

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of: HIGH EXPOSURE, INC.

FAA Order No. 2003-7

Docket No. CP00EA0037
DMS No. FAA-2000-7873¹

Served: September 12, 2003

DECISION AND ORDER²

High Exposure appeals from the written initial decision of Administrative Law Judge Burton S. Kolko,³ finding that High Exposure operated its Piper PA-18A aircraft beyond the time limitations for compliance with two airworthiness directives (ADs) in violation of 14 C.F.R. §§ 39.3⁴ and 91.7(a)⁵. This decision denies High Exposure's appeal.

¹ 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 following Internet address: <http://dms.dot.gov>.

² The Administrator's civil penalty decisions, as well as indexes of the decisions, the Rules of Practice in civil penalty actions, and other information, are available on the Internet at the following address: <http://www.faa.gov/agc/cpwebsite>. In addition, there are two reporters of the decisions: Hawkins' Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. Finally, the decisions are available through LEXIS and Westlaw. Additional information is available on the website.

³ A copy of the initial decision, assessing a \$2000 civil penalty, is attached.

⁴ Section 39.3 of the Federal Aviation Regulations provides as follows:

No person may operate a product to which an airworthiness directive applies except in accordance with the requirements of that airworthiness directive.

14 C.F.R. § 39.3

⁵ Section 91.7(a) of the Federal Aviation Regulations provides that "No person may operate a civil aircraft unless it is in an airworthy condition." 14 C.F.R. § 91.7(a).

The Facts.

High Exposure⁶ owned and operated a two-seat Piper PA-18A aircraft, registration number N6894B.⁷ On May 2, 1999, N6894B was involved in an accident after getting caught in a wind shear while landing at Cross Keys Airport in Williamstown, New Jersey. Although the aircraft's occupants only sustained minor injuries, the aircraft was destroyed. (Tr. 14, 75.)

FAA Aviation Safety Inspectors Eric Bubny and Thomas Martin investigated this accident. (Tr. 13, 64.) Bubny requested High Exposure's maintenance records for N6894B, and about 2 or 3 weeks after the accident, David E. Dempsey, High Exposure's president, submitted the maintenance records to Bubny. (Tr. 16, 76, 84-85.) After reviewing the records, Bubny questioned whether prior to February 1999, High Exposure had complied with AD 60-10-08 and AD 68-05-01 in a timely fashion.⁸

AD 60-10-08 required fuel selector valve inspections on all PA-18 airplanes equipped with two wing tanks.⁹ (Agency's Exhibit 4.) The FAA issued AD 60-10-08 in May 1960 after the occurrence of "several accidents ... involving engine fuel starvation attributed to a lack of detent action in the fuel selector valve ..., causing the pilot to

The Administrator has held that to be airworthy, an aircraft must 1) conform to a type design approved under a type certificate or supplemental type certificate and to applicable Airworthiness Directives; and 2) be in a condition for safe operation. In the Matter of Kilrain, FAA Order No. 96-18 (May 3, 1996), *petition for reconsideration denied*, FAA Order No. 96-23 (August 13, 1996), *petition for review denied*, Kilrain v. FAA, No. 3587 (3rd Cir. May 1, 1997).

⁶ High Exposure is a non-commercial operator under Part 91 of the Federal Aviation Regulations, 14 C.F.R. Part 91 *et. seq.* High Exposure has a waiver for banner towing. (Tr. 60.)

⁷ The aircraft was manufactured in 1956.

⁸ Complainant did not allege that the accident in May 1999, was caused by any non-compliance with AD 60-10-08 or AD 68-05-01, or that on the day of the accident, the aircraft was not in compliance with the ADs or was unairworthy for any other reason.

