

SERVED: November 15, 1994

NTSB Order No. EA-4271

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 3rd day of November, 1994

_____	)	
DAVID R. HINSON,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	
v.	)	Dockets SE-12608
	)	SE-12609
	)	
ROYAL CARIBBEAN INTERNATIONAL	)	
AIRLINES and	)	
GEORGE F. BEVILACQUA,	)	
Respondents.	)	
	)	
_____	)	

**OPINION AND ORDER**

Respondents have appealed from the oral initial decision of Administrative Law Judge William R. Mullins, issued on October 26, 1993, following an evidentiary hearing.<sup>1</sup> The law judge affirmed an amended order of the Administrator revoking Royal Caribbean's operating certificate and revoking Mr. Bevilacqua's

<sup>1</sup>The initial decision, an excerpt from the hearing transcript, is attached.

inspection authorization (IA).<sup>2</sup> The law judge found that respondent Bevilacqua had violated 14 C.F.R. 65.20(a)(1) and 135.13(a)(3), and that respondent Royal Caribbean (RC) had violated §§ 135.5 and 135.13(a)(3).<sup>3</sup> We deny the appeal.<sup>4</sup>

Regarding the suspension and revocation of respondent Bevilacqua's certificates, the law judge found that respondent had falsified his IA renewal application and that the FAA relied

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<sup>2</sup>The law judge declined to affirm that part of the Administrator's order revoking respondent Bevilacqua's airframe and powerplants (A&P) rating, and instead ordered it suspended for 90 days. The Administrator has not appealed that modification of his order.

<sup>3</sup>§ 65.20(a)(1) reads:

(a) No person may make or cause to be made -

(1) Any fraudulent or intentionally false statement on any application for a certificate or rating under this part[.]

§ 135.5 reads, as pertinent:

No person may operate an aircraft under this part without, or in violation of, an air taxi/commercial operator (ATCO) operating certificate[.]

§ 135.13(a)(3) reads:

(a) To be eligible for an ATCO operating certificate and appropriate operations specifications, a person must -

(3) Hold any economic authority that may be required by the Civil Aeronautics Board [now the Department of Transportation].

<sup>4</sup>On February 25, 1994, we received a letter from respondent Bevilacqua discussing procedure as well as the merits of his case, and enclosing letters from DOT to Senator John Kerry respondent to questions raised by respondents. The correspondence was not served on the Administrator, as required by our rules. Moreover, it is new evidence filed without permission, and is accompanied with no argument as to why we should accept it. The letter and attachments will not be considered.

on that false information in renewing his IA. Regarding RC's operations, the law judge found that RC transported passengers without the required economic authority from DOT and without the required insurance and that respondent Bevilacqua, who had signed RC's application to the DOT, did so knowing these facts.

On appeal, respondents offer two arguments: first, that they were denied due process by the law judge, primarily in his failure to require the Administrator to answer various interrogatories; and second, that the law judge's decision is not supported by the evidence. We disagree on both counts.

1. Respondents' procedural claims. Much of respondents' appeal discusses the law judge's denial, at the start of the October hearing, of their motion to dismiss the Administrator's case because he failed to answer certain discovery. Respondents argue that the failure to answer all the discovery in writing, in and of itself, compelled dismissal of the complaints. There are a number of reasons why the relief respondent sought at the time was inappropriate and why a new hearing at this stage, as requested, is not warranted.

The law judge noted that respondents had not filed a motion to compel a discovery response, and given the status of the case, were out of time in filing their own discovery requests. Tr. at 10-12.<sup>5</sup> Nevertheless, the law judge stated quite clearly that

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<sup>5</sup>The discovery was served in September 1993, after an August hearing at which the proceedings were delayed until October. The orders of revocation had been served on respondents in mid-1992.

