

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of: BUTTE AVIATION, INC.

FAA Order No. 2004-3

Docket No. CP03NM0014
DMS No. FAA-2003-16183¹

Served: July 20, 2004

DECISION AND ORDER²

Respondent Butte Aviation, Inc. (Butte Aviation) has appealed the default judgment entered against it by Administrative Law Judge (ALJ) Burton S. Kolko. On December 2, 2003, the ALJ ordered Butte Aviation to file an answer "now." The ALJ did not receive an answer, and on February 12, 2004, he construed the apparent failure to file an answer as a withdrawal of the request for hearing and an admission of the allegations in the complaint. The complaint alleged that Butte Aviation failed to comply with an airworthiness directive. The ALJ assessed Butte Aviation a \$2,200 civil penalty, as requested in the complaint.

Butte Aviation has filed a notice of appeal, arguing that on December 9, 2003, it did indeed send a timely answer to the Hearing Docket via certified mail, as well as a

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) at the following Internet address: <http://dms.dot.gov>.

² The Administrator's civil penalty decisions, along with indexes of the decisions, the rules of practice, and other information, are 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. For additional information, see the website.

copy of the answer to Complainant. To support its claim that it sent its answer to the Hearing Docket, Butte Aviation has supplied a verification of delivery from the United States Postal Service Tracking System. For some reason, however, the Hearing Docket did not receive Butte Aviation's answer.

A previous order construed Butte Aviation's notice of appeal as an appeal brief, because it contained ample detail concerning the company's objections to the ALJ's decision. In the Matter of Butte Aviation, Inc., FAA Order No. 2004-1 (April 6, 2004). The order gave Complainant 35 days in which to file a reply brief. *Id.*

In its reply brief, Complainant points out that Butte Aviation's answer indicated that it was filed with the Hearing Docket. As a result, Complainant states, it assumed that the Hearing Docket and the ALJ had received the answer and that the ALJ would not grant Complainant's motion to dismiss based on the apparent failure to file an answer. For this reason, Complainant states, it took no further action, apparently referring to such possible actions as sending the ALJ a copy of the answer, or withdrawing its motion to dismiss. Complainant states that it was not until after the ALJ issued his default judgment that Complainant realized that the ALJ did not receive the answer.

Complainant asserts that it "neither concedes nor contests" the timeliness of Butte Aviation's answer. Complainant's position is that the ALJ's default judgment resulted from a good faith misunderstanding. Under the circumstances, Complainant agrees with Butte Aviation that it is appropriate to remand this case to the ALJ for further proceedings.

In the interest of justice, this order grants Butte Aviation's appeal, vacates the ALJ's default judgment assessing Butte Aviation a civil penalty, and remands this matter

to the ALJ for further proceedings.

Marion C. Blakey
MARION C. BLAKEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 19th day of July, 2004.