

SERVED: July 28, 2011

NTSB Order No. EA-5592

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 July, 2011

_____)	
J. RANDOLPH BABBITT,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket No. SE-18886
v.)	
)	
JAMES H. GARST,)	
)	
Respondent.)	
)	
_____)	

OPINION AND ORDER

Respondent, who proceeds pro se, appeals the oral initial decision of Administrative Law Judge Alfonso J. Montano in this matter, issued following an evidentiary hearing held January 19 and 20, 2011.¹ By that decision, the law judge affirmed the

¹ A copy of the initial decision, an excerpt from the hearing transcript, is attached.

Administrator's complaint and ordered a 120-day suspension of respondent's commercial pilot certificate, based on violations of 14 C.F.R. §§ 91.119(a)² and 91.13(a).³ We deny respondent's appeal.

The Administrator's October 21, 2010, amended order, which served as the complaint before the law judge, alleged that, on June 19, 2009, respondent operated a Robinson R44-2 helicopter (hereinafter, "N8364Z") over homes and businesses at a low altitude "in the Helen, Georgia, and/or Robertstown, Georgia, communities." Compl. at ¶ 2. The complaint listed several names of people and one business over which respondent flew "between approximately 100–300 feet." Compl. at ¶ 4. The complaint also alleged that, if the helicopter power unit failed during the low-altitude flight, respondent would not have been able to conduct an emergency landing without undue hazard to persons or property on the surface. The complaint concluded with an allegation that, on June 29, 2009, during a White County

² Title 14 C.F.R. § 91.119(a) provides as follows:

Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

(a) Anywhere. An altitude allowing, if a power unit fails, an emergency landing without undue hazard to persons or property on the surface.

³ Section 91.13(a) prohibits careless or reckless operations so as to endanger the life or property of another.

commissioners' work session, respondent stated, "[l]egally, we can fly a hundred feet over Mr. Greear's house ... and I did personally the day we opened up [in White County, Georgia,] to let the citizens know I'm here, I'm back, and I'm not going anywhere." Compl. at ¶ 7(a).⁴ The complaint also alleged respondent stated, "[i]f they'll notice, once I left, I told my pilots, I said, you can't do that. I did it because I own it and I want to make a statement. So now the pilots fly higher." Compl. at ¶ 7(b).

Respondent appealed the Administrator's order and the case proceeded to hearing, at which the Administrator called five eyewitnesses who all testified a helicopter flew less than 200 feet over their property on June 19, 2009. All eyewitnesses except one testified that the flights occurred in the evening.⁵

⁴ As explained below, testimony at the hearing indicated the citizens of White County were displeased with the helicopter operations over their properties.

⁵ Phillip Shelby testified as follows:

Q. Can you tell the Judge -- well, let me ask you this. About what time during the day did that low flight take place?

A. I don't recall the specific hours. It seems like it was the majority of the day, starting before lunch and well into the afternoon.

Tr. at 101. On cross-examination, Mr. Shelby clarified that he did not recall what time of day he saw the aircraft on June 19, 2009:

Q. ... Now, Mr. Shelby, that aircraft didn't arrive into the state of Georgia until after 4:00 in the

Four witnesses also testified they heard respondent admit at the June 29, 2009 commissioners' meeting that he had flown the helicopter at a low altitude on June 19, 2009 over Helen and Robertstown, Georgia. In addition, Mr. Shelby testified that respondent visited his house after the commissioners' meeting, and apologized for the June 19, 2009 flights. Mr. Shelby stated respondent attempted to reach out to the community at the commissioners' meeting and by coming to his house, because respondent outlined his plans for further operation concerning his helicopter business, and indicated his pilots would no longer fly at such a low altitude near homes. Tr. at 108-109.

Two FAA aviation safety inspectors also testified at the hearing. Aviation safety inspector James Couch testified concerning autorotation,⁶ and stated the height-velocity curve

(..continued)

afternoon. How could you have seen that aircraft fly in the state of Georgia all day on the 19th of June?

A. After a year and a half, I can't honestly say what time flights started. If you're saying they didn't start until 4:00, then that must be when they started.

Tr. at 111-12.

⁶ Inspector Couch described autorotation as a procedure in which a pilot can safely land a helicopter in the event of an engine failure. Inspector Couch provided the following example:

[T]he engine quits, so therefore the rotor is no longer being driven by the engine because it's not working, and so the rotor turning and continuing to provide lift and control of the helicopter will be

from Robinson's flight manual indicates an operator for a Robinson R44-2 should avoid flying below 400 feet. Exh. A-11. Inspector Couch testified flying below 400 feet would prevent autorotation in the event of an engine failure. Inspector Couch also identified the Robinson noise abatement procedure, which recommends flying always above 500 feet, preferably over 1,000 feet.

In addition, aviation safety inspector Shane Pengelly testified he investigated the June 19, 2009 flights. Inspector Pengelly identified several complaint letters the FAA received from residents of Helen concerning the flights.⁷ Inspector Pengelly opined that respondent violated §§ 91.119(a)

(..continued)

dependent upon the aircraft descending, and air flow up and through the rotor system. And it would continue to drive the rotor by the force of the air going through the rotor system.

And then that would maintain the rotor RPM. The aircraft is descending, and as it approaches the surface, the pilot will decelerate the aircraft by raising the nose, slowing the aircraft, and reducing the ground speed, airspeed, and then he would use the other flight control to cushion the landing, and using the rotor RPM and land the aircraft.

Tr. at 190-91.

