

SERVED: September 7, 1999

NTSB Order No. EA-4787

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 7th day of September, 1999

_____	)	
JANE F. GARVEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	
v.	)	Dockets SE-15676 and
	)	SE-15677
	)	
DAN'S AIRCRAFT REPAIR, INC., AND	)	
LLOYD D. HOLLINGSWORTH	)	
	)	
Respondents.	)	
	)	
_____	)	

**OPINION AND ORDER**

The Administrator appeals the oral initial decision of Administrative Law Judge William R. Mullins, rendered after an evidentiary hearing held on August 10, 1999.<sup>1</sup> By that decision, the law judge found that respondent Dan's Aircraft Repair, Inc.

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

("Dan's Aircraft") violated Federal Aviation Regulation ("FAR") section 145.61, but that neither respondent violated, as alleged by the Administrator in each of her Emergency Orders of Revocation, FAR sections 43.12(a) and 45.13(c).<sup>2</sup> The law judge thus reversed the revocation order against respondent Hollingsworth's airframe and powerplant ("A&P") mechanic certificate, and, as to respondent Dan's Aircraft, declined to

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<sup>2</sup> Sections 43.12 (14 C.F.R. Part 43), 45.13 (14 C.F.R. Part 45) and 145.61 (14 C.F.R. Part 145) provide, in relevant part, as follows:

**§ 43.12 Maintenance records: Falsification, reproduction, or alteration.**

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

(1) Any fraudulent or intentionally false entry in any record or report that is required to be made, kept, or used to show compliance with any requirement under this part;

\* \* \* \* \*

**§ 45.13 Identification data.**

\* \* \* \* \*

(c) Except as provided in paragraph (d)(2) of this section, no person may remove or install any identification plate required by §45.11 of this part, without the approval of the Administrator.

\* \* \* \* \*

**§ 145.61 Performance records and reports.**

Each certificated domestic repair station shall maintain adequate records of all work that it does, naming the certificated mechanic or repairman who performed or supervised the work, and the inspector of that work. The station shall keep each record for at least two years after the work it applies to is done.

make a sanction finding because, he said, the issue was "moot."<sup>3</sup>  
We grant the Administrator's appeal.

According to the relevant portions<sup>4</sup> of the Administrator's complaints:<sup>5</sup>

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<sup>3</sup> Prior to the hearing, but subsequent to her revocation order, the Administrator issued Dan's Aircraft a new Air Agency Certificate. At the hearing, the unrefuted representation by counsel for the Administrator was:

[Because of] the way the regulation is currently written, the allegations in the complaint [against respondent Dan's Aircraft], even if established, are not a bar to a subsequent application. [For u\nlike an airman certificate, there is no one-year wait [required by] the statute. Mr. Hollingsworth [as owner of Dan's Aircraft] made a new application. He demonstrated the qualifications[, ] which are basically that he have a sufficient physical plant, people authorized to do the work and a maintenance manual. Anyone who can show he has those is entitled to a certificate, so that's why [Dan's Aircraft] has a certificate.

Hearing Transcript ("Tr.") at 7. On account of counsel's confirmation that, notwithstanding affirmation of her order against respondent Dan's Aircraft, Dan's Aircraft would nonetheless be permitted to continue operations under the newly-issued certificate, the law judge concluded the sanction issue under the complaint against Dan's Aircraft was "moot." We question this reasoning, however, in light of counsel's hearing representation that the new certificate issued to Dan's Aircraft "doesn't authorize . . . as much as the previous one did[, ] or . . . give . . . as much latitude, so there is a difference." Id. at 7-8.

<sup>4</sup> Several paragraphs of the complaints -- 6, 7, and 11 -- as well as the associated charge -- FAR section 43.15(a)(1) (14 C.F.R. Part 43) -- were properly stricken by the law judge because the Administrator chose not to present supporting evidence. In addition, although the complaints alleged violations of FAR section 43.12(a), the evidence presented was, generally, limited to FAR section 43.12(a)(1).

<sup>5</sup> The wording of the Administrator's orders against each  
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2. On or about October 17, 1996, Dan's Aircraft Repair, a business owned and controlled by you, began a project to build an aircraft for a Mr. Jim Fejes using a fuselage and wings provided by Mr. Fejes and other new and used parts.
3. On or about December 2, 1996, Dan's Aircraft Repair received the wreckage of civil aircraft N1590R, a Piper Model PA-18.
4. At the time Dan's Aircraft Repair received the wreckage of civil aircraft N1590R, the above-referenced project had already progressed to the point that the floorboards had been installed and the frame had been refabricated.
5. During the above-referenced project, you removed or directed the removal of the data tag from the wreck of N1590R and, without authority from the Administrator, affixed it or directed that it be affixed to the fuselage referenced in paragraph 2, and you painted or directed the painting of markings on that fuselage indicating that it was civil aircraft N1590R.

