

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

**In the Matter of: AIR CHARTER, INC.
d/b/a AIR FLAMENCO**

FAA Order No. 2012-11

Docket No. CP09SO0008
FDMS No. FAA-2009-0100¹

Served: October 11, 2012

DECISION AND ORDER²

Administrative Law Judge Isaac D. Benkin (“ALJ”) issued a written initial decision³ on January 8, 2010, finding that the FAA did not prove that Air Charter, Inc., d/b/a Air Flamenco (“Air Charter”) operated an air ambulance flight contrary to its operations specifications in violation 14 C.F.R. § 119.5(g).⁴ The ALJ also held that the FAA did not prove that Air Charter violated 14 C.F.R. § 91.13(a)⁵ by conducting a flight with a stretcher that had been installed backwards and that had the wrong number of restraint belts. Finally, the ALJ held that Air

¹ Generally, materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing at <http://www.regulations.gov>. 14 C.F.R. § 13.210(e)(1).

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: www.faa.gov/about/office_org/headquarters_offices/agc/pol_adjudication/AGC400/Civil_Penalty/. See 14 C.F.R. § 13.210(e)(2). In addition, Thomson Reuters/West Publishing 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 A copy of the initial decision is attached. A hearing was held in this case on October 23 and 26, 2009, in San Juan, Puerto Rico.

⁴ Section 119.5(g) provides in pertinent part: “No 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.”

⁵ Section 91.13(a) provides that regarding aircraft operations for the purpose of air navigation, “[n]o person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.”

Charter did not have an FAA-approved flight manual aboard the aircraft on this flight in violation of 14 C.F.R. § 121.141(b).⁶ He assessed a \$550 civil penalty for the Section 121.141(b) violation.

The FAA appealed, arguing that the ALJ's initial decision contains material errors of fact that are not supported by the preponderance of the evidence and conclusions of law that are not in accordance with applicable law, precedent and public policy. The FAA urges the Administrator to find that it proved that Air Charter violated Sections 119.5(g) and 91.13(a), as alleged, and to assess an \$11,000 civil penalty against Air Charter.

The FAA's appeal is denied. As will be explained in this decision, the FAA failed to prove its allegations that Air Charter violated Sections 119.5(g) and 91.13. The \$550 civil penalty assessed by the ALJ is not affected by this decision.

I. Facts

On June 8, 2008, a woman between the age of 60 and 70 years old (Tr. 270) visited the emergency room in the Center of Diagnosis and Treatment ("the Center") on the island of Culebra, which is off the east coast of the main island of Puerto Rico. The woman had fallen in her apartment and was complaining about a pain in her hip. When she arrived at the Center, she told Dr. Manangely Rodriguez that she could not stand up by herself. (Tr. 270, 272.)

⁶ The FAA alleged in its Complaint that Air Charter had violated Section 91.9(b)(1) by not having a current manual on board the flight in question. Section 91.9(b)(1), in pertinent part, provides: "No person may operate a U.S.-registered civil aircraft (1) For which an Airplane ... Flight Manual is required by § 21.5 of this chapter unless there is available in the aircraft a current, approved Airplane ... Flight Manual or the manual provided for in § 121.141(b)." Air Charter was certificated to conduct operations under 14 C.F.R. Part 135, not under Part 121, (See Air Charter's operations specifications at A001-1 and A003-1 included in Government Exhibit 4). Therefore, Section 121.141(b) was neither applicable to the operation in question nor alleged as having been violated. Air Charter did not file an appeal from the ALJ's finding that it did not have a current manual on board during the flight giving rise to this case, which does constitute a violation of Section 91.9(b)(1). The ALJ's error appears to have been inadvertent and no further discussion regarding this violation is warranted.

Dr. Rodriguez testified that she referred the patient to University of Puerto Rico (UPR) Hospital in Carolina, Puerto Rico, for x-rays because the Center in Culebra does not have an x-ray machine. (Tr. 456.) The Center arranged for Air Charter to fly the patient to the main island. Air Charter flew this patient to Isla Grande Airport in Puerto Rico on a Britten-Norman BN2A-26 Islander multi-engine aircraft, registration number N906GD, (Government Exhibit 1) on June 8, 2008.

Air Charter is a certificated air carrier authorized to conduct on demand operations under 14 C.F.R. Part 135 based in Isla Grande, Puerto Rico. (Government's Exhibit 3 at A001-1.) Air Charter has a contract with the Municipality of Culebra to transport elderly indigent patients who need to go to the main island for medical appointments. The contract does not include transportation for emergency care or for treatment of a critical condition.⁷ (Air Charter's Exhibit 21; Tr. 390-391; Government Exhibit 8.)

Under its operations specifications, Air Charter is not authorized to conduct air ambulance operations. (Government Exhibit 4 at A004-1A004-2.) An "air ambulance operation" is defined in Air Charter's operations specifications as follows:

- (a) Air transportation of a person with a health condition that requires medical personnel as determined by a health care provider; or
- (b) Holding out to the public as willing to provide air transportation to a person with a health condition that requires medical personnel as determined by a health care provider including, but not limited to, advertisement, solicitation, association with a hospital or medical care provider and
- (c) Uses an air ambulance aircraft, either fixed wing or helicopter.

(Government Exhibit 4 at A002-1.) The operations specifications define "air ambulance aircraft" as follows:

⁷ The president of Air Charter, Francisco Torres, testified that the contract does not call for Air Charter to provide air ambulance service. (Tr. 390-391.) He said that they use the stretcher for passenger comfort only. (Tr. 389.)

An aircraft used in air ambulance operations. The aircraft must be equipped with at least medical oxygen, suction, and a stretcher, isolette, or other approved patient restraint/containment device. The aircraft need not be used exclusively as an air ambulance aircraft and the equipment need not be permanently installed.

Dr. Rodriguez testified that at the time that she saw the patient, the patient did not have a medical condition that required that she be accompanied on the flight by medical personnel.

(Tr. 267.) Dr. Rodriguez stated that she would have called for an air ambulance, such as Aeromed, Aviane, or Critical Care, if the patient's condition had required care by medical personnel during the flight. She testified that she could have called the Coast Guard if none of the air ambulances were available. (Tr. 267-269.) Dr. Rodriguez said that she later heard from other residents of Culebra that the patient had fractured her femur and had been transferred to another hospital, Centro Medico, where the patient received surgical treatment for the fracture. (Tr. 272 -278.) She testified that when she called Air Charter to arrange for the flight, she did not know that the patient had a fracture. (Tr. 77.)

