

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

In the Matter of:

EUROPEX, INC.

FAA Order No. 2000-11

Served: May 11, 2000

FAA Docket No. CP98EA0042

DMS No. FAA-1998-4676<sup>1</sup>

**ORDER DISMISSING APPEAL**<sup>2</sup>

On November 18, 1999, Administrative Law Judge Burton S. Kolko ordered Respondent Europex, Inc., to show cause by November 23, 1999 why the hearing should not be dismissed and a \$10,000 civil penalty assessed. On November 24, 1999, as a result of Europex's failure to respond to that order to show cause, the law judge issued an order assessing a \$10,000 civil penalty. On December 14, 1999, Europex mailed a response to the order to show cause to the law judge, who subsequently forwarded that response to the Appellate Docket for consideration as an appeal from the order assessing civil penalty.<sup>3</sup>

---

<sup>1</sup> Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing through the Department of Transportation's Docket Management System (DMS). Access may be obtained through the use of the following Internet address: <http://dms.dot.gov>. For additional information, see 65 Fed. Reg. 1654, 1671 (January 11, 2000).

<sup>2</sup> The Administrator's civil penalty decisions are available on LEXIS, WestLaw, and other computer databases. They are also available on CD-ROM through Aeroflight Publications. Finally, they can be found in Hawkins's Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. For additional information, see 65 Fed. Reg. 1654, 1671 (January 11, 2000).

<sup>3</sup> A short chronology of the pertinent events is as follows:

Once the order assessing civil penalty was filed, it was too late for Europex to file a response to the order to show cause. If Europex wanted to challenge the law judge's order assessing civil penalty, then it was necessary for Europex to file a notice of appeal from the law judge's order. In a footnote to his order assessing civil penalty, the law judge informed Europex of its appeal rights and the timeframe in which an appeal could be made.

Under 14 C.F.R. §§ 13.233(a) and 13.211(e), a notice of appeal from a law judge's initial decision is due to be filed no later than 15 days after the service of a law

- 
- |          |   |
|----------|---|
| 10/8/99  | The law judge issued the Order Limiting Hearing to the issue of sanction. The law judge ordered: "If Respondent is pleading an inability to pay the amount sought in the complaint and intends to introduce documents in support, such as income tax returns, any such documents must be shown to agency counsel in advance of the hearing date, indeed by October 29, 1999. If that happens, the matter will be heard in New York City on December 1, 1999, starting at 10 am in a courtroom to be announced. If not, agency counsel may move for final decision." |
| 10/14/99 | The law judge issued a Notice of Hearing.   |
| 11/8/99  | Complainant filed a motion for decision, arguing that Europex had not produced any financial documents in response to the law judge's order dated October 8, 1999. Complainant noted that it had already taken Europex's financial circumstances into account when it decided to seek a \$10,000 civil penalty rather than \$45,000, as it had originally intended.   |
| 11/18/99 | The law judge issued an Order to Show Cause "by November 23, 1999, receipt date, why the hearing should not be canceled and an order assessing civil penalty be issued for \$10,000."   |
| 11/24/99 | The law judge issued the Order Assessing Civil Penalty. The law judge noted that he had received no response from Europex to his November 18, 1999, Order to Show Cause. The law judge wrote that he construed Europex's "silence both as a constructive withdrawal of the request for a hearing and as an admission of the complaint's allegations. Either conclusion renders the holding of a hearing unnecessary. Accordingly, this order is an order assessing a civil penalty of \$10,000."  |
| 12/14/99 | The law judge forwarded Europex's response to the Order to Show Cause to the Appellate Docket for consideration as a notice of appeal.  |

judge's written initial decision.<sup>4</sup> Hence, in this case, in which the law judge's written order assessing civil penalty was served by mail, Europex had 15 days or until no later than December 9, 1999, in which to file its notice of appeal.

Europex filed a document on December 14, 1999,<sup>5</sup> responding to the law judge's order to show cause and Complainant's motion for decision.<sup>6</sup> Europex's president, Sergei Kurdimov, stated that he had been unable to respond on time to the order to show cause because he was out of the United States from November 9, 1999, to November 27, 1999, and he attached copies of his ticket and boarding passes.

---

<sup>4</sup> Section 13.233(a) provides:

(a) *Notice of appeal.* A party may appeal the initial decision, ... by filing a notice of appeal with the FAA decisionmaker. A party shall file the notice of appeal with the Federal Aviation Administration, 800 Independence Avenue, SW., Room 924A, Washington, DC 20591, Attention: Appellate Docket Clerk. A party shall file the notice of appeal not later than 10 days after entry of the oral initial decision on the record or service of the written initial decision on the parties and shall serve a copy of the notice of appeal on each party.

14 C.F.R. § 13.233(a). Section 13.211(e) provides:

(e) *Additional time after service by mail.* Whenever a party has a right or a duty to act or to make any response with a prescribed period after service by mail, or on a date certain after service by mail, 5 days shall be added to the prescribed period.

14 C.F.R. § 13.211(e).

<sup>5</sup> Europex's response is dated December 12, 1999. There is no certificate of service attached to the document. The envelope in which the response was sent to the law judge bears a postmark dated December 14, 1999. Under 14 C.F.R. § 13.210(b), the filing date was December 14, 1999. However, regardless of whether the document was filed on December 12 or 14, 1999, it was filed late.

<sup>6</sup> In its response, Europex acknowledged that it offered auto parts and painting materials for transportation by air to a freight forwarder, PRA World Wide Transportation. PRA in turn, Europex stated, consolidated Europex's shipment with another shipment, and delivered the consolidated shipment directly to Aeroflot Airlines. Europex contended that PRA should be held solely responsible for this improperly packaged and labeled shipment. Europex denied that it violated the Hazardous Materials Regulations. In addition, Europex stated that "[c]onsidering the financial shape of Europex, Inc. we believe that assessment of the \$10,000 fine will definitely lead to the liquidation of the company."

The response filed by Europex on December 14, 1999, may be construed as a notice of appeal from the law judge's order assessing civil penalty. However, because it was not filed until December 14, 1999, it was 5 days late. A late-filed notice of appeal will only be excused for good cause shown. *E.g.*, In the Matter of Taylor, FAA Order No. 98-1 (February 18, 1998). While Europex tried to justify its failure to respond in a timely fashion to the order to show cause, it has provided no explanation for its late filing of its notice of appeal from the order assessing a \$10,000 civil penalty. Thus, Europex failed to demonstrate that it had good cause for the late filing of its notice of appeal. As a result, the notice of appeal is dismissed, and the order assessing a \$10,000 civil penalty remains in effect.

JANE F. GARVEY, ADMINISTRATOR  
Federal Aviation Administration



VICKI S. LEEMON<sup>7</sup>  
Manager, Adjudication Branch

Issued this 11th day of May, 2000.

---

<sup>7</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.