

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

In the Matter of: AIR CHARTER EXPRESS, INC.

FAA Order No. 2019-2

FDMS No. FAA-2017-0097

Served: October 1, 2019

DECISION AND ORDER

Respondent, Air Charter (“Air Charter”) filed an appeal from the Initial Decision issued by Administrative Law Judge Douglas M. Rawald (the “ALJ”) of the Department of Transportation’s Office of Hearings.¹ The Initial Decision found that in 2016 Air Charter failed to file an FAA flight plan or retain flight locating information for the subject flight in violation of 14 C.F.R. §135.79(b) (2016), and this failure constituted a residual violation of 14 C.F.R. 91.13(a) (2016).² The Office of Hearings assessed a civil penalty of \$2,100.00.³

Air Charter argues on appeal that the violations found in the Initial Decision “are not true.”⁴ It asks that the Initial Decision be vacated and the civil penalty be dismissed.⁵ For the reasons stated below, the appeal is denied, and the Initial Decision is affirmed.

¹ The Initial Decision, served on March 4, 2019, is attached. An erratum, which corrects a citation, is also attached.

² Initial Decision at 5-6. Section 91.13(a) (2016) provides, “no person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.”

³ Initial Decision at 10.

⁴ Complainant’s Appeal (April 8, 2019) (hereinafter “Appeal”) at 1.

⁵ *Id.*

I. Standard of Review

In any appeal from an initial decision, the FAA decisionmaker considers only: “(1) whether each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence; (2) whether each conclusion of law is made in accordance with applicable law, precedent, and public policy; and (3) whether the administrative law judge committed any prejudicial errors that support the appeal.”⁶

II. Factual Background

At all relevant times, Air Charter held Air Carrier Certificate No. XIRA47IU, and was authorized to conduct operations as a Single Pilot Operator under 14 C.F.R. Part 135.⁷ Air Charter’s President, Robert Golo, is its sole pilot.⁸ Air Charter’s operations specifications states that, “[t]he pilot listed ... is responsible for filing the appropriate flight plan for each Part 135 flight...”⁹ Air Charter’s FAA compliance statement provided that, for each flight it conducted, it would “file a[n] FAA VFR¹⁰ flight plan ... or provide the same information to a trained flight dispatcher ... for timely notification to FSS¹¹ personnel for search and rescue, if an aircraft is overdue or missing.”¹²

On October 27, 2016, Air Charter operated a Cessna 310 on a passenger flight from San Clemente Island, California to Montgomery Field Airport in San Diego, California.¹³ Mr. Golo served as the pilot in command for the subject flight.¹⁴ Before taking off, Air Charter did not file an FAA flight plan.¹⁵ On the date of the flight, San Clemente Island had no phone service or

⁶ 14 C.F.R. §13.233(b) (2019).

⁷ Initial Decision at 3 (citing Answer).

⁸ *Id.* at 3 (citing Ex. C-5); *see also* Transcript at 74.

⁹ Initial Decision at 3 (citing Ex. R-2).

¹⁰ VFR is the acronym for “Visual Flight Rules.”

¹¹ FSS is the acronym for “Flight Service Station.”

¹² Initial Decision at 3 (citing Ex. C-6).

¹³ *Id.* at 3 (citing Answer and Ex. C-9).

¹⁴ *Id.* at 3 (citing Transcript at 66 and Exs. C-4 and C-5 at 1).

¹⁵ *Id.* at 3 (citing Transcript at 25, 32-33, and 88; Exs. C-7 and C-9).

internet access.¹⁶ Also on the date of the flight, Air Charter neither employed a flight dispatcher, nor did it have any employees who could retain flight locating records for the subject flight.¹⁷ Air Charter did provide detailed flight information to the San Clemente Island ground control before take-off.¹⁸

III. Issue on Appeal and Discussion

Air Charter appeals the ALJ's narrow factual finding that Respondent "failed to retain flight location information for a flight conducted on October 27, 2016 at [its] principal place of business for the duration of the flight."¹⁹ Air Charter's appeal simply states "[t]hat is not true."^{20, 21}

The relevant flight locating requirements, as published on the date of the flight, are found in 14 C.F.R. §135.79(b) (2016). Section 135.79(b) requires that "[f]light locating information shall be retained at the certificate holder's principal place of business, or at other places designated by the certificate holder in the flight locating procedures, until the completion of the flight."

