

SERVED: January 25, 2006

NTSB Order No. EA-5205

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 23rd day of January, 2006

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MARION C. BLAKEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Docket SE-17202
)	
MARK G. LORENZ,)	
)	
Respondent.)	
)	
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OPINION AND ORDER

Respondent appeals the written decision of Administrative Law Judge William R. Mullins, served in this proceeding on March 29, 2005.¹ By that decision, the law judge affirmed the Administrator's Order of Suspension with Waiver of Penalties pursuant to the Aviation Safety Reporting System based on respondent's violation of section 91.13(a) of the Federal

¹ A copy of the law judge's decision and order is attached.

Aviation Regulations ("FARs").² For the reasons set forth below, we deny the appeal.

Respondent stipulated to most of the facts alleged in the complaint. In particular, respondent, who holds a commercial pilot's license, admits that on March 23, 2004, he inadvertently landed a Beechcraft Model V-35B at the Eastern Iowa Airport with the landing gear retracted. The aircraft sustained "minor" damage, and no other property was damaged. On the basis of these facts, the law judge affirmed the Administrator's allegation that respondent's operation of the aircraft was careless.

On appeal, respondent argues that the law judge erred in affirming the FAR section 91.13(a) charge on the basis of the "potential endangerment" created by his inadvertent gear-up landing. Specifically, respondent argues that there was, in fact, no "potential endangerment," and, even if there was, potential endangerment is, "contrary to the plain and sensible meaning of the regulation."

Respondent's arguments are unavailing, and the issues he raises are well-settled. See, e.g., Administrator v. Szabo, NTSB Order No. EA-4265 at 4 (1994) ("innumerable Board cases make clear that no more than potential endangerment is required to find a violation of section [91.13(a)]"); Administrator v. Lancaster, NTSB Order No. EA-3911 at 2 (1993) ("Given ... that respondent forgot to put down the landing gear, we cannot agree

² FAR section 91.13(a) prohibits, "operat[ing] an aircraft in a careless or reckless manner so as to endanger the life or property of another."

with respondent's contention that he acted with all due care. Irrespective of the amount of damage actually done to the aircraft ... the inherent danger in a failure to lower landing gear supports a [carelessness or recklessness] finding."); Administrator v. Smith, 3 NTSB 3196, 3198 ("the potential for endangerment to life and property inherent in a gear[-]up landing is considerable and the likelihood of some damage almost a certainty"); Haines v. Department of Transp., 449 F.2d 1073, 1076 (D.C. Cir. 1971) ("What is more important is that, in the judgment of the Board, potential danger was unnecessarily presented, and this is sufficient to support a finding that the regulation was violated... Proof of actual danger is unnecessary, for the regulation prohibits any careless or reckless practice in which danger is inherent.") (citations omitted); Haines at n.10 (addressing language similar to section 91.13, and stating: "The wording of the regulation does not support a requirement of actual danger. Instead it prohibits the ['']operation of] an aircraft in a careless * * * manner so as to endanger life or property['.']) (emphasis in the original); Roach v. Nat'l Transp. Safety Bd., 804 F.2d 1147, 1157 (10th Cir. 1986) (it is not necessary to prove actual endangerment in order to sustain carelessness charge in FAA enforcement proceedings).³

³ Complainant's argument that the FAA did not allege "potential" endangerment in the complaint is unavailing. Long-standing precedent holds that potential endangerment is sufficient to prove a violation of FAR section 91.13(a), and the complaint clearly put respondent on notice that the Administrator considered his gear-up landing to be a violation of FAR section 91.13(a).

Landing an aircraft with the landing gear retracted clearly creates the potential for injury, death or significant property damage, not only to the aircraft and those aboard it, but to those persons or property that are, or reasonably could have been, in the vicinity of the runway.⁴

We need not address respondent's arguments regarding the aircraft's corporate ownership and whether it constitutes "property of another" in light of our finding that his gear-up landing created potential endangerment to other persons or property in the vicinity of the accident. Nonetheless, we note our view that the corporate ownership of the aircraft -- respondent is one-half owner of the corporation, the other half interest in the corporation is owned by another who is the only other authorized pilot -- renders the corporately-owned aircraft "property of another" under FAR section 91.13(a).⁵

In sum, respondent demonstrates no basis to disturb the law

⁴ Respondent did not present evidence that it would have been impossible for anyone or anything in the vicinity of the runway to sustain injury or damage under the circumstances of his landing. The Administrator carries the ultimate burden in these proceedings, but given the extensive case law recognizing that the danger of such injury or damage is inherent in a gear-up landing, we think the lack of any showing that there was, in actuality, *no such potential*, requires a finding of potential endangerment.

⁵ See, e.g., Bankers Life & Casualty Co. v. Kirtle, 338 F.2d 1006, 1013 (8th Cir. 1964) ("A corporation is an entity separate and distinct from its stockholders and its separate entity will generally be recognized.... [T]he corporate entity will be disregarded only under exceptional circumstances such as where the corporation is a mere shell, serving no legitimate business purpose, and is used principally as an intermediary to perpetrate fraud or promote injustice.").

judge's decision.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The law judge's decision, upholding the Administrator's Order of Suspension with Waiver of Penalties, is affirmed.

ROSENKER, Acting Chairman, and ENGLEMAN CONNERS, HERSMAN, and HIGGINS, Members of the Board, concurred in the above opinion and order.