\* \* \* \* \*

8. On or about March 25, 1997, you made entries in a FAA Form 337 indicating EDO 89-2000 floats had been installed on civil aircraft N1590R.
9. The form referenced in paragraph 8 was intentionally false because no floats had been installed on this aircraft, and you knew at the time you made the above entries that floats had not been installed on this

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respondent, filed as the complaints in this proceeding, is substantively the same, with minor differences in wording to account for the fact that one complaint is issued against the corporate entity of Dan's Aircraft, and the other against its individual owner and president, respondent Hollingsworth. The complaint against Dan's Aircraft also contains the section 145.61 allegations (see footnote 14, infra).

aircraft.<sup>6</sup>

10. On or about April 1, 1997, you made or caused to be made an entry in the maintenance records of civil aircraft N1590R indicating an annual inspection had been performed on civil aircraft N1590R and approving it for return to service. Included with this entry was an entry indicating that the total time in service of the airframe was 1022.1 hours.

\* \* \* \* \*

12. The entry referenced in paragraph 10 regarding the total time in service of the airframe was intentionally false because 1022.1 hours was not the total time of the airframe that you had identified as civil aircraft N1590R, and you knew at the time you made the entry that it was not correct.

At the hearing, it was established that respondent Hollingsworth is the owner and president of respondent Dan's Aircraft. In October 1996, respondents, who specialize in Piper PA-18 Cub aircraft, began a PA-18 "rebuild" project for customer Jim Fejes. Subsequently, in the midst of the project, respondents purchased and received the wreckage of N1590R, an aircraft that had been substantially damaged in a fatal crash in the Brooks Mountain Range, Alaska.<sup>7</sup> At the time respondents received the wreckage of N1590R, substantial work had already been completed on the project aircraft's fuselage -- which

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<sup>6</sup> The law judge dismissed the section 43.12(a) violation associated with the allegations contained in paragraphs 8 and 9, and the Administrator did not appeal this ruling.

<sup>7</sup> Pictures of the wreckage of N1590R show that, with the exception of the empennage, the aircraft suffered severe damage, having been crushed, essentially, from the propeller to aft of the wings. Exhibit ("Ex") A-1.

incorporated the frame and, apparently, other parts, from a fuselage supplied by customer Fejes without a data plate or other identifying information<sup>8</sup> -- such that it had already been covered with fabric.<sup>9</sup> Ultimately, at the conclusion of the rebuild project in late March or April 1997, respondents delivered what they alleged to be N1590R to Fejes. The logbooks, as well as hearing testimony, indicate that very few, if any, of the parts or components of the "rebuilt" N1590R -- with the exception of the data plate -- came from the salvaged wreck of N1590R.<sup>10</sup>

The evidence presented also indicates that the frame used in the "rebuild" of N1590R came from N83395, Fejes' old aircraft, which had accumulated in excess of 4,000 total in-service hours.<sup>11</sup> Respondent Hollingsworth's signed stamp entry in

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<sup>8</sup> Fejes also supplied the wings which were eventually installed by respondents on the "rebuilt" N1590R.

<sup>9</sup> According to respondent Hollingsworth, who testified he didn't know from what aircraft Fejes had acquired the fuselage and wings he brought to him, "it doesn't matter" whether the fuselage installed in the "rebuilt" N1590R came from Fejes' old aircraft, N83395. Tr. at 196. However, respondent Hollingsworth testified that after conducting an annual inspection on N83395 in 1996, he advised Fejes that, in his opinion, the aircraft (which, at that time, had accumulated in excess of 4,000 total hours in service) would likely not pass future annual inspection without cost-prohibitive maintenance because "the fabric, the cables, [and] the floor boards were rotting." Tr. at 189-190.

<sup>10</sup> We find it telling that, in the face of the Administrator's evidence, respondent Hollingsworth did not mention any part or component on the "rebuilt" N1590R that came from the original wrecked aircraft.

<sup>11</sup> FAA Inspector Kitchens testified that he obtained Form 337s for repairs made to the airframe of N83395 that were filed in Oklahoma City, and a comparison of those repairs with those found on the frame of the "rebuilt" N1590R yielded a perfect match.