⁷ The record indicates many residents of Helen opposed the operation of helicopters in their town. Some residents pursued a writ of mandamus in local court prohibiting the helicopter operations. Respondent allegedly operated N8364Z on June 19, 2009 over the houses of many of the same residents who were involved in the local court case.

and 91.13(a), and summarized the aggravating factors he believed justified a 120-day suspension of respondent's certificate.⁸

In response to the Administrator's case, respondent testified on his own behalf. Respondent asserted he did not fly N8364Z on June 19, 2009, and that the Administrator could not prove that he was in Georgia during the flights at issue.⁹ With regard to respondent's statements at the commissioners' meeting, in which he appeared to admit that he operated N8364Z in Helen and Robertstown on June 19, 2009, respondent testified that his statements were "not literally truthful" (tr. at 329), and that he said what he did in order to defend all helicopter operators in the area (tr. at 368). Respondent also produced a copy of his logbook, which does not list an entry for June 19, 2009, as well as the aircraft log for N8364Z, which shows pilot Nicholas Scott, who works with respondent, flew the aircraft on June 19, 2009. Finally, respondent asserted the FAA's Atlanta Flight Standards District Office has an agenda to sabotage respondent's helicopter business. Respondent sought to

⁸ In his initial decision, the law judge mentioned respondent made numerous passes in the aircraft and used it as "an instrument to harass those individuals that opposed [respondent's] helicopter business." Initial Decision at 428.

⁹ Respondent indicated his intent to call a witness to verify he was not in Georgia at the time of the flights, but then voluntarily withdrew the witness, saying the testimony was not necessary.

introduce correspondence from Mr. Scott indicating this objective, but admitted he was not prepared to call Mr. Scott as a witness at the hearing.

The law judge issued an oral initial decision at the conclusion of the hearing, in which he affirmed the Administrator's complaint. The law judge provided a detailed summary of the evidence, and resolved the issue of whether respondent operated N8364Z over Helen and Robertstown on June 19, 2009 by finding respondent's testimony lacked credibility. The law judge stated the documents respondent produced showing N8364Z was on the border of South Carolina and Tennessee in early to mid afternoon on June 19, 2009, would have allowed sufficient time for respondent to fly the aircraft back to Helen and Robertstown for the low flights after 4:00 pm, as the witnesses testified. The law judge stated the Administrator had proven by a preponderance of the evidence that respondent was the pilot on June 19, 2009, and the Administrator's sanction of 120-day period of suspension was appropriate.

On appeal, respondent essentially attempts to refute the Administrator's witnesses' testimony. Respondent asserts the Administrator did not prove he operated N8364Z, and that none of the Administrator's witnesses identified the registration number of the aircraft, nor could they correctly describe the helicopter's color, at the time of the flights. Respondent

asserts Inspector Pengelly conducted an incomplete, half-hearted investigation because he did not visit the sites over which respondent allegedly flew N8364Z to determine whether respondent could have landed the aircraft had the engine failed, in accordance with the requirements of 14 C.F.R. § 91.119(a). Respondent also mentions that Inspector Couch conducted an investigation into the flights at issue and determined no violations occurred. The Administrator disputes each of respondent's arguments, and urges us to affirm the law judge's decision.

We first note that we have long deferred to the credibility findings of law judges in the absence of a showing that such findings are arbitrary and capricious.¹⁰ The law judge's resolution of the issues in this case required him to assess the credibility of respondent's testimony, and he made credibility findings adverse to respondent. The law judge supported his determinations with patent findings indicating he had sufficient rationale for determining respondent's testimony—specifically, that respondent did not pilot N8364Z on June 19, 2009—was not credible.

¹⁰ See, e.g., Administrator v. Porco, NTSB Order No. EA-5591 at 20 (2011); Administrator v. Nickl, NTSB Order No. EA-5287 at 6 (2007) (citing Administrator v. Kocsis, 4 NTSB 461, 465 n.23 (1982); see also Administrator v. Smith, 5 NTSB 1560, 1563 (1986); Administrator v. Sanders, 4 NTSB 1062 (1983)).

Moreover, the evidence unequivocally shows the law judge's determinations were not arbitrary, capricious, or contrary to the evidence. One of respondent's own exhibits shows N8364Z was in Helen, Georgia on June 19, 2009. Exh. R-30. In addition, the transcript from the June 29, 2009 commissioners' meeting, which respondent produced as an exhibit, proves respondent stated he conducted the June 19, 2009 flights. Exh. R-5. Respondent does not deny that he said, in reference to the June 19 flights, "I did it 'cause I own it and I want to make a statement." Overall, the evidence strongly supports law judge's determination that respondent's testimony concerning the flights lacked credibility.

We also agree with the law judge's disposition of respondent's argument that he could have made an emergency landing without undue hazard or harm to anyone. Inspector Couch provided persuasive testimony indicating the June 19 flights were almost certainly too low to perform a successful autorotation in the event of an engine failure. Respondent appears to believe the standard of review for a § 91.119(a) violation is determining whether someone may die if they conduct an autorotation in the incorrect spectrum of the manufacturer's height-velocity curve. Instead, we have long held that, to prove a violation of § 91.119(a), the Administrator must show an emergency landing from the altitude at which a pilot flew

presented an unreasonable risk of harm to persons or property.¹¹ Based on the eyewitness testimony, the complaint letters several witnesses submitted to the FAA concerning the June 19 flights, and the testimony of Inspector Couch, we believe the Administrator fulfilled this standard.

Finally, to the extent respondent argues the FAA sent him correspondence establishing their investigation of the June 19 flights did not indicate any violations occurred, we note respondent first submitted this correspondence with his appeal brief. We previously have held we will not review such evidence, as it was not admitted at the hearing.¹² In addition, the letters respondent provided were not addressed to respondent, but were sent to Mr. Scott and respondent's company, Sevier County Choppers. These letters were not addressed to respondent in his individual capacity, which is the basis for the case at hand.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;

¹¹ See, e.g., Administrator v. Michelson, 3 NTSB 3111, 3114 (1980); see also Administrator v. Simmons, NTSB Order No. EA-5535 at 11 (2010) (increasing sanction and stating, "[w]e have previously taken seriously a respondent's failure to comply with the requirements of § 91.119); Administrator v. Jablon, NTSB Order No. EA-5460 at 12 (2009) (elaborating on meaning of "undue hazard" in § 91.119(a)).

¹² See, e.g., Administrator v. Eckstine, NTSB Order No. EA-4064 at 2-3 (1994) (citing 49 C.F.R. § 821.50(c)).

2. The law judge's initial decision is affirmed; and

3. The 120-day suspension of respondent's commercial pilot certificate shall begin 30 days after the service date indicated on this opinion and order.¹³

HERSMAN, Chairman, HART, Vice Chairman, and SUMWALT, ROSEKIND, and WEENER, Members of the Board, concurred in the above opinion and order.