According to the president of Air Charter, Francisco Torres, and an automobile mechanic named Robert Emeric, there were two individuals other than the patient on the flight: the pilot,⁸ and Mr. Emeric. Mr. Emeric testified that he sat in the seat next to the pilot in Row 1, that no one sat near the patient during the flight, and that the pilot did not attend to the patient during the flight. (Tr. 315-316, 318, 324.) The weight and balance form that the pilot completed for this flight indicated, however, indicated that there was someone weighing 140 pounds in Row 5, which is the seat next to the stretcher. (Government Exhibit 6.)

While conducting surveillance operations at Isla Grande Airport, Puerto Rico, on June 8, 2008, FAA Inspector Eugene Jester observed the landing and unloading of N906GD. Inspector

⁸ Air Charter's president testified that the pilot, who did not testify at the hearing, had no medical training. (Tr. 424.)

Jester became curious about this Air Charter flight when he observed an ambulance pull up to N906GD. (Tr. 41.) While he was standing about 50 to 75 feet away from the aircraft, he observed someone being taken off the aircraft on a stretcher. (Tr. 64-65.) He said that the patient on the stretcher was removed head first from the aircraft through the passenger door on the left side of the aircraft. (Tr. 79.) The inspector testified that it appeared to him to be an emergency situation. (Tr. 43, 64.) The photographs that he took show several individuals, including the pilot, around the stretcher as they carried it off the airplane and subsequently while it stood on the runway before being loaded on the ground ambulance. The inspector identified a paramedic from the ground ambulance in the photographs but no other medical personnel. (Tr. 47.) Inspector Jester testified that he thought that he had seen a fourth person get off the aircraft (besides the patient, the pilot and the auto mechanic) but he did not know that person's identity.

After everyone deplaned, Inspector Jester boarded the aircraft to see whether it was equipped for air ambulance operations. (Tr. 92.) He did not see any of the medical equipment, such as an oxygen system, that is required on board air ambulance aircraft. (Tr. 95.) He did not testify whether the stretcher was on the aircraft at the time or whether it was still on the tarmac.

According to Britten-Norman, only a configuration for two restraints crisscrossing the patient is approved for a stretcher on this aircraft.⁹ (Government Exhibit 16; Tr. 125-127.) Inspector Jester testified that based upon his review of photograph 5 in Government Exhibits 3a and 3b, there were four restraints on the stretcher. This photograph shows the patient on a stretcher, which is on the tarmac. The view of the stretcher in this photograph is partially blocked because the stretcher is behind the gurney from the ambulance.

⁹ A Britten-Norman representative wrote that the British Civil Aviation Authority approved the stretcher modification for the BN2A series Islander aircraft as a major modification, and the FAA would accept such a modification under a "cross-validation" agreement. (Government Exhibit 16.)

Inspector Joel Rodas, who was not present at the Isla Grande Airport during the inspection, testified that according to the maintenance manual for this aircraft, the stretcher should have been installed so that the foot of the stretcher is toward the cargo end of the aircraft, and the head is toward the front of the aircraft. (Tr. 107, 109; Government Exhibit 5 at 3.) He said that installing a stretcher backwards would affect the weight and balance calculations for the aircraft. (Tr. 108, 160.) Torres testified that the weight and balance would not be affected if the stretcher is installed so that the long part is toward the front of the aircraft because the stretcher is attached to the base plate at the same station in the aircraft. (Tr. 412-413.)

II. The Initial Decision

The ALJ held that the FAA failed to sustain its burden of proving that Air Charter operated an unauthorized air ambulance service. The ALJ wrote as follows:

There is no evidence in the record to prove that the patient whom Inspector Jester saw being removed from respondent's aircraft was either accompanied by medically trained personnel or was the subject of a recommendation by her doctor or any other person at Culebra Medical Center that she must be so accompanied. In fact, the physician who treated her as well as the head of the Medical Center where she was seen both testified that there was no recommendation for a medically trained person to accompany the patient on the flight.

The issue is not even close. Inspectors Jester and Rodas could have ascertained that this was not an air ambulance service simply by making a few telephone calls to Culebra. The fact that they neglected to do so and instead relied on erroneous inferences from a few distant photographs does not redound to the credit of them or the Complainant.

(Initial Decision at 6.)

The ALJ also rejected the FAA's allegation that Air Charter operated the aircraft in a careless or reckless manner. The ALJ held that the FAA failed to prove that the stretcher had been installed backwards because neither inspector "actually examined the manner of the stretcher's installation during the flight." (Initial Decision at 10.) He wrote that the photographs of the stretcher after it had been removed from the aircraft did not prove the inference drawn by

the inspectors that the stretcher had been installed backwards. He held further that even if Air Charter had installed the stretcher backwards, the FAA did not prove that operation with a backwards stretcher would have “produced a palpable danger to human life or property.” (Initial Decision at 11.)

The ALJ also rejected the allegation that the operation constituted a violation of Section 91.13(a) because the stretcher had the wrong number of restraints. (Initial Decision at 9.) Although the FAA alleged that the stretcher had *too many* – four instead of two - restraints,¹⁰ the ALJ held that the FAA failed to prove that the stretcher had an “*insufficient*” number of restraints. (Initial Decision at 9.)

Finally, the ALJ held that the aircraft did not have a current approved flight manual on board during the flight, and assessed a \$550 civil penalty for the resulting violation. (Initial Decision at 11-14.)

III. Discussion

A. The FAA did not prove that Air Charter operated an air ambulance in violation of Section 1119.5(g).

The FAA argued that the ALJ should have held that patient was a seriously injured woman with a broken femur who was unable to move on her own, instead of describing her as a “recumbent woman” with a fractured tibia. In support of its argument, the FAA pointed to the following evidence:

- the patient was driven from her home to the Center to see Dr. Rodriguez, and from the Center to the local airport in a ground ambulance;
- the patient told Dr. Rodriguez that she could not stand by herself;
- the patient had a fractured femur, not a fractured tibia.

¹⁰ Paragraph II.7 of the complaint alleged that the stretcher had “had an improper number of safety belts (four)” and the witnesses testified that the stretcher should have had two belts, not four.

The FAA argued, without any supporting evidence, that a “broken femur is a more threatening condition for an elderly person than a broken tibia.” (Appeal Brief at 10). The FAA also argued that the ALJ ignored the evidence that there was a person in Row 5 during the flight. According to the FAA, the passenger needed the same level of attention as that which the ground ambulances could provide to her. The FAA argued further that the patient needed the stretcher for her safety during the flight, not just for her comfort. According to the FAA, any lack of care or equipment during the flight does not prove that this flight was not an air ambulance flight.

