

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

LARRY'S FLYING SERVICE,
INC.

FAA Order No. 98-14

Served: July 3, 1998

Docket No. CP97AL0002

ORDER DENYING RECONSIDERATION

On March 12, 1998, the Administrator issued and served FAA Order No. 98-4 on the parties. In that order, the Administrator affirmed the law judge's initial decision assessing Respondent Larry's Flying Service, Inc. (Larry's) a \$20,000 civil penalty for a number of violations of the safety regulations. In the Matter of Larry's Flying Service, FAA Order No. 98-4 (March 12, 1998). Page 8 of FAA Order No. 98-4 was omitted inadvertently during the copying process and as a result, the copies served on the parties on March 12th were incomplete. However, the missing page was served on the parties the following day, on March 13, 1998.¹

The Rules of Practice require petitions for reconsideration to be filed within 30 days. 14 C.F.R. § 13.234(a). The mailing rule, which applies because FAA Order No. 98-4 was served by mail, gave Larry's an additional 5 days to file a petition for

¹ See letters dated March 13, 1998, written by Vicki S. Leemon, Manager, Adjudication Branch, to Glenn H. Brown, Esq., (agency counsel), and to Winston S. Burbank, Esq. (counsel for Larry's), transmitting copies of page 8 of FAA Order No. 98-4.

reconsideration. 14 C.F.R. § 13.211(e). As a result, Larry's petition for reconsideration was due no later than April 17, 1998.²

Larry's failed to file either a petition for reconsideration or an extension of time within the 35-day period. Larry's did file a document captioned "Notice of Appeal" on March 26, 1998; however, this document cannot be construed as a petition for reconsideration because it does not state the errors that Larry's alleges were made by the Administrator in FAA Order No. 98-4. See 14 C.F.R. § 13.234(c) setting forth the requirements for the contents of a petition for reconsideration. Larry's was sent a letter on April 6, 1998, via fax and U.S. certified mail, advising Larry's that its only options under the Rules of Practice at that point were to file either: (1) a petition for reconsideration with the Administrator; or (2) a petition for review with an appropriate U.S. Court of Appeals.³ When Larry's received this information, it still had time to file a petition for reconsideration, or at least a request for an extension of time, before the deadline of April 17, 1998. Nevertheless, Larry's failed to meet the deadline.

Larry's filed a document entitled "Motion to Reconsider" on May 30, 1998. As a petition for reconsideration, it must be denied because it is late-filed and good cause for

² April 17, 1998, was 35 days after March 13, 1998. Thus, Larry's was not penalized in any way for the inadvertent omission of page 8.

³ Specifically, it was stated in this letter as follows:

This letter is to inform you that at this point in the proceedings, the appeal provisions in 14 C.F.R. § 13.233 do not apply. You should refer to 14 C.F.R. § 13.234 (Petition to reconsider or modify a final decision and order of the FAA decisionmaker on appeal) and/or § 13.235 (Judicial review of a final decision and order).

Letter dated April 6, 1998, written by Vicki S. Leemon, Manager, Adjudication Branch, to Winston S. Burbank, Esq. (counsel for Larry's).

the untimeliness has not been demonstrated. A further fatal error is that Larry's late-filed petition for reconsideration fails to state the alleged errors in FAA Order No. 98-4 and the grounds that support Larry's petition for reconsideration, as required by 14 C.F.R. § 13.234(c).

THEREFORE, IT IS ORDERED THAT:

Larry's petition to reconsider is denied, and a \$20,000 civil penalty is assessed.

JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration



VICKI S. LEEMON⁴
Manager, Adjudication Branch

Issued this 3rd day of July, 1998.

⁴ 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.