⁹ N6894B had one fuel tank on each wing. (Tr. 14, 16, 60, Agency's Exhibit 1.)

position the selector improperly.” (*Id.*) AD-60-10-08 provided that prior to July 15, 1960, and every 100 hours of time in service afterwards, the fuel selector valve shall be “thoroughly cycled to determine whether or not detent engagement is positive.” (*Id.*) The AD required that “[i]f detent engagement is not positive, the valve must be replaced prior to further flight.” (*Id.*) The AD also required the inspection of the fuel valve to determine whether “the position of the fuel valve handle at detent engagement coincides with the proper markings on the indicator plate.” If the fuel valve handle does not coincide with those markings, the plate must be repositioned properly. (*Id.*)

AD 68-05-01 required periodic inspections of the engine exhaust muffler and shroud assembly, carburetor heat shroud and air duct, support braces, clamps and brackets, exhaust stacks and manifolds in various models of Piper aircraft, including the PA-18. (Agency’s Exhibit 5.) Under this AD, for PA-18 aircraft with mufflers having fewer than 950 hours time in service as of March 31, 1968, an inspection was required within the next 50 hours of time in service and then at least every 100 hours time in service afterwards. (*Id.*, ¶ b.)

On October 25, 1997, an A&P mechanic certified that he performed an annual inspection on N6894B and that it was in airworthy condition. (Agency’s Exhibit 7.) The mechanic noted that N6894B’s tachometer indicated that the aircraft had 799 hours time in service on that date. (*Id.*) In a separate entry on the same date on another page, the mechanic wrote that he inspected the muffler in compliance with AD 68-05-01 and that he complied with AD 60-10-08. (Agency’s Exhibit 6.)

Bubny testified that under these ADs, recurrent inspections were required within the next 100 hours time in service, or by 899 hours as measured by tachometer. (Tr. 32.)

Bubny testified, however, that he did not find any records reflecting compliance with these ADs¹⁰ prior to N6894B's next annual inspection on February 15, 1999,¹¹ when tach time was 1033 hours. (Tr. 26-28, 122; Administrator's Exhibits 7, 8 and 9.) High Exposure, in Bubny's opinion, operated the aircraft between 899 and 1033 hours in an unairworthy condition. He explained that the aircraft was unairworthy during that period because High Exposure did not perform the maintenance required under AD 60-10-08 and AD 68-05-01. (Tr. 33.)¹² After completing his review, he testified, he returned the records to Dempsey, keeping copies of those that led him to believe that the AD inspections had not been conducted in a timely fashion between October 1997 and February 1999. (Tr. 19, 50.)

High Exposure's only witness during its case-in-chief was its president and owner, David Dempsey. He testified about an earlier occasion when he had provided N6894B's records to a different FAA inspector, David Grasso,¹³ who was investigating N6894B's loss of power while flying over Veteran's Stadium in Philadelphia in September 1998. As a result of the loss of power, N6894B made a forced landing in an Acme parking lot.¹⁴ Dempsey testified that Grasso did not mention any problems revealed by the maintenance review. (Tr. 72.) Dempsey stated that while he did not

¹⁰ Bubny testified that he thought that Dempsey had provided him with all of the maintenance records in his possession. (Tr. 49.)

¹¹ According to Dempsey, there was no annual inspection between October 1997 and February 1999, because the aircraft was grounded in 1998. (Tr. 95.)

¹² See n.8.

¹³ Dempsey testified that he provided Grasso with logbooks, copies of 337s, and records of annual inspections and AD compliance, as well as stickers or invoices reflecting maintenance performed while N6894B was away from its home base. (Tr. 71, 74.)

¹⁴ Despite damage to the aircraft, no one was injured.

check to ensure that Grasso returned *all* the records, he had no reason to think that any were not given back to him. (Tr. 75, 88.)

According to Dempsey, High Exposure's pilots do not carry the logbooks in the aircraft. As a result, mechanics record maintenance performed when the aircraft is away from High Exposure's home base on stickers or pieces of paper, or as addenda to maintenance invoices.¹⁵ (Tr. 74; *see also* Agency's Exhibit 10.)