Air Charter responded that the FAA’s assessment that Air Charter conducted an air ambulance operation was in error. The FAA, Air Charter argued, based its allegation solely upon the observation of the offloading of the stretcher from the flight and ignored the opinion of Culebra Medical Center staff that the patient did not need air ambulance transportation and that the use of the stretcher was for the patient’s comfort only. (Reply Brief at 2-4.)

The FAA’s argument that Air Charter conducted an air ambulance operation contrary to its operations specifications is rejected. The FAA failed to prove that the operation met the definition of “air ambulance operation” set forth in Air Charter’s operations specifications. Air Charter’s operations specifications, as well as FAA Order No. 8900.1 (change 22, dated May 1, 2008), defined air ambulance operation as “air transportation of a person with a health condition that *requires medical personnel as determined by a health care provider*.”¹¹ (Emphasis added.) FAA Order No. 8900.1, change 22, defined the term “medical personnel” as “persons with medical training who are assigned to provide medical care during flight.” The FAA did not introduce any evidence that a medical provider had determined that the patient’s condition made it necessary for the patient to have medical personnel attend to her during the flight.

¹¹ The FAA did not contend that Air Charter had held out to the public that it would be willing to provide air transportation to a person with a health condition that requires medical personnel including, but not limited to, advertising, solicitation, or association with a hospital or medical care provider.

Dr. Rodriguez, the physician who examined the patient at the emergency room in the Center in Culebra, testified that in her opinion, the patient's condition had not required her to be accompanied by medical personnel on the flight. She said that if she thought that the patient had required medical care during the flight, she would have ordered an air ambulance to transport the patient to the main island. (Tr. 267-268.) Although there may be a question regarding whether someone sat in Row 5 next to the stretcher during the flight, there was no evidence that any occupant of that seat was a medical care provider.

The record contained very weak evidence regarding the patient's health condition. Dr. Rodriguez did not have the equipment necessary to determine the cause of the patient's pain. The inspector assumed that the patient had a health condition because she was on a stretcher and was picked up by a ground ambulance. Dr. Rodriguez never saw the patient after June 8, 2008. The evidence that the patient later had surgery to treat a fractured femur deserved little weight because it was no more than gossip. Dr. Rodriguez said that Culebra was a very small island and people talk about each other. She said that she had been told that the patient later had surgery to treat a fracture. (Tr. 272, 278.)

The FAA's argument that the patient needed the same level of care during the flight as was provided by the ground ambulances that transported her to and from the hospital was not persuasive because it was not based upon the testimony of any health care provider. As the administrator at the Center, Aida Maldonado, testified, a ground ambulance transported the patient on a stretcher from her home to the Center and from the Center to the local airport because it is a free service in Culebra and there are no taxis or public transportation on that island. (Tr. 464.) Dr. Rodriguez testified that she "preferred to send her [the patient] in the same stretcher in which she came to the Emergency Room" (Tr. 272.)

The FAA relied upon FAA Order No. 8900.1, change 22, to support its argument that the ALJ erred in not finding that Air Charter had operated an unauthorized air ambulance operation.

In particular, the FAA referred to Paragraph 4-921A(1), which provides in pertinent part:

The carriage of a person or persons *requiring* medical personnel and/or *medical equipment* on a *scheduled air carrier*, under 14 CFR parts 121 or 135, does not constitute air ambulance operations. However, a *scheduled* air carrier who transports a person or persons *requiring medical personnel and/or equipment on an unscheduled flight* (charter) is engaged in air ambulance operations.

(Emphasis added.) The quoted language in this paragraph does not apply to Air Charter because it pertains to scheduled air carriers, and Air Charter is an on-demand air carrier.¹²

The FAA also referred to paragraph 4-921C, which provides, in pertinent part, as follows:

Operators holding part 135 OpSpecs without paragraphs A021 or A024 *may transport medical personnel as passengers who are accompanying a sick or injured person*, but must meet the following requirements:

* * *

(2) Any in-flight patient care equipment and medical personnel that accompany the passenger must be provided solely for the patient's comfort. If any medical care provider has determined that the medical personnel are required for the patient's safety, the flight is an air ambulance operation

(Emphasis added.) This paragraph does not apply because there is no evidence that any medical personnel accompanied the patient as a passenger. Inspector Jestor did not know the identity of the fourth person whom he thought he had seen get off the aircraft.

For these reasons, the FAA's argument that the ALJ should have held that Air Charter conducted an unauthorized air ambulance operation is rejected.

¹² This paragraph is also troublesome to the extent that it provides that if a person requires medical equipment – but not medical personnel -- during flight, then that flight is an air ambulance operation. First, this paragraph of the Order goes beyond the definition of air ambulance operation which only includes a requirement for medical personnel – not for any medical equipment -- as determined by a health care provider. Second, it does not mention the role of a health care provider in determining the requirements of the patient. In this case the issue is whether the respondent violated the operation specifications, and therefore, the definitions found in the operations specifications control.

B. The FAA did not prove that the stretcher was installed backwards or had the wrong number of restraints in violation of Section 91.13(a).

Government Exhibit 5, an excerpt from Supplement No. 16 to Chapter 2.4 of the Britten-Norman Islander Maintenance Manual, provided instructions for the installation of a stretcher unit with one, two or three stretchers in an Islander. The manual provides that the stretcher unit “installation is accomplished by removal of the standard cabin passenger seats and replacing them with light alloy baseplates slotted into the standard keyhole seat floor attachment points.” The manual directs that the single-stretcher installation with one attendant’s seat, “is assembled on the rear baseplate which is slotted into rows 4 and 5 seat retaining keyholes.” Figures 1-3 in the manual show that the headrest should be closer to the pilot’s seat and the stretcher should point toward the rear of the aircraft. The frame supporting the stretcher should be attached to the baseplate at fuselage stations 183.60 and 211.60.

Air Charter introduced a copy of the Major Repair and Alteration Form, Form 337, which had been prepared in 2005 to document the stretcher installation in N906GD. The installation, as described on the Form 337, is consistent with the instructions and the illustrations in the manual. In box 8, the work accomplished was described in pertinent part as follows:

Aircraft converted for ambulance role by the installation of a single stretcher assy. ... in accordance with Britten Norman M.M. /1 No. 16 to chapter 2.4 (Operation option NB/M/915 issue 3 and NB/M/1002, issue 1¹³).

