

SERVED: August 4, 2014

NTSB Order No. EA-5726

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 31st day of July, 2014

_____	)	
MICHAEL P. HUERTA,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	
v.	)	Docket SE-19453
	)	
MARIO COSTA,	)	
	)	
Respondent.	)	
	)	
_____	)	

**OPINION AND ORDER**

**1. Background**

Respondent appeals the oral initial decision of Administrative Law Judge Stephen R. Woody, issued July 24, 2013.<sup>1</sup> By that decision, the law judge affirmed the Administrator’s order suspending respondent’s private pilot certificate for 90 days on the basis respondent violated 14 C.F.R. §§ 91.7(a), 91.13(a), and 91.405(a) by operating an aircraft with an electrical

<sup>1</sup> A copy of the oral initial decision, an excerpt from the hearing transcript, is attached.

system fault.<sup>2</sup> We grant respondent's appeal and remand for further proceedings.

*A. Facts*

The Administrator's order alleged respondent flew an airplane with a known electrical fault, after having diverted during the preceding flight to the departure airport for an unplanned landing due to an electrical system failure.<sup>3</sup> The order became the complaint in this case, which proceeded to a hearing before the law judge on July 23 and 24, 2013.

On June 20, 2012, respondent was pilot-in-command of his Beechcraft Bonanza G36 airplane on a flight under visual flight rules (VFR) from Long Island MacArthur Airport (ISP) in Islip, New York, to Essex County Airport (CDW) in Caldwell, New Jersey, when he noticed a multi-function display in the cockpit begin to "flicker" and perceived an electrical system fault.<sup>4</sup> Respondent elected to divert to nearby Westchester County Airport (HPN) near White Plains, New York, instead of continuing to CDW. He advised air traffic control of the electrical issues with an indication of a "bat[tery] one" problem.<sup>5</sup> As respondent neared HPN, the airplane's electrically-operated landing gear and flaps failed to extend normally. Respondent manually extended the landing gear and made a low pass over the field for ground observers to assess whether the landing gear was, in fact, down.<sup>6</sup> In testimony before the law judge, respondent

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<sup>2</sup> Section 91.7(a) prohibits operation of an unairworthy aircraft; section 91.13(a) prohibits operation of "an aircraft in a careless or reckless manner so as to endanger the life or property of another"; and section 91.405(a) requires an owner or operator of an aircraft to "have that aircraft inspected as prescribed in subpart E of [part 91] and shall between required inspections . . . have discrepancies repaired . . ."

<sup>3</sup> See Compl. 1-2.

<sup>4</sup> Tr. 157-58.

<sup>5</sup> Tr. 158; Exh. J-1C.

<sup>6</sup> Tr. 174; Exh. J-1B.

characterized the ultimate electrical fault, once it spread to preclude normal operation of the landing gear and flaps, as “complete failure” and “100 percent failure.”<sup>7</sup>

Stephen Ferrara, a Federal Aviation Administration (FAA) aviation safety inspector whom the law judge accepted as an expert in general aviation operations, testified manual extension of the landing gear “is a last resort” and that a pilot would not necessarily receive a cockpit indication that manually-extended gear was down and locked in the midst of an electrical system failure.<sup>8</sup> Mr. Ferrara stated the inability to extend the landing gear normally is “a major issue” and a pilot’s inability to confirm the landing gear is down and locked is “a safety issue.”<sup>9</sup>

Once on the ground at HPN, respondent taxied to the ramp of Panorama Flight Service and solicited the assistance of mechanics.<sup>10</sup> Testimony conflicted as to what happened next. Respondent testified two Panorama mechanics, Dexter Stewart and Sean Amsterdam, asked him to sign a form, visually inspected the engine compartment and observed cockpit instruments with the engine running, and found nothing amiss but offered to “take a couple of days to do further analysis.”<sup>11</sup> Respondent testified he asked Mr. Stewart and Mr. Amsterdam if it was safe to fly the airplane back to CDW and they told him, “It’s a VFR day. There’s no reason why you can’t make it to Caldwell.”<sup>12</sup> He testified they assured him there was no charge for the examination of the airplane because they did no work.<sup>13</sup>

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<sup>7</sup> Tr. 184-85.

<sup>8</sup> Tr. 136-37.

<sup>9</sup> Tr. 135, 137.

<sup>10</sup> Tr. 159-60.

<sup>11</sup> Tr. 161-62.

<sup>12</sup> Tr. 162.

<sup>13</sup> Tr. 163.

However, Mark Woinicki, Panorama's director of maintenance, testified Panorama policy requires mechanics to charge pilots even for troubleshooting that does not lead to diagnosis of a problem, and requires a pilot seeking maintenance or even evaluation to sign a work authorization, which the company retains for two years.<sup>14</sup> He testified Panorama's records did not include a work authorization for respondent's aircraft,<sup>15</sup> although a log of transient aircraft parking on the Panorama ramp on June 20, 2012, showed respondent's aircraft was parked there that day.<sup>16</sup> Mr. Woinicki testified that, based on Panorama records and routine business practices, Panorama mechanics "didn't work on respondent's aircraft at all."<sup>17</sup>

Both Mr. Stewart and Mr. Amsterdam testified at the hearing, and neither mechanic specifically recalled respondent or his airplane.<sup>18</sup> Both testified they would never tell a customer an airplane was safe for return to service without generating documentation<sup>19</sup> and would never evaluate an aircraft without generating a work authorization;<sup>20</sup> Mr. Amsterdam testified Panorama procedures require, "[o]nce we touch the aircraft, we have to bill the customer."<sup>21</sup> The two mechanics' work records did not list any activity with respect to respondent's airplane.<sup>22</sup>

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<sup>14</sup> Tr. 52-54

<sup>15</sup> Tr. 40, 44-45.

<sup>16</sup> Exh. R-13.

<sup>17</sup> Tr. 46.

<sup>18</sup> Tr. 62, 75.

<sup>19</sup> Tr. 65, 76.

<sup>20</sup> Tr. 63-64; 74-76.

<sup>21</sup> Tr. 74.

<sup>22</sup> See Exh. A-3.

It is undisputed, at some point after parking the airplane on the Panorama ramp, respondent started the airplane and flew it from HPN to CDW. Respondent testified he tried to replicate the electrical fault during engine run-ups and troubleshooting before taxiing for takeoff, but those efforts were unsuccessful, and the fault did not materialize again.<sup>23</sup> FAA inspector Louis Misiano, who contacted respondent by phone on June 26, 2012, to investigate the precautionary landing at HPN, testified respondent told him “he wasn’t able to get maintenance fast enough, and that he contacted someone to reset some switches, and that he did that, and he performed a run-up and all the systems appeared to be working properly at that time,” and ultimately departed HPN for CDW.<sup>24</sup>

Little evidence was adduced at the hearing regarding events on the flight from HPN to CDW. Mr. Misiano’s record of his post-event telephone call with respondent reflected respondent told Mr. Misiano that he had a “light flickering” while on approach to CDW,<sup>25</sup> and respondent’s logbook entry for the flight from HPN to CDW contains a notation of “low volt bat one.”<sup>26</sup> Respondent testified, however, the notation for the logbook entry was merely a continuation of the entry for the flight from ISP to HPN, which read, “bat one fail—partial panel, gear down,” and he maintained he did not tell Mr. Misiano a light was flickering during the approach to CDW.<sup>27</sup>

After arrival at CDW, respondent took the airplane to C&W Aero Services; Sean Nederfield, C&W’s director of maintenance, and another mechanic performed three run-ups of

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<sup>23</sup> Tr. 161-63.

