UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Served: February 6, 1992

FAA Order No. 92-10

In the Matter of:	Docket No. CP90NE0138
FLIGHT UNLIMITED, INC.	

DECISION AND ORDER

Complainant has appealed from the oral initial decision issued by Administrative Law Judge John J. Mathias at the conclusion of the hearing held in this matter on May 22, 1991, in Bridgeport, Connecticut.[1/] In his initial decision, the law judge held that Respondent Flight Unlimited, Inc., violated Sections 39.3,[2/] 91.29(a),[3/]

1/ A copy of the law judge's oral initial decision is attached.

2/ 14 C.F.R. § 39.3 provides:

General.

No person may operate a product to which an airworthiness directive applies except in accordance with the requirements of that airworthiness directive.

3/ 14 C.F.R. § 91.29(a) (recodified as § 91.7(a), effective August 18, 1990) provides:

Civil aircraft airworthiness.

No person may operate a civil aircraft unless it is in an airworthy condition.

and 135.25(a)(2)[4/] of the Federal Aviation Regulations (FAR), (14 C.F.R. §§ 39.3, 91.29(a), and 135.25(a)(2)), when Respondent operated an aircraft beyond the time that a specific maintenance inspection was required under an airworthiness directive (AD). The law judge, however, reduced the $25,000 civil penalty sought by Complainant to $3,000. Complainant has appealed from the law judge's reduction of the civil penalty. For the reasons set forth below, the law judge's decision to reduce the civil penalty to $3,000 is reversed, and a civil penalty of $10,000 is assessed.

The facts of this case are not in dispute. Between January 21 and February 23, 1989, Respondent, an air taxi operator, operated a Cessna 414A, Registration No. N2622A, on 46 flights after the time for conducting a radiographic inspection of the right engine mount beams[5/] had expired. This inspection was required by AD-85-13-03.[6/]

4/ 14 C.F.R. § 135.25(a)(2) provides:

Aircraft requirements.

(a) Except as provided in paragraph (d) of this section, no certificate holder may operate an aircraft under this part unless that aircraft--

(2) Is in an airworthy condition and meets the applicable airworthiness requirements of this chapter....

5/ The engine mount beams support the engine and the propeller.

6/ The stated purpose of this airworthiness directive is to insure the structural integrity of the engine mount beams by requiring that they be inspected for cracks.

Respondent's failure to conduct this inspection was discovered when FAA Aviation Safety Inspector Joseph E. Butler examined Respondent's maintenance records on February 27, 1989. While reviewing the records, Mr. Butler noted that Cessna Service Kit SK 414-17 was installed on N2622A's right engine on July 1, 1983, when the total time-in-service was 1339.6 hours. Consequently, the radiographic inspection was due 1600 hours later at 2939.6 hours. By January 21, 1989, N2622A had accumulated a total time in service of 2940.5 hours, but no radiographic inspection of the right engine mount beams had been conducted since the service kit's installation. A month later, at the time of Mr. Butler's inspection, the radiographic inspection still had not been performed.

Respondent had contracted with Avco Lycoming Textron Flight Services ("Textron"), a certificated maintenance facility, to conduct maintenance on Respondent's aircraft. Richard Slater, a Textron employee, who also served as Respondent's Maintenance Director, admitted that the inspection of the right engine beams had not been performed on Respondent's aircraft as required by the airworthiness directive.[7/]

7/ In a separate action, FAA Docket No. CP90NE0285, Complainant sought a $3,000 civil penalty against Textron. Complainant alleged in that action that Textron had violated 14 C.F.R. §§ 43.15(a)(1), 43.9(a), and 145.57(a), when it returned Respondent's aircraft to service without having inspected the right engine beams, as required by AD-85-13-03. Prior to the scheduled consolidated hearing in this case, Textron withdrew its request for a hearing.

The law judge found that Respondent violated each of the regulations cited in the complaint. The regulations, according to the law judge, placed an absolute duty on the operator to ensure that the aircraft was in an airworthy condition. The law judge also found that the regulations did not allow Respondent to escape responsibility by asserting that it had relied on a certificated repair station to maintain the aircraft. Nevertheless, the law judge reduced the $25,000 civil penalty assessed against Respondent to $3,000. The law judge found that Respondent's inexperience in the field and inability to absorb the sanction, as well as the inadvertent nature of the violations, were mitigating circumstances. According to the law judge, Textron and Richard Slater were probably the principal violators in this matter. Based on these findings, he held that the amount of the sanction imposed on Respondent should not exceed the $3,000 penalty assessed against Textron.