N1590R's logbook, however, returning the aircraft to service after the "rebuild," indicates a total "airframe" time in service of 1,022.1 hours.<sup>12</sup>

The law judge found that, because respondents documented the fact that a used airframe and wings from another aircraft were substituted, and "it's pretty clear when you read the logbook that all of these parts and the engine is new," the Administrator failed to prove that respondents intentionally falsified the logbooks.<sup>13</sup> Strangely, however, the law judge did not discuss the section 45.13(c) allegation about the data plate, and, instead, simply summarily dismissed the charge.<sup>14</sup>

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<sup>12</sup> The 1,022.1 hours of total *airframe* time reported by respondent Hollingsworth appears to be a carry-over from the total *aircraft* time recorded on the previous page of N1590R's logbook during a 100-hour inspection performed approximately 3 weeks before the 1995 crash. Another pre-crash logbook entry made during a 50-hour inspection after the 100-hour inspection, however, indicates that even if this entry were otherwise proper, the aircraft's total time at the time of the crash exceeded 1,022.1 hours.

<sup>13</sup> A type-written entry in N1590R's logbook lists, very generally, the work that was done during the "rebuild" project, including the fact that respondent Dan's Aircraft "replaced the fuselage with a used serviceable frame" and "replaced both wings with used serviceable wings[.]" Ex. A-6.

<sup>14</sup> The law judge did uphold the section 145.61 charge against respondent Dan's Aircraft. The complaint alleges:

13. The records Dan's Aircraft Repair made concerning the above-referenced project do not identify the mechanic performing the work on most entries, and many entries lack detailed and adequate descriptions of the work performed.

Although respondent Dan's Aircraft did not appeal that finding, we note that it was adequately supported by the record. At the  
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On appeal, the Administrator argues that the law judge failed to decide the central issue in the case: whether respondents legitimately repaired N1590R or, as the Administrator contends, impermissibly transferred N1590R's data plate to an aircraft they assembled from new and used parts. The Administrator also argues that the law judge erred in dismissing the 43.12(a)(1) charge.<sup>15</sup> Respondents -- who submitted a jointly-filed appeal brief -- argue, essentially, that they did nothing wrong.<sup>16</sup>

This case turns, in the Administrator's favor, on the

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hearing, respondent Hollingsworth agreed that for portions of the work description -- incorporated by reference in the logbook entry returning the aircraft to service -- it was not possible to determine what work had been performed by mechanics at Dan's Aircraft.

<sup>15</sup> The Administrator's motion to exclude attachments to respondents' appeal brief, which she claims are impermissible new evidence, is denied.

<sup>16</sup> Respondents also unconvincingly argue that the issuance of a new Air Agency Certificate to Dan's Aircraft, subsequent to the issuance of the revocation orders against them, proves that the Administrator's complaints are unfounded. See footnote 3, supra. In addition, respondents complain that they have been deprived of their certificates in excess of the maximum period permitted under procedural rules applicable to emergency revocation proceedings, since they surrendered their certificates to the FAA on June 25, 1999, and contend that, therefore, the law judge's ruling should stand. Under Rule 54(b) (49 C.F.R. Section 821.54), however, the 60-day period within which the Board must decide an emergency appeal began on July 9, 1999, the day the emergency complaints in this matter were filed with the law judge. Prior to that filing, the Board had not been advised by the Administrator of the existence of the emergency actions, a condition precedent to the commencement of the 60-day review period. See 49 U.S.C. § 44709(e)(2).



language published in the Federal Register on August 2, 1979, when the Administrator added subsection (c) to FAR section 45.13. There, the Administrator stated:

The FAA believes that the practice of rebuilding a wrecked aircraft by replacing almost the entire aircraft and affixing the identification plate which was recovered from the wreckage is not in the public interest. This practice has been justified as "maintenance" or "repair," when it is in fact a rebuilding of the aircraft. The only person authorized to rebuild an aircraft is a person who manufactures it under a type or production certificate.

Ex. A-7. The preponderance of the evidence indicates that -- contrary to this prohibition -- respondents attached, or were responsible for the attachment of, the data plate from the wreck of N1590R to an aircraft entirely rebuilt from new and used parts that did not come from the wreckage of N1590R. The law judge erred in finding that the Administrator did not prove the violations of FAR section 45.13(c).