<sup>24</sup> Tr. 86.

<sup>25</sup> Exh. A-4.

<sup>26</sup> Exh. J-1C.

<sup>27</sup> Exh. J-1C; Tr. 170, 187.

the engine before replicating an electrical fault during the fourth run-up.<sup>28</sup> Mr. Nederfield testified it was “very normal” for mechanics to try several times to replicate a problem before the problem resurfaced.<sup>29</sup> Inspecting the airplane’s main alternator after the run-ups, C&W mechanics found stator windings that appeared “a bit discolored” or “burnt”, which Mr. Nederfield testified may have been related to the electrical failure: “what we thought . . . could be causing [the alternator] to intermittently drop offline was that overheated or burned section of the stator windings in the alternator.”<sup>30</sup> Mr. Nederfield testified he and C&W mechanics, reaching a decision out of “precaution” because of the inconclusive nature of their findings, then replaced the aircraft’s main alternator, which, as Mr. Nederfield explained, feeds electrical power to “a good part of the aircraft systems, airframe systems,” including the landing gear and flaps.<sup>31</sup> Mr. Nederfield further testified it was more likely than not the alternator problem caused the in-flight electrical issue, and he opined the problem was an unsafe condition that needed to be addressed.<sup>32</sup> Mr. Ferrara testified, in his opinion, “after [respondent] experienced the battery failure and wasn’t able to get the gear down, that’s egregious, that’s a problem. I would have expected him to get the airplane inspected and repaired” before flying from HPN to CDW over a populated area in “congested air.”<sup>33</sup> Mr. Ferrara testified the

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<sup>28</sup> Tr. 110-11.

<sup>29</sup> Tr. 115.

<sup>30</sup> Tr. 112.

<sup>31</sup> Tr. 106-07.

<sup>32</sup> Tr. 113.

<sup>33</sup> Tr. 138-39.

subsequent replacement of the airplane's alternator by C&W Aero Services "absolutely tells me that there was definitely an electrical issue, an electrical anomaly."<sup>34</sup>

### *B. Law Judge's Order*

At the conclusion of the hearing, the law judge issued an oral initial decision affirming the Administrator's order of suspension. Citing the absence of evidence of any mechanic's return of the airplane to service, respondent's logbook entry recounting an annunciation in flight from HPN to CDW, Mr. Misiano's record of respondent's statements regarding the flight to CDW, and "[t]he fact that [respondent] had to have the main alternator replaced immediately upon his return to Caldwell," the law judge found respondent departed HPN despite an unsafe condition.<sup>35</sup> The law judge observed that the degradation of landing gear and flap operation during the flight from ISP to HPN created "a very dangerous situation" that respondent failed to address before taking off for CDW.<sup>36</sup> Accordingly, the law judge found respondent violated the Federal Aviation Regulations as charged by operating the aircraft from HPN to CDW and imposed the Administrator's requested sanction of a 90-day suspension.<sup>37</sup>

### *C. Issues on Appeal*

Respondent first argues the evidence does not support the law judge's finding he violated 14 C.F.R. § 91.7(a) by operating an unairworthy aircraft, insofar as respondent and mechanics failed to replicate the electrical system fault on the ground at HPN and reasonably relied on the assurances of the two Panorama mechanics that they found nothing amiss. Respondent argues

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<sup>34</sup> Tr. 139.

<sup>35</sup> *Id.* at 242, 245.

<sup>36</sup> *Id.* at 242.

<sup>37</sup> *Id.* at 251.

Mr. Woinicki, Mr. Stewart, and Mr. Amsterdam had reason to be untruthful in their testimony that they never initiated a work authorization for the airplane. Second, respondent argues the sanction of a 90-day suspension was unreasonable and inconsistent with Board precedent.

## **2. Decision**

### *A. Standard of Review*

We review the law judge's order *de novo*.<sup>38</sup>

### *B. Analysis*

Longstanding Board precedent holds that an aircraft is in an airworthy condition if it (1) conforms to its type certificate and applicable airworthiness directives, and (2) is in a condition for safe operation.<sup>39</sup> Both parts of the standard must be met to conclude an aircraft is airworthy; therefore, "to prevail on an airworthiness charge, the Administrator need only prove the aircraft fails to meet one of the two [parts]."<sup>40</sup> The Administrator must prove unairworthiness by a preponderance of the evidence.<sup>41</sup>

This case involves the second part of the airworthiness standard. A finding of violation based on the second part of the standard is appropriate if the weight of the evidence shows the

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<sup>38</sup> Administrator v. Dustman, NTSB Order No. EA-5657 at 6 (2013) (citing Administrator v. Smith, NTSB Order No. EA-5646 at 8 (2013), Administrator v. Frohmuth and Dworak, NTSB Order No. EA-3816 at 2 n.5 (1993); Administrator v. Wolf, NTSB Order No. EA-3450 (1991); Administrator v. Schneider, 1 N.T.S.B. 1550 (1972)).

<sup>39</sup> Administrator v. Surratt and Walkers, NTSB Order No. EA-5514 at 6 (2010) (citing Administrator v. Anderson, NTSB Order No. EA-3976 at 2 (1993); Administrator v. Nielsen, NTSB Order No. EA-3755 at 4 (1992); Administrator v. Copsey, 7 NTSB 1316, 1317 (1991); and Administrator v. Doppes, 5 NTSB 50, 52 n.6 (1985)).

<sup>40</sup> Administrator v. Smith, NTSB Order No. EA-5646 at 4 (2013).

<sup>41</sup> Administrator v. Haddock, NTSB Order No. EA-5539 at 4 (2010); Administrator v. Thibert, NTSB Order No. EA-5306 at 2 (2007); Administrator v. Van Der Horst, NTSB Order No. EA-5179 at 3 (2005).

pilot “*knew or should have known* that the aircraft was not in a condition for safe operation.”<sup>42</sup>

The mere fact an aircraft is capable of performing a flight does not mean the aircraft is airworthy; as we have observed, “[t]he term ‘airworthiness’ is not synonymous with flyability, and, once an aircraft has been rendered unairworthy because of damage . . . , it must be repaired and returned to service by means of an established protocol . . . .”<sup>43</sup>

However, the mere necessity of a subsequent repair does not conclusively prove the actual existence of an unsafe condition during a flight before the repair—particularly when evidence establishes the problem was replicated only after multiple attempts.<sup>44</sup>

In this case, the mere fact respondent’s airplane was flyable from HPN to CDW does not mean it was in an airworthy condition for that flight. We do not disagree with the law judge’s observation that an electrical failure that degrades the operation of essential equipment such as landing gear and flaps, as occurred during the preceding flight, is a “very dangerous condition.” On the other hand, the mere fact respondent ultimately had to have the alternator replaced does not conclusively establish the existence of an unsafe condition during the flight from HPN to CDW, in view of evidence that the airplane’s electrical system functioned normally after startup on the ground at HPN and that multiple troubleshooting attempts were required before C&W mechanics detected an electrical issue.<sup>45</sup>

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<sup>42</sup> Smith, NTSB Order No. EA-5646 at 7 (emphasis in original).

