

SERVED: April 9, 1992

NTSB Order No. EA-3528

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 19th day of March, 1992

---

BARRY LAMBERT HARRIS,  
Acting Administrator,  
Federal Aviation Administration,

Complainant,

Docket

v.

SE-10018

VERNON CHASON,

Respondent.

---

OPINION AND ORDER

The respondent has appealed from the oral initial decision Administrative Law Judge William A. Pope, II, issued in this proceeding on January 3, 1990, at the conclusion of an evidentiary hearing.<sup>1</sup> By that decision, the law judge affirmed in part an order of the Administrator suspending respondent's private certificate for 45 days<sup>2</sup> on allegations

---

<sup>1</sup>An excerpt from the hearing transcript containing the initial decision is attached.

<sup>2</sup>The Administrator's order suspended respondent's pilot certificate for 90 days. The Administrator has not appealed the law judge's reduction in sanction.

that he violated sections 61.3(a), 61.3(h), 91.79(d) and 91.9 of the Federal Aviation Regulations ("FAR") , 14 C.F.R. Part 91.<sup>3</sup>

The Administrator's order, which was filed as the complaint in this matter, made the following factual allegations:

---

<sup>3</sup>FAR sections 61.3(a) and (h), 91.79(d), and 91.9 provided in pertinent part at the time of the incident as follows:

"§61.3 Requirements for certificates, ratings, and authorizations.

(a) Pilot certificate. No person may act as pilot in command or in any other capacity as a required pilot flight crewmember of a civil aircraft of United States registry unless he has in his personal possession a current pilot certificate issued to him under this part . . . .

(h) Inspection of certificate. Each person who holds a pilot certificate, flight instructor certificate, medical certificate, authorization, or license required by this part shall present it for inspection upon the request of the Administrator, an authorized representative of the National Transportation Safety Board, or any Federal, State, or local law enforcement officer.

§91.79 Minimum safe altitudes; general.

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

(d) Helicopters. Helicopters may be operated at less than the minimums prescribed in paragraph (b) or (c) of this section if the operation is conducted without hazard to persons or property on the surface. . . .

§91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

"1. At all times material herein you [respondent] were and are the holder of Private Pilot Certificate No. 001764004.

2. On or about February 2, 1988, you operated civil aircraft N9067W, a Robinson (R-22) Helicopter, the property of another, in the vicinity of Martin Memorial Hospital located in Stuart, Florida.

3. You landed N9067W on the top floor of the parking garage at the Martin Memorial Hospital.

4. At the time of the above-described landing, the parking garage was opened to pedestrian and vehicular traffic, there were vehicles parked in the immediate area of the landing and there were light poles extending above the parking garage.

5. At the time of the above-referenced flight, you did not have in your personal possession a current pilot certificate.

6. At the time of the above-referenced flight, you failed to present your pilot certificate to a local law enforcement official as requested by that official."

Respondent, who is not represented by counsel, makes several arguments on appeal, all of which attack the law judge's findings that the evidence adequately supports the Administrator's allegations regarding the landing on the roof top of the parking lot.<sup>4</sup> Moreover, respondent claims that the law judge failed to evaluate the evidence in light of provisions in the Airman's Information Manual [AIM] (Respondent's Exhibit R-1), which places great discretion with a helicopter pilot to evaluate the suitability of a landing area.

---

<sup>4</sup>The Administrator has not filed a brief in reply.

Upon consideration of the issues raised by respondent and our review of the entire record, the Board has determined that safety in air commerce or air transportation and the public interest require affirmation of the Administrator's order, as modified by the law judge with regard to sanction, except as to the finding of a violation of FAR section 91.79(d). For the reasons that follow, we will grant respondent's appeal as to that finding only.

