

SERVED: October 29, 2003

NTSB Order No. EA-5061

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 28th day of October, 2003

MARION C. BLAKEY,)
Administrator,)
Federal Aviation Administration,)
Complainant,)
v.) Docket SE-16634
WILLIAM F. MURRAY, III,)
Respondent.)

OPINION AND ORDER

Respondent, appearing *pro se*, has appealed from the oral initial decision of Administrative Law Judge William E. Fowler, Jr., issued on December 10, 2002, following an evidentiary hearing.¹ The law judge affirmed an order of the Administrator suspending respondent's private pilot certificate for 270 days, on finding that respondent had violated 14 C.F.R. 61.113(a), 119.33(a)(2) and (3), and 91.13(a) of the Federal Aviation

¹ The initial decision, an excerpt from the transcript, is attached.

Regulations ("FARs").² We deny the appeal.

In early February 2002 (Superbowl weekend), respondent acted as pilot-in-command of a Piper aircraft on a number of flights between Port Clinton, Ohio, and Put-In-Bay Island, Ohio. Passengers, most of whom respondent did not personally know, were onboard each flight.³ The Administrator claims that these flights were for compensation or hire, therefore running afoul of the cited regulations.

On appeal, respondent continues to argue that there was no compensation - he was transporting friends of friends to (and/or from) a Superbowl party at Mr. Ed's Bar and Grille, owned by respondent's friend Ed Fitzgerald, and received no form of payment. However, he misperceives the definition of compensation long-established through the Administrator's interpretations and NTSB case law.⁴

Mr. Ed's charged a flat price for the party, and it included

² Section 61.113(a) prohibits a private pilot from acting as pilot-in-command of an aircraft carrying passengers for compensation or hire, and from acting as pilot-in-command for compensation or hire. Sections 119.33(a)(2) and (3) prohibit operating as a direct air carrier without an air carrier certificate and operations specifications. Section 91.13(a) prohibits careless and reckless operations so as to endanger the life or property of another.

³ The record supports a finding that one friend of his accompanied him on a number of these flights, but that none of the other passengers was personally known to him.

⁴ Respondent also misunderstands the difference between evidence and argument. The Administrator is not required to provide respondent, via discovery, all his arguments and supporting case law.

air transportation.⁵ Apparently, if arrangements had been made by Mr. Fitzgerald with air charter operators, they had fallen through. There were people who had paid to be flown to Put-In-Bay for whom there was no transportation available and, apparently, respondent came to the rescue.

There is no evidence that respondent received any money directly. (Mr. Fitzgerald was subpoenaed by the Administrator to testify but failed to appear.) Nevertheless, compensation need not be direct nor in the form of money. Goodwill is a form of prohibited compensation. Administrator v. Blackburn, 4 NTSB 409 (1982).

The evidence establishes that, not only was respondent a friend of Mr. Fitzgerald, but he had done work for him in the past. Interpreting the facts in a way most favorable to respondent and assuming that he really had no expectation of any kind of benefit, strains credulity. Respondent testified that these flights cost him about \$1100. The law judge, who had the opportunity to witness respondent's demeanor, judged his credibility and rejected his Good Samaritan argument. The law judge was unable to accept respondent's claim that he would freely transport people he did not know at a personal expense of over \$1000 simply for pleasure. We have no basis to overturn that decision.

⁵ Respondent's argument to the contrary is not supported in the record. See Tr. at 27, 98-101. Nor does Mr. Gotha's testimony corroborate respondent's version of events.

[A] finding that some prospective economic advantage inured to respondent ... is not precluded by ... [a] credibility determination with respect to the respondent's subjective intent... The subjective intent relates to the actor, whereas the objective result relates to the act itself. It is only natural that good will results between individuals and businesses when a party accommodates and assists another, *and it is unlikely that a free ride would have been given to any stranger off the street who happened by...*

Administrator v. Mims, 7 NTSB 850 (1991). Emphasis added.⁶

There is evidence in the record that respondent was warned prior to these events that what he was doing violated the FARs. However, assuming for purposes of discussion that he may have truly believed that, so long as he accepted no money directly, he would not run afoul of the regulations, a serious look at that proposition and at the facts here demonstrate the dangers inherent in such a view. The passengers, who had paid for the flight, expected a licensed, qualified operator and a qualified pilot. Instead, all they got was a private pilot who was not certificated for commercial flight. Respondent's attitude precluded him from considering any negative safety aspects of these activities. And his negative compliance disposition continued throughout the hearing. The Administrator's order is

⁶ Respondent denied that he was doing a favor for Mr. Fitzgerald. He testified that it was a favor to all the stranded people. Respondent referred in his testimony to a letter Mr. Fitzgerald wrote to the FAA investigator. Although that letter was not formally introduced into the record, it corroborates the law judge's conclusion. Mr. Fitzgerald states that he needed more air transportation for the people coming to Mr. Ed's for the Superbowl, that respondent stated that he would help, that it was legal so long as he received no payment, and that respondent "was doing a friend a favor" and "was just trying to help."

affirmed.⁷

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The 270-day suspension of respondent's certificate shall begin 30 days after the service date indicated on this opinion and order.⁸

ENGLEMAN, Chairman, ROSENKER, Vice Chairman, and GOGLIA, CARMODY, and HEALING, Members of the Board, concurred in the above opinion and order.

⁷ The section 91.13(a) violation is a residual one. See Administrator v. Pritchett, 7 NTSB 787 (1991) at n.17, and cases cited there (a violation of an operational FAR regulation is sufficient to support a finding of a "residual" or "derivative" carelessness violation).

⁸ For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).