<sup>43</sup> Administrator v. Doppes, 5 N.T.S.B. 50, 53 n.6 (1985).

<sup>44</sup> See Administrator v. Werve, NTSB Order No. EA-4213 at 3 (1994) (“Second, the repairs ultimately conducted on the aircraft are of little or no use in proving the door (and thus the aircraft) unairworthy, as they do not reliably confirm either that there was a problem with the door at the time respondent checked it or that, if there was a problem, it was the problem noted by the January 27 crew. It took extensive trials to produce any problem with the door, and when a problem ‘developed,’ it was not clearly the same problem as a door that would not open.”).

<sup>45</sup> See id.

Presented with the record before us in this particular case, we cannot reliably infer the electrical fault that required diversion to HPN actually re-emerged during the flight from HPN to CDW and created an unsafe condition about which respondent knew or should have known. The law judge summarily drew such an inference, but, after careful review of the record, we cannot conclude the law judge made sufficiently detailed findings based on record evidence as to the relationship among the electrical failure during the first flight, the problem ultimately discovered in the alternator, and the condition of the airplane during the second flight. We therefore remand the case to the law judge for more explicit factual findings on the issue of whether, in fact, an unsafe condition persisted during the flight from HPN to CDW.

We emphasize that this decision is limited to the facts of this particular case. We do not intend to suggest a pilot situated similarly to respondent, having landed after experiencing an inflight electrical failure, should operate a subsequent flight without a mechanic's return to service if the pilot has reason to believe an unsafe condition persists, even if the pilot fails to immediately replicate the failure on the ground. In this particular case, however, the record raises at least a question about whether the unsafe condition re-emerged or persisted during the second flight or whether the unsafe condition was purely transient. On remand, the law judge should make more detailed findings regarding the existence or non-existence of an unsafe condition during the second flight and may wish to receive further testimony and evidence supporting such findings, even if they are based on circumstantial evidence, that respondent operated the airplane from HPN to CDW with an unsafe condition.<sup>46</sup>

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<sup>46</sup> On remand, the law judge may wish to take more testimony or receive more evidence, and to make more detailed findings, concerning (1) why the issues ultimately discovered in respondent's alternator created an unsafe condition, and (2) what, if anything, happened during the second flight that would support a finding as to an unsafe condition.

Because we are remanding the case to the law judge, we need not address the remaining issues on appeal, including the law judge's credibility determinations and findings regarding respondent's transaction with the Panorama mechanics and the appropriateness of the 90-day suspension of respondent's private pilot certificate. On remand, the law judge should specifically tie his additional findings of fact to corresponding credibility findings regarding the condition of the airplane during the flight from HPN to CDW.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is granted;
2. The law judge's initial decision is reversed; and
3. The case is remanded to the law judge for further proceedings consistent with this

Opinion and Order.

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



## APPEARANCES:

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P R O C E E D I N G S

(3:07 p.m.)

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3 ADMINISTRATIVE LAW JUDGE WOODY: This is day 2 of the  
4 proceeding in the case of the Administrator versus Mr. Mario  
5 Costa. And we have convened so I can announce my Oral Initial  
6 Decision.

ORAL INITIAL DECISION AND ORDER

7  
8 ADMINISTRATIVE LAW JUDGE WOODY: This is a proceeding  
9 under the provisions of Title 49, United States Code, Section  
10 44709 and the provisions of the Rules of Practice in Air Safety  
11 Proceedings of the National Transportation Safety Board.

12 This matter has been heard before me and as provided by  
13 the Board's ~~R~~rules, I've elected to issue an Oral Initial Decision  
14 in this matter.

15 Pursuant to notice, this matter came on for trial on  
16 July 23rd and 24th, 2013 in New York City. The Administrator was  
17 represented by staff counsel, Mr. Zachary Berman of the Eastern  
18 Region, Federal Aviation Administration. The Respondent was  
19 represented by Mr. Justin Marchetta, Esquire. The parties were  
20 afforded full opportunity to offer evidence, to call, examine, and  
21 cross-examine witnesses and to make arguments in support of their  
22 respective positions.

23 I will not discuss all of the evidence in detail. I  
24 have, however, considered all the evidence, both oral and  
25 documentary, and that which I do not specifically mention is

1 viewed by me as being corroborative or as not materially affecting  
2 the outcome of this decision.

3           The Respondent, Mr. Mario Costa, has appealed ~~to~~ the  
4 Administrator's Order of Suspension, dated March 14th, 2013. And  
5 pursuant to the Board's Rules, the Administrator filed a copy of  
6 that order on March 28th, 2013, which serves as the complaint in  
7 this case. The Administrator subsequently amended the Order of  
8 Suspension on April 23rd, 2013 and then again verbally on July  
9 23rd, 2013. And that amendment, that last verbal amendment was  
10 with without objection from the Respondent.

11           The Administrator ordered the suspension of Respondent's  
12 private pilot certificate and any other FAA-issued pilot's  
13 certificates based on Respondent's violation of Federal Aviation  
14 Regulation, Section 91.7(a), 91.13(a) and 91.405(a). More  
15 specifically, the complaint alleges that Respondent operated a  
16 civil aircraft in an unairworthy condition, operated an aircraft  
17 in a careless or reckless manner so as to endanger the life or  
18 property of another, and failed to have his aircraft inspected or  
19 discrepancies repaired, as required by 14 Code of Federal  
20 Regulations, Part 43.

21           In his answer to the Administrator's complaint,  
22 Respondent admitted paragraphs 1 through 3 and 5. As he has  
23 admitted those allegations, they're deemed as established for  
24 purposes of this decision. Respondent has denied paragraphs 4 and  
25 6 through 9 of the complaint.

1           The Administrator moved for the admission of Exhibits A-  
2 1 through A-4 and A-8, which were admitted into evidence without  
3 objection by Respondent. Respondent moved for the admission of  
4 Exhibits R-2, R-6, R-9 and 10, R-12 and 13, which were admitted  
5 into evidence without objection by the Administrator. The parties  
6 also jointly offered Exhibit J-1, which was admitted into  
7 evidence.

8           The Administrator presented testimony of Mr. Mark  
9 Woinicki, Mr. Dexter Stewart, Mr. Sean Amsterdam, Mr. Louis Misiano,  
10 Sean  
11 Mr. Sean Nederfield, and Mr. Stephen Ferrara.

12           Mr. Woinicki is the director of maintenance at Panorama  
13 Flight Service at Westchester County Airport, New York. He  
14 testified that the customer intake process at Panorama  
15 involves first filling out a work authorization form prior to  
16 completing any evaluation or repair. That form, such as the one  
17 at Exhibit A-8, includes a collection of credit card and billing  
18 information. There are two such forms, one for piston aircraft  
19 and one for turbine aircraft. There are no other work  
20 authorization forms now or in June of 2012.

