

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

In the Matter of: EASTERN AIR CENTER, INC.

FAA Order No. 2008-6

Docket No. CP05NE0003
FDMS No. FAA-2005-21756¹

Served: February 14, 2008

**ORDER DISMISSING APPEALS AND
TERMINATING PROCEEDINGS**²

On May 24, 2006, Administrative Law Judge Isaac D. Benkin issued a written initial decision finding that Eastern Air Center (“Eastern”) had violated 14 C.F.R. §§ 91.203(a)(1) and 135.25(a)(1). Both parties appealed from the initial decision and perfected their appeals by filing appeal briefs. Subsequently, on August 16, 2006, the agency attorney withdrew the complaint, explaining that the parties had settled the case.³

The Hearing Docket received the document withdrawing the complaint, but the document did not come to the attention of the FAA decisionmaker or his advisors. As a result, instead of dismissing the appeals and terminating the proceedings with prejudice,

¹ Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing at <http://www.regulations.gov>. For additional information, see <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 available on the Internet at the following address: http://www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty. In addition, Thompson/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.

³ The Rules of Practice do not provide instructions regarding a withdrawal of a complaint after a party has filed an appeal. As a matter of good practice, if the parties reach a settlement after the appeal of an initial decision, the parties should file a document in which the complaint and appeal are withdrawn. The document also should include a motion to dismiss the appeal and to terminate the proceedings with prejudice.

the Administrator issued a decision and order, FAA Order No. 2008-3, “resolving” the appeals.

FAA Order No. 2008-3 lacks the force and effect of law because it was issued after Complainant had withdrawn the complaint. It will not, therefore, be considered an order assessing a civil penalty under 14 C.F.R. §§ 13.16(d)(4) and 13.233(j)(2) after the expiration of the time period for filing a petition for review.⁴

Also, once the complaint was withdrawn, the legal foundation for the initial decision was removed. Thus, the initial decision now lacks the force and effect of law. In the Matter of Sonico, FAA Order No. 2000-24 (December 21, 2000). Consequently, Complainant’s and Eastern’s cross-appeals are dismissed as moot, and the proceedings are dismissed with prejudice. In the Matter of Panalpina, FAA Order No. 2007-2 (March 12, 2007).

ROBERT A. STURGELL
ACTING ADMINISTRATOR
Federal Aviation Administration

[Original signed by Vicki S. Leemon]

VICKI S. LEEMON⁵
Mgr., Adjudication Branch, AGC-430

⁴ Thus, the FAA will not seek to collect the civil penalty “assessed” in FAA Order No. 2008-3.

⁵ 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.