Respondents' contention that the Administrator's case against them represents an impermissible enforcement of an unascertainable standard of when the scope of permissible repairs are exceeded, is not persuasive. We think the language published in the Federal Register provided respondents with adequate notice that their actions were improper. Moreover, although respondents correctly point out that almost any part of the aircraft can be repaired or replaced (as required by routine maintenance or repair), they are simply incorrect to then argue -- contrary to the explicit language published in the Federal Register -- that

there is no ascertainable prohibition to "replacing," concurrently, virtually all parts and components of a wrecked aircraft and then attaching the wrecked aircraft's data plate to this assemblage of parts and components. This should be an obvious notion for any A&P mechanic, especially in light of the substance of Part 45, but, in any event, the Administrator has taken appropriate steps to inform mechanics of her views.<sup>17</sup>

Turning to the issue of whether respondents intentionally falsified the flight time in the logbook of the "rebuilt" N1590R when they returned the aircraft to service, we also think the law judge erred in finding that the Administrator did not prove the violations of FAR section 43.12(a). The elements of intentional falsification are: 1) a false representation; 2) in reference to a material fact; and 3) made with knowledge of its falsity. See, e.g., Administrator v. Van Eaton, NTSB Order No. EA-4435 at 4-5 (1996). On April 1, 1997, respondent Hollingsworth, in his personal capacity as an A&P mechanic and on behalf of Dan's Aircraft, signed a logbook entry for N1590R that stated, in part,

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<sup>17</sup> Respondents' argument that they are well-known, both throughout the industry and within FAA, for their specialization in "rebuilding" PA-18 aircraft, and that, even if they did err, they did so mistakenly and with the implicit approval of the Administrator's agents who, over the past ten years, knew of their practices and never objected, is equally unpersuasive. Aside from the fact that respondent Hollingsworth never mentions a specific instance where the practices at issue here were performed with the Administrator's knowledge, respondents never sought the Administrator's averment to their "methods, practices [or] techniques" with regard to the data plate or, for that matter, her opinion as to whether the handling at issue here of the data plate could be properly considered "necessary during maintenance operations." See FAR Section 45.13(d)(2).

that "[t]he airframe identified herein is approved for return to service" and recorded a "total in service" time of 1,022.1 hours. The representation that the "airframe" on the aircraft in 1997 had 1,022.1 hours was false and made with knowledge of its falsity because, if respondent Hollingsworth's testimony is to be believed, he did not even know which aircraft the replacement frame came from.<sup>18</sup> Misrepresentation of this information is material because, clearly, it has the potential to mislead others trying to assess the overall condition of the aircraft, and, regardless of the current non-existence of officially-mandated time limits on the PA-18 airframe, applicability of regulatory requirements.<sup>19</sup> Cf. Administrator v. Thunderbird Propellers,

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<sup>18</sup> Although we think it should be apparent from the logbook, at least with the benefit of the supplemental record we have before us, that respondent Hollingsworth carried forward the total time accumulated by N1590R as of its last 100-hour inspection before the 1995 crash -- improperly since the aircraft had accumulated additional time by the time it crashed -- it is also possible that persons who review the logbook could rely on respondent Hollingsworth's attestation that the "used servicable frame" he installed had accumulated only 1,022.1 hours. Regardless, however, of the questions the entries might raise in the mind of a reasonably observant reviewer of the logbook, respondents represented that the replacement frame had a total time significantly less than the more than 4,000 hours it actually had accumulated.

<sup>19</sup> The law judge's observation that, currently, there are no Airworthiness Directives dependent on total airframe time applicable to the PA-18 is irrelevant to the issue of intentional falsification. Moreover, were such a restriction to be promulgated in the future, as this record indicates has occurred with other aircraft, those attempting to determine its applicability to N1590R's replacement frame would be unable to reliably do so. Finally, the law judge's statement that "one frame would be as good as the other" is inconsistent with the testimony of FAA Inspector Kitchens, and, where, as here, the two frames have accumulated significantly different amounts of time  
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Inc., NTSB Order No. EA-4648 at 6-7 (1998) (emphasizing the fact that others may rely on records for an unanticipated but valid purpose).

Given our findings and conclusions, we agree with the Administrator that revocation of both certificates is the appropriate sanction. We think the facts of this case do not just support revocation of respondents' certificates on the basis of the section 45.13(c) violations, they also fall within precedent that clearly mandates revocation for the section 43.12(a)(1) violations. See, e.g., Administrator v. Croll, NTSB Order No. EA-4460 (1996) (one instance of intentional falsification warrants revocation).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The Administrator's appeal is granted;
2. The law judge's decision is reversed, in part; and
3. The Administrator's orders revoking the air agency certificate of respondent Dan's Aircraft Repair, Inc., and all airman mechanic certificates held by respondent Hollingsworth, are affirmed.

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

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in service, contrary to common sense.