Dempsey opined that the aircraft must have accrued 100 hours of flight time some time between Memorial Day in May 1998, and the forced landing in September 1998.¹⁶ He thought that the muffler was replaced in June 1998, and the exhaust stacks were replaced later. This work, he claimed, was recorded on stickers, but not in the logbooks. (Tr. 80-81, 87.)¹⁷ The sticker for the muffler repair, he believed, was in the logbook at some point but it was not affixed to any logbook page. (Tr. 87.) He did not know what had happened to the sticker. He explained that he did not know if he had lost the sticker or whether someone else – perhaps Grasso, Bubny or an insurance company employee – had lost it. (*See* Tr. 88.)¹⁸

¹⁵ High Exposure used to fly that aircraft along the beaches in New York and New Jersey during the summer. (Tr. 73.) Dempsey explained that maintenance was performed at various facilities depending upon where the aircraft was located when maintenance was needed. (Tr. 73-74.)

¹⁶ He based this assumption on the fact that the logbook indicated that as of May 12, 1998, N6894B had been in service for 64 hours since its last AD inspections in October 1997. Dempsey stated that High Exposure does most of its flying in the summer. Their banner towing season, he explained, starts after Memorial Day. (Tr. 80.)

¹⁷ Stickers are generally about 4 inches by 6 inches. Dempsey testified that they usually do not adhere the stickers onto any pages of the logbook but instead insert them in a sleeve in a binder. (Tr. 92.) Bubny, however, testified that he did not see logbook entries as described by Dempsey on stickers that were either loose or affixed to a logbook page. (Tr. 122.)

¹⁸ Dempsey acknowledged that he did not provide the invoice regarding the 1998 muffler replacement to Bubny in 1999 although he thinks that that record was in one of his offices when Bubny requested the records. (Tr. 90.)

High Exposure also introduced Carter Aviation's invoice for replacing a PA-18's exhaust stacks and spark plugs. Dempsey explained that he found this invoice while preparing for the hearing and did not think that he had provided it to the FAA previously.¹⁹

Dempsey testified that Flight Line Aero in Woodbine, New Jersey, performed the required AD inspections at some point between the AD inspections that were conducted on October 25, 1997, and February 15, 1999. (Tr. 82-83, 96.) He said that when he checked with Flight Line Aero prior to the hearing, they explained that while they had no record of the AD inspections, they did recall doing the work. (Tr. 93.)

Dempsey explained that after N6894B crashed at Cross Keys Airport in May 1999, both the FAA and the insurance company requested the aircraft's maintenance records. (Tr. 76.) He said that he provided the "large majority" of the records to Bubny and some of the information to the insurance company. (Tr. 84)²⁰ He said that he had provided sufficient records to Bubny to establish that the aircraft was airworthy at the time of the accident. (Tr. 108.)²¹ He testified further that he offered to provide Bubny with any additional records if needed, but he did not hear from the FAA until he received the letter of investigation dated May 27, 1999. (Tr. 77, 113.) He testified that he

¹⁹ Respondent's Exhibit 4 is a typed invoice billing High Exposure for replacing a PA-18's exhaust stacks and spark plugs. Someone wrote by hand "what plane" on the bottom of the invoice and "6894B" next to the typed entries regarding the exhaust stacks and spark plugs. *Id.* There is no mention of either AD 60-10-08 (pertaining to fuel selector valves) or AD 68-05-01 (pertaining to exhaust mufflers, exhaust stacks, etc.)

²⁰ He also stated that he provided Bubny with all of the records that he had or reasonably could get his hands on (Tr. 104), including a binder containing some logbooks. (Tr. 77.)

²¹ The central issue in this case, it should be noted, however, is not whether the aircraft was airworthy immediately prior to its crash in May 1999, but whether it was airworthy between 899 hours time in service and February 15, 1999, when it had 1033 hours time in service.

provided all the records that he could find to the insurance company after June 25, 1999.
(Tr. 106.)

The ALJ's Initial Decision.

In the initial decision, the ALJ held that the preponderance of the evidence demonstrated that High Exposure flew N6894B without inspection 134 hours beyond the limits set by AD 60-10-08 and AD 68-05-01 between 899 and 1033 time in service. He found that High Exposure operated N6894B in an unairworthy condition during those 134 hours. He inferred that High Exposure had overflowed the ADs based upon his finding that High Exposure failed to provide any records to the FAA that established that the required inspections were performed on time, that is, by 899 hours time in service. (Initial Decision at 4.) The ALJ found that Bubny had no reason to believe that Dempsey had given him "anything less than all relevant records." (Initial Decision at 5.)