21           Once that form is completed, a work order number is  
22 assigned and a work order opened. No evaluation or repair can be  
23 completed without a work authorization or work order being done.  
24 Even if a mechanic were to troubleshoot a problem and perform no  
25 repairs, a work order is opened and the customer is charged for  
any evaluation completed. The only way no charge is made is if

1 the evaluation is related to prior service completed at Panorama  
2 that needs to be reevaluated. The same is not true for new  
3 customers. Panorama maintains copies of all work orders and  
4 related documentation for 2 years.

5 Mr. Woinicki reviewed all work orders, time cards,  
6 billable hour reports and billing documents for June 20th, 2012,  
7 and there is no record of any work being completed on the aircraft  
8 tail number November-979-November-Alpha and no record of Mr. Costa  
9 as a customer. Sean Amsterdam and Dexter Stewart, both mechanics  
10 at Panorama, had billable hours for June 20th, 2012, but no record  
11 of work completed on Mr. Costa's aircraft.

12 Based on his reviews, Mr. Woinicki concluded Panorama  
13 did not work on Mr. Costa's aircraft at all. He has seen the  
14 transit log, which is maintained by a different department and  
15 shows that Mr. Costa's aircraft was on the Panorama ramp on June  
16 20th, 2012, but that does not mean any work was completed and does  
17 not change his conclusion.

18 On cross-examination, Mr. Woinicki indicated that he was  
19 not at work on June 20, 2012 and that his review of Panorama  
20 records did not include a review of video surveillance footage  
21 from the ramp area. He also admitted that he is aware of past  
22 incidents where a mechanic completed work for a customer without a  
23 work order, but that was a unique situation involving a 30-year  
24 mechanic completing work for an established customer he had been  
25 working with for over 20 years.

1           Mr. Woinicki indicated that, rarely, a work  
2 authorization form is completed and no work done. The only way  
3 that would occur is if a customer completes the work authorization  
4 and then changes his mind about having any work completed. In  
5 those cases, the work authorization is destroyed immediately  
6 because it contains credit card information, and no record of the  
7 work authorization is maintained.

8           Dexter Stewart and Sean Amsterdam are both full-time  
9 mechanics at Delta Airlines and work part-time at Panorama, and in  
10 June 2012, Mr. Stewart was working full-time for Panorama and  
11 Mr. Amsterdam, part-time. Both were working on June 20th, 2012.  
12 Neither have any specific recollection of Mr. Costa or his  
13 aircraft nor any independent recollection of work completed on  
14 June 20th, 2012 aside from what is documented in Panorama records  
15 for that date.

16           Both testified that they always followed Panorama  
17 procedures for customer intake, which required completion of a  
18 work authorization form and opening a work order before performing  
19 any work or evaluation on an aircraft. Both testified that they  
20 have never inspected or troubleshot an aircraft at Panorama  
21 without a work order or without charging for work completed. Both  
22 testified that they've never inspected or troubleshot an aircraft  
23 and advised a customer it was safe to operate without generating a  
24 work order. Both testified that the piston work authorization  
25 form at Exhibit A-8 and a similar turbine work authorization form

1 are the only two such forms used by Panorama. There are no other  
2 or different work authorization forms.

3 Mr. Stewart acknowledged that he has, at times, been  
4 called to the ramp to assist inbound aircraft but did not recall  
5 whether that happened on June 20th, 2012. In those cases, he  
6 still completes a work authorization form and generates a work  
7 order. He also agreed that he's had instances where he's been  
8 unable to replicate reported problems on an aircraft, including  
9 electrical problems.

10 Mr. Amsterdam indicated that he had been made aware of  
11 past instances where work was completed without a work order and  
12 the customer did not want to pay afterwards. He indicated he was  
13 advised that was the reason the current policy for work  
14 authorizations and work orders was in place. The current policy  
15 has been in place since before he began work in 2011.

16 Louis Misiano is currently assigned to the FAA Eastern  
17 Region Office in Burlington, Massachusetts but was previously  
18 assigned as an aviation safety inspector, or ASI, for general  
19 aviation maintenance at the Farmingdale, New York Flight Standards  
20 District Office, or FSDO. He was the ASI assigned to investigate  
21 Mr. Costa's purported electrical failure and diversion to  
22 Westchester County Airport in June of 2012.

23 He interviewed Mr. Costa by telephone, took handwritten  
24 notes, and then transcribed those notes into the typewritten  
25 record at Exhibit A-4. He indicated the typewritten record was

1 transcribed within a day or two of the telephone conference and  
2 his handwritten notes were then discarded.

3           Mr. Misiano testified that Mr. Costa informed him of the  
4 electrical failure during his flight on June 20th, 2012 that  
5 caused him to divert to Westchester County Airport. As a result  
6 of the failure, Mr. Costa had to manually extend his landing gear  
7 before landing. After landing, he first went to Signature Flight  
8 Services, where he couldn't get service, and then he crossed the  
9 field to Panorama, where he was also unable to get service right  
10 away.

11           Mr. Costa indicated he called someone and was able to  
12 reset switches and do a run-up of his aircraft. Everything came  
13 up online and all systems indicated okay. Mr. Costa stated he  
14 believed the aircraft to be airworthy so he decided to take off  
15 and fly to Caldwell Airport. Mr. Misiano does not know who  
16 Mr. Costa spoke with about resetting switches, and he did not ask.  
17 He found out afterwards that the main alternator was found to be  
18 at fault and had to be replaced upon Mr. Costa's return to  
19 Caldwell. That was not apparent until the problem was troubleshot  
20 completely. Mr. Misiano indicated the main alternator is tied to  
21 the landing gear and flaps along with much of the heavy electronic  
22 load on the aircraft. The standby alternator is primarily for the  
23 avionics.

24           On cross-examination, Mr. Misiano indicated that during  
25 his investigation, the only individual from Panorama that he

1 interviewed was the director of maintenance, Mr. Woinicki. He did  
2 not interview Mr. Amsterdam or Mr. Stewart. He did request any  
3 documents related to maintenance performed but was advised that  
4 there were none. He did not request video surveillance footage.  
5 He did have a second conversation with Mr. Costa but did not  
6 reduce that to writing because that was primarily for purposes of  
7 asking for further documentation and nothing more factual in  
8 nature.

9           Mr. Misiano stated the entries for June 20th, 2012 in  
10 Mr. Costa's pilot logbook -- and that's at Exhibit J-1C -- has  
11 separate entries for the trip from Islip to Westchester and from  
12 Westchester to Caldwell and that those entries appeared to be  
13 consistent with the issues reported to him by Mr. Costa. However,  
14 Mr. Misiano had not seen those prior to the hearing, as he had not  
15 requested that information from Mr. Costa.

16           Mr. Misiano indicated that he is familiar with Federal  
17 Aviation Regulation Section 91.7(b), which makes the pilot-in-  
18 command responsible for determining whether the aircraft is in a  
19 condition for safe flight. However, he also indicated that  
20 whereas here there is a significant discrepancy, only a certified  
21 mechanic can return the aircraft to service.

22           Mr. Stephen Ferrara is an ASI for operations in the  
23 Farmingdale, New York FSDO. He holds a commercial pilot  
24 certificate with instrument rating and is a certified flight  
25 instructor with multi-engine and instrument ratings. He's been a

1 flight instructor for approximately 20 years, including as a chief  
2 flight instructor and check flight instructor for two  
3 universities. His qualifications and experience are more fully  
4 set forth in his resume at Exhibit A-1. He was recognized as an  
5 expert in general aviation operations.