Single Stretcher assy. P/N CAE-83-G-149 and attendant seat P/N NB-16-A0-825.

The installation is accomplished by removal of the standard cabin passenger seat rows 3, 4, and 5, and replacing them with light alloy base plate ... slotted into the standard keyhole seat floor attachment points located at fuselage station 173.6, 183.6, 201.6 and 211.6 and secured with four locking pins ... that are also secured by the installation of four AN3A bolts with split washer or spring washers at keyhole attachment points at fuselage station 173.6 and 211.6 patient support canvas (stretcher) installed with the headrest section looking after the baggage stowage area and secured to the stretcher assy.

¹³ Government Exhibit 5 is Britten Norman Supplement No. 16 to Chapter 2.4 (Operator’s Option NB/M/915, Issue 4 and NB/M/1002, Issue 1), Stretcher Unit Installation.

retaining brackets on baseplate with four quick release pins ... two at fuselage station 183.6 and two at fuselage station 211.6.

(Air Charter Exhibit 24, Form 337, box 8).

Inspector Jestor looked inside the aircraft but there is no evidence that he examined the baseplate. He did not testify that he observed the stretcher after it had been returned to the aircraft. He based his testimony that the stretcher was installed backwards on his observation of the stretcher being removed from the aircraft. The photographs show that the patient on a stretcher was removed head first from the aircraft from a door under the wing on the side of the aircraft. Removal of the stretcher head first through this door would be consistent with an installation in which the head of the stretcher was toward the front of the aircraft. (See Government Exhibit 5, Figure 3, which shows that the rear door aperture extends from approximately from STN 173.60 to STN 211.60 and Figure 1 showing that the stretcher frame should be attached to the baseplate at STN 183.60 and 211.60.)

Regarding the restraint belts on the stretcher, Mr. Torres testified that an M-915 stretcher unit kit was installed on the aircraft, and the belts were part of the kit. (Tr. 436.) According to the Britten-Norman representative who was consulted by Inspector Rodas, the NB-M-0915 includes a stretcher which “comes with two safety belts, which ... are crossed across the patient. These belts are TSO’d to TSO-C22f.” (Government Exhibit 16.) It stands to reason that the stretcher unit that was installed in this aircraft had the correct number of safety belts, *i.e.*, two safety belts which, when fastened properly, would criss-cross the body of the patient.

The only photographs in which the belts can be seen are photograph 5 in Exhibits 3a and 3b. These photographs show the stretcher with the recumbent patient. It cannot be determined from the photographs how many belts are attached to the stretcher because the stretcher is behind

the gurney from the ambulance.¹⁴ Only one belt on the stretcher can be viewed extending horizontally across the woman's thighs or lower torso, but it cannot be determined whether the belt is fastened incorrectly or fastened at all.

In light of the foregoing, it is held that the FAA failed to prove its allegation that Air Charter violated Section 91.13(a) by operating in a careless or reckless manner so as to endanger the lives or property of others.¹⁵

IV. Conclusion

The FAA's appeal is denied. The civil penalty for the violation of Section 91.9(b)(1) remains at \$550.

[Original signed by Michael P. Huerta]

MICHAEL P. HUERTA
ACTING ADMINISTRATOR
Federal Aviation Administration

¹⁴ Inspector Jester testified that he could not tell from looking at photograph 5 how many seatbelts were on the stretcher. (Tr. 61.)

¹⁵ Due to the finding that the FAA failed to prove that there were the wrong number of belts on the stretcher, it is not necessary to address the question whether operating an aircraft with a stretcher that has the wrong number of belts could constitute a violation of Section 91.13(a)

SERVED JANUARY 8, 2010

U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, DC

RECEIVED
JAN 11 2010
HEARING DOCKET

IN THE MATTER OF

AIR CHARTER INC.,
Respondent.

FAA DOCKET NO. CP09SO0008
(Civil Penalty Proceeding)

DMS NO. FAA-2009-0100

ADMINISTRATIVE LAW JUDGE'S INITIAL DECISION

I. Nature of the Case.

In this civil penalty proceeding, the Respondent is charged with three violations of the Federal Aviation Regulations (FAR). The primary charge leveled by the Complainant, the Federal Aviation Administration, is that the Respondent conducted an air ambulance service in violation of its Operations Specifications, which did not authorize it to perform this service.¹ Second, the FAA says that when the Respondent, which owns and operates a Britten-Norman "Islander" aircraft, installed in that aircraft facilities for transporting a stretcher, it installed those facilities backwards and with an improper number of safety belts attached to the stretcher. This, the FAA charged, amounted to a violation of § 91.13(a) of the FAR, which prohibits operation of an aircraft "in a careless or reckless manner so as to endanger the life or property of another."² The third charge against the Respondent alleges that, on the day in question, the aircraft did not have an

¹ Section 119.5(g) provides, in pertinent part: "No 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."

² It is important to note that the Respondent was not charged with violating § 43.13(a) of the FAR, which requires that a person performing maintenance or an alteration on an aircraft must use the methods, techniques, and practices prescribed in the current manufacturer's manual or the manufacturer's instructions, unless that person has secured the FAA's approval for a different installation.

FAA-approved flight manual aboard in violation of § 121.141(b) of the FAR.³

The Respondent is an on-demand air carrier, operating under the trade name of "Air Flamenco." Its principal place of business is the Commonwealth of Puerto Rico. The FAA lodged its charges in a complaint filed on May 27, 2009, seeking a civil penalty of \$11,000. The Respondent denied all of the charges and sought an on-the-record hearing. The case was referred to the Department's Office of Hearings, where it was assigned to me for the conduct of the hearing and the issuance of an initial decision. A two-day hearing was held in the Federal Building in Hato Rey, Puerto Rico on October 23 and 26, 2009. Briefs have been filed, and the case is now ready for decision.

II. Complainant Has Not Sustained Its Burden Of Proving that Respondent Performed an Illegal Air Ambulance Service.

The Complainant's evidence consisted entirely of the testimony of two Air Safety Investigators, one of whom was not at the scene at the time in question. Both of them were permanently assigned to the FAA's Miami Flight Standards District Office (FSDO). On June 8, 2008, Investigator Eugene Jester was standing on the tarmac at the Isla Grande airport in Puerto Rico, when he noticed an aircraft bearing the Respondent's trade name being offloaded about 50 to 100 feet from where he was standing. An ambulance had pulled up near the aircraft, and a stretcher carrying what appeared to be an elderly, recumbent woman was being removed through the aircraft's aft door. The woman was then transferred to a gurney that had been carried in the ambulance. The gurney, with its occupant, was placed into the ambulance, which then drove away. Assisting with the transfer were the aircraft's pilot, another passenger who had been transported on the aircraft, a person who Jester recognized as an airport employee and the driver of the ambulance. So far as Jester could tell, the scene did not include any medical personnel who had been carried in the aircraft, although the identity of the second passenger was unknown to him.

