

SERVED: June 4, 1998

NTSB Order No. EA-4668

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 28th day of May, 1998

JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Dockets SE-14807
)	SE-14832
)	
LAWRENCE J. KIRSCH)	
and)	
PAUL E. RODERICK,)	
)	
Respondents.)	

OPINION AND ORDER

The Administrator has appealed from the oral initial decision of Administrative Law Judge Patrick G. Geraghty, issued on July 22, 1997.¹ The law judge dismissed two orders of suspension, based on the Administrator's failure timely to appear for hearing.² We grant the appeal, and remand for hearing.

¹ The initial decision is attached.

² The two respondent-pilots were involved in a midair collision with their helicopters, during Part 135 passenger-carrying flights. Sixty-day suspensions were sought.

The hearing in this case was originally scheduled for 9:30 A.M. on July 22, 1997, in Courtroom 1 of the United States Courthouse, Anchorage, AK. An amended notice of hearing was issued, changing the location of the hearing to Courtroom 4.

These courtrooms are in the "new" Federal Building, and it houses FAA counsel's offices, as well. The law judge and one respondent, Mr. Kirsch, who was appearing pro se, arrived at Courtroom 4 at 9:00. Sometime between 9:30 and 9:45, due to FAA counsel's failure to appear, the law judge contacted the FAA offices, and was told that the attorneys were on their way and should be walking through the door any minute (or words to that effect). The law judge knew they were in the same building. Tr. at 5; Brief at 10.

At 9:45, the law judge called the proceedings to order, and dismissed the complaints for the Administrator's failure to appear. Shortly thereafter, FAA counsel, accompanied by respondent Roderick and his counsel, arrived at Courtroom 4. The law judge was still there; respondent Kirsch had been encountered in the hall. FAA counsel explained that he had not received the notice of room change, and had been either waiting at Courtroom 1, with respondent Roderick and his counsel, or looking around for where the others might be. The law judge refused to reopen the matter, and refused to allow counsel to put on the record the events of the morning.

It is our view that the law judge abused his discretion in this case. There was no reason to assume that FAA counsel was

not coming. Indeed, the opposite assumption would be called for. Respondent Roderick had hired counsel, and there was no basis to conclude they did not intend to appear. We agree with the Administrator that our law judges are not expected to be missing persons detectives. However, a little more patience and/or inquiry in this case would have been appropriate.

ACCORDINGLY, IT IS ORDERED THAT:

These proceedings are remanded to the law judge for further hearing.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT and BLACK, Members of the Board, concurred in the above opinion and order. GOGLIA, Member, did not concur.