The ALJ rejected High Exposure's contention that N6894B was airworthy despite the absence of records showing timely AD compliance. The ALJ held: "Responsibility for the failure of relevant documents to show that Respondent complied with the ADs – and the consequences therefrom – is its [High Exposure's] own." (Initial Decision at 3.) The ALJ also rejected High Exposure's position that the FAA should have, as part of its investigation, contacted all of the facilities that performed maintenance on N6894B to determine whether High Exposure had complied with the two ADs. (Initial Decision at 5.)²² He concluded that the invoices from Carter Aviation did not establish that it had

²² The ALJ wrote:

It was not up to the FAA to contact every concern which did or could have performed maintenance for the company or might otherwise hold records in order to determine whether High Exposure was in compliance. That was manifestly High Exposure's responsibility. As the recipient of the maintenance services, it was in the best position to know where pertinent records might be located and what they contained.

performed the necessary AD inspections on N6894B. (Initial Decision at 6.) Finally, he assessed a \$2,000 civil penalty against High Exposure.

High Exposure's Appeal.

1. The complaint was not stale.

High Exposure argues on appeal that the ALJ should have dismissed the complaint as stale because the alleged failure to comply with the ADs occurred more than 2 years prior to the issuance of the Final Notice of Proposed Civil Penalty (FNPCP) on September 5, 2000. High Exposure, however, misunderstands the stale complaint rule, which provides that a complaint is stale if the alleged violations occurred more than 2 years before the issuance of the Notice of Proposed Civil Penalty (NPCP). 14 C.F.R. § 13.208.²³ In this case, the complaint was not stale because Complainant issued the NPCP on October 6, 1999, less than 2 years after the last AD inspection on October 25, 1997. Necessarily then, the agency attorney issued the NPCP less than 2 years after the time when the AD required inspections should have occurred.

Additionally, to require the agency to undertake such a search would place a burden on it plainly unreasonable under the circumstances – and one not contemplated by the FARs. ... Finally, the fact that Respondent may have had to turn over certain records to its insurance company simply does not excuse its failure to supply the pertinent records to the agency. Respondent does not contend that copier machines were unavailable to it.

* * *

The aircraft would have been airworthy, of course, if AD compliance had been shown (Tr. 35.) But it was not. Respondent's failure to produce records showing periodic, 100-hour inspections under AD requirements when it had the obligation to do so demonstrated that the FARs in question had been violated. (Initial Decision at 5.)

²³ The agency attorney issues a NPCP to a person for alleged violations of the regulations. That person may submit written comments, request an informal conference, or pay the penalty. If the person fails to submit a timely response to the NPCP or if, after an informal conference, the agency attorney does not agree to withdraw the allegations, the agency attorney will issue the FNPCP. 14 C.F.R. §§ 13.16(d) & (e).

2. The complaint was sufficient.

High Exposure argues that the “Notice was so defective that is (sic) should be stricken.” (Appeal Brief at 12.) High Exposure noted that Complainant misidentified the aircraft’s registration number in both the notice and the complaint. While Complainant did give the wrong registration number in the original complaint in some paragraphs, it correctly identified the aircraft as N6894B in others. Complainant subsequently amended the complaint, correcting those errors. High Exposure never argued that it was confused by these mistakes.

High Exposure also argues that the notice was inadequate because Complainant alleged violations occurring between October 25, 1997, and February 15, 1999, failing to specify the exact dates on which the violations occurred. Complainant was not required to allege specific dates because compliance with these two ADs is based upon hours of operation rather than calendar dates.

3. High Exposure was not prejudiced by Complainant’s post-hearing submission.

High Exposure argues that the ALJ should have dismissed this civil penalty action because Complainant filed a “prejudicial and inflammatory” supplementary submission after the conclusion of the hearing. At the end of the hearing, the ALJ held the record open until July 13 to allow the parties to submit additional evidence or motions.

