

**UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC**

**In the Matter of: AIR SOLUTIONS, LLC AND AIR SOLUTIONS GROUP, INC.**

FAA Order No. 2007-4

Docket No. CP05EA0012  
DMS No. FAA-2005-21062<sup>1</sup>

Served: April 5, 2007

**EXTENSION OF TIME**<sup>2</sup>

Complainant Federal Aviation Administration (FAA) filed its appeal brief on February 20, 2007. Under 14 C.F.R. §§ 13.233(e), the deadline for filing a reply brief is 35 days after service of the appeal brief on the other party. In addition, 14 C.F.R. § 13.211(e) provides an additional 5 days for filing when the party is served by mail, as in the instant case. Under these rules, Respondents' reply brief was due no later than April 2, 2007, which was a total of 40 days after Complainant served the appeal brief on Respondents. Respondents failed, however, to file their reply brief by the deadline.

A day after the deadline, on April 3, 2007, Respondents filed with the Hearing Docket an "Emergency Motion for Extension of Time to File Reply Brief Out of Time." In the motion, Respondents' counsel states that she misinterpreted the Rules of Practice and incorrectly calendared the reply brief for a service date after the deadline. Respondents argue that that the misinterpretation and incorrect calendaring constitute excusable neglect. They also argue that an extension of time will not prejudice Complainant.

Complainant has objected to an extension of time. Complainant states, without any supporting authority, that it lacks the authority to agree to an extension of time, because the required filing date had passed already. Complainant also states, in a conclusory fashion, that Respondents have failed to demonstrate good cause for their failure to file the reply brief on time.

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<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 (DOT's) Docket Management System (DMS) at the following Internet address: <http://dms.dot.gov>.

<sup>2</sup> The Administrator's civil penalty decisions, along with indexes of the decisions, the rules of practice, and other information, are available on the Internet at the following address: [http://www.faa.gov/about/office\\_org/headquarters\\_offices/agc/pol\\_adjudication/AGC400/Civil\\_Penalty](http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty). In addition, Thomson/West publishes Federal Aviation Decisions. Finally, the decisions are available through LEXIS (TRANS library) and WestLaw (FTRAN-FAA database). For additional information, see the Web site.

Under 14 C.F.R. § 13.233(e)(2), when a request for an extension of time to file a reply brief is opposed, the request will be granted only if the party seeking the extension shows good cause for an extension.

Respondents have shown good cause. Respondents filed their motion for an extension of time only 1 day beyond the deadline for the reply brief. Thus, counsel acted quickly to correct the simple human error. The filing was prompted by Respondents' own discovery of the error. Complainant has not shown, or even alleged, that it would be prejudiced by granting the request for an extension. Although Respondent's explanation for the error is a marginal showing of good cause, it is sufficient under the circumstances.

This should not be construed as a holding that misinterpreting the Rules of Practice, resulting in incorrect calendaring, always constitutes good cause for a procedural default. As stated In the Matter of Esau, "[t]he facts of each case must be evaluated to determine if good cause exists in that case." FAA Order No. 1991-24 at 2 (June 21, 1992).

For the foregoing reasons, this order grants, under 14 C.F.R. § 13.233(e)(2), the request for extension of time in which to file the reply brief. Respondent's reply brief is now due to be filed on or before the date certain of April 12, 2007.

MARION C. BLAKEY, ADMINISTRATOR  
Federal Aviation Administration

[Original signed by Vicki S. Leemon]

VICKI S. LEEMON<sup>3</sup>  
Manager, Adjudication Branch

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<sup>3</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 re-delegated by the Assistant Chief Counsel for Litigation to the Manager, Adjudication Branch, by Memorandum dated August 6, 1993.