6 Mr. Ferrara is familiar with and has flown the Beech  
7 Bonanza, albeit the A-36 rather than the G-36 model. He testified  
8 that the electrical systems on the two aircraft are similar in  
9 nature.

10 Regarding Mr. Costa's written statement at Exhibit J1-B,  
11 Mr. Ferrara testified that being unable to extend the landing gear  
12 is a major issue and that manually extending the gear is a last  
13 resort. When manually extending the gear, there's no confirmation  
14 in the cockpit that the gear are down and locked, which could  
15 result in a belly landing or a gear collapsing if not fully  
16 extended. The need for Mr. Costa to do a low-level approach for  
17 the tower to confirm his gear were down is an indication he did  
18 not have a cockpit indicator that the gear were, in fact, down.

19 Mr. Ferrara testified that, in his opinion, departing  
20 from Westchester to Caldwell without maintenance completed and the  
21 discrepancy repaired was dangerous. The fact that the main  
22 alternator had to be replaced immediately upon his return to  
23 Caldwell confirms that there was an electrical anomaly that should  
24 have been fixed before Mr. Costa's departure. He also testified  
25 that Mr. Costa's flight between Westchester and Caldwell was over

1 a very congested area, which merely increased the danger.

2 Mr. Ferrara indicated he was the reporting investigator  
3 on this case although the investigation was begun by Mr. Misiano.  
4 Mr. Ferrara did not personally interview Mr. Costa, Mr. Nederfield  
5 or any individuals at Panorama or Westchester Airport nor did he  
6 inspect or run tests on the aircraft. His opinions are based on  
7 facts and documentation gathered and relying on his background in  
8 general aviation.

9 As a pilot, with the discrepancy noted in this case, he  
10 would not be comfortable returning the aircraft to service without  
11 having a certified mechanic evaluate and repair the discrepancy.  
12 In his opinion, any reasonable pilot would need to have the  
13 aircraft evaluated and returned to service by a qualified  
14 mechanic.

15 He further opined that if a pilot who is not a certified  
16 mechanic was unable to replicate the problem, that would not be  
17 enough to safely return the aircraft to service. However, if a  
18 qualified mechanic fully evaluated the aircraft and determined it  
19 was appropriate to return to service, then it would be reasonable  
20 and safe to fly the airplane.

21 Mr. Sean Nederfield was called as a witness for both the  
22 Administrator and the Respondent. He is an A&P mechanic since  
23 1991, employed as director of maintenance at C & W Aero Services  
24 at the Caldwell, New Jersey Airport. Mr. Costa has been a regular  
25 customer of C & W since he purchased his Beech Bonanza in 2008.

1           In June 2012, C & W replaced the main alternator on  
2 Mr. Costa's aircraft after he had an electrical failure that  
3 caused him to divert to Westchester. Mr. Costa advised  
4 Mr. Nederfield he had an alternator problem that he had someone at  
5 Westchester look at but did not initially tell him about the  
6 landing gear problem. He reported the landing gear problem only  
7 after Mr. Nederfield had completed the alternator replacement and  
8 returned the aircraft to service. Mr. Nederfield also did not  
9 recall Mr. Costa reporting any issues with the flight from  
10 Westchester to Caldwell.

11           Mr. Nederfield testified that he performed three run-ups  
12 without replicating the problem and that the alternator went  
13 offline only on the fourth run-up. He also testified it was not  
14 unusual to have to do multiple run-ups before replicating a  
15 reported problem. After the alternator went offline, they took  
16 the aircraft back to the hangar and did a thorough inspection  
17 during which they noted the stator windings in the main alternator  
18 looked burnt.

19           When the plane was initially given to Mr. Nederfield for  
20 evaluation and repair, it appeared to be in a condition for safe  
21 flight. Once he found the alternator windings burnt, the aircraft  
22 did not appear to him to be in a condition for safe flight.

23           In his estimation, the alternator was the likely cause  
24 of the problem that caused Mr. Costa's diversion to Westchester.  
25 He bases this on the reported problems, what he found during his

1 evaluation and troubleshooting of the problem, and the fact that  
2 there have been no further reported problems since the alternator  
3 was replaced. If the problem had not been replicated during the  
4 run-ups, Mr. Nederfield stated that he would have made a  
5 maintenance log entry to document the evaluation and return the  
6 aircraft to service.

7           Mr. Nederfield testified that C & W does all maintenance  
8 on Mr. Costa's aircraft. Mr. Nederfield is not aware of any  
9 missed maintenance and he's never raised a maintenance issue with  
10 Mr. Costa that Mr. Costa has not addressed. He stated that  
11 Mr. Costa's aircraft is current with all airworthiness directives.

12           Respondent testified in his own behalf and presented the  
13 testimony of Mr. Alan Leiwant as well as that of Mr. Nederfield  
14 that I summarized previously. Mr. Leiwant is a friend of  
15 Mr. Costa's and also owns a Beech Bonanza, Model A-36. He's known  
16 Mr. Costa since he purchased his Bonanza in 2008. He has flown  
17 with Mr. Costa two or three times. He's observed Mr. Costa  
18 perform his preflight check, and he appeared to do it correctly,  
19 from Mr. Leiwant's vantage point.

20           And Mr. Leiwant testified that on June 20th, 2012,  
21 Mr. Costa telephoned him to ask if Mr. Leiwant was available to  
22 pick him up since he might have to leave his aircraft in  
23 Westchester. Mr. Costa did not impress Mr. Leiwant as being in a  
24 hurry when they spoke. Mr. Leiwant finished his dinner and then  
25 went to Caldwell Airport to wait in case he needed to go get

1 Mr. Costa. Mr. Costa called back 45 to 60 minutes later to say  
2 that he did not need a ride. Mr. Leiwant opined that Mr. Costa  
3 was not an unsafe pilot and he is not aware of Mr. Costa ever  
4 lying to him.

5 The Respondent testified in his own behalf that he's  
6 held a private pilot+ certificate for 7 years, with an instrument  
7 rating for 5 years. He has approximately 1,300 total flight hours.  
8 He bought his Beech Bonanza G-36, tail number November-979-  
9 November-Alpha, in 2008 and has approximately 600 hours in that  
10 aircraft.

11 Mr. Costa described his preflight checklist, including a  
12 walk-around visual inspection of the carriage and exterior of his  
13 aircraft, opening the cowling to inspect any loose connections and  
14 checking fluids. He then proceeds through his start-up checklist,  
15 which includes a run-up to check the batteries and all the  
16 electrical systems before requesting clearance to take off.

17 Mr. Costa testified that on June 20th, 2012, on his  
18 flight from Islip to Caldwell, he experienced electrical problems  
19 which he described as a flickering or partial panel failure. He  
20 also indicated the electrical problem was not a consistent problem  
21 initially.

22 He testified that he contacted Flight Services and was  
23 given the option to continue to Caldwell or divert, and he chose  
24 to divert to Westchester. Mr. Costa indicated he landed at  
25 Westchester, initially taxied to the wrong side of the runway and

1 then taxied for Panorama Services, parked, shut down the aircraft,  
2 called Mr. Leiwant and asked him to standby in case he needed a  
3 ride, and then went to the Panorama front desk and asked for a  
4 mechanic. He stated he was directed to return to his aircraft  
5 where a mechanic would meet him.

