

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of: GUY EDWARDS

FAA Order No. 2003-1

Docket No. CP00GL0009
DMS No. FAA-2000-7305¹

Served: May 6, 2003

DECISION AND ORDER²

Respondent Guy Edwards has appealed the decision of Administrative Law Judge (ALJ) Burton S. Kolko assessing Edwards a \$5,000 civil penalty for operating moored balloons³ within 5 miles of an airport, a violation of 14 C.F.R. § 101.13,⁴ and for operating the balloons in a hazardous manner, a violation of 14 C.F.R. § 101.7.⁵ This decision denies Edwards' appeal and affirms the ALJ's assessment of a \$5,000 civil

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). Access may be obtained through 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.

³ The safety regulations in 14 C.F.R. Part 101 only apply to moored balloons that have a diameter of more than 6 feet or a gas capacity of more than 115 cubic feet. 14 C.F.R. § 101.1(a)(1). There is no dispute in this case that the balloons at issue were large enough to fall within the scope of the regulations.

⁴ 14 C.F.R. § 101.13, which is entitled "Operating limitations," provides: "(a) . . . [N]o person may operate a moored balloon . . . (4) Within five miles of the boundary of any airport."

⁵ 14 C.F.R. § 101.7, which is entitled "Hazardous operations," provides: "(a) No person may operate any moored balloon . . . in a manner that creates a hazard to other persons, or their property."

penalty.

I. Facts

Every August in Sturgis, South Dakota, there is a large motorcycle rally, with as many as 250,000 to 500,000 people attending. The rally lasts about a week.

A number of businesses in the city of Sturgis offer goods and services to those attending the rally. The respondent in this case, Edwards, owns several such businesses, including a Best Western Hotel, a restaurant/lounge, and the Sturgis Inn Shirt Company.

The alleged violations took place during the 1999 motorcycle rally. In previous years, a business named Rapid Helicopters flew sightseeing and aerial photography flights from a location near Edwards' property. Edwards believed the flights were unsafe and were hurting his businesses. To stop the helicopter flights, Edwards bought the property that the helicopters were using.

Undeterred, Rapid Helicopters leased another property directly across the street from Edwards' property. Rapid Helicopters sought and obtained a favorable airspace determination for the site from the FAA, as well as an airport operating license from the South Dakota Aeronautics Commission.

Even though FAA safety regulations prohibited flying a moored balloon within 5 miles of an airport, Edwards nevertheless planned to fly several advertising balloons during the 1999 motorcycle rally. Edwards believed that he was justified in flying his balloons for numerous reasons. First, he believed that he and his balloons were there first. Second, he had a large (\$500,000) investment in his property, which he claimed would be lost if the helicopter flights occurred, because the helicopters created havoc for his businesses. For example, before the rally, one of the helicopters blew shirts off his

racks, and the helicopters frightened his vendors and blew a great deal of dust on them. Third, Edwards claims that the attorney for the state aeronautics commission stated at a hearing that Edwards could continue to fly his balloons even if the airport was approved, and the Manager of the FAA's local Flight Standards District Office, who was present at the time, did not contradict the statement. Fourth, Rapid Helicopters had had several crashes at other locations, and Edwards believed it was not a safe operator. Fifth, in Edwards' view, the location was not safe for an airport, and his family, staff, and vendors were in danger. Sixth, Edwards strongly believed that the FAA erred in issuing a favorable airspace determination for the proposed airport site, and the South Dakota Aeronautics Commission erred in issuing the airport operating license. Finally, Edwards believed that he was justified in flying his balloons because Rapid Helicopters had not obtained a city permit, which was a contingency in the airport operating license.

Before the rally, the FAA learned of Edwards' plans to fly balloons close to the airport, and the FAA sent Edwards a copy of the specific regulations prohibiting him from doing so. Edwards flew his balloons anyway.

According to Edwards, the rally did not go well for him. He testified that the helicopters "came in and out and in and out and in and out all day long," from 8 or 8:30 in the morning until dark, driving him crazy, like "Chinese water torture." (Tr. 175, 178.) The helicopters were so close, according to Edwards, that he could see the pilots' faces. (*Id.*) He testified that the helicopters frightened his vendors so much that none came back the following year. He claimed that he can no longer use the property for which he paid \$500,000.

FAA inspectors testified that during the rally, they saw Edwards flying his balloons, and advised him that he was violating the regulations. Edwards told one inspector that he did not care about the regulations. (Tr. 35.) He told another inspector that he was not violating the regulations because Rapid Helicopters had not obtained a city permit.⁶ The inspectors testified that from their observations during the rally, the helicopter operations were safe, and that Edwards' balloons created a hazard for the helicopters.