(Tr. 152.) Complainant filed a supplemental pleading, with an attached declaration by an FAA inspector. The ALJ denied High Exposure’s motion to strike Complainant’s post-hearing pleading, but he did strike the attached declaration and any argument based on

it.²⁴ There is no evidence in the initial decision that the ALJ was influenced by the supplemental pleading.²⁵

4. The ALJ's decision is supported by the preponderance of the evidence.

High Exposure argues that the ALJ's decision is not supported by the preponderance of the reliable, probative and substantial evidence. That argument is rejected.

It is undisputed that the aircraft underwent AD inspections on October 25, 1997, (tach time: 799 hours) and on February 15, 1999, (tach time: 1033). As inspections were due under these ADs every 100 hours, inspections should have been repeated when the aircraft had no more than 899 hours time in service. Bubny found no documentation indicating that N6894B had been inspected under these ADs between 799 and 1033 hours time in service.

The FAA's prima facie case would have been stronger if the regulations required High Exposure to retain records of *all* recurrent AD inspections, even after they are repeated. The FAA, however only requires owners or operators to retain records revealing current AD status. Section 91.417(a)(2)(v) requires that each registered owner or operator shall retain records of "[t]he *current* status of applicable airworthiness directives (AD) including for each, the method of compliance, the AD number, and revision date." 14 C.F.R. § 91.417(a)(2)(v) (emphasis added.) Records reflecting the current status of compliance with an AD, furthermore, "shall be retained and transferred

²⁴ The ALJ struck the declaration, finding that it contained "rank hearsay untested by cross-examination." (Initial Decision at 6.)

²⁵ Consequently, there is no need to determine whether High Exposure correctly described the declaration as "inflammatory."

with the aircraft at the time the aircraft is sold.” 14 C.F.R. § 91.417(b)(2). Consequently, once High Exposure repeated the inspections under AD 60-10-08 and AD 68-05-01 on February 15, 1999, it was not required to keep records of previous inspections under those ADs.

Nonetheless, the preponderance of the evidence supports the conclusion that the inspections under these ADs did not occur in a timely fashion between October 1997 and February 1999. The evidence does not indicate that it was High Exposure’s practice to destroy records of superceded AD inspections²⁶ or more specifically, that it discarded the records of prior inspections under these ADs once the inspections were repeated in February 1999. On the contrary, Dempsey testified that High Exposure keeps all maintenance records, regardless of whether the FAA requires it to keep them. (Tr. 88).

High Exposure’s explanations for the absence of records indicating that the required AD inspections were performed by 899 hours time in service were not compelling. Dempsey’s vague, uncorroborated testimony that Flight Line Aero in Woodbine, New Jersey, performed the inspections under these ADs deserves little weight. There was no evidence that he had any first-hand knowledge about these inspections. Dempsey’s hearsay testimony that someone at Flight Line Aero informed him prior to the hearing that he recalled performing the inspections (Tr. 93) – in the absence of corroborating documentation -- constitutes, as the ALJ found, unconvincing and unsubstantiated hearsay.

High Exposure argues that under 14 C.F.R. § 91.417, it properly transferred N6894B’s maintenance records to its insurance company following the accident on

²⁶ High Exposure provided records of superceded inspections under these ADs when the tach time was 582.61 hours.

May 2, 1999, and as a result, it could not provide them to the FAA during the investigation. However, Dempsey did not know when he gave the maintenance records to the insurance company. He testified vaguely that the insurance company had all the records “within a few weeks [after the accident], I imagine.” (Tr. 76.) When asked on cross-examination where the maintenance records were when Bubny requested them, Dempsey replied that while he could not recall where all the records were at that point, he gave Bubny the “large majority” of the records and he gave all the maintenance records eventually to the insurance company. (Tr. 84.) Also, on re-direct examination, he testified that Bubny requested the records before High Exposure surrendered materials to the insurance company. (Tr. 106-107.)