³ Section 121.141(a) requires each certificate holder to keep "a current approved airplane flight manual for each type of airplane that it operates . . ." Paragraph (b) of §121.141 states that a copy of the flight manual must be carried "[i]n each airplane required to have an airplane flight manual in paragraph (a) of this section."

From his vantage point, Jester took a series of photographs on the various steps in the transfer, starting with the time the stretcher had been removed from the aircraft. He testified that he had looked into the interior of the aircraft, after the recumbent passenger had been driven away. Inspector Jester also spoke with the pilot, asking to see his load manifest (containing his weight-and-balance calculation) and the Flight Manual that had been carried on the flight. Except for that brief conversation, it does not appear that Jester interviewed anyone else who was on the flight. In particular, he did not speak with either of the passengers or with anyone else who was involved in the transfer of the elderly patient.

The flight had originated on Culebra, a small island off the east coast of Puerto Rico. Under local law, Culebra is a municipality with its own local government. There is a ferry service between the two islands, although it is slow and subject to the vagaries of the weather. The municipal authorities of Culebra had entered into a contract with the Respondent to provide air service between Culebra and the main island for residents of Culebra who were considered too frail or elderly to suffer the rigors and discomfort of an ocean crossing in order to obtain medical services, e.g., appointments with specialist physicians whose service were not available on Culebra. Culebra has a small clinic but lacks many elementary medical facilities such as X-ray machines. The contract does not call for the Respondent to provide air ambulance services. In case of a genuine medical emergency requiring such services, there are other providers (Aeromed, Aviane, Critical Care) as well as the U.S. Coast Guard who are available to transfer patients to hospitals on the larger island. In addition, the contract, which is Exhibit 20 in the record, provides for the Respondent to furnish air transportation to municipal officials of Culebra. The Respondent also provides an on-demand service between the two islands for travelers who pay their own way.

At some point, Inspector Jester sought the counsel of Joel Rodas, the Principal Maintenance Inspector at the Miami FSDO. Jester showed the photographs to Rodas. After viewing the pictures and performing some research into the aviation literature pertaining to the Britten-Norman "Islander" aircraft, Inspector Rodas concurred in his colleague's view that Respondent's aircraft had been used to conduct an illegal air ambulance operation. Inspector Rodas was also responsible for the conclusion that the flight manual that the pilot had showed to Jester was not the proper manual

to be carried in the aircraft; although it had been prepared by the British firm that built the aircraft, the manual carried by the pilot was not the one that was currently approved by the FAA for use in domestic operations. Finally, Rodas concluded that the stretcher had been improperly installed and was not equipped with the appropriate number of safety belts, a conclusion he reached on the basis of viewing the photographs that Jester had taken. Like Jester, Rodas did not interview any of the individuals involved in the transfer of the patient; nor did he speak with the pilot, the patient or the other passenger on the aircraft.

The Complainant's case was closed after the testimony of the two inspectors.

Respondent's evidence opened with the testimony of Dr. Manangely Rodriguez, the physician who had seen the patient that Inspector Jester later observed leaving the aircraft on June 8, 2008 at the Isla Grande airfield. Dr. Rodriguez is a general practitioner in Culebra. She was on clinic duty that Sunday, when an elderly lady was presented to her, suffering from pain in her hip after a fall at home. Suspecting a broken hip or broken leg, Dr. Rodriguez made arrangements for her patient to be flown to the main island for an X-ray. She also made arrangements for the airplane to be met by an ambulance to take the patient to the X-ray facility. It was Dr. Rodriguez's unequivocal testimony that the condition of her patient did not require medical personnel to attend to her during the flight, and the arrangements for her transportation did not include the attendance of a medically trained person or persons during the flight. Dr. Rodriguez testified that, after the flight took place, she learned that the patient had suffered a fractured tibia, although she did not know that at the time.

During the hearing, the Respondent also sponsored the testimony of Aida Maldonado, the Manager of the Culebra Health Center, where Dr. Rodriguez had seen the patient. On the witness stand, Ms. Maldonado confirmed a statement she had made earlier and that is in evidence as Exhibit 21. According to the statement, the patient was stable when she left the Health Center and was not accompanied by paramedics. Ms. Maldonado also testified that an air ambulance was not required to perform the transportation, and that if one had been required, the Health Center would have called on a different provider than the Respondent.

Another of the Respondent's witnesses was Robert Emerick, the other passenger on the flight from Culebra. He testified that there was no one on the flight who was attending to the patient. He himself is an automobile mechanic, and he purchased his passage on the flight to Isla Grande because there was an empty seat on the aircraft and he had some private business on the main island. Mr. Emerick also testified that there was no medical equipment, such as oxygen, on the aircraft, and that the patient did not need or receive medical attention during the flight. When the aircraft landed, he and others assisted in removing the patient and transferring her to the ambulance.

The definition of "air ambulance," as used in the Operations Specifications for the Respondent's Islander (Exhibit 4) turns on the service actually performed as well as the configuration of the aircraft. The fact that the aircraft has been modified to carry a passenger in a recumbent position on a stretcher is not dispositive. The term "Air Ambulance Operations" is defined as follows:

- (a) Air transportation of a person with a health condition that requires medical personnel as determined by a health care provider; or
- (b) Holding out to the public as willing to provide air transportation to a person with a health condition that requires medical personnel as determined by a health care provider including, but not limited to, advertisement, solicitation, association with a hospital or medical care provider; and
- (c) Uses an air ambulance aircraft, either fixed wing or helicopter.

The term "Air Ambulance Aircraft" is defined as:

An aircraft used in air ambulance operations. The aircraft must be equipped with at least medical oxygen, suction, and a stretcher, isolette, or other appropriate patient restraint/containment device. The aircraft need not be used exclusively as an air ambulance aircraft and the equipment need not be permanently installed.

An air ambulance is by definition an aircraft that is used for the transportation of persons whose medical condition is such that they must be accompanied by medical personnel as determined by a health care provider. It is not simply an aircraft that is equipped to carry a passenger who is confined to a stretcher or litter. The aircraft must be equipped with oxygen

and suction for use by the patient, along with the stretcher, in order to qualify as an "air ambulance aircraft." The passenger must be attended by someone with medical training, and the presence of the attendant must have been required by a health care provider. If the aircraft does not qualify as an "air ambulance aircraft," the service provided by that aircraft cannot be deemed air ambulance service.