6           Two mechanics arrived approximately 15 minutes later.  
7 Mr. Costa stated he filled out a work authorization form, although  
8 he indicated it was different than the form at Exhibit A-8. He  
9 indicated it was formatted differently; he believed it was a  
10 different color and it did not have a space to provide his credit  
11 card information. Otherwise, the form required similar personal  
12 and aircraft information.

13           The mechanics opened the cowling to perform a visual  
14 inspection, which he described as not a thorough analysis but  
15 enough to see any obvious problems, such as a loose connection.  
16 They indicated they could see no problem and asked him to start  
17 his aircraft. He went through the hot-start checklist and started  
18 the aircraft, and all systems came back up online. He asked the  
19 mechanics to take a look at the panel inside his cockpit and the  
20 younger mechanic climbed into the cockpit to do so.

21           He indicated he asked if they saw any reason why he  
22 could not continue to Caldwell and they told him that he could  
23 leave his aircraft at Westchester and they could perform a more  
24 thorough analysis, which might take a couple of days, but said  
25 that they saw no reason why he could not fly the aircraft to

1 Caldwell in the existing VFR conditions. He stated he requested a  
2 copy of the paperwork and offered to pay, but they indicated they  
3 really did not do much so there was no charge, and they kept the  
4 work authorization form.

5 Mr. Costa indicated he did a run-up and an electrical  
6 systems check before taking off and there were no problems  
7 indicated. He called Mr. Leiwant after the engine was running to  
8 cancel the pick-up.

9 Mr. Costa testified that the written statement at A-4 is  
10 inaccurate in a number of areas. For instance, Mr. Costa did not  
11 say he was informed by Panorama that it would be approximately one  
12 hour before the aircraft could be looked at. He did not tell  
13 Mr. Misiano that he tried something that someone told him about on  
14 the aircraft and he did not report that he had lights flickering  
15 on his approach to Caldwell.

16 With respect to the two entries in his pilot logbook at  
17 Exhibit J1-C for June 20th, 2012, Mr. Costa testified that the  
18 second entry, which is for the flight from Westchester to  
19 Caldwell, was intended as a continuation of the entry for the  
20 diverted flight from Islip to Westchester and as a reminder to  
21 himself as to why he diverted to Westchester. Those entries were  
22 made at the same time. He stated he did not experience any  
23 electrical problems on his flight from Westchester to Caldwell and  
24 he did not intend to indicate such with his entry.

25 With respect to the e-mail memorandum Mr. Costa provided

1 to Mr. Misiano, Mr. Costa testified that their telephone  
2 conversation included a lot more details, including physical  
3 descriptions of the Panorama mechanics that he had spoken with.

4 Mr. Costa indicated that he was aware of the requirement  
5 in FAR Section 91.405(b) that requires an owner or operator of an  
6 aircraft to ensure maintenance personnel make appropriate entries  
7 in the aircraft maintenance records indicating an aircraft has  
8 been returned to service. In this case, the mechanics did not  
9 make a log entry, but as a practical matter, they did return the  
10 aircraft to service.

11 Mr. Costa also agreed that there's no paperwork  
12 reflecting that Panorama did any work on his aircraft on June  
13 20th, 2012. Mr. Costa stated that he was at Panorama at least an  
14 hour on June 20th, 2012, from the time that he shut down his  
15 aircraft until he departed. He indicated the mechanics took  
16 approximately 15 to 20 minutes to evaluate his aircraft. He  
17 stated he did advise Mr. Misiano what the mechanics did to  
18 evaluate his aircraft, but did not recall any conversation with  
19 him about having to wait an hour or more for the aircraft to be  
20 evaluated.

21 DISCUSSION

22 Now, having summarized the testimony of the witnesses,  
23 I'll discuss that testimony and other evidence as it pertains to  
24 the alleged violations in this case. With regard to the alleged  
25 operation of the civil aircraft in an unairworthy condition, the

1 Board has held that the standard for airworthiness consists of two  
2 prongs: First, whether the aircraft conforms to its type  
3 certificate and applicable airworthiness directives and, second,  
4 whether the aircraft is in a condition for safe flight. The Board  
5 has held that airworthiness is not synonymous with flyability. In  
6 determining whether an aircraft is airworthy in accordance with  
7 this standard, the Board considers whether the operator knew or  
8 should have known of any deviation in the aircraft's conformance  
9 with its type certificate.

10 Now, in this case, the Administrator has not presented  
11 any evidence of the aircraft's type certificate nor testimony or  
12 other evidence which would suggest that the aircraft did not  
13 conform to its type certificate. And although both counsel  
14 addressed the notion that it is almost self-evident that an  
15 aircraft without a functioning electrical system or landing gear  
16 would not conform to its type certificate, the focus of the  
17 evidence and the discussion in this matter has been on the second  
18 prong of the standard, and that's the condition for safe flight.

19 Mr. Ferrara provided expert opinion that the aircraft  
20 was not in a condition for safe flight. He based that opinion on  
21 the fact that Mr. Costa had experienced a serious discrepancy on  
22 his flight from Islip, which required him to divert to  
23 Westchester. Mr. Ferrara credibly testified that the electrical  
24 failure with loss of the ability to extend the landing gear and  
25 flaps, requiring a manual extension of the gear, which Mr. Costa

1 was unable to confirm were fully down and locked from the cockpit,  
2 created a very dangerous situation.

3           In Mr. Ferrara's opinion, absent a qualified mechanic  
4 fully evaluating the aircraft, repairing the discrepancy and/or  
5 determining the aircraft could be returned to service, the  
6 aircraft was not in a condition for safe flight. The fact that  
7 Mr. Costa had to have the main alternator replaced immediately  
8 upon his return to Caldwell is further confirmation of the need to  
9 have fully evaluated and repaired the discrepancy before departing  
10 Westchester.

11           I found Mr. Ferrara to be a credible witness and afford  
12 substantial weight to his opinion. Mr. Ferrara's opinion is  
13 dependent upon the fact that Mr. Costa did not have his aircraft  
14 adequately evaluated and returned to service by a qualified  
15 mechanic, and for reasons which I will discuss further  
16 momentarily, I reach a similar conclusion.

17           I also considered the testimony of Mr. Nederfield  
18 regarding whether the aircraft was in a condition for safe flight  
19 on the trip from Westchester to Caldwell. Mr. Nederfield  
20 indicated that when he first received the aircraft, he believed it  
21 to be in a condition for safe flight; however, after completing  
22 his evaluation and discovering the burnt stator windings in the  
23 main alternator, he concluded the aircraft was not in a condition  
24 for safe flight.

25           That testimony is consistent with the testimony of

1 Mr. Ferrara and further points out the danger of not having the  
2 aircraft fully evaluated before returning it to service. This is  
3 especially true given the extent and nature of the failure  
4 experienced in flight as well as the fact that Mr. Costa had to  
5 have the aircraft jumpstarted after landing at Westchester in  
6 order to taxi it to Panorama, further indicating an ongoing  
7 electrical problem.

