

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Served: March 10, 1994

FAA Order No. 94-2

In the Matter of:

MARY WOODHOUSE d/b/a PAPILLON
BALLOONS

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) Docket No. CP92WP0059
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DECISION AND ORDER

Respondent Mary Woodhouse d/b/a Papillon Balloons has appealed from the written initial decision of Administrative Law Judge Robert L. Barton, Jr.^{1/} The law judge found that Respondent, a certificated repair station, returned a hot air balloon to service in violation of Sections 43.15(a)(1) and 145.57(a) of the Federal Aviation Regulations (FAR), 14 C.F.R. §§ 43.15(a)(1) and 145.57(a).^{2/} The law judge reduced the

^{1/} A copy of the law judge's written initial decision is attached.

^{2/} 14 C.F.R. § 43.15(a)(1) provides:

(a) General. Each person performing an inspection required by Part 91, 123, 125, or 135 of this chapter,

(Footnote 2 continued on the next page.)

\$2,000 civil penalty sought in the complaint to \$950.^{3/}

On November 15, 1989, Respondent conducted an annual inspection on hot air balloon N364CB, a Model 0-105 balloon, manufactured by Cameron Balloon Ltd. (Cameron). Respondent certified that the balloon was airworthy and approved it for return to service. At the time of the inspection, the balloon had two fuel manifolds,^{4/} and six portable fuel tanks.

The balloon originally was imported to the United States without fuel tanks under a Certificate of Airworthiness for Export from the United Kingdom, dated September 22, 1981. The British certificate certified that the balloon conformed to the type design approved under FAA Type Certificate B1EU, and noted that the balloon did not include fuel tanks. Upon the balloon's arrival in the United States, the owner added two fuel tanks and filed an FAA Form 337 (Major Repair and

(Footnote 2 continued from the previous page.)

shall-

(1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements.

14 C.F.R. § 145.57(a) provides in part:

(a) Except as provided in § 145.2, each certificated domestic repair station shall perform its maintenance and alteration operations in accordance with the standards in part 43 of this chapter.

^{3/} The law judge found that Complainant did not establish that the maximum civil penalty was warranted. Complainant did not appeal the law judge's decision.

^{4/} Fuel manifolds are "... lengths of fuel lines with tee fittings, which connect multiple tanks together." See Complainant's Exhibit C, Findings of Investigation.

Alteration) certifying that the two fuel tanks conformed to FAA requirements.

A subsequent owner installed two fuel manifolds in the balloon. The fuel manifolds were obtained from a propane company. Cameron never authorized fuel manifolds for the balloon. (TR 70).^{5/}

During the annual inspection, Respondent reviewed the balloon's type certificate data sheet,^{6/} the manufacturer's maintenance manual, and the balloon's maintenance log.^{7/} Respondent found that they contained no information on fuel manifolds or on the number of fuel tanks for this balloon. Respondent, nevertheless, "... assumed that Balloon N364CB was correct," with fuel manifolds and six fuel tanks (Initial Decision, Finding #35), and certified the aircraft as airworthy.

The law judge found that Respondent violated the FAR when she certified the balloon as airworthy with unauthorized fuel

^{5/} The Findings of Investigation explained that "[a]lthough fuel manifolds have since 1985 been available and certified for use of Cameron balloons in the U.S., there is no manifold available from or certified by Cameron Balloons for the particular basket/fuel system installed on this balloon." See Complainant's Exhibit C.

^{6/} The type certificate data sheet summarizes the type design requirements of an aircraft. See Complainant's Exhibit J.

^{7/} Respondent appeared pro se, and did not testify at the hearing. The law judge found that Respondent reviewed the type certificate data sheet based on the testimony of FAA Safety Inspector Dean Hennies. See TR 45. Respondent's review of the log book and maintenance manual may be inferred from Hennies' testimony, Respondent's log book entry for the inspection, and Respondent's certification that the inspection was performed in accordance with the manufacturer's instructions.

manifolds, and with more than two fuel tanks, when only two tanks had been authorized for the balloon.

Respondent argues on appeal that she did everything a reasonable repairman would have done during an annual inspection of the balloon. Respondent's argument must be rejected.

Since fuel manifolds were never authorized for this model balloon by the manufacturer, the fuel manifolds in the balloon at the time of Respondent's inspection were clearly not part of the type design of the aircraft or other approved modification. The unauthorized fuel manifolds rendered the balloon unairworthy.^{8/}

While fuel tanks are necessary for the operation of a hot air balloon, fuel manifolds are not.^{9/} A certificated repair station, like Respondent, should have determined whether this balloon was one for which fuel manifolds were authorized. The absence of any information on fuel manifolds in the balloon's type certificate data sheet, the manufacturer's maintenance manual, and the balloon's maintenance log, should have triggered further inquiry before certification of the balloon as airworthy.

