

**FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

In the Matter of: CLELIA AYALA

FAA Order No. 2014-2

FDMS No. FAA-2012-0910¹

Served: June 10, 2014

ORDER²

On August 28, 2013, Administrative Law Judge (“ALJ”) J.E. Sullivan issued a written order denying Respondent’s request to withhold information filed in this case from public disclosure. On September 18, 2013, after neither party had filed an interlocutory appeal from that order, the ALJ dismissed the proceedings in this matter with prejudice because the parties had reached a settlement and Respondent had withdrawn her request for hearing. Subsequently, Respondent sent the ALJ a letter again seeking a limitation on the public availability of the documents filed in this case. The ALJ forwarded to the Administrator for consideration as a notice of appeal a letter written by Respondent dated April 30, 2014, requesting that “this matter be expunged from the public record” or in the alternative, that her name not be disclosed. As will be explained in this order, even if Respondent’s letter is or could be construed as a request

¹ Materials filed in the FAA Hearing Docket (except for materials in security cases or materials under seal are also available for viewing at the following Internet address: <http://www.regulations.gov>. See 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. 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.

for an interlocutory appeal from the ALJ's August 28, 2013, order, or a notice of appeal from the September, 18, 2014, dismissal, it would be late-filed.

Preliminarily, the Rules of Practice provide that "[u]nless protected from public disclosure by an order of the ALJ under § 13.226, all documents filed in the Hearing Docket are accessible through the Federal Docket Management System (FDMS)" at <http://www.regulations.gov>. 14 C.F.R. § 13.210(e)(1). Also, under 14 C.F.R. 13.230(b), documents filed in FAA civil penalty cases are available for viewing and copying at the FAA Hearing Docket and at the Department of Transportation ("DOT") Docket Operations office. Documents that were received by the FAA Hearing Docket in this matter are available on that Web site and at the FAA Hearing Docket and the DOT Docket Operations office.³

In this case, on June 3, 2013, the FAA sent the ALJ a written Notice of Settlement, explaining that Respondent had agreed to withdraw her request for hearing.⁴ The same day, Respondent contacted the ALJ's office about public availability of the documents filed in this case.

Instead of dismissing the case with prejudice based upon the settlement, the ALJ held the record open and held a telephonic motion conference, during which Respondent explained the basis for her request that documents in her case not be made available to the public. Complainant subsequently filed a written response to Respondent's oral motion, and Respondent responded in writing to Complainant's reply.

³ Some of the documents reviewed by the ALJ were neither filed with the FAA Hearing Docket nor provided to it by the ALJ. Those documents have not been made publicly available. *See* Notice of Return of Respondent's Discovery Materials, served by the ALJ on July 26, 2013.

⁴ The FAA Hearing Docket did not receive this document.

On August 28, 2013, the ALJ issued the Order Denying Respondent's Motion to Withhold or Redact Information from the Record, denying Respondent's motion to seal the entire record, as well as Respondent's alternate request to withhold her address, telephone number, and email address from the public record. The ALJ noted specifically that a party could appeal from this order by filing an interlocutory appeal on or before September 12, 2013, under 14 C.F.R. § 13.219 and 13.210(e).⁵ Neither party filed an interlocutory appeal.

On September 19, 2013, after neither party filed a timely interlocutory appeal, the ALJ dismissed the proceedings with prejudice under 14 C.F.R. § 13.215. In the Order Dismissing Proceeding, the ALJ referenced the notification of settlement dated June 3, 2013, and noted that neither party had filed an interlocutory appeal from the Order Denying Respondent's Motion to Withhold or Redact Information from the Record. Any notice of appeal from the ALJ's dismissal order should have been filed no later than 15 days later, or by October 3, 2013, under 14 C.F.R. §§ 13.233(a) and 13.211(e).⁶

Between November 13, 2013, and April 2, 2014, Respondent contacted the ALJ's office three times and spoke with a staff attorney regarding her continued concern about the public availability of the records in this case. On April 30, 2014, more than 7 months after the ALJ dismissed the proceeding with prejudice, Respondent sent the ALJ a letter requesting that this

⁵ It is provided in 14 C.F.R. § 13.219(d) that "[a party shall file a notice of interlocutory appeal, with supporting documents, with the FAA decisionmaker and the hearing docket clerk, ..., not later than 10 days after the administrative law judge's decision forming the basis of an interlocutory appeal of right or not later than 10 days after the administrative law judge's decision granting an interlocutory appeal for cause, whichever is appropriate." A person may be entitled to an additional 5 days in which to file an interlocutory appeal under 14 C.F.R. § 13.211(e), "the mailing rule," which provides that "[w]henver a party has a right or a duty to act or to make any response within a prescribed period after service by mail, 5 days shall be added to the prescribed period."

⁶ Section 13.233(a) provides that "[a] party shall file the notice of appeal not later than 10 days after ... service of the written initial decision on the parties" The "mailing rule" provides an additional 5 days in which to file a notice of appeal from a written order of an ALJ.

matter be expunged from the public record or in the alternative that her name be withheld. The ALJ forwarded this letter to the Administrator for consideration as a notice of appeal.⁷

Even if Respondent's letter dated April 30, 2014, were or could be construed as an interlocutory appeal from the ALJ's August 28, 2013, Order Denying Respondent's Motion to Withhold or Redact Information from the Record, or a notice of appeal from the ALJ's Order Dismissing Proceeding,⁸ it would be well out of time. These two orders are final because no timely appeals were filed. Further, in light of Respondent's withdrawal of the request for hearing and the finality of the Order Dismissing Proceeding, this matter is closed.

THEREFORE, IT IS ORDERED THAT: This matter is closed.

MICHAEL P. HUERTA, ADMINISTRATOR
Federal Aviation Administration

[Original signed by Vicki S. Leemon]

VICKI S. LEEMON⁹
Manager, Adjudication Branch

⁷ Due to the outcome of this order, it is not necessary to decide if this letter was a notice of appeal from the ALJ's Order of Dismissing Proceeding, dated September 18, 2013, or a request for interlocutory appeal under 14 C.F.R. § 13.219 from the ALJ's Order Denying Respondent's Motion to Withhold or Redact Information from the Record dated August 28, 2013.

⁸ *See supra* note 7.

⁹ Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by memorandum dated October 27, 1992, under 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202 (*see* 57 Fed. Reg. 58,280 (1992)) and redelegated by the Assistant Chief Counsel for Litigation to the Manager, Adjudication Branch, by Memorandum dated August 6, 1993.