¹³ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. § 61.19(g).

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES

* * * * *

In the matter of:	*	
	*	
J. RANDOLPH BABBITT,	*	
Administrator,	*	
Federal Aviation Administration,	*	
	*	
Complainant,	*	Docket No.: SE-18886
vs.	*	JUDGE MONTAÑO
	*	
JAMES H. GARST,	*	
	*	
	*	
Respondent.	*	

* * * * *

4th Floor, Courtroom #3
225 Greet Street, Southwest
Gainesville, Georgia

Thursday,
January 20, 2011

The above-entitled matter resumed for hearing, pursuant
to notice, at 8:40 a.m.

BEFORE: ALFONSO J. MONTAÑO
Administrative Law Judge

APPEARANCES:

On behalf of the Complainant:

WILLIAM VINES, ESQ.
TANEESHA DOBYNE MARSHALL, ESQ.
Federal Aviation Administration
Southern Region
P.O. Box 20636
Atlanta, Georgia 30320
404-305-5200

On behalf of the Respondent:

JAMES H. GARST, Pro se
510 Jordan Lane
Seymour, Tennessee 37865
865-388-4342

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE MONTAÑO: This has been a proceeding under the provisions of 49 U.S.C. Section 44709, formerly Section 609, of the Federal Aviation Act, and the provisions of the Rules of Practice in Air Safety Proceedings of the National Transportation Safety Board.

This matter has been heard before this administrative law judge, and as provided by the Board's Rules, I've elected to issue an Oral Initial Decision in this matter.

Pursuant to notice, this matter came on for trial on January 19 -- and today is the 20th -- 2011, in Gainesville, Georgia. The Administrator was represented by two of his staff counsel: Ms. Taneesha D. Marshall, Esquire, and William P. Vines, Esquire. They are from the Office of Regional Counsel, Southern Region.

Mr. Garst, James H. Garst, chose to represent himself in these proceedings. For a period of time yesterday morning and for part of the afternoon he was informally assisted by an attorney by the name of George Butler, who was not present during the second day of the hearing.

Mr. Garst had been informed of his right to have counsel to represent him in the previous prehearing telephone conference that was conducted last Thursday, January 13, 2011. He was informed of his right to have counsel represent him. He indicated

1 he understood that right, but he chose instead to represent
2 himself.

3 The parties were provided an opportunity to offer
4 evidence, to call, examine, and cross-examine witnesses, and make
5 arguments in support of their respective positions.

6 I will not discuss all of the evidence in detail. I
7 have, however, considered all the evidence, both oral and
8 documentary. That which I do not specifically mention is viewed
9 by me as being corroborative or does not materially affect the
10 outcome of this case.

11 As to the witnesses that Mr. Garst indicated he wanted
12 to call in his case, since he did not comply with the prehearing
13 order to exchange witness lists and a brief summary of what those
14 witnesses were to say, those witnesses were not allowed to
15 testify.

16 On the morning of the first day of the hearing Mr. Garst
17 informed me that a number of witnesses apparently had shown up
18 from the community to testify on his behalf. Mr. Garst also
19 indicated he had one witness whom he wanted to call on rebuttal,
20 and he was given an opportunity to do that. However, he chose not
21 to call his witness on rebuttal. I will discuss this issue later.

22 Mr. Garst, the Respondent, has appealed the
23 Administrator's Order of Suspension dated May 26, 2010. Pursuant
24 to 821.31(a) of the Board's Rules, the Administrator filed a copy
25 of the order on June 9, 2010, to serve as the complaint in this

1 case.

2 The Administrator filed an amended complaint on October
3 21, 2010. The Administrator alleges that Mr. Garst operated a
4 helicopter over Helen and Robertstown homes and businesses at low
5 altitudes varying from 100 to 300 feet.

6 As a result of the alleged conduct, the Administrator
7 maintains that Mr. Garst violated Section 91.13(a), which
8 indicates that no person may operate an aircraft in a careless or
9 reckless manner so as to endanger the life or property of another.

10 The Administrator also alleged that Mr. Garst violated
11 Section 91.119(a), which reads that, "And except when necessary
12 for takeoff or landing, no person may operate an aircraft below an
13 altitude allowing, if the power unit fails, an emergency landing
14 without undue hazard to persons or property on the surface."

15 In response to the Administrator's Order of Suspension,
16 the Respondent admitted paragraphs 1 and 7, paragraph 7 being the
17 White County commissioners work session transcript or statement
18 that was in the complaint, which was conducted on June 29, 2009.

19 As Respondent has admitted to those allegations, they
20 are deemed to be established for the purpose of this decision.
21 The Respondent has denied paragraphs 2, 3, 4, 5, and 6 of the
22 amended complaint.

23 The Administration moved for the admission of and I
24 admitted Administrator's exhibits A-1b, A-1e, A-1f, A-1g, A-1h,
25 A-1i, A-1j, A-1k, A-1m, A-1n, A-1o, A-4a, A-5, A-11, A-12, A-13

1 and A-1d.

2 Respondent moved for the admission of and I admitted
3 Respondent's exhibits R-1, R-2, R-3, R-4, R-5, R-10, R-11, R-18,
4 R-19, R-20, R-21, R-22, R-25, R-30, R-33, R-37 and R-39.

5 The Administrator put on its case first. I will talk
6 about the fact witnesses testimony that the Administrator has
7 placed into evidence. I will also talk about the testimony that
8 was presented by the Respondent in this case. I will then discuss
9 whether I find the evidence substantiates the Administrator's
10 allegations.

11 The Administrator presented the testimony of Mr. Delbert
12 Greear. He's a resident of Helen, Georgia, and he testified that
13 he filed a complaint with the FAA regarding the June 19, 2009,
14 helicopter flights in issue in this case.

15 He testified that there were eight or nine passes by a
16 helicopter over his home. He testified that he calculated that
17 the helicopter made its flight over his property at less than 200
18 feet.

19 He is a math teacher at the community college, and he
20 used a mathematical means of measuring the distance and the height
21 of the helicopter. He said it was similar to the way that a
22 rangefinder is used, using the same type of calculations.