Hence, in order to prove that an air ambulance service was being performed, the Complainant must at a minimum present evidence that either (a) the aircraft transported a person who, because of ill health, was accompanied by, e.g., a doctor, nurse, paramedic or other medically trained individual; and (b) the physician or other person who treated the patient determined that it was necessary to have a medically trained individual accompany the patient on the flight. In this case, the Complainant has not sustained its burden of proof with respect to the charge of unlawfully performing air ambulance service. There is no evidence in the record to prove that the patient whom Inspector Jester saw being removed from Respondent's aircraft was either accompanied by medically trained personnel or was the subject of a recommendation by her doctor or any other person at Culebra Medical Center that she must be so accompanied. In fact, the physician who treated her as well as the head of the Medical Center where she was seen both testified that there was no recommendation for a medically trained person to accompany the patient on the flight.

The issue is not even close. Inspectors Jester and Rodas could have ascertained that this was not an air ambulance service simply by making a few telephone calls to Culebra. The fact that they neglected to do so and instead relied on erroneous inferences from a few distant photographs does not redound to the credit of them or the Complainant.

For these reasons, I find and determine that the charge of conducting an air ambulance service in violation of Respondent's Operations Specifications cannot stand. It must be, and will be, dismissed with prejudice.

III. The Charge of Operating an Aircraft In a Careless or Reckless Manner So As to Endanger Life or Property was Unproven.

In its complaint, the FAA alleged that the Respondent operated the Islander aircraft on the June 8, 2008 flight in a careless or reckless manner.

The gravamen of this charge is the claim that when the Respondent modified the aircraft by removing two seats and installing a frame to hold the removable stretcher, it performed the installation so that the stretcher was carried backwards, i.e., with the patient's head towards the front of the aircraft rather than with the head of the patient towards the rear of the aircraft. The complaint also alleges that the stretcher was installed with only two safety belts, whereas four safety belts were required.

In its post-hearing briefs, the Complainant has attempted to transmute its initial claim of violating § 91.13(a) of the FAR into a broad attack on whether the Respondent took proper care of the patient during the flight from Culebra to Isla Verde. The problem that Complainant cannot overcome, however, is that it did not make this claim in its complaint or in any other pleading preceding the hearing. Elementary principles of due process require that the Complainant must, at an early stage of the proceeding, give the Respondent clear notice of the claims the Respondent must meet. It is beyond question that, at the time this case went to hearing, the Complainant's case for a violation of § 91.13(a) was founded on the manner in which the stretcher was installed and the number of safety belts attached to it. The Complainant simply cannot, at the post-hearing briefing stage, shift its focus and assert that a totally different theory of liability was established by the evidence. Its case must rest on the validity of its original contention that the aircraft was operated "in a careless or reckless manner so as to endanger the life or property of another" because the stretcher was installed improperly and had an insufficient number of safety belts.

The principal witness for the Complainant on this issue was Maintenance Inspector Rodas. Inspector Rodas was not at the Isla Grande field on the date in question and, therefore, could not have examined the aircraft to ascertain how the framework that held the stretcher was installed. Instead, his primary evidence for his conclusion that it had been installed backwards was the photographs taken by his colleague, Inspector Jester. Inspector Jester testified that he examined the interior of the aircraft. He did so, however, only after the stretcher with the patient on it had been removed. Hence, his examination did not permit him to ascertain the configuration of the stretcher unit during the flight from Culebra. The earliest of his photos in the record appears to show the stretcher after it had been removed from the aircraft. There were no photos showing the interior of the aircraft while the patient was on board. It is clear, therefore, that Inspector Jester reached his conclusion about the so-called "backwards" installation of the stretcher-

holding mechanism by inferring that conclusion from a photograph of the stretcher (and a group of people surrounding it) as it was held on the tarmac outside of the aircraft. This was a rather strange inference to draw, since there is no indication in the photographs (at least those that were offered in evidence by the FAA) as to how the stretcher had been removed from the aircraft – feet first or head first – or how it had been moved within the aircraft before it came out the rear door.

The evidence proffered by the FAA also included the installation instructions that accompanied the aircraft manufacturer's "kit" for the removal of two passenger seats and their replacement by the stretcher unit. The instructions will be found in Exhibit 5.⁴ It is true that those instructions teach that the unit should be installed so that the occupant of the stretcher has his or her head facing the rear of the aircraft. It is also noteworthy, however, that the Respondent is not charged with failure to follow those instructions; it is charged with operating in a careless or reckless manner. This means that the Complainant, in order to make its case, must do more than merely demonstrate that the stretcher unit may have been installed in a manner inconsistent with the manufacturer's directions. The FAA was required also to prove that the failure to follow those directions produced a palpable danger to human life or property. This, the Complainant failed to do.

In its initial brief, the Complainant charges Air Charter with a "breach of the duty of care to treat an immobilized, allegedly schizophrenic human passenger with a medical condition the same as a carrier would treat cargo (i.e. loaded in the back of an aircraft with no attention until unloaded.)" Comp. Init. Br. At 1-2. The trouble with this outrageous charge is that there is no evidence (medical or otherwise) to support it. The only physician who testified stated categorically that the patient's medical condition did not require her to be attended during the flight. In addition, the FAA's complaint in this case did not charge the Respondent with a "breach of its duty of care." The charge was improper installation of a stretcher equipped with an insufficient number of safety belts.

When asked what danger to life or property may have resulted from the manner in which the stretcher kit was installed, Inspector Rodas

⁴ The instructions also include directions for removal of four seats and the installation of two stretchers in their place. So far as the record shows, the two-stretcher option was never used.

mentioned, in a vague way, that the installation may have adversely affected the pilot's weight and balance calculation. But he could not adequately explain why that might be so. I asked him directly whether he was assuming that the patient's head weighed more than her feet or vice versa and I did not receive a satisfactory answer. Inspector Rodas conceded that he did not know whether the patient was lying down or sitting up during her journey.