High Exposure contends that the ALJ should have found that it gave all of its maintenance records to Grasso for a conformity inspection in September 1998. (Appeal Brief at 8.) The issue, however, is whether High Exposure gave Grasso records of any AD inspections that were performed by the time that the aircraft had accumulated 899 hours of operation. Dempsey did not know whether Grasso failed to return any of the records. (Tr. 88.)²⁷ Moreover, Dempsey’s testimony that he picked up records from Hortman Aviation, which performed most of High Exposure’s maintenance, and

²⁷ The question remains, however, why Grasso did not notice that AD compliance was overdue. It seems likely that if the aircraft had 863 hours of operation on May 12, 1998, and recurrent inspections were due by 899 hours, that AD compliance was overdue by September, 1998, after a summer of banner towing. Bubny’s testimony that Grasso stated that he did not review the records is hearsay and deserves little weight. On the one hand, perhaps Dempsey provided Grasso with records of timely recurrent inspections. This would explain why Grasso did not alert Dempsey that the aircraft was overdue for these AD inspections. On the other hand, perhaps Grasso performed a cursory review of the records – or no review at all – and did not realize that the recurrent AD inspections were overdue.

delivered them to Grasso, is irrelevant in light of his claim that Flight Line Aero performed the AD compliance inspections. (Tr. 70-71.)

High Exposure raised the possibility that records of AD compliance might be in the possession of one of the several shops that performed maintenance on this aircraft, and that Complainant should have contacted those shops as part of its investigation. Complainant was not obligated to represent at the hearing that it had contacted each maintenance shop but found no records. Likewise, Complainant was not obligated to interview the witnesses listed on High Exposure's witness list. Under 14 C.F.R. § 13.224(a), Complainant had to prove its case by the preponderance of the evidence, not beyond a reasonable doubt. In the Matter of Terry and Menne, FAA Order No. 1991-12 at 6 (April 12, 1991), *petition for reconsideration denied*, FAA Order No. 1991-31 (August 2, 1991), *petition for review denied*, Terry & Menne v. FAA, reported as table case at 976 F.2d. 1445, *full text slip opinion reported at* 1992 U.S. App. LEXIS 27483 (D.C. Cir. October 21, 1992.)²⁸

High Exposure also argues that Complainant should have interviewed the authors of the invoice for the new muffler (Respondent's Exhibit 4.) Complainant was unaware of the invoice until the hearing. (Tr. 114-119.) Moreover, the invoice did not even mention the fuel selector valve, the subject of AD 60-10-08.

²⁸ Also, High Exposure may be confusing what the FAA inspectors should have done during their investigation before the issuance of the NPCP, and what Complainant had to do to prevail at the hearing. For example, High Exposure argues that the FAA's failure to do any investigation to search for exculpatory materials was inexcusable. (Appeal Brief at 9.) Complainant was required to prove its case by the preponderance of the evidence at the hearing. It is irrelevant whether Complainant could have conducted a more thorough investigation prior to initiating this action. See In the Matter of High Exposure, FAA Order No. 2001-2 (May 16, 2001) (finding that regardless of what additional actions the FAA inspectors could have taken during the investigation to ascertain whether High Exposure operated the aircraft in question, Complainant presented sufficient evidence to sustain its burden of proof at the hearing.)

High Exposure challenged the reliability of Bubny's testimony in light of the inconsistency between his testimony during Complainant's case-in-chief on cross-examination in the morning, and his rebuttal testimony in the afternoon. Bubny testified on cross-examination during the morning session:

Q (High Exposure's attorney): The aircraft, though, was involved in an accident in 1998, isn't that correct?

A (Bubny): I am unaware of that.

Q (High Exposure's attorney): Are you aware at any time in 1998 that the aircraft records were surrendered to the FAA at your office in 1998 to David J. Grasso?

A (Bubny): I'm not aware of that.