The evidence of record amply establishes that on the day in question respondent, in effect, utilized his helicopter as if it were an automobile - by landing it on the roof of a hospital parking lot so he could accompany his wife to a 7 p.m. Lamaze class. At the time of the landing, there were approximately 4 cars parked on the upper level of the lot, about 60 feet away from where respondent landed.<sup>5</sup> The parking lot could be reached by pedestrians using any of four stairwells, one in each corner, as well as two elevators. Vehicles could enter from any of three entrances to the lot. While the Administrator's witnesses established that respondent's landing took place during the height of visiting

---

<sup>5</sup>We recognize that according to respondent, these cars were parked hundreds of feet away, on the other side of the roof. However, implicit in the law judge's initial decision is a credibility determination in favor of the Administrator's witnesses, who testified that immediately after the landing they saw several vehicles parked about 60 feet away, on the same side of the lot as the helicopter. We have no reason to disturb the law judge's credibility findings on this issue.

hours at the hospital, fortuitously, no one entered the upper parking lot area during the aircraft's landing, and no evidence was produced that any actual hazard was created by the landing to any persons or property on the ground.<sup>6</sup> Because we believe that no actual hazard was caused by respondent's landing, we are constrained to reverse the finding of a violation of FAR section 91.79(d). See Administrator v. Tur, NTSB Order No. EA-3490 at 8 (1992), and cases cited therein.

Notwithstanding the foregoing, we cannot condone respondent's use of his helicopter as personal transportation under these circumstances. Contrary to respondent's claims, he is not free to land his helicopter anywhere he wants.<sup>7</sup> Respondent's assertion in his appeal brief that the AIM permits any operation in any clear area, in accordance with

---

<sup>6</sup>We agree with respondent that the law judge misinterpreted the FAA inspector's testimony with regard to the likelihood of respondent striking one of the light poles. The inspector testified that a landing could have been safely performed if the area had been secured in advance from people and vehicles, and assuming the light poles were sufficiently distant from the aircraft to allow for a safe approach and an autorotation in the event of engine failure. Our review of Joint Exhibit 1, a photograph of the parking area, reveals that light poles are placed along the perimeter of the ramp leading up to the parking lot roof and the light poles which surround the parking lot are placed some distance away from the structure. We accept respondent's testimony that given the placement of these light poles in relation to his approach and where he landed, there is insufficient evidence to support a finding that there was any significant likelihood that he could have struck one of these poles.

<sup>7</sup>According to the investigating FAA inspector, respondent made a statement to that effect, to him.

the pilot's discretion, evidences a lack of comprehension of the requirements of FAR section 91.9. A pilot may not operate his aircraft in a careless or reckless manner so as to create even potential endangerment to persons or property on the ground. While the Board has recognized that the unique characteristics of helicopter operations necessitate great reliance on a pilot's judgment, see e.g. Administrator v. Reynolds, 4 NTSB 240, (1982), in this case we cannot say that the likelihood of harm was too remote to support a finding of a violation of FAR §91.9.<sup>8</sup> Respondent should have reasonably expected that persons and vehicles could have arrived at the time of his landing, which was immediately after work, and during the height of visiting hours at the hospital.<sup>9</sup> Moreover, while respondent claims that he carefully looked for pedestrians before, during, and after his landing, he also admitted on the stand that he could not possibly have seen someone coming behind him, as he landed. We conclude that respondent would have been unable to prevent a pedestrian from gaining access from the rear stairwell and

---

<sup>8</sup>We also believe that respondent's decision to land on the roof of the parking lot under the circumstances established in this record are indicative of deficient judgment. See Reynolds, id.

<sup>9</sup>We reject respondent's claim that his landing was as safe as a landing on the hospital helipad. There was testimony that when an emergency helicopter is about to land, there is two-way radio communication between the hospital and the pilot, and the security staff takes numerous precautions to secure the area from people and vehicles. Respondent took no such precautions here.

approaching the helicopter while the blades were still rotating, and that fact alone supports a finding of a violation of FAR section 91.9.<sup>10</sup>

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is granted in part;
2. The law judge's initial decision and order, except as to the FAR section 91.79(d) violation which is reversed, and the Administrator's order, as modified by the law judge with regard to sanction, are affirmed; and
3. The 45-day suspension of respondent's airman certificate shall begin 30 days from the date of service of this order.<sup>11</sup>

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

---

<sup>10</sup>We consider the 45-day sanction assessed by the law judge to be minimal under the circumstances., particularly in light of the additional FAR §61.3 violation established by the Administrator.

<sup>11</sup>For purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR §61.19(f).