FAA Safety Inspectors Christopher Thomas and Ryan Armenta conducted a ramp inspection when the flight at issue arrived at Montgomery Field Airport.²² The inspectors discovered that

¹⁶ *Id.* at 3 (citing Transcript at 83).

¹⁷ *Id.* at 3 (citing Transcript at 74 and 88).

¹⁸ *Id.* at 4. Notably, the record establishes that the information required to be provided to Air Traffic Control on San Clemente Island, a Navy facility, was required for documentation of air traffic control provided to the aircraft. The documentation, specifically the flight data strip, is collected and used for local use only. The flight strip information is not provided to anyone off the island. Transcript at 78, 97, 101, and 102.

¹⁹ Appeal at 1.

²⁰ *Id.* at 1.

²¹ Air Charter submitted an unauthorized reply to Complainant's Reply Brief. The Rules of Practice provide only for the filing of an appeal brief and a reply brief. 14 C.F.R. § 13.233(d) and (e) (2019). A party may not file an additional brief without the Administrator's express permission, but a party may petition in writing for leave to file an additional brief. The FAA decisionmaker will grant such permission if the party demonstrates good cause for allowing additional argument. 14 C.F.R. § 13.233 (f). Air Charter did not petition for leave to file the additional brief, and even if the filing was treated as containing a petition, it did not demonstrate good cause for the additional brief given that it relies on material not submitted during the hearing before the ALJ. As such, Air Charter's unauthorized Reply to Complainant's Reply Brief is not part of the record on appeal.

²² Initial Decision at 4; Transcript at 23.

Air Charter had not filed an FAA flight plan or retained a record of the flight at its home office during the duration of the flight.²³

While Air Charter disputes the ultimate conclusion, the underlying material facts are not in dispute. Air Charter admits that at the time of the subject flight, Robert Golo was Air Charter's pilot and sole employee.²⁴ Air Charter acknowledges that its Operations Specifications require the pilot file the appropriate flight plan for each Part 135 flight to be conducted.^{25, 26} Air Charter admits that no flight plan was filed.²⁷ Air Charter admits that its compliance statement specifies that if it does not file a flight plan it will comply with flight locating requirements by using a trained dispatcher.²⁸ Air Charter further concedes it did not use a trained dispatcher.²⁹ Air Charter simply states that it did not have a trained dispatcher or any employees who could retain flight locating records.³⁰ Failure to have the necessary personnel, as described in the operations specification, is not a valid excuse for failure to comply with Part 135 requirements.

The decision below is well supported by the record. It correctly concluded that Air Charter failed to file a flight plan or retain flight locating information at its principal place of business for its flight on October 27, 2016 as required by 14 C.F.R. §135.79(b) (2016) and such failure constituted a residual violation of 14 C.F.R. § 91.13(a) (2016).³¹

²³ Initial Decision at 4; Transcript at 25 and 32-33.

²⁴ Initial Decision at 3; Transcript at 74.

²⁵ Initial Decision at 3, Transcript at 27 -28, Respondent's exhibit 2.

²⁶ 14 C.F.R. 119.5 (g) provides that "[n]o person may operate as a direct air carrier or as a commercial operator without, or in violation of, an appropriate certificate and appropriate operations specifications..."

²⁷ Transcript at 88 and 91.

²⁸ *Id.* at 31 and 62.

²⁹ *Id.* at 88.

³⁰ Initial Decision at 3; Transcript at 74 and 88.

³¹ Initial Decision at 5 and 6.

III. Conclusion

Based on the foregoing, Air Charter has not met its burden on appeal. The Initial Decision is affirmed.³²

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STEVE DICKSON
ADMINISTRATOR
Federal Aviation Administration

³² This order shall be considered an order assessing civil penalty unless Air Charter files a petition for review within 60 days of service of this decision with the U.S. Court of Appeals for the District of Columbia Circuit or the U.S. Court of Appeals for the circuit in which the Air Charter resides or has its principal place of business. 14 C.F.R. §§ 13.16(d)(4), 13.233(j)(2), 13.235 (2019).