23 He testified that his calculations were essentially a
24 gut judgment as well. He said that using trees in the area, which
25 were 70 to 80 feet as a reference. He estimated that the flight

1 in was about 100 feet above the trees.

2 He testified that the flight took place between 6:00 and
3 7:00 p.m. in the evening, and he estimated that the speed of the
4 helicopter as it made its passes to vary between 20 and 30 miles
5 per hour and up to 50 miles an hour.

6 He took a photo of the helicopter over some trees, which
7 he represented as a photo of the helicopter making the passes he
8 described on June 19, 2009. The photo was admitted without
9 objection as Exhibit A-4(a). He took another photo of a
10 helicopter on the ground at a flea market in Robertstown, which
11 was admitted as A-4(b).

12 He testified he was present at the White County
13 commissioners workgroup. He testified Mr. Garst admitted buzzing
14 him -- those were his terms -- and that Mr. Garst wanted to let
15 the audience know and those individuals that live in Helen that he
16 was back and he was not going anywhere.

17 Mr. Greear testified that Mr. Garst was apparently angry
18 because of a writ of mandamus that had been issued which would
19 require a re-zoning hearing.

20 On cross-examination he testified he did not see
21 Mr. Garst piloting the helicopter that made the passes over his
22 property and he did not see the tail number for that helicopter.
23 However, he testified that he heard Mr. Garst, at the White County
24 commissioners meeting, state that he had indeed been flying, the
25 flights that were made on June 19.

1 Mr. Gear admitted that he had been involved in a
2 lawsuit to obtain the writ of mandamus and that he was a member of
3 an organization that I believe he called Stop the Helicopter
4 Tours.com.

5 I found his testimony to be frank, credible, both on
6 direct and cross-examination. He freely admits he does not like
7 the helicopter flights over his home and opposes the helicopter
8 business in Helen. However, that does not impeach his credibility
9 as to what he witnessed on June 19, 2009, and there was nothing on
10 cross-examination to lead me to conclude that Mr. Gear testified
11 incorrectly or falsely.

12 Phillip Shelby next testified for the Administrator. He
13 testified that he too lives in Helen, Georgia. He testified that
14 he and his wife had filed the complaint with the FAA about the
15 June 19, 2009 flights, which has been admitted in A-1(h).

16 He testified that there were 15 to 20 flights
17 originating from just over the ridge from his home which flew into
18 the valley where Helen is located. He testified the flights were
19 made very close to his home and the flights were atypical of any
20 other helicopter flights he had witnessed.

21 He testified the flights were at an altitude of about
22 100 feet above the ground. He testified he used his two-story home
23 as a reference, as it is approximately 20 feet high, and the trees
24 in the area over which the helicopter flew which are 60 to 75 feet
25 high.

1 He testified that comparing the helicopter flight to
2 traffic on the ground, he estimated the helicopter was flying
3 about 30 miles an hour to 50 miles an hour.

4 He testified that he attended the White County meeting
5 and heard Mr. Garst say that he had made the helicopter flights on
6 June 19. He heard Mr. Garst say that he flew the flights in issue
7 because he wanted to make a statement.

8 This witness also testified that after the meeting
9 Mr. Garst was apologetic, but he said he was not sorry he flew
10 over the home of Mr. Greear.

11 Mr. and Mrs. Shelby's complaint indicates, in the body
12 of the complaint, that they felt the flights were retaliatory in
13 nature, were reckless, unsafe, and irresponsible. On cross-
14 examination he testified he was not 100 percent sure the
15 helicopter was flying at 30 miles an hour. He also testified that
16 he believed Mr. Garst was flying the helicopter on June 19 by
17 virtue of the fact that Mr. Garst had admitted it at the White
18 County workgroup meeting. I found his testimony to be credible
19 both on direct and cross-examination.

20 Ms. Teresa Holtzclaw also testified. She's a resident
21 of Helen and has lived there for 31 years. She testified that on
22 June 19, 2009, she witnessed helicopters' flights that were very
23 low and very loud.

24 She said the large helicopter slowly flew over her and
25 her husband's house and barn. The helicopter hovered over her

1 house, flew slowly to their barn, pivoted and flew back over the
2 house at about 100 to 150 feet above the house.

3 She used an 80-foot walnut tree as a reference to
4 estimate the altitude of the helicopter. She said that the
5 helicopter was flying about 50 feet above the tree and about 100
6 feet above her house. She testified that the helicopter was
7 moving very slowly. She described it as barely moving.

8 She testified she saw Mr. Garst at the White County work
9 session meeting as well, and she testified she also heard him say
10 that he had made the June 19 flights and that he stated that it
11 was to make a statement that he was back in the area.

12 She testified that since he provided his business card
13 at the meeting so that anyone that had any complaints about his
14 business could contact him, she was led to believe that he was in
15 control of the helicopter that made the flight on June 19.

16 On cross-examination she testified that she did not see
17 Mr. Garst flying the helicopter, nor did she see the registration
18 number on the helicopter that flew over her home and barn. She
19 admitted that she was part of a group that were the named
20 plaintiffs in the suit to obtain a writ of mandamus against
21 Mr. Garst's helicopter business and she did not want the
22 helicopters flights to continue over her community.

23 I find her testimony credible. I think she was very
24 frank in the fact that she didn't want the helicopters in the
25 area. The fact that she didn't want the helicopters in the area

1 does not necessarily invalidate her testimony, and there was
2 nothing on cross-examination to lead me to believe that she
3 fabricated what she said she had seen during her direct
4 examination in this case.

5 William Holtzclaw, also testified, and he also described
6 the flights on June 19. He described them as low, hostile, and
7 repetitive. The flights took place about between 7:00 and 7:30 in
8 the evening, and he said the flights flew less than 50 feet above
9 the walnut tree in his yard and no more than 100 feet from where
10 he stood at the time.

11 He testified it flew a little higher when it flew over
12 pasture in front of his house. He also testified he believed that
13 Mr. Garst was the pilot of the helicopter because, again, of what
14 Mr. Garst said at the White County workgroup meeting. He
15 testified that Mr. Garst said at the meeting: I did it; I own it;
16 and I wanted to make a statement.