On appeal, Complainant argues that the law judge's reduction of the civil penalty from $25,000 to $3,000 is so severe that if allowed to stand it will amount to avoidance of the penalty by Respondent. Complainant states that the record does not contain sufficient information to determine Respondent's inability to pay the sanction. Respondent's filing of a petition in bankruptcy, according to Complainant, does not establish Respondent's inability to pay the civil penalty. Complainant also contends that reduction of the

penalty assessed against an aircraft operator to equal the penalty assessed against a maintenance facility is improper because aircraft operators are held to a higher standard of care. The $3,000 civil penalty assessed against Textron, Complainant explains, was the maximum civil penalty that could be sought against Textron. Complainant argues further that by reducing Respondent's civil penalty to equal the civil penalty assessed against Textron, the law judge effectively permitted Respondent to shift its responsibility as an aircraft operator to a repair station, contrary to public policy and precedent.

The law judge's decision that Respondent and Textron should each be assessed $3,000 civil penalties was clearly erroneous. Section 901(a) of the Federal Aviation Act of 1958, as amended, (the Act), provides as follows:

> Any person who violates...any provision of Title III, IV, V, VI, VII or XII...of this Act, or any rule, regulation, or order issued thereunder,...shall be subject to a civil penalty of not to exceed $1,000 for each such violation, except that a person who operates aircraft for the carriage of persons or property for compensation or hire (other than an airman serving in the capacity of an airman) shall be subject to a civil penalty not to exceed $10,000 for each violation of Title III, VI, or XII of this Act, or any rule, regulation, or order issued thereunder, occurring after the date of the enactment of the Airport and Airway Safety and Capacity Expansion Act of 1987....

49 U.S.C. App. § 1471(a) (emphasis added). Thus, Congress has authorized higher penalties against commercial operators and air taxis, like Respondent.

Textron's violations concerned the return to service of an unairworthy aircraft by a maintenance facility. Respondent's violations involved the operation of an unairworthy aircraft by the aircraft operator. Both violations are serious. Respondent's violations, however, posed a higher risk of immediate danger, because they involved the actual operation of an aircraft carrying persons or property. Air carriers[8/] have a duty to perform their services with the highest possible degree of safety. See Section 601(b) of the Act, 49 U.S.C. App. § 1421(b). For these reasons, it is not appropriate to impose the same penalty on the repair station and the air taxi operator.

As noted above, the law judge based his decision to reduce the sanction on three factors: Respondent's inexperience, its ability to pay, and the inadvertent nature of the violation. Regarding Respondent's inexperience, the record contains some evidence that Respondent's president, and perhaps the company itself, may have been new to the business of aircraft operations, but that evidence is vague and insufficient to establish inexperience as a mitigating factor. Furthermore, no consideration should be given to the business inexperience of an air taxi operator because of the

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8/ Air taxi operators are a class of air carrier. 14 C.F.R. § 298.1.

high standard of care expected of Part 135 certificate holders.

As to Respondent's financial hardship, this is a factor which the Complainant may consider in determining the appropriate amount of civil penalty to seek. The record does not indicate whether Complainant did so in this case. In any event, the fact that Respondent may have filed a petition in bankruptcy does not, by itself, establish that Respondent is unable to pay the civil penalty. This is especially so in this case where the record does not include any evidence, as opposed to assertion by counsel, that Respondent actually filed for bankruptcy.

The law judge's finding that Respondent's violations were inadvertent is supported by the record. Respondent's good faith reliance on a certificated maintenance facility to maintain the aircraft in airworthy condition indicates that Respondent's failure to comply with the airworthiness directive was not a willful ommission. In view of that reliance, I find that a $25,000 civil penalty is not required. Instead, I find that a penalty of $10,000 will adequately reflect the seriousness of the violations committed by Respondent, and deter future violations.

Therefore, Complainant's appeal is granted in part. The decision of the law judge to reduce the $25,000 civil penalty assessed against Respondent to $3,000 is reversed. A civil

penalty in the amount of $10,000 is assessed.[9/]

BARRY LAMBERT HARRIS
Acting Administrator
Federal Aviation Administration

Issued this 5th day of February, 1992.

9/ Unless Respondent files a petition for judicial review within 60 days of service of this decision (pursuant to 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).