One FAA inspector testified that he returned to the site because he received a complaint that strong winds were causing Edwards' balloons to drift across the street, causing a hazard to vehicles on the ground. (Tr. 109.) Edwards himself testified that the winds were so heavy that at one point the wind slammed his balloons against the ground and "busted" one of them. (Tr. 176.) He said that he did not feel at all safe flying the balloons, but he did it because it stopped the helicopters from "buzzing" his business, and if the helicopters crashed, it would be on the interstate highway rather than on his vendors, his family, or himself. (*Id.*)

One of the FAA inspectors testified that Edwards stated during the rally that he would do whatever it took to protect his interest and property, even if it meant shooting the windows out of the helicopters. (Tr. 87.) The inspector asked Edwards if he was serious, and when Edwards said that he was, the inspector filed a report about Edwards' threat with the Sturgis Police Department. (Tr. 92.) Rapid Helicopters also filed a report

⁶ At the hearing, the person who was mayor of the city at the time of the 1999 rally testified that the city never authorized the airport. (Tr. 131.) At some point, however – the record is unclear as to the exact date – the city did approve Rapid Helicopters' request to use the site as an airport. Edwards challenged the city's decision in state court, but lost. (Complainant's Exhibit 6.)

with the FBI about Edwards' threat to shoot at the helicopters. FBI agents came to the site and seized Edwards' remaining balloon. (Tr. 88.)

The U.S. Attorney for the District of South Dakota considered prosecuting Edwards criminally, apparently for threatening to shoot at the helicopters (Tr. 186, Respondent's Exhibit 13), but the record is unclear as to whether the U.S. Attorney ever proceeded with criminal charges against Edwards.

Edwards filed an action against the City of Sturgis alleging that the airport was a nuisance, and that the city had erred in granting Rapid Helicopters' petition to use the land as an airport.⁷ In July 2000, South Dakota's Fourth Judicial Circuit Court ruled on Edwards' case against the city. The court held that substantial evidence supported the city's approval of the airport. (Complainant's Exhibit 6.) The court further held that the city did not err in determining that the airport was not a nuisance. (*Id.*)

II. The ALJ's Initial Decision

In his initial decision, the ALJ stated that while it struck him as "dangerous and crazy" to permit helicopter operations at the location, that was not his decision to make. (Tr. 198.) According to the ALJ, this civil penalty action was not a proceeding to "second-guess" the airport's approval. (*Id.*) The ALJ added that Edwards' actions were "dangerous and crazy," because: "[F]urther decreasing a safety zone does not add to the well-being of flight operations. It detracts from them." (Tr. 199.)

Regarding 14 C.F.R. § 101.13(a)(4), which provides that no person may operate a moored balloon within 5 miles of any airport, the ALJ said that this alleged violation was easy to decide because Edwards flew his balloon across the street from the airport, well

⁷ The record is unclear as to when Rapid Helicopters filed the petition; neither does it indicate when the city granted the petition.

within 5 miles of the airport. Accordingly, the ALJ found that Complainant had proven the violation. In that regard, the ALJ noted that he was relying on the definition of airport in 14 C.F.R. § 1.1. Section 1.1 defines airport as “an area of land or water that is used or intended to be used for the landing and takeoff of aircraft, and includes its buildings and facilities, if any.” The ALJ said that, “Whether or not the approvals were flawed, Mr. Edwards, I’m finding that in any event, it’s a functioning airport. That means that there are real flight operations occurring from it, and that, therefore, a hazard cannot be created to those real flight operations.” (Tr. 199.)

Regarding 14 C.F.R. § 101.7(a), which provides that no person may operate any moored balloon in a manner that creates a hazard to other persons or their property, the ALJ said that Section 101.7(a) was more generalized than Section 101.13(a)(4) and that a violation of it was harder to prove. In his view, however, Complainant had proven the violation given the proximity of the balloons to the flight operations. The ALJ said, “no matter how unpleasant the flight operations may be, they’re there and the balloons can’t be.” (Tr. 200.) Noting testimony from Edwards himself that the balloons can become uncontrolled in heavy winds, the ALJ held that the mere presence of the balloons in that location, at that height,⁸ and in those winds, created a hazard to persons and their property. (*Id.*)

The ALJ rejected Edwards’ defense that the FAA knew about the balloons as “man-made objects” before it approved the airport and that the FAA had approved the continued operation of the balloons. (Tr. 201.) The ALJ said he found it

⁸ The balloons were at a height of approximately 200 feet. (*See, e.g.*, Tr. 34.)

“incomprehensible” that FAA personnel would allow the balloons of that size⁹ to remain there, and so he did not believe that FAA personnel assumed that the balloons would continue to be operating when they “gave the approvals that they did.” (*Id.*)

Regarding the amount of the civil penalty, the ALJ said that while in other circumstances, he might have lowered the civil penalty, here he could assess no less than the \$5,000 sought by Complainant. (Tr. 201.)