8           Regarding whether the aircraft was evaluated fully at  
9 Panorama, I considered and gave substantial weight to the  
10 testimony of Mr. Stewart, Mr. Amsterdam and Mr. Woinicki, all of  
11 whom I found to be credible witnesses. And although Mr. Amsterdam  
12 and Mr. Stewart did not have any specific recollection of  
13 Mr. Costa or any work performed on June 20th, 2012, both were  
14 quite certain that they have never performed any inspection,  
15 troubleshooting or repair of any aircraft while at Panorama  
16 without first completing a work order, nor had either performed  
17 any maintenance activity, no matter how limited, without charging  
18 for the work completed.

19           Both mechanics and Mr. Woinicki independently and very  
20 consistently described the process for completing work  
21 authorizations and opening a work order for any and all work  
22 completed. All consistently described the only two work  
23 authorization forms used to initiate the process. Mr. Stewart and  
24 Mr. Amsterdam, who both work full-time for Delta Airlines and only  
25 part-time for Panorama, have no apparent reason to fabricate

1 whether they have ever deviated from the prescribed process even  
2 for a very quick or minor evaluation.

3           Mr. Woinicki's testimony that the only time a work  
4 authorization form is destroyed without a work order is if the  
5 customer changes his mind without completing the work is entirely  
6 consistent with Mr. Misiano's report in Exhibit A-4 indicating the  
7 Respondent reported he was able to bring the systems back online,  
8 decided against having the work done at Panorama and then flew on  
9 to Caldwell. That report was completed from notes taken  
10 contemporaneously with their phone conversation.

11           Nor is there any maintenance log entry indicating Panorama  
12 evaluated the aircraft. Mr. Nederfield indicated that he would have  
13 ~~completed a~~ completed a log entry if he had evaluated but been unable to  
14 ~~replicate the~~ replicate the problem. And Mr. Costa confirmed that he understood  
15 ~~his~~ his responsibilities to ensure a maintenance log entry was  
16 ~~completed~~ completed when the aircraft was returned to service and his belief  
17 ~~that~~ that Panorama had, as a practical matter, verbally returned the  
18 aircraft to service.

19           The complete absence of any work authorization, work  
20 order or other documentation at Panorama confirming Mr. Costa as a  
21 customer or of any work completed on his aircraft, together with a  
22 lack of a customary maintenance log entry strongly supports the  
23 allegation that the necessary inspection and repair was not  
24 completed.

25           Conversely, Mr. Costa's recitation of what transpired is

1 not consistent with other available evidence in a number of  
2 respects. Mr. Costa's description of the form that he was asked  
3 to complete and the information provided on the form differs  
4 significantly from the very consistent testimony of all three  
5 Panorama employees and the work authorization form that's in  
6 evidence at Exhibit A-8.

7           Mr. Costa's description of the evaluation, completely  
8 free of charge and without a work order or other documentation,  
9 again, varies greatly from the credible and consistent testimony  
10 of three independent witnesses with no interest in the outcome of  
11 the proceedings.

12           Mr. Costa's testimony is not consistent with the report  
13 completed by Mr. Misiano following his telephone conversation with  
14 Mr. Costa. Mr. Misiano's report, as noted earlier, is consistent  
15 with the complete lack of documentation regarding evaluation or  
16 repair of the aircraft and Mr. Woinicki's testimony regarding the  
17 circumstances under which no records would be maintained by  
18 Panorama.

19           The two entries in Mr. Costa's pilot logbook for June  
20 20th, 2012 are, on their face, consistent with Mr. Misiano's  
21 report of additional electrical issues on approach to Caldwell. I  
22 found Mr. Costa's explanation that he intended the second entry  
23 for the trip from Westchester to Caldwell as merely a continuation  
24 of the earlier entry as a reminder of why he diverted to  
25 Westchester not to be entirely logical or convincing, particularly

1 in light of the substantial difference between the entries, his  
2 testimony that the entries were made simultaneously, and the fact  
3 that the diversion to Westchester was fully documented in the  
4 initial entry.

5 Nor did I find entirely credible the fact that Mr. Costa  
6 immediately took his aircraft to C & W Aero Services for repair of  
7 the alternator if he had no additional issues on the flight from  
8 Westchester to Caldwell and believed that Panorama had adequately  
9 evaluated the issue and appropriately determined the aircraft safe  
10 for flight.

11 In order to accept Mr. Costa's version of events, I  
12 would also have to believe that Mr. Stewart and Mr. Amsterdam were  
13 both lying about the fact that they had never completed any  
14 inspection or maintenance activity on an aircraft at Panorama  
15 either free of charge or without first completing the work order,  
16 a point about which both gentlemen were very clear and unwavering.  
17 As noted, I found these two witnesses, along with Mr. Woinicki, to  
18 be very credible and the ones with the least interest in the  
19 outcome of these proceedings.

20 I would also have to believe that Mr. Misiano, in  
21 completing his report following his telephone conversation with  
22 Mr. Costa, completely fabricated important and damaging details  
23 regarding what transpired on June 20th, 2012. I find no apparent  
24 reason for him to do so.

25 Based on the foregoing, I find by a preponderance of

1 reliable, probative and credible evidence that the Respondent  
2 operated his aircraft, Beech Bonanza G-36 aircraft, identification  
3 number November-979-November-Alpha, when it was not in a condition  
4 for safe flight and thus not airworthy.

5 I further find that the Respondent failed to have the  
6 discrepancy appropriately inspected and repaired, as prescribed by  
7 14 CFR Part 43, and having failed to have the discrepancy  
8 appropriately inspected or repaired, the Respondent thereafter  
9 willingly operated that aircraft over a highly congested area in a  
10 careless or reckless manner so as to endanger the life and  
11 property of another.

12 Now, the Respondent raised two affirmative defenses:  
13 First, that he reasonably relied upon certain representations made  
14 by persons who held themselves out to be mechanics employed by  
15 Panorama Flight Services; and second, that the aircraft's  
16 electrical system was fully functional and airworthy upon  
17 Respondent's departure from Westchester County Airport.

18 With respect to the first affirmative defense, I find  
19 that the Respondent did not reasonably rely upon representations  
20 by mechanics employed by Panorama. Instead, as discussed more  
21 fully above, the evidence supports the conclusion that the  
22 Respondent was able to restart his aircraft and bring the systems  
23 online and, thus, declined to have his aircraft evaluated or  
24 repaired by Panorama. With respect to the second affirmative  
25 defense, again, based upon the evidence discussed more fully

1 above, I find that the aircraft was not in a condition for safe  
2 flight and thus not airworthy. Based upon that, I find that the  
3 Respondent's asserted affirmative defenses are not supported by  
4 the evidence before me.

5           Based on the foregoing, I make the following specific  
6 findings with respect to allegations that are enumerated in the  
7 Administrator's amended complaint.

8           Now, as I noted previously, the Respondent admitted  
9 paragraphs 1, 2 and 3, so those are established for the purposes  
10 of my findings.

11           Paragraph 4, I find that during flight number one, that  
12 being the flight between Islip and Westchester County Airport,  
13 Respondent experienced an electrical failure on the aircraft as a  
14 result of which he diverted to land at Westchester County Airport,  
15 New York.

