

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

AIR ST. THOMAS

FAA Order No. 97-38

Served: November 17, 1997

Docket No. CP97SO0007

ORDER REQUESTING FURTHER BRIEFING

On February 26, 1997, Complainant Federal Aviation Administration (FAA) filed a complaint alleging that Air St. Thomas operated a Piper PA-23-250 aircraft in Part 135 air carrier revenue service on approximately 560 flights with deactivated and partially dismantled carburetor heat systems on both engines. Complainant sought a \$20,000 civil penalty.

On March 11, 1997, Chief Administrative Law Judge Roy J. Maurer served an order on the parties. The order stated, in relevant part, as follows:

The Rules of Practice provide that Respondent must file a written answer to the Complaint within 30 days of service of the Complaint (§ 13.209(a)). A general denial is deemed a failure to file [an] answer. . . .

The parties should serve copies of all filings upon the administrative law judge. . . .

On March 14, 1997, Respondent Air St. Thomas sent Complainant's counsel a letter stating as follows:

As per our previous conversations concerning this matter, I am requesting that this complaint be Dismissed without prejudice due to the extenuating circumstances involving Mr. Mel Marengo.

If we cannot come to some agreement on this matter, I then request that the hearing be held in St. Thomas, Virgin Islands

I am sure that if we could talk this out that we could come to some understanding as you know the intentions of Air St. Thomas is

not to brake (sic) any regulations and try to have the safest operation that we could have since we have been in operation since 1970.

Respondent did not, however, serve a copy of the March 14, 1997, letter on the law judge, though the law judge's order expressly stated that the parties should serve copies of all filings on him.

On April 15, 1997, the law judge issued an order to show cause in which he stated:

Respondent has still not filed a written answer to the complaint.

Under the circumstances, Respondent is hereby ordered to show cause, on or before May 12, 1997, why the request for hearing herein should not be dismissed and the sanction set forth in the complaint (\$20,000) be imposed.

If Respondent wishes to pursue the request for hearing herein, an answer to the complaint must be filed on or before May 12, 1997. The answer can be in simple letter form, explaining the circumstances surrounding the incident in question, but it must either admit or deny the factual allegations of the complaint. . . .

Failure to file [an] answer to the complaint or respond to this order to show cause, on or before May 12, 1997, will result in the issuance of a default judgment against Respondent.

On May 29, 1997, when the law judge still had not received Respondent's answer to the complaint or a response to the order to show cause, he found Respondent in default and dismissed the request for hearing and entered an order assessing a civil penalty of \$20,000, as requested in the complaint. The law judge noted that if Respondent wished to appeal the decision, a written notice of appeal must be filed no later than 10 days after service of the decision on Respondent.

Despite the requirement to file a notice of appeal within 10 days, Respondent did not file its notice of appeal until 100 days later, on September 6, 1997. In its notice of appeal, Respondent, through its President, stated:

I requested this case to be heard in Court from the beginning and was advised that I would have it so but due to an apparent lack of communication this case was ruled on without it being heard. I think

this is not proper for the FAA to judge me without being heard and therefor (sic) in violation of my civile wrights (sic) for a trial so I may be heard.

The Administrator dismissed Respondent's appeal due to the lateness of its notice of appeal, noting that Respondent had failed to show good cause for the lateness of its notice of appeal. In the Matter of Air St. Thomas, FAA Order No. 97-29 (October 1, 1997).

On October 13, 1997, Respondent filed a document captioned, "Notice of Appeal to Reopen Case." In this document, which can be construed as a petition for reconsideration, Respondent stated that it was requesting that the case be reopened because the law judge was unaware of the answer dated March 14, 1997.

Respondent stated that Complainant did not notify the law judge that it had received an answer to the complaint. Respondent's President also stated that his telephonic communications with Complainant's counsel led him to believe that he would be notified when the hearing would take place. In his cover letter, Respondent's President also stated that he had been advised by Complainant's counsel that Complainant would not object to his "Notice of Appeal to Reopen Case" and that he should send it to the Appellate Docket Clerk.

The Appellate Docket has not received any response to Respondent's "Notice of Appeal to Reopen Case" from Complainant.

Respondent appears to have misunderstood the basis for the dismissal of its appeal in FAA Order No. 97-29. In FAA Order No. 97-29, the issue of whether the law judge correctly dismissed the case due to his belief that no answer had been filed was not addressed. That issue, which Respondent focused on in its request for reconsideration, was not and will not be addressed until Respondent first provides

good cause, if any exists, for its failure to file a timely notice of appeal from the law judge's order.¹ The law judge issued his order dismissing the case on May 29, 1997. Under the Rules of Practice, Respondent's notice of appeal was due to be filed no later than June 13, 1997.² Respondent, however, did not file its notice of appeal from the law judge's order until September 6, 1997. A late-filed notice of appeal is subject to dismissal unless good cause for the lateness is demonstrated. In the Matter of Continental Airlines, FAA Order No. 97-28 (September 26, 1997); In the Matter of Metz, FAA Order No. 90-3 (January 29, 1990.)

The record of this case, including Respondent's "Notice of Appeal to Reopen Case," does not explain Respondent's reasons for failing to file a timely notice of appeal. As a result, it is unclear whether Respondent had good cause for the untimeliness.

¹ In other words, at this juncture in the proceedings, the foremost question is why did Respondent file its *notice of appeal* in an untimely fashion. Only if good cause is shown for the lateness of the notice of appeal will the Administrator consider the issue of whether Respondent timely filed a document which can be construed as an answer.

² Section 13.233(a) of the Rules of Practice in Civil Penalty Proceedings provides that a notice of appeal from a decision of an administrative law judge shall be filed with the Administrator not later than 10 days after service of a written decision. 14 C.F.R. § 13.233(a). In addition, because the law judge's decision was written, Respondent had an additional 5 days to file its notice of appeal under 14 C.F.R. § 13.210(e). Thus, Respondent had a total of 15 days from May 29, or until June 13, 1997, in which to file its notice of appeal.

Respondent is hereby granted until January 20, 1998, to file a brief detailing its reasons for failing to file a timely notice of appeal. As for Complainant, Complainant is granted 30 days from the service date of Respondent's brief to file a reply brief.

JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration



VICKI S. LEEMON³
Manager, Adjudication Branch

Issued this 17th day of November, 1997.

³ 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.