

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of: **BUTTE AVIATION, INC.**

FAA Order No. 2004-1
Docket No. CP03NM0014
Served: April 6, 2004

ORDER

Administrative Law Judge Burton S. Kolko issued an order assessing a \$2,200 civil penalty against Butte Aviation, Inc., on February 12, 2004. In his order, the ALJ explained that he had ordered Butte Aviation two months earlier to file an answer promptly, but, nonetheless, Butte Aviation had failed to file an answer. As a result, he wrote, he construed Butte Aviation's silence both as a constructive withdrawal of the request for a hearing and as an admission of the allegations contained in the complaint.

Butte Aviation filed a notice of appeal dated February 14, 2004, in which it argues that it had filed an answer in the form of a letter dated December 3, 2003. Butte Aviation sent the answer to the Hearing Docket via certified mail on December 9, 2003. It also sent a copy of this letter to agency counsel. Butte Aviation attached a copy of the answer as well as a copy of the United States Postal Service Product Tracking System Intranet Item Inquiry page for item 7003 1680 0004 3579 1941, indicating that this item was delivered on December 15, 2003, to the FAA in Washington D.C. on December 15, 2003, and was received by an individual named J. Ferrell. The Hearing Docket Clerk, however, has no record of receiving the answer.

The Rules of Practice in Civil Penalty Actions provide that a party may appeal from an initial decision of an administrative law judge by filing a notice of appeal within 10 days of the ALJ's decision and then by perfecting that appeal by filing an appeal brief. 14 C.F.R. § 13.233(a) and (c). Under 14 C.F.R. § 13.233(c), a party is required to perfect an appeal by filing an appeal brief with the Administrator no later than 50 days after the entry of the oral initial decision or service of a written initial decision on the party. Butte Aviation has filed a timely notice of appeal and has until April 7, 2004,¹ in which to file an appeal brief. Butte Aviation, however, indicated in its notice of appeal that it should not be required to submit anything further on appeal.

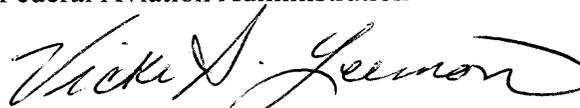
The Rules of Practice require parties to detail in the appeal brief their specific objections to the initial decision. 14 C.F.R. § 13.233(d)(1). Butte Aviation's notice of appeal specifies its objections to the ALJ's initial decision in ample detail, and as a result,

¹ Butte Aviation's appeal brief is due to be filed no later than April 7, 2004, because it had 50 days in which to file the appeal brief under 14 C.F.R. § 13.233(c) plus an additional 5 days in which to file a response by action of 14 C.F.R. § 13.211(e), the "mailing rule." The mailing rule provides that "[w]hen a party has a right or a duty to act or to make any response within 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).

it meets the requirements of both a notice of appeal and an appeal brief. Therefore, there is no need for Butte Aviation to file a separate appeal brief. In the Matter of Atlantic World Airways, Inc., FAA Order No. 1995-23 (October 13, 1995).

Complainant is ordered to file a reply brief within 35 days from the service date of this order.

MARION BLAKEY, ADMINISTRATOR
Federal Aviation Administration



VICKI S. LEEMON²
Manager, Adjudication Branch, AGC-430

Issued this 5th day of April, 2004.

² 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 3, 1993.