16           Respondent admitted paragraph 5, and that's established  
17 for purposes of my decision.

18           Paragraph 6, between flight number one and flight number  
19 two, Respondent failed to have the aircraft inspected or repaired  
20 by a certified mechanic or repair station.

21           With respect to paragraph 7, I find that, thus, the  
22 Respondent operated the aircraft on flight number two in a known  
23 unairworthy condition and that the aircraft had an electrical  
24 discrepancy, as manifested during flight one.

25           Paragraph 8, I find that, as a result of Respondent's

1 actions, as described herein, he operated the aircraft described  
2 above in a careless or reckless manner so as to endanger the lives  
3 and property of others.

4           And consistent with those findings, I find that the  
5 Respondent violated the following sections of the Federal Aviation  
6 Regulations: Section 91.7(a), which states that no person may  
7 operate a civil aircraft unless it is in an airworthy condition;  
8 Section 91.13(a), which states that no person may operate an  
9 aircraft in a careless or reckless manner so as to endanger the  
10 life or property of another; and Section 91.405(a), which states  
11 that each owner or operator of an aircraft shall have that  
12 aircraft inspected, as prescribed in subpart (e) of this part and  
13 shall, between required inspections, except as provided in  
14 paragraph (c) of this section, have discrepancies repaired as  
15 prescribed in Part 43 of this chapter.

16           Having found that the Administrator has proven all the  
17 allegations in the Administrator's amended complaint by a  
18 preponderance of reliable, probative and credible evidence, I now  
19 turn to the sanction imposed by the Administrator in this case.

20           On August 3rd, 2012, Public Law 112-153, known as the  
21 Pilot's Bill of Rights, was signed into law by the President of  
22 the United States. The law applies to all cases before the  
23 National Transportation Safety Board involving reviews of actions  
24 of the Administrator of the Federal Aviation Administration to  
25 deny airman medical certification under 49 U.S.C., Section 44703,

1 or to amend, modify, suspend or revoke airman certificates under  
2 49 U.S.C., Section 44709. The law became effective immediately  
3 upon its enactment.

4           The Pilot's Bill of Rights strikes from 49 United States  
5 Code, Sections 44709 and 44710 language that, in cases involving  
6 amendments, modifications, suspensions or revocations of airman  
7 certificates, the Board is "bound by all validly adopted  
8 interpretations of laws and regulations the Administrator carries  
9 out and of written Agency policy guidance available to the public  
10 relating to sanctions to be imposed under this section unless the  
11 Board finds an interpretation is arbitrary, capricious or  
12 otherwise not according to the law."

13           Now, while I'm no longer bound to give deference to the  
14 Federal Aviation Administration by statute, that Agency is  
15 entitled to the judicial deference due all other federal agencies  
16 under the Supreme Court decision in Martin v. Occupational Safety  
17 and Health Review Commission. In applying the principle of  
18 judicial deference to the interpretations of laws, regulations and  
19 policy that the Administrator carries out, I must analyze and  
20 weigh the facts and circumstances in each case to determine if the  
21 sanction selected by the Administrator is appropriate.

22           In the case before me, the Administrator has argued that  
23 the Administrator remains entitled to deference in choice of  
24 sanction unless I find that interpretation is arbitrary,  
25 capricious or otherwise not according to law. In essence, the

1 Administrator argues that the language stricken by the Pilot's  
2 Bill of Rights was simply to eliminate a redundancy between the  
3 language in the statute and deference afforded to all federal  
4 administrative agencies under existing Supreme Court precedent.

5           The Administrator argues that the sanction here is not  
6 arbitrary, capricious or otherwise not in accordance with the law  
7 and, therefore, I should defer to the Administrator's choice of  
8 sanction. The Respondent has argued that should I find some  
9 degree of sanction is supported that I should reduce the sanction  
10 in light of Respondent's record, including his lack of violation  
11 history.

12           Now, having considered the facts and circumstances in  
13 this case and the nature and severity of the confirmed violations  
14 and comparing the proposed sanctions to other similar cases  
15 involving operation of an unairworthy aircraft and careless or  
16 reckless operation of an aircraft, I find that the sanction sought  
17 by the Administrator is appropriate and warranted in the public  
18 interest in air safety and air commerce.

19           Therefore, I find that the Order of Suspension, the  
20 complaint herein, must be and shall be affirmed as issued.

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ORDER

IT IS HEREBY ORDERED that the Order of Suspension, the complaint herein, be, and is hereby, affirmed as issued and that Respondent's private pilot certificate number ~~3266080~~ and any other FAA-issued airman certificates held by him be, and hereby is, suspended for a period of 90 days.

IT IS SO ORDERED this 24th day of July 2013, in New York City.

EDITED

AUGUST 13, 2013

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STEPHEN R. WOODY

Administrative Law Judge

1 APPEAL

2 ADMINISTRATIVE LAW JUDGE WOODY: That concludes my  
3 decision in this matter.

4 Mr. Costa, you have certain appeal rights. You have the  
5 opportunity to appeal my decision to the full Board and beyond  
6 that if you so desire. I need to make you aware of those appeal  
7 rights. I have those reduced to writing here, and I'm sure your  
8 counsel is familiar with those.

9 Counsel, I would ask you to approach so I can hand you a  
10 copy of these appeal rights. Would you like a separate copy for  
11 Mr. Costa as well?

12 MR. MARCHETTA: Do you have one?

13 ADMINISTRATIVE LAW JUDGE WOODY: I do. I'm handing a  
14 copy to the Administrator and one to the court reporter for  
15 inclusion in the record.

16 COURT REPORTER: Thank you.

17 ADMINISTRATIVE LAW JUDGE WOODY: So, counsel, do you  
18 desire for me to orally advise Mr. Costa regarding the appeal  
19 rights or do you intend to do that separately after the  
20 proceeding?

21 MR. MARCHETTA: We'll do that separately, Judge.

22 ADMINISTRATIVE LAW JUDGE WOODY: Okay. Fair enough.  
23 Those, as I say, are set forth in the document I've just provided  
24 to you. Most importantly, I will highlight for you the fact that  
25 if you decide that you would like to appeal the decision, there

1 are certain timelines for submitting the Notice of the Appeal and  
2 perfecting the appeal, and those are very important because those  
3 are, for the most part, very hard and fast. If you miss the  
4 deadline absent extraordinary circumstances, chances are that your  
5 opportunity to appeal will be deemed to have been waived.  
6 So I just call that to your attention so that you're aware of that  
7 so that that's something you pay particular attention to. And I'm  
8 sure your counsel will help you to do that as well if that's  
9 something you decide to proceed with.

10 All right. Is there anything else that we need to  
11 discuss, then, before we terminate the proceeding?

12 MR. MARCHETTA: No, Judge.

13 MR. BERMAN: No, Your Honor.

14 ADMINISTRATIVE LAW JUDGE WOODY: All right. Gentleman,  
15 I appreciate everything for the past 2 days. Thank you very much  
16 for your time. And that will terminate the proceeding.

17 (Whereupon, at 3:56 p.m., the hearing in the above-  
18 entitled matter was adjourned.)

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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Mario Costa

DOCKET NUMBER: SE-19453

PLACE: New York, NY

DATE: July 24, 2013

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.

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Kim Marsala  
Official Reporter