17 His written complaint to the FAA was admitted into
18 evidence as Exhibit A-1-i and Mr. Holtzclaw's complaint was
19 admitted as A-1-g.

20 He said his granddaughter was terrified by the sound of
21 the helicopter, but he was not really certain as to whether or not
22 his granddaughter was at his home on the 19th. On cross he
23 testified again that he wasn't sure if his granddaughter was at
24 his home on the 19th.

25 He did not see the registration number on the helicopter

1 that flew over his home; he did not see Mr. Garst fly the
2 helicopter, but he too indicated on one of the passes the
3 helicopter pivoted above his barn and flew back over the house.

4 He described the tree growth around his house as being a
5 canopy, so apparently from that there was significant tree growth
6 in the area. I found his testimony to be credible both on direct
7 and cross-examination.

8 Mr. David Wilkins next testified that he lived in Helen,
9 Georgia for 21 years. He testified that he witnessed one flight
10 on June 19, 2009, which flew approximately 200 feet above his
11 house. He testified the helicopter was white or off-white in
12 color and it came over his house, hovered, and moved on slowly at
13 about 5 miles an hour.

14 He did not see anyone in the helicopter on the day of
15 the event and he did not know who was piloting the helicopter. He
16 also testified that he could not identify the helicopter as one of
17 those helicopters owned by Mr. Garst because he did not see the
18 tail number.

19 The complaint he made to the Federal Aviation
20 Administration was admitted into evidence as Exhibit A-1-f. In
21 that statement he describes the flights as intentionally made to
22 be upsetting to the community. The complaint indicates that this
23 was confirmed by what Mr. Garst said publicly, that the low
24 flights were to make a statement. Again, those statements were
25 made at the White County workgroup meeting.

1 Mr. James Couch then testified for the Administrator.
2 Mr. Couch works for the FAA FSDO in Atlanta, Flight Standards
3 District Office, and he has done so for 7 years and 5 months. He
4 is an aviation safety inspector and a principal operating
5 inspector. He has an air line transport pilot certificate,
6 commercial pilot certificate. He is a flight instructor, a flight
7 instructor for rotorcraft; he is also an instrument flight
8 instructor. He testified, has more than 4,700 flight hours in
9 various types of helicopters.

10 He was offered as an expert in general helicopter
11 operation, but because Mr. Garst had not been informed that
12 Mr. Couch would testify as an expert, I did not qualify him to
13 testify as an expert. He was allowed to testify, however, based
14 on his experience as a helicopter pilot and as an aviation safety
15 inspector. He testified he was familiar with the light
16 helicopters but has not flown a Robinson R44 or Robinson R22.

17 He testified as to the concept of autorotation. He
18 testified that autorotation occurs when an engine stops
19 functioning and the helicopter blades maintain some degree of lift
20 as air rushes up through the blades and allows the helicopter to
21 descend at a reduced airspeed.

22 He testified in order to have autorotation, a helicopter
23 must have altitude and airspeed. He testified that most light
24 helicopters must be at an altitude of 390 to 400 feet above the
25 ground in order to enter into autorotation and to stabilize that

1 autorotation in order to make a positive outcome landing.

2 He cited the requirements of the law, Section 91.119(a),
3 in his testimony. He testified that a helicopter hovering at 200
4 feet, when it experienced an engine failure, would not have enough
5 altitude to enter into autorotation, stabilize that autorotation,
6 in order to obtain a positive outcome upon landing.

7 He testified there was no reason for a helicopter to fly
8 at 200 feet unless it was an emergency or it had a specific
9 legitimate purpose or was landing or taking off.

10 He testified relative to the height-velocity curve
11 graph, which was admitted without objection as A-11. He testified
12 that the altitude and airspeeds depicted on the graph that fell
13 within a shaded area indicated that autorotation at those specific
14 altitudes and airspeeds could not be accomplished safely. The
15 general recommendation is to avoid autorotation at the speeds and
16 altitudes depicted in the gray area of the graph.
17 He also testified that such a graph was specific to each type of
18 aircraft.

19 He also testified about the noise-abatement procedures
20 in the Robinson model R44-2, which recommends that flights not be
21 conducted below 500 feet in congested areas.

22 On cross-examination he testified that the height-
23 velocity curve graph and noise abatement sections were not
24 regulatory in nature. He also admitted that if someone executed
25 an autorotation at altitudes and airspeeds within the gray area of

1 the chart, that it did not mean someone would die.

2 He testified that inertia was also a necessary element
3 for autorotation, which he had not testified to on direct
4 examination.

5 He testified that autorotation at 100 feet at 100 knots
6 of indicated airspeed or 100 knots could be safe. He agreed that,
7 according to the graph, autorotation at 100 feet altitude at 50
8 knots could also be safe, as it fell outside of the gray area.

9 I found Mr. Couch's testimony to be credible on direct
10 and on cross-examination.

11 Mr. Shane Pengelly also testified. He has an ATP
12 certificate and has worked for the FAA for close to 3 years. He
13 testified about the investigation he conducted in the case. He
14 essentially inherited the case from another inspector.

15 He reviewed the complaints filed with the FAA, contacted
16 the witnesses, to find out if they still wanted to pursue the
17 matter. He spoke to the witnesses by telephone, listened to the CD
18 recording of the White County workgroup meeting. Based on the
19 interviews, he obtained commercial pilot data on Mr. Garst and the
20 registration information on the helicopter 8364-Zulu that is in
21 issue in this case, or is alleged to have made the flights in this
22 case.

23 The helicopter is owned by Mr. Spitzer, and on contact
24 by Mr. Pengelly, Mr. Pengelly was informed that the helicopter had
25 been leased to Sevier County Choppers.

1 Mr. Pengelly did a Google search of the addresses of the
2 complainants' homes, checked with the local aviation fueling
3 centers to determine if Mr. Garst had purchased fuel in the area,
4 and found that there was no evidence of that.

5 He sent a letter of investigation to Mr. Garst, to which
6 he did not receive a written response. He obtained excerpts from
7 the Robinson Helicopter pilot operating handbook specifically for
8 the helicopter in issue, using the serial number from 8364Z.

