section, and the repair station's inspection system including the continuity of inspection responsibility, samples of inspection forms, and the method of executing them. The manual must refer whenever necessary to the manufacturer's inspection standards for the

(Continued on next page.)

although repair stations must develop and maintain Inspection Procedures Manuals, and must ensure that their inspection personnel thoroughly understand these manuals, repair stations need not comply with their Inspection Procedures Manuals. It would be contrary both to reason and the public interest in safety to rule that the regulations do not require Alphin Aircraft to comply with its Inspection Procedures Manual. Though the requirement is implicit rather than explicit, it is clear. Once again, Alphin Aircraft's hypertechnical reading of the regulations lacks persuasiveness, and if accepted, would have a harmful effect on aviation safety.

Alphin Aircraft contends that the requirement in its Inspection Procedures Manual for a hidden damage inspection derives from Section 145.45(e),<sup>16</sup> which requires such an inspection only after an accident, and no accident occurred in this case. Alphin Aircraft's argument concerning the derivation of the requirement for a hidden damage inspection is speculative and unsupported.

Nothing in Alphin Aircraft's Inspection Procedures Manual limits hidden damage inspections to post-accident situations. On the contrary, Alphin Aircraft's Inspection Procedures Manual expressly states that preliminary inspections are not

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maintenance of the particular article. The repair station must give a copy of the manual to each of its supervisory and inspection personnel and make it available to its other personnel. The repair station is responsible for seeing that all supervisory and inspection personnel thoroughly understand the manual.

<sup>16</sup> Section 145.45(e), 14 C.F.R. § 145.45(e) (1993), provides:

The applicant must provide a system so that before working on any airframe, powerplant, or part thereof that has been involved in an accident, it will be inspected thoroughly for hidden damage, including the areas next to the obviously damaged parts. He shall enter the results of this inspection on the inspection form required by paragraph (d) of this section.

limited to the area of obvious damage or deterioration, but include a thorough and searching inspection for hidden damage in areas adjacent to the damaged area. Moreover, the manual indicates that in the case of deterioration, the preliminary inspection includes a thorough review of all similar materials or equipment in a given system or structural area. In the instant case, Alphin Aircraft's own witnesses noted that the aircraft was poorly maintained, suggesting deterioration. (See, e.g., Complainant's Exhibits 24, 25, 28; 2 Tr. 79, 144.)

Furthermore, Section 145.45(e) is not at issue in this case. Complainant alleged, and the law judge found, that Alphin Aircraft violated the provision requiring a preliminary inspection, Section 145.45(d). The law judge did not err in finding that Alphin Aircraft's Inspection Procedures Manual required it to conduct a preliminary inspection on the aircraft, which, under the manual's express terms, included an inspection for hidden damage.

Finally, Alphin Aircraft argues that the law judge erred in finding that the required inspection would have revealed the propeller governor control cable rod end rubbing against the engine baffling. (Appeal Brief at 11.) Alphin Aircraft asserts that no evidence contradicted the testimony of Mr. Alphin, the owner of Alphin Aircraft, and Mr. Potter, the Quality Assurance Manager, that the assembly was not rubbing when the aircraft left its shop. (2 Tr. 58, 123.)

The law judge did not err in finding that the discrepancy existed when Alphin Aircraft released the aircraft. Circumstantial evidence may suffice to prove a violation. Sorenson v. National Transportation Safety Board, 684 F.2d 683, 685

(10th Cir. 1982).<sup>17</sup> As Complainant points out, Alphin Aircraft's witnesses conceded that they removed the mechanism as part of their work and then reinstalled it.

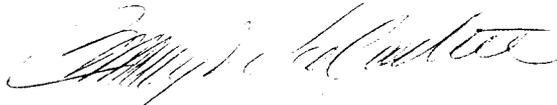
(Complainant's Exhibit 26.) According to Complainant's expert witnesses, which the law judge credited, the rubbing was due to the manner in which the mechanism was installed. (2 Tr. 11-15, 38-41.) Moreover, given the physical evidence of scoring on the baffling, the law judge expressly rejected as unpersuasive Mr. Alphin's claim that the air flow would hold the baffling away from the governor control cable rod end. (2 Tr. 182-83.) Alphin Aircraft has offered no persuasive reason to disturb the law judge's assessment of the evidence in this case.<sup>18</sup>

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<sup>17</sup> Alphin Aircraft cites Robinson v. National Transp. Safety Bd., 28 F.3d 210 (D.C. Cir. 1994) to support its argument that the law judge's finding was erroneous. The Court of Appeals remanded Robinson on the ground that the Board had not sufficiently explained its findings. Robinson is distinguishable from the instant case. One of the witnesses in Robinson corroborated key parts of Mr. Robinson's account, and the Board had not indicated that the corroborating witness' testimony was in some manner deficient. In the instant case, although Mr. Potter did corroborate Mr. Alphin's testimony, Mr. Potter is an employee of Mr. Alphin. Moreover, the law judge credited the testimony of Complainant's witnesses over that of Messrs. Alphin and Potter. Alphin Aircraft has provided no convincing reason to disturb the law judge's finding.

<sup>18</sup> Alphin Aircraft's other arguments have been considered and rejected, but do not merit discussion.

For the foregoing reasons, Alphin Aircraft's appeal is denied and the law judge's decision assessing a \$1,500 civil penalty is affirmed.<sup>19</sup>



**BARRY L. VALENTINE**  
Acting Administrator  
Federal Aviation Administration

Issued this 17<sup>th</sup> day of February, 1997.

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<sup>19</sup> 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. § 46110), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1996).