In their appeal, respondents incorrectly argue that just

respondents could and should, at any point in the hearing where the unanswered discovery was implicated, raise an objection and the law judge would rule on the admissibility of the evidence. Id. Respondents never made an objection of this sort, and never made an offer of proof on the hearing record,<sup>6</sup> nor is there any indication that they were surprised by any aspect of the case put on by the Administrator.<sup>7</sup> Further, we have reviewed the entire record and it is our view that the law judge was more than liberal in the procedural leeway he gave respondent Bevilacqua and his non-attorney representative throughout the course of the hearing.<sup>8</sup> And, as we next discuss, respondents offered no real

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prior to the hearing they moved that the law judge direct the Administrator to comply with the discovery request. The law judge denied having received any such motion. The motion he denied at the hearing was not a motion to compel answers, it was a motion to dismiss for failure to answer. (The law judge noted, even there, that respondents mischaracterized the facts by arguing that the Administrator had failed to comply with an order of the law judge to respond. The law judge had issued no such order. See Tr. at 11-12.)

<sup>6</sup>In their appeal, respondents contend they were denied the ability to question, through interrogatories, witnesses at the hearing. But, they had a full opportunity at the hearing to cross-examine these witnesses.

<sup>7</sup>Respondents incorrectly argue that the Administrator never made any substantive response to their discovery requests. At the hearing, the Administrator described to the law judge the materials that had been provided to respondents and explained his objections, including that the discovery was extremely late and that much of it was directed to DOT, not FAA, employees. Tr. at 9-10.

<sup>8</sup>For example, respondents never filed an answer to the complaints against them in these cases. Despite 49 C.F.R. 821.31(c) ("[f]ailure to deny the truth of any allegation . . . may be deemed an admission of the truth of the allegation[.]"), the law judge made no adverse inferences, and denied the Administrator's request that hearing be limited to sanction only.

evidentiary challenge to the facts necessary to establish the alleged violations.

2. Respondent Bevilacqua's IA. To renew an inspection authorization, respondent was required to have performed four annual inspections, or eight repairs, or one progressive inspection, among other possibilities. Respondent's renewal application (Exhibit A-1) listed 2 repairs and 3 annual inspections. Although this was not sufficient to qualify him for renewal, that fact initially was overlooked by the FAA and his renewal was approved. According to the Administrator's witness, upon a random selection of applications to review, this was discovered and respondent was asked to provide qualifying information. He gave the FAA a list of seven aircraft on which he allegedly had performed annual inspections. Exhibit A-2.

The Administrator demonstrated at the hearing that the aircraft described on the Exhibit did not correspond to the N numbers respondent provided. Two were large aircraft for which, the Administrator's witness testified unrebutted, progressive inspections, not annual inspections, were required. Another had been in storage for at least 5 years. Exhibit A-4. See also Tr. at 233. Respondent's explanation was that he made up the information, with the FAA's full knowledge, because the FAA wanted details and he did not have the information with him at

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At the October hearing, the law judge repeatedly asked Mr. Bevilacqua and his representative to explain to him their defense so that he could understand their arguments. (Respondents had declined to make an opening statement.)

the time. Tr. at 221-225.

The law judge was required to assess the credibility of the respective witnesses, and did so, rejecting respondent's version of events. Tr. at 261. Respondents show us no error in the law judge's assessment. And, as the law judge correctly explained to respondent, it is irrelevant to the falsification charge whether respondent could have qualified for his IA renewal in other ways (by citing a progressive inspection, for example). Respondent had been filling out these applications since 1979. He was obliged to know IA requirements, and to complete application documentation truthfully. His failure to do so in this case justifies revocation of both his IA certificate and A&P rating.<sup>9</sup>

3. RC's lack of insurance. Respondents admitted that, at least from mid-November 1989 through March 1990, RC transported passengers. Tr. at 63. The unrebutted record also establishes (Exhibit A-9) that DOT issued RC no passenger authority, although the DOT authority presented to the FAA to obtain certification indicated that passenger and cargo authority had been granted.<sup>10</sup>

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<sup>9</sup>Intentional falsification of application is a serious offense which in virtually all cases the Administrator imposes and the Board affirms revocation. See, e.g., Administrator v. Cassis, 4 NTSB 555 (1982), reconsideration denied, 4 NTSB 562 (1983), aff'd, Cassis v. Helms, Admr., FAA, et al, 737 F.2d 545 (6th Cir. 1984), and Administrator v. Rea, NTSB Order EA-3467 (1991). But see footnote 2.