9 He said that based on that information he asked
10 Mr. Couch to give him an opinion as to autorotation, since
11 Mr. Couch was the only aviation inspector with helicopter
12 experience in the FSDO where he worked.

13 Mr. Pengelly said he spoke to Mr. Garst and that he
14 neither confirmed or denied he was the pilot of the flights in
15 issue. During the investigation he learned that only two pilots
16 could have been flown 8364-Zulu on June 19: Mr. Nick Scott and
17 the Respondent.

18 He contacted Mr. Scott by telephone, who denied that he
19 made the flights in issue. Mr. Scott also provided copies of his
20 logbook to show the flights he made during that day, and they have
21 been made part of the record in the Administrator's case.

22 Mr. Pengelly made his recommendations and forwarded them
23 to the regional legal counsel's office for their consideration.
24 He said that he considered the aggravating factors to be that
25 there were multiple passes at hazardously low altitudes when

1 people were in their homes, even though he determined, based on
2 his view of the matter, that it was a sparsely populated area,
3 despite the fact that there were a number of homes close together.
4 He determined the area was sparsely populated because the flights
5 were over one house at a time and not over all of the houses at
6 the same time.

7 On cross-examination he testified that he conducted the
8 investigation from his desk, making telephone calls and inquiries
9 from there. He did not go out to the heliport to talk to anyone.
10 He agreed that there was another investigation of the helicopter
11 in issue here by the Nashville Flight Standards District Office.
12 That discussion resulted in a stipulation by the parties that
13 placed this specific helicopter at the border of Tennessee and
14 South Carolina at about 2:50 on June 19 of 2009.

15 Mr. Pengelly also agreed, on cross-examination, that no
16 witnesses who testified identified Mr. Garst as the pilot nor
17 identified one of his aircraft.

18 Mr. Garst testified on his own behalf. He was given the
19 opportunity to call a rebuttal witness to prove that he was not in
20 the state on June 19, 2009, which was one of his affirmative
21 defenses. However, during the discussions of the objections and
22 before I ruled on the Administrator's objection, he withdrew his
23 request to call the witness.

24 As the record will reflect, I wanted to make sure that I
25 had not ruled and that he could still call his witness to testify

1 about his affirmative defense. End result was that he withdrew
2 his request to call this witness.

3 Mr. Garst testified he's a retired Army officer with
4 10,000 hours of flight time. He's flown helicopters in two wars
5 and received five air medals, one for valor. He said most people
6 who work for him do not want to leave and that that's the highest
7 compliment an employee can give an employer.

8 He said he'd been thrashed around by people for being
9 too honest. He testified he made the statements as recorded at
10 the White County workgroup meeting. He was there to exercise his
11 freedom of speech, and at that time he did not know that -- that
12 any of his pilots were involved in the flights in issue.

13 Mr. Garst testified that he made the statements that
14 have been attributed to him. He testified that they were not
15 literally truthful, but they figuratively were truthful. He
16 testified that he falsely claimed that the flights were
17 deliberate, and he goes on to testify that he denies that he made
18 the flights in issue on June 19, 2009, or that he authorized them.

19 He provided documents which he argued proved that the
20 helicopter used in the alleged flights was not in the state at the
21 time. However, as I mentioned, the documents and the additional
22 evidence placed the helicopter at the Tennessee and South Carolina
23 border at 2:30, which would give some additional time before the
24 times in issue, between 6:00 and 7:00, for the helicopter to be in
25 the state of Georgia and in Helen at the time that the flights

1 were alleged to have taken place.

2 He had testified that he was confused about all the
3 complaints that were being investigated by the FAA, and he still
4 couldn't get a straight response from the FAA as to whether there
5 were still any pending complaints against him.

6 He provided logbooks for Sevier County Choppers, which
7 indicated flights for the helicopter in issue here, which included
8 flights by Nick Scott and a pilot by the name Mr. Garst could not
9 initially remember, because he referred to pilots as being like
10 gypsies; they come and they go. Then he finally remembered that
11 the pilot's name was Kevin Crye.

12 He again testified that no witness produced by the
13 Administrator could identify him as the pilot; no one could
14 identify any of his helicopters.

15 As far as the testimony of Mr. Couch, Mr. Garst
16 testified that he believed that he was more of an expert than
17 Aviation Inspector Couch and that their conversations as between
18 helicopter pilots and autorotation went over everyone else's head
19 in the courtroom.

20 He testified that even if autorotation was executed
21 within the gray area of the height and velocity graph, that that
22 did not mean some one would die. He agreed with some of the
23 witnesses that were presented by the Administrator that something
24 happened on that day, June 19, 2009, that a helicopter had flown
25 at low levels, but it was not his helicopter and he was not the

1 pilot.

2 He testified that essentially Mr. Greear was lying
3 during his testimony and should not be believed. He moved into
4 evidence tax documents which he claimed showed his business did
5 not start operation until August of 2009, which he said was long
6 after the flights in issue occurred.

7 He testified that the area over which the flights were
8 said to have occurred were covered by a canopy of trees, that
9 there was a pasture where he could have safely landed a helicopter
10 and where a helicopter could be landed and even an airplane could
11 be landed.

12 On cross-examination he testified his commercial pilot's
13 license was valid on June 19, 2009, as well as his medical
14 certificate. He is 50-percent owner of Sevier County Choppers and
15 has been 50-percent owner since January of 2009. His business was
16 leasing 8364-Zulu in June of 2009.

17 He admitted he was the managing member of the company,
18 and he admitted that he had operational control of the business in
19 Helen, and he had operational control over the helicopters at the
20 business, at the Sevier County Choppers, and he had operational
21 control over the pilots that worked for the company.

22 He said he attended a helicopter safety course conducted
23 by the Robinson Helicopter Company, but he did not produce any
24 records to establish that for the record.

25 That has been the testimony that I heard from the

1 witnesses. I now discuss how that evidence affects my decision in
2 this case.

3 I found the testimony of the fact witnesses in this case
4 to be credible. They testified credibly about what they witnessed
5 as to the flights on June 19, 2009. They were credible as to how
6 they estimated the altitudes of the relevant flights, as well as
7 the speeds that they estimated.