As we have noted, Inspector Rodas did not interview anyone who was aboard the aircraft during the flight, nor was he able to describe how the calculation of the aircraft's center of gravity might change depending on the location of the patient's head relative to her feet.⁵

During his testimony, Inspector Rodas was compelled to retract the charge, found in the FAA's complaint, that the stretcher unit used by Respondent lacked a sufficient number of safety belts. He did so after being shown the Britten-Norman instructions for equipping the aircraft with a stretcher unit; those instructions showed that the stretcher was to be equipped with two safety belts crossing over the upper torso of the patient. If Inspector Rodas had done his homework sufficiently, he would have learned that the stretcher unit was part of a kit supplied by a manufacturer who worked with Britten-Norman, the builder of the aircraft; the safety belts were part of the kit that had been installed on the aircraft. Hence, in the absence of evidence that Respondent had *removed* one or more belts (and there was no such evidence), the number of belts seen in the photographs could not have been insufficient.⁶ The fact remains that neither Rodas nor his colleague had performed a thorough investigation on this issue.

Much of the testimony during the hearing concerned the Respondent's installation of the stretcher kit without first securing the approval of the FAA. Under Part 43, Appendix B, section (a) of the FAR, a person performing a major alteration or repair to an aircraft must obtain the prior approval of the FAA for the work by submitting a Form 337 to the local FSDO. In April 2009, the FAA learned that the Respondent had installed the stretcher unit in its aircraft without submitting a Form 337 to authorize the installation. As a result, the Miami FSDO sent the Respondent a warning notice about this alleged violation of the Regulations. See Exhibit

⁵ In fact, Rodas's testimony on cross-examination demonstrated that he did not know how to calculate the center of gravity. He is not a pilot.

⁶ The person who strapped the patient to the stretcher for her removal from the aircraft erroneously locked the two upper belts parallel to each other, rather than criss-crossing them over her torso. The Respondent, however, was not charged with locking the belts improperly; it was charged with having an insufficient number of belts, a charge that was palpably false.

23.⁷ The Respondent then filed a Form 337, and the FAA closed the case, notifying the Respondent that "this matter does not warrant legal enforcement action."

During the hearing, the Respondent maintained that the Complainant's decision to terminate the case without enforcement action barred the agency from now asserting a claim that the stretcher unit had been improperly installed and lacked the requisite number of safety belts. A great deal of testimony, including the testimony of Hernando Otero, Respondent's expert witness, was devoted to the question whether the FAA had been correct in insisting on the submission of a Form 337.⁸

The issue of whether the removal of two seats and the installation of the stretcher unit in their place constitutes a major alteration requiring FAA approval is not relevant to this case, however. There may be a great deal to be said for the Respondent's contention that the FAA may not prosecute a civil penalty claim after notifying the putative Respondent that it is closing the books on the matter without formal enforcement action. The same principles of repose that underlie the doctrines of *res judicata* and double jeopardy would seem to dictate that the agency must be held to its initial decision in such cases. Nevertheless, that issue is not ripe for decision here. The Respondent has not been charged in this case with causing a major modification of its aircraft without FAA's prior approval. It has been charged with operation of an aircraft in a careless or reckless manner. That charge relates to the manner in which the stretcher kit was installed – not to the installation of the kit *per se*. Hence, the Respondent's claim that the FAA's prior no-enforcement decision exonerates it from the charge is incorrect.

Nevertheless, I find that there is no validity to the Complainant's allegation that operation of the aircraft with the stretcher installation as it was constituted a careless or reckless act that endangered human life or property. The ineluctable fact is that neither of the Complainant's witnesses appears to have actually examined the manner of the stretcher's installation during the flight; if they did, neither testified to the results of that

⁷ The warning notice spoke about the failure to submit "approved data" to support the modification. It is clear, however, that the aircraft manufacturer's specific instructions for installation of the stretcher kit constituted sufficient "approved data."

⁸ Otero testified that a 337 was unnecessary because the installation of the stretcher kit, utilizing the same anchorage hardware as had been used for the passenger seats that the kit replace, was not a "major repair or alteration."

installation. All that the record contains on the point is Inspector Jester's photographs showing the stretcher with a patient upon it *after* it had been removed from the aircraft, coupled with Inspector Rodas's inference that the stretcher had to have been installed backwards. That inference is faulty, as we have seen, or at least completely unsupported. To learn whether the stretcher was properly installed, one would either have had to examine it while it was in the aircraft or interrogate someone who was on the aircraft while the stretcher was carrying a patient. Neither of the two investigators did this. Nor was there any persuasive testimony that the manner in which the unit was installed presented an unreasonable risk of harm to its occupant or to the aircraft as a whole during the flight from Culebra to the main island of Puerto Rico.

In short, the Complainant has failed to sustain its burden of persuasion as to this charge. As a result, the controversy over whether Form 337 or its approval by the FSDO was necessary is moot.

IV. Respondent is Liable for Not Carrying a Current FAA-Approved Flight Manual.

There does not appear to be much dispute concerning the facts that gave rise to Complainant's third charge: failure to have on board the aircraft a copy of the current, approved flight manual. As we have noted above, § 121.141(a) of the FAR requires a certificate holder to keep "a current approved airplane flight manual for each type of aircraft that it operates" and § 121.141(b) states that a copy of the manual must be carried "[i]n each airplane required to have an airplane flight manual in paragraph (a) of this section." When Inspector Jester asked the pilot of Respondent's aircraft to exhibit a copy of his flight manual, the pilot produced a copy of what is called FM-20. FM-20 is the flight manual issued by the manufacturer of the aircraft, Britten-Norman, Ltd., a British company with headquarters on the Isle of Wight.⁹ The manual had been approved for use with the "Islander" by the British government's counterpart of the FAA, the Civil Aviation Authority. It came with the aircraft when the Respondent acquired it from a company based on Tortola, one of Great Britain's Caribbean islands. At some point, however, the Britten-Norman company issued a version of the Flight Manual valid for operation of the aircraft in the United States. This version is called FM-7. The FAA approved the FM-7 version and required

⁹ A copy of FM-7 will be found in Exhibit 37.

operators to use it for domestic operations. So far as the record shows, the two versions are practically identical, except perhaps for changes in the spelling of some terms. The witnesses could point to only one substantive difference: the fact that the gross weight figure in the U.S. version is 100 pounds lighter than the figure that appears in FM-20.¹⁰

When the "Islander" was acquired by the Respondent, in July 2005, the FAA issued an Airworthiness Certificate for the aircraft. See Exhibit 35. The certificate covered the aircraft and its associated equipment. The Respondent's contention is that the FAA's airworthiness certificate includes approval of the Flight Manual that accompanied the aircraft and that was shown to the FAA representative who signed the certificate. Hence, says the Respondent, there was no violation of the FAR provisions that require a "current approved" flight manual to be carried on an aircraft. The problem with the Respondent's position is that the word "current" cannot be stretched to mean "current at the time the initial airworthiness certificate was issued." The term "current" means "current at the time the FAA inspects the aircraft." At some point, the FAA in its wisdom decided that FM-7 should be adopted and should supersede FM-20. To do so was well within the discretion of the agency. Once that decision was made and duly published, parties who operated the Britten-Norman "Islander" were duty-bound to replace their old flight manuals with the one that the FAA had blessed. The Respondent did not do so. Thereby, it violated § 121.141 of the FAR.