<sup>10</sup>That is, the document had been altered. Compare Exhibits A-7 and A-9. Mr. Bevilacqua freely admitted that he initially sought passenger authority, and did not challenge testimony that a DOT employee "whited out" his "x" in the "scheduled passenger" box of the application because he had no insurance for passengers. Tr. at 117, 136-137 and Exhibit 9, ¶ 5.

Notwithstanding the fact that Mr. Bevilacqua testified that the FAA had issued him an amendment granting RC passenger authority (see Tr. at 206),<sup>11</sup> he could produce no such document, and the Administrator's witness had no recollection of one.

The law judge did not directly find that someone at RC falsified the DOT form to obtain passenger authority from the FAA, or that Mr. Bevilacqua knew that RC did not have passenger authority. Instead, the law judge focussed on RC's lack of insurance. Mr. Bevilacqua had testified to his concern that RC have insurance and his repeated attempts to find out from the FAA whether insurance was on file. The law judge concluded that respondent "kept asking the FAA because [he] knew they didn't have it because [he] knew it didn't exist." Tr. at 257. On appeal, respondents continue to argue that the responsibility here was the FAA's. We do not agree.

In the first place, the record indicates that the insurance information is filed with a DOT, not an FAA, office, and that RC was aware of the separate locations.<sup>12</sup> We agree with the law judge that respondents may not in this fashion deflect attention from their own failure. The FAA's alleged failure to respond to RC's Freedom of Information Act (FOIA) requests is not "entrapment," as respondents argue, and the Administrator replies that the FAA did respond with over 1,000 pages of material.

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<sup>11</sup>Only DOT could issue such authority.

<sup>12</sup>Respondent's representative had taken the original application to the DOT office. Authority would not be issued by DOT until it had the insurance certificate on file.

Respondents were unable to present any reliable documentation to support either that RC actually had insurance or that RC had reason to believe it did. See law judge's findings, Tr. at 257-8.<sup>13</sup> Respondents' actions demonstrate that they operated passenger service when there was doubt in their minds that the aircraft were insured for passenger service.<sup>14</sup> At worst, the record could support a finding that RC falsified the DOT form and provided passenger service when its owners knew that no passenger insurance had been paid for or obtained. Regardless, transporting passengers when the carrier should have known it was without the proper level of insurance is an act so rash that it warrants revocation of RC's operating certificate and revocation of Mr. Bevilacqua's certificates.<sup>15</sup>

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<sup>13</sup>See also Reply at 8 (In response to FOIA requests, "[c]omplainant has never been able to fulfill Respondents' hysterical request for a Certificate of Passenger Insurance, because Respondent never obtained one, and never submitted one to Complainant or anyone else.").

<sup>14</sup>Exhibit R-3, a letter from RC to the FAA, suggests a belief that the FAA had received the insurance and that it had issued RC passenger authority for 9-passenger aircraft. There is no support for this in the record.

<sup>15</sup>In their appeal, respondents make reference to grand jury proceedings, and the hearing transcript indicates a prior criminal proceeding. Respondents did not explain the relationship of the proceedings, nor is it clear to us. We also fail to see the relevance of the new evidence respondents offer (Appeal at 13) or the subsequent discussion related to the DOT Inspector General. Moreover, the evidence does not support the notion, urged by respondents, that the FAA amended RC's application to add passenger authority so as to entrap them and ruin Mr. Bevilacqua.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondents' appeal is denied; and
2. The 90-day suspension of respondent Bevilacqua's airframe and powerplant rating, the revocation of respondent Bevilacqua's Inspection Authorization, and the revocation of Royal Caribbean's operating certificate shall begin 30 days from the date of service of this order.<sup>16</sup>

HALL, Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board, concurred in the above opinion and order.

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<sup>16</sup>For the purposes of this order, respondents must physically surrender the certificates to an appropriate representative of the FAA pursuant to FAR § 61.19(f).