8 Nothing on cross-examination led me to conclude that
9 their estimates were fabricated, untrustworthy, or erroneous.
10 While Mr. Garst did point out in his questioning that some of the
11 witnesses did not want his helicopter flying over their
12 communities and took action to try and stop the helicopter
13 operations, the witnesses were honest in their answers. The
14 questioning and the answers did not invalidate the testimony as to
15 what they saw, how they gauged the altitude of the aircraft, how
16 the helicopter was flying, which they described under oath during
17 the course of this hearing. Mr. Garst has not demonstrated that
18 their testimony was not credible or that their motivations move
19 them to lie under oath.

20 As to the testimony of Mr. Couch, while he was not
21 qualified as an expert, he does have substantial experience in
22 helicopters. His testimony as to autorotation and the elements
23 necessary to enter into an autorotation, stabilize the
24 autorotation, and make a safe landing or one with a positive
25 outcome, were credible.

1 While he admitted that inertia was a necessary element
2 to autorotation he did not describe in his direct examination,
3 that, does not invalidate his entire testimony. It certainly goes
4 to the weight of his testimony, but it does not invalidate him or
5 invalidate his experience.

6 He credibly testified as to how the height-velocity
7 curve graph is used to calculate appropriate airspeed and altitude
8 necessary to execute a safe autorotation. He also testified
9 credibly that autorotation is dependent also upon a finding of a
10 suitable level area to set down the helicopter.

11 Certainly in this testimony during the course of this
12 hearing, the only place to land that has apparently been
13 established is a pasture in front of one of the witnesses' house.
14 The rest of the houses, as Mr. Garst just pointed out, and most of
15 the area is covered by a canopy of trees, which I would not
16 believe would produce an adequate landing area to execute a
17 successful emergency autorotation and landing.

18 While Mr. Couch was not qualified as an expert, I give
19 his testimony great weight, based on his substantial experience in
20 flying helicopters.

21 Mr. Pengelly testified, as I said, as to his
22 investigation. I found his testimony to be credible,
23 straightforward on direct and cross-examination. He answered the
24 questions he could. I believe his testimony.

25 So those are the witnesses that were presented by the

1 Administrator. As to the testimony of Mr. Garst, at the White
2 County work session, Mr. Garst has admitted that he said that he
3 could legally fly over Mr. Greear's house, legally. "I did it
4 personally, and I did it personally the day we opened up down
5 there to let the citizens know that I'm here, I'm back, I'm not
6 going anywhere."

7 He also said, "When I left, I told my pilots, I said,
8 you can't do that. I did it because I own it, and I wanted to
9 make a statement." That statement has been gone over throughout
10 the course of this hearing a number of times.

11 In response to the initial complaint, Mr. Garst made a
12 statement to the effect that he made the statements at that
13 meeting in order to take the heat for his pilots. When the
14 Administrator amended his complaint to indicate that Mr. Garst
15 operated the flights in issue, Mr. Garst then argued -- or now
16 argues that none of his pilots made the flights in issue.

17 Here in this courtroom Mr. Garst's statement is that his
18 statements at that meeting were false when he made them, and he
19 testified that they were false because he was not taking the blame
20 for himself, not taking the blame for his pilots, not taking the
21 blame for his company, but what Mr. Garst now tells me is he's
22 taking the blame for any other helicopter pilot that comes under
23 complaints by anyone in Helen.

24 He admitted a business form to convince me that his
25 business did not actually begin operation until August of 2009,

1 after the flights in issue had occurred. However, he contradicted
2 that testimony when he said under oath he was in operational
3 control of the Sevier County Choppers, its helicopters and its
4 pilots, as of June of 2009.

5 I've observed Mr. Garst throughout these proceedings.
6 I've observed his demeanor and the manner in which he conducted
7 himself. I asked questions during the course of this proceedings.

8 Based on his testimony and my observations, I must
9 conclude that I do not find his testimony to be credible during
10 the course of this hearing. He admitted that he made statements
11 at the White County workgroup meeting. I believe those statements
12 were true when he made them. Why else would he take the blame?
13 There's been no explanation that appears to follow any logic that
14 would lead me to conclude that the statements were not true when
15 he made them.

16 Based on the admissions he has made at that meeting and
17 the fact that I do not believe his testimony in this proceeding, I
18 believe he was the pilot-in-command of the helicopter that made
19 the flights in issue.

20 Based on the numerous passes, at low altitude I believe
21 that he was using his helicopter as an instrument to harass those
22 individuals that opposed his helicopter business, I believe that
23 the Administrator has proven by a preponderance of evidence that
24 he was the pilot. I believe that the Administrator has been
25 lenient in the actions they've taken against Mr. Garst.

1 The Administrator has also established Mr. Garst had
2 operational control, even if I didn't find he was the pilot-in-
3 command for those flights on June 19, 2009.

4 The Administrator has established that Mr. Garst had
5 operational control of the Sevier County Choppers, its helicopters
6 and its pilots, during the month of June of 2009.

7 The Administrator has established by a preponderance of
8 evidence that one of Mr. Garst's helicopters made the flight in
9 issue on June 19, 2009.

10 Furthermore, throughout the testimony of Inspector
11 Couch, the Administrator has proven by a preponderance of evidence
12 that the flights were in violation of Section 91.119.

13 I found the testimony of Mr. Couch, as I said, to be
14 credible. While Mr. Garst testified that he believes he's more of
15 an expert than Mr. Couch on this matter, that is not my finding in
16 this case.

17 While an executed autorotation in the gray area of the
18 height-velocity graph may not result in someone dying, as
19 Mr. Garst claims, the Administrator has proven that the flights in
20 issue created an undue hazard to persons or property on the
21 surface.

22 Having found that Mr. Garst was the pilot-in-command for
23 the helicopter that made the flights in issue on June 19, 2009, I
24 also find that the Administrator has proven by a preponderance of
25 evidence that Mr. Garst violated Section 91.13, that he carelessly

1 operated an aircraft so as to endanger the life or property of
2 another.