The Respondent also stresses the fact that the aircraft in question was ramp-inspected on a number of occasions, and no FAA inspector objected to the FM-20 manual that it carried. This is irrelevant. The failure of law-enforcement personnel to detect a violation on one or more occasions does not transmute the violation into compliance with the law when it finally comes to light. The FAA's lack of enforcement action with respect to the flight manual during prior ramp inspections did not create an immunity from prosecution on this particular occasion.

The Respondent also argues that the Agreement between the United States and the United Kingdom on Certificates of Airworthiness for Imported Aircraft, signed at London on December 28, 1971, 23 U.S.T. 4309, conferred on it the right to continue to use the same flight manual that had been supplied by the aircraft manufacturer. Paragraph 2(b) of the

¹⁰ See Tr. 416-17.

Agreement provides that if the exporting country's aeronautical authorities have certified that an aircraft is airworthy, "the importing State shall give the same validity to such certification as if the certification had been made by its own competent aeronautical authorities . . .". That is exactly what happened when the FAA issued an airworthiness certificate for Respondent's aircraft in July 2005. But that is not the end of the matter. For paragraph 4 of the Agreement also gives the "competent aeronautical authorities of the importing State," i.e., the FAA, the right to prescribe "additional requirements which the importing State finds necessary to ensure that the product meets a level of safety equivalent to that provided by its applicable laws, regulations and requirements . . .". This latter clause vindicates the FAA's right to change its mind and to direct that the FM-20 manual must be replaced by the FM-7 manual. That is exactly what seems to have happened here. Consequently, the international agreement does not absolve the Respondent from its duty to adopt the latest FAA-approved flight manual for use in its aircraft.

For these reasons, I find and determine that the Complainant should prevail on the third of its charges against the Respondent – failure to carry the current, approved flight manual on its aircraft.

V. A Civil Penalty of \$550 is Appropriate.

The charge for which the Respondent has been found liable – failure to have a current flight manual aboard the aircraft – is one that, standing alone, would not have merited this lengthy and complex prosecution to which the Respondent has been subjected. Inspector Rodas admitted as much while on the witness stand; in the absence of the first charge – operating an unauthorized air ambulance service – this case would have resulted in a warning letter. Nevertheless, the Complainant has established, after a trial-type hearing in accordance with the Administrative Procedure Act, that the Respondent was in violation of a provision of the FAR. The Respondent must therefore pay the price.

In determining what that price should be, a good place to start is with the Table of Sanctions, Appendix B to FAA Order No. 2150.3B. It is in evidence as Exhibit 16. The Table of Sanctions lists different levels of penalties for violations by air carriers, depending on the size of the carrier. There was, however, no evidence placed in the record bearing on the size of the Respondent, either in terms of its gross annual revenues or the number of

aircraft in its inventory or the number of employees on its staff. Since the burden of proof with respect to those issues of fact rested on the Complainant, we must assume that the result most favorable to the Respondent is true. Hence, I conclude that the Respondent would be considered a "GROUP IV" air carrier under Order No. 2150.3B, i.e., a small business concern. The order also provides, in Figure B-11 found on page B-12, that "failure to maintain a current manual" warrants a "minimum"-level civil penalty. (The order addresses maintenance manuals, not flight manuals. I also recognize that "failure to maintain" is not the same as failure to have the manual on board. This, however, is as close as we can come, since the order does not specifically address the latter violation.) Order No. 2150.3B says that the range of the minimum penalty for a small business concern would be \$550-\$2,199.

In this case, I conclude that a penalty at the lower end of the range is appropriate, for several reasons. First, the fact is that the Respondent's aircraft was equipped with a serviceable flight manual; the trouble was that it was out of date. The second is that there is no evidence that the Respondent committed the violation intentionally. Third is the fact that no adverse effect on the safety of flight was shown to have taken place as a result of the violation. In the only reported case my research has uncovered where an airman was subjected to a civil penalty for not having a current flight manual, Eric W. Hereth, FAA Order No. 95-26, 1995 W.L. 853896 (1995), a \$3,000 civil penalty was deemed appropriate in a case where the pilot had consulted the wrong flight manual and, as a result, ran out of fuel and crashed-landed the airplane. What happened in the instant case was not nearly as egregious and demonstrates, in my view, that a penalty at the lower end of the range is appropriate.

VI. Order.

In consideration of the foregoing, and subject to review by the Administrator of the Federal Aviation Administration on appeal or on the Administrator's own motion, IT IS ORDERED THAT –

1. The Respondent, Air Charter, Inc., is liable to the United States of America, as represented by the Federal Aviation Administration, for a civil penalty in the amount of five hundred fifty dollars (\$550.00);

2. The amount of the civil penalty for which the Respondent has been held liable herein shall be paid to the Federal Aviation Administration forthwith; and
3. The charges against the said Respondent set forth in Paragraph III.
 1. a. and b. of the Complaint are dismissed with prejudice.



Isaac D. Benkin
Administrative Law Judge

[Note: This decision may be appealed to the Administrator of the FAA. The Notice of Appeal must be filed not later than 10 days after service of this decision (plus five additional days, if this decision is served by mail). 14 C.F.R. §§ 13.233(a), 13.211(e). The appeal must be perfected with a written brief or memorandum not later than 50 days after service of this decision (plus five additional days, if this decision is served by mail). 14 C.F.R. §§ 13.233(c), 13.211(e). The Notice of Appeal and brief or memorandum must be either (a) mailed to the Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591; Attention: Hearing Docket Clerk, AGC-430, Wilbur Wright Building—Suite 2W1000, or (b) delivered personally or via expedited courier service to the Federal Aviation Administration, 600 Independence Ave., S.W., Wilbur Wright Building—Suite 2W1000, Washington, DC 20591, Attention: Hearing Docket Clerk, AGC-430. 14 C.F.R. §§ 13.233(a), 13.210(a)(2), (1). A copy of the Notice of Appeal and brief or memorandum should also be sent to counsel for the FAA in this proceeding. 14 C.F.R. § 13.233(a).]