Finally, the ALJ stated as an aside that he sympathized with Edwards, and if he were in Edwards’ place, he would probably be just as angry about the danger to his family, personnel, vendors, and lessees. (Tr. 202.) Indeed, he said, he would probably take every lawful means known to him to undo the airport. Still, the ALJ said, Edwards was unjustified in flying his balloons in violation of the regulations. (*Id.*)

III. Edwards’ Appeal

On appeal, Edwards argues that the ALJ erred in rejecting his various defenses to the complaint – *i.e.*, his arguments that he should not be held responsible for the alleged violations because: (1) the authorities should not have approved the airport in the first place; (2) Rapid Helicopters had failed to obtain a city permit before the rally; and (3) the authorities promised that he could continue to fly his balloons.

The ALJ correctly rejected each of these defenses. He correctly held that Edwards was entitled to pursue all lawful means of furthering his ends, but he was not justified in flying his moored balloons in defiance of the authorities and the regulations. Edwards was not entitled to decide for himself whether the South Dakota Aeronautics

⁹ Each of the balloons had a gas capacity of at least 115 cubic feet. (*See, e.g.*, Tr. 34.)

Commission had erred in approving the airport.¹⁰ Nor was he entitled to decide for himself whether the helicopter company, Rapid Helicopters, had satisfied all pre-conditions for a valid airport operating license. As held in previous cases, individuals may not substitute their own judgment for that of the authorities. *See, e.g., In the Matter of Zoltanski*, FAA Order No. 2002-12 at 12 (April 26, 2002) (involving a person who disregarded the instructions of security personnel). Edwards' defiance of the authorities and the regulations was particularly egregious in this case, because, as he himself admitted at the hearing, his actions placed the helicopter pilots in danger. (Tr. 176.) His actions also created danger for the helicopter passengers, and persons and property on the ground.

Regarding Edwards' claim that Rapid Helicopters failed to obtain a city permit, this was a matter between Rapid Helicopters and the authorities. Even if the claim is accurate, it is irrelevant because it is not a valid defense to argue that someone else committed some infraction. It is Edwards' actions that are at issue here, and Edwards was on notice that the authorities considered the site to be an airport.

As for Edwards' claim that the authorities had reneged on a promise that he could continue to fly his balloons, even if such a promise was made, Edwards was only entitled to pursue lawful means to enforce the promise, such as by taking his case to court. Again, he was not entitled to take the law into his own hands.

¹⁰ Edwards also argues that the ALJ should have admitted into evidence the transcripts of the three pre-trial conferences, because they contain an admission by Complainant that if the airport was not "properly sited," then he did not commit the alleged violations. A reading of the transcripts, however, reveals no such admission by Complainant. In any event, the holding in this case is that it is not a valid defense to argue that the authorities should not have approved the airport.

Finally, Edwards argues that the ALJ erred in declining to grant him a continuance so that he could challenge the airport in another forum. But even if a court now ruled that both the South Dakota Aeronautics Commission and the FAA erred in permitting the helicopter operations, Edwards still was unjustified in flying his balloons when he did, because no court had so ruled at the time.

Further, Edwards gives no specifics regarding his intended legal challenge. For example, he has not indicated the forum in which he intends to challenge the airport's approval, nor has he indicated whether it is at all likely that he could succeed in such a challenge. To date, his attempts to overturn the airport's approval in court have been fruitless.¹¹ (Complainant's Exhibit 6.) Thus, Edwards has not shown that the outcome in this case would be any different if the continuance were granted. See In the Matter of Blue Ridge Airlines, FAA Order No. 1999-15 (December 12, 1999) (denying Blue Ridge Airline's request for a remand where Blue Ridge Airlines had failed to show that the outcome would be any different upon remand). Under the circumstances, it makes little sense to delay this matter while Edwards pursues some further legal challenge to the airport's existence. Thus, the ALJ did not err in declining to grant Edwards a continuance.¹²

¹¹ As discussed above, South Dakota's Fourth Judicial Circuit Court rejected Edwards' nuisance claim against the city, holding that substantial evidence supported the city's approval of the airport, and that the city did not err in determining that the airport was not a nuisance. (Complainant's Exhibit 6.)

¹² Any other arguments not specifically addressed have been considered and found unworthy of discussion.

IV. Conclusion

For the foregoing reasons, Edwards' appeal is denied, the ALJ's decision is affirmed, and a civil penalty of \$5,000 is assessed.¹³



MARION C. BLAKEY, ADMINISTRATOR
Federal Aviation Administration

Issued this 2nd day of May, 2003.

¹³ Unless Respondent files a petition for review with a Court of Appeals of the United States under 49 U.S.C. § 46110 within 60 days of service of this decision, this decision shall be considered an order assessing civil penalty. 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2).