3 Based on my view of the credible witnesses presented by
4 the Administrator and the evidence in its entirety, I must find
5 that, based upon the factual situations as presented here, the
6 Administrator has made a showing by a preponderance of
7 substantial, reliable, and probative evidence that Mr. Garst
8 operated low-altitude flights over Helen, Georgia homes and
9 businesses at low altitudes varying between 100 to 300 feet.

10 I therefore make the following findings of facts and
11 conclusions of law, and to do that, I am looking at the
12 Administrator's amended complaint.

13 FINDINGS OF FACT AND CONCLUSIONS OF LAW

14 I find that, based on the evidence in this case, that
15 Mr. Garst has admitted to allegation number 1, which indicates at
16 all times material you were and are now the holder of a commercial
17 pilot certification (omitted).

18 Number 2, I find that the Administrator has established
19 that during June of 2009, including but not limited to June 19,
20 2009, you operated a helicopter over homes and businesses at low
21 altitude in Helen, Georgia and/or Robertstown, Georgia
22 communities. I find that the Administrator has established that
23 by a preponderance of the evidence.

24 Number 3, I find that the Administrator has established
25 that you, Mr. Garst, operated a helicopter over the homes and

1 businesses, including but not limited the following: Delbert
2 Greear, David Wilkins, Teressa and William Holtzclaw, Phillip and
3 Janine Shelby, Mike Wilkins, and Alpine Golf, Incorporated.

4 I also find, as to allegation number 4, that the
5 Administrator has established that you operated a helicopter over
6 the Helen and/or Robertstown homes and businesses at low altitudes
7 varying between 100 and 300 feet.

8 I find that the Administrator has established, number 5,
9 that your action of operating a helicopter at low altitudes was
10 careless so as to endanger the life or property of another.

11 Allegation number 6 has also been established, that
12 should the helicopter power unit have failed during the low-
13 altitude flights, the operator would have not been able to conduct
14 an emergency landing without undue hazard to persons or property
15 on the surface.

16 Allegation number 7 is admitted by Mr. Garst again at
17 the White County commissioners work session conducted on June 29,
18 2009. You admitted the following:

19 (a) "Legally we can fly 100 feet over Mr. Greear's
20 house, and I did personally the day we opened up down there to let
21 the citizens know I'm here, I'm back, and I'm not going anywhere."

22 (b) "If they'll notice, once I left, I told my pilots, I
23 said, you can't do that. I did it because I own it and I want to
24 make a statement. So now the pilots fly higher."

25 I further find that, based on all of the evidence, the

1 substantial, probative and reliable evidence in this case, I find
2 that you, Mr. Garst, violated Section 91.13(a), that no person may
3 operate an aircraft in a careless or reckless manner so as to
4 endanger the life or property of another. I found that you
5 operated an aircraft carelessly.

6 I also find that, by a preponderance of the evidence,
7 the Administrator has proven Section 91.119(a), in that except
8 when necessary for takeoff or landing, no person may operate an
9 aircraft below an altitude allowing, if a power unit fails, an
10 emergency landing without undue hazard to a person or property on
11 the surface.

12 In conclusion, having found as proven the specific
13 allegation in the Administrator's amended complaint by a
14 preponderance of reliable, probative, and credible evidence, I now
15 turn to the sanction imposed by the Administrator in this case.

16 As to the appropriate sanction in this case by statute,
17 deference is to be given to the choice of sanction chosen by the
18 Administrator in the absence of any showing that the deference is
19 to an interpretation which is arbitrary, capricious, or not in
20 conformity with the law.

21 There has been no such showing in this case. The actual
22 sanction guidelines have been made an exhibit in this case.
23 Therefore I find I must to give deference to the Administrator's
24 choice of sanctions.

25 I find, therefore, that the sanction brought by the

1 Administrator is appropriate and warranted in the public interest
2 and air commerce and air safety. Therefore, I find that the
3 Administrator's Order of Suspension, the amended complaint herein,
4 must be and shall be affirmed.

5 ORDER

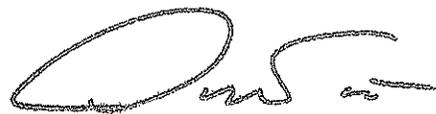
6 Respondent James H. Garst's commercial pilot certificate
7 number (omitted) and any other commercial pilot certificate held
8 by him be, and hereby is, suspended for a period of 120 days.

9 I find that the 120 days is reasonable, based on the
10 aggravating factors, the facts of this case that would indicate
11 that there was no legitimate purpose for those flights at that
12 altitude over these individuals' homes.

13 Therefore I find, as I've indicated, a period of 120
14 days is appropriate.

15

16



17 EDITED ON

ALFONSO J. MONTAÑO

18 February 28, 2011

Administrative Law Judge

19

20

APPEAL

21 Now, as to the appeal in this case, this is the oral
22 initial decision, which can be appealed to the full Board, and
23 they can decide whether or not my decision is correct. They can
24 either reverse my decision, remand the decision for further
25 proceedings, or affirm the decision.

1 There are a group of Board members that will review the
2 evidence in this case and will make their decision as to whether
3 or not this decision is correct.

4 I have provided the court reporter with sheets of paper
5 which include all of the appeal procedures that are necessary in
6 this case. You still have control over your commercial pilot's
7 license until the appeals have been exhausted, Mr. Garst.

8 But in any event I will have the court reporter hand
9 those out, if you could just put them on top of the railing there,
10 and, Mr. Pengelly, if you could just grab one and give one to
11 Mr. Garst.

12 That includes all the information that you'll need to
13 appeal this case. A record will be made available to you of these
14 proceedings without cost to you, and you can make that request
15 through the court reporting service.

16 That concludes my decision in this case and the
17 proceedings in this case.

18 (Whereupon, at 4:40 p.m., the hearing in the above-
19 entitled matter was concluded.)

20

21

CERTIFICATE

This is to certify that the attached proceeding before the
NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: James H. Garst
DOCKET NUMBER: SE-18886
PLACE: Gainesville, Georgia
DATE: January 20, 2011

was held according to the record, and that this is the original,
complete, true and accurate transcript which has been compared to
the recording accomplished at the hearing.

Brenda W. Thompson
Official Reporter