(Tr. 36.) In the afternoon, the agency attorney asked Bubny on direct during Complainant's rebuttal case: "In doing your review of the maintenance for November 6894 Bravo, were you aware that Inspector David Grasso had also reviewed those maintenance records back in September of 1998?" (Tr. 122-123.) Bubny responded he had asked Grasso whether he had reviewed the records, and that he recalled Grasso saying that he had had the records but had not reviewed them. (Tr. 123.) Bubny later explained that he recalled questions in the morning regarding an accident in 1998 but he considered N6894B's forced landing in the Acme parking lot in 1998 as an *incident*, not an *accident*.²⁹ (Tr. 123-125.) He also claimed that he had misunderstood the question in the morning because he thought that he had been asked if Grasso had reviewed -- rather than obtained -- the logbooks. (Tr. 124-125.) Bubny's explanation of these discrepancies

²⁹ Unlike an incident, an accident is defined as an occurrence involving an aircraft in which a person suffers a serious injury or dies, or an aircraft sustains substantial damage. *Aircraft Accident and Incident Notification, Investigation, and Reporting*, FAA Order No. 8020.11B, p.2 & 4 (August 16, 2000).

is plausible, and in any event, the discrepancies do not render his testimony, as a whole, unreliable.

5. The ALJ properly rejected High Exposure's reasonable reliance argument.

High Exposure's attorney argues that his client relied reasonably upon the assessments of the aircraft as airworthy by Aviation Safety Inspectors John Penzone and David Grasso. (Tr. 138-139; Appeal Brief at 13-14.) High Exposure did not prove any detrimental reliance, and as a result, the ALJ properly rejected this argument.³⁰

Penzone issued a special airworthiness certificate for N6894B in May 1998. According to a logbook entry dated May 12, 1998, Penzone found that N6894B met the requirements for amending its special purpose agricultural airworthiness certificate to permit the aircraft to be used for aerial photography. When Penzone wrote that entry, N6894B had only 863 hours time in service,³¹ and recurrent inspections were not due until 899 hours time in service. Hence, when the special airworthiness certificate was issued, High Exposure had not operated N6894B past the due date for recurrent AD inspections.

High Exposure's argument that it relied to its detriment upon any finding of airworthiness by Grasso must also be rejected. It is undisputed that Dempsey provided maintenance records to Grasso in September 1998. There is no evidence that High Exposure delayed recurrent AD inspections until February 15, 1999, based upon any advice regarding recurrent inspections given by Grasso or any other FAA official. High

³⁰ The ALJ did not specifically address High Exposure's reasonable reliance argument, but instead rejected it without comment. (Initial Decision at 6.)

³¹ The logbook indicates that N6894B had 3533 total time in service and 863 hours tach time on May 11, 1998. (Agency's Exhibit 7, p.2). Penzone's logbook entry, dated May 12, 1998, indicates that the aircraft had 3533 total time in service on that date. (Agency's Exhibit 7, p.3.)

Exposure asserts in its appeal brief that it relied upon Grasso's conformity inspection on February 2, 1999, but there is no evidence that Grasso had any involvement with N6894B after October 1, 1998, when he was supposed to return the maintenance records to High Exposure.

6. High Exposure's other arguments.

High Exposure states in its appeal brief that, with the Administrator's permission, it will present additional arguments after it receives the hearing transcript. It mentions that it requested a copy under 14 C.F.R. § 13.230(b) but did not receive it.³²

The transcript is available on-line through the Department of Transportation's Docket Management Services (DMS) at <http://dms.dot.gov>. Due to the peculiar circumstances, compounded by the difficulties with the delivery of the U.S. Mail in the fall, 2001, High Exposure may raise new arguments based upon a review of the transcript in a petition of reconsideration.

Conclusion.

High Exposure's appeal of the ALJ's initial decision is denied. A \$2,000 civil penalty is assessed.³³


MARION C. BLAKEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 10th day of September, 2003.

³² The Hearing Docket file does not have any request from High Exposure for a copy of the transcript. High Exposure's attorney did not mention that he had requested a copy of the transcript in his request for an extension of time in which to file the appeal brief.

³³ Unless Respondent files a petition for review with a Court of Appeals of the United States under 49 U.S.C. § 46110 within 60 days of service of this decision, this decision shall be considered an order assessing civil penalty. 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2).