

SERVED: March 7, 2001

NTSB Order No. EA-4883

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 5th day of March, 2001

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15526
v.)	
)	
ANDREW W. VANDYKE,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The respondent has appealed from the oral initial decision Administrative Law Judge William E. Fowler, Jr., rendered in this proceeding on May 27, 1999, at the conclusion of an evidentiary hearing.¹ By that decision, the law judge affirmed, with a modification in sanction, an order of the Administrator suspending respondent's commercial pilot certificate for his alleged violations of sections 91.126(b)(1), 91.127(a), and

¹An excerpt from the hearing transcript containing the initial decision is attached.

91.13(a) of the Federal Aviation Regulations, "FAR," 14 C.F.R. Part 91.² For the reasons discussed below, we will deny the appeal.³

The Administrator's April 14, 1999 Amended Order of Suspension, which served as the complaint in this action, alleged, among other things, the following facts and circumstances concerning the respondent:
(..continued)

²The law judge reduced the sanction sought by the Administrator for the alleged violations from 60 to 45 days. The Administrator did not appeal the reduction. FAR sections 91.126(b)(1), 91.127(a), and 91.13(a) provide as follows:

§ 91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

§ 91.126 Operating on or in the vicinity of an airport in Class G airspace.

* * * * *

(b) *Direction of turns.* When approaching to land at an airport without an operating control tower in Class G airspace—

(1) Each pilot of an airplane must make all turns of that airplane to the left unless the airport displays approved light signals or visual markings indicating that turns should be made to the right, in which case the pilot must make all turns to the right....

§ 91.127 Operating on or in the vicinity of an airport in Class E airspace.

(a) Unless otherwise required by part 93 of this chapter or unless otherwise authorized or required by the ATC facility having jurisdiction over the Class E airspace area, each person operating an aircraft on or in the vicinity of an airport in a Class E airspace area must comply with the requirements of § 91.126.

³The Administrator has filed a reply opposing the appeal.

1. At all relevant times herein, you were the holder of Commercial Pilot Certificate No. 046748127.

2. On or about April 25, 1998, at approximately 6:15 p.m., you acted as pilot-in-command of a Beech 65 aircraft, identification number N983K (hereinafter "the aircraft"), on a flight in the vicinity of Orange County Airport, Montgomery, NY (hereinafter "the flight").

3. At all relevant times herein, Orange County Airport, Montgomery, NY (hereinafter "Orange County Airport") did not have an operating control tower.

4. During the flight, when approaching to land at Orange County Airport in Class E airspace, you entered a high left-hand pattern, when airport displays, approved light signals, and visual markings indicated that turns should be made to the right.

5. By virtue of the allegations in Paragraphs (2) through (4), above, you operated the aircraft in a careless or reckless manner so as to endanger the life or property of another.

The law judge concluded that the Administrator had met her burden of proof with respect to these allegations. Respondent's brief does not establish error in that conclusion.⁴

The flight at issue occurred in connection with respondent's

(..continued)

⁴Respondent argues that the Administrator breached his Privacy Act rights because the investigating inspector viewed respondent's failure to respond to an inquiry about the subject flight as a factor that should bear on sanction for the suspected regulatory violations. Aside from the fact that respondent does not identify the rights he believes may have been disregarded, we are doubtful that the Board is authorized to resolve disputes over the FAA's obligations in this regard. We accordingly intimate no view as to whether the Administrator, having advised an airman that the "FAA cannot impose any penalties upon you in the event you fail to respond to this enforcement investigative letter," can, consistently with the Privacy Act, continue an investigation if no response is received or treat a failure to respond as indicative of an uncooperative or non-compliant attitude warranting an enhanced suspension.

employment as a pilot for Sky's the Limit, a sky diving operation. The law judge accepted the testimony of the Administrator's eyewitness, an employee at the Orange County Airport who was in radio contact with respondent before and during his approach to the airport after a parachutist drop, that respondent had flown a left downwind for Runway 26 despite advice that a right-hand pattern was in effect. Although the witness, because of buildings blocking his line of sight from the airport operations office, did not actually see respondent make the two left turns necessary to complete a left-hand pattern, he did observe the landing that followed the left downwind. The law judge rejected the respondent's contrary testimony, and the generally supporting testimony of the co-worker witnesses respondent called in his defense, to the effect that he had flown in a northeasterly direction, more or less perpendicularly, across the threshold for Runway 26 and thereafter entered a right downwind for a landing.⁵ Respondent has not identified any circumstance that would justify disturbing the law judge's credibility assessments in this respect, and the airport worker's testimony provided adequate circumstantial proof that respondent had operated contrary to the regulations cited in the Administrator's complaint.

⁵We assume, given the law judge's ultimate conclusions and the general tenor of his decision, that he misspoke or was misquoted when he recites, in summarizing the evidence at I.D. page 351, that respondent made "all the appropriate right turns"

We find no abuse of discretion in the law judge's refusal to admit into evidence respondent's exhibits R-11 and R-15, which concern litigation between respondent's employer and the airport owner and numerous complaints against the employer that the airport has filed with the FAA. The law judge correctly viewed these documents as irrelevant to the issues to be proved in this proceeding. That they were arguably relevant to the matter of credibility warrants no different ruling, for the law judge did not need to know the exact details of each of these exhibits to be fully apprised, as is clear from the record, that a level of friction existed between the respondent's employer and the airport.⁶ We have no reason to believe that that potential was not appropriately evaluated in the law judge's review of the testimony of the parties' witnesses.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The initial decision is affirmed; and
3. The 45-day suspension of respondent's airman certificate shall begin 30 days after the service date indicated on this opinion and order.⁷

(..continued)
during his approach.

⁶The only motivation evident on this record for the airport's alleged antagonism toward respondent's employer is its apparent view that Sky's the Limit does not conduct its business in a manner that ensures the level of safety the airport believes is necessary for the welfare of all of its users.

⁷For the purposes of this order, respondent must physically

CARMODY, Acting Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

(..continued)
surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR section 61.19(f).