^{8/} The Administrator has held that an aircraft is airworthy when: it conforms to its type design or supplemental type design and is in a condition for safe operation. In the Matter of Watts Agricultural Aviation, FAA Order No. 91-8 at 17 (April 11, 1988), (citing Section 603(c) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. App. § 1423(c), pet. for review denied, Watts Agricultural Aviation, Inc. v. FAA, No. 91-70365 (9th Cir. 1992)).

^{9/} See e.g., Complainant's Exhibit L in which Cameron stated that fuel manifolds are not needed to operate their balloons.

If Respondent had questioned the owner, she would have determined that he had obtained the fuel manifolds from a propane company (TR 152), and therefore confirmed that the fuel manifolds had not been installed by the manufacturer. This, coupled with the conspicuous absence of maintenance records showing the subsequent installation of the fuel manifolds, left Respondent no valid basis for a determination of airworthiness.

If Respondent had questioned Cameron she would have determined that the manufacturer had never authorized fuel manifolds for that model balloon. Respondent could have also questioned the local FAA inspector about the fuel manifolds. Without further inquiry and information, Respondent had no basis for a determination of airworthiness.^{10/}

"The issuance of a repair station certificate reposes on the holder thereof a trust and responsibility to carry on its enterprise with the highest regard for air safety." See Propeller Service Corp., 13 CAB 242, 243 (1953). Respondent violated the FAR when she certified the hot air balloon as airworthy with unauthorized fuel manifolds.

Respondent's argument on appeal that the two fuel manifolds that she inspected were of a type and design consistent with the manufacturer specifications was expressly refuted by evidence that Cameron never approved fuel manifolds for the balloon. The fact that some Cameron balloons have

^{10/} See e.g., Administrator v. Stroupe, 1 NTSB 1708 (1972) (A mechanic who installed an incorrect part based on an outdated manual was found to have violated the duty to scrutinize carefully.)

authorized fuel manifolds does not mean that all Cameron balloons are authorized to have them, or that this balloon was authorized to have them.

The law judge's finding that Respondent violated the FAR when she certified the balloon as airworthy with more than two fuel tanks, when only two tanks had been authorized, is reversed. Complainant failed to establish the number of fuel tanks authorized by the balloon's type design. Without that information, it is not possible to determine whether the balloon met all applicable airworthiness requirements with respect to the fuel tanks.

Respondent's arguments on appeal concerning alleged prejudicial errors made by the law judge in the course of the hearing are not supported by the record. Contrary to Respondent's argument, the law judge did allow Diane Thomas, the owner of a different Cameron balloon model to testify. While Thomas was on the witness stand, Respondent stipulated with Complainant as to Thomas's testimony. Afterwards Respondent told the law judge that she did not have anything further to ask the witness. (TR 165).

The law judge did not err in sustaining Complainant's objection on relevance grounds to testimony by Respondent's expert witness, Thomas Sheppard, concerning fuel hoses. A complaint allegation on fuel hoses had been withdrawn by Complainant before the hearing, and was not at issue.

Respondent's claim that she did not testify at the hearing because she felt pressured to finish presenting her case by a statement made by Complainant's counsel is not supported by the record. Throughout the hearing, the law judge advised

Respondent that the hearing could be continued on the following day if Respondent needed more time to present her witnesses. (TR 111, 210). On one of these occasions, Complainant's counsel stated that she would prefer instead to stay until 8 p.m. that evening. (TR 111). Respondent never indicated during the hearing that she wanted to testify on her own behalf or that she was not testifying because she felt pressured not to take the stand.

In her appeal, Respondent requests a new hearing so that she could offer the testimony of an FAA inspector to refute Hennies' statements concerning the fuel tanks. This issue need not be addressed since the law judge's finding on the fuel tanks is reversed by this decision.

The reduced \$950 civil penalty adequately reflects the serious nature of Respondent's return to service of an unairworthy hot air balloon.

In summary, the decision of the law judge is modified. The finding concerning the fuel tanks is reversed. The finding on the fuel manifolds, and the \$950 civil penalty are affirmed.^{11/}



DAVID R. HINSON, ADMINISTRATOR
Federal Aviation Administration

Issued this 10th day of March , 1994.

^{11/} Unless Respondent files a petition for review with a Court of Appeals of the United States within 60 days of service of this decision (under 49 U.S.C. App. § 1486), this decision shall be considered an order assessing civil penalty. See 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2) (1992).