

SERVED: January 29, 2008

NTSB Order No. EA-5357

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 24th day of January, 2008

_____)	
ROBERT A. STURGELL,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Docket SE-17844
)	
SUNWORLD INTERNATIONAL AIRLINES, INC.,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent has appealed from the February 16, 2007 order of Administrative Law Judge William A. Pope, II, granting the Administrator's motion for summary judgment and denying respondent's cross-motion for summary judgment.¹ We deny respondent's appeal and affirm the Administrator's revocation of

¹ A copy of the law judge's order, and a copy of the law judge's March 30, 2007 denial of respondent's motion for reconsideration, are attached.

any and all air carrier certificates held by respondent.

The September 12, 2006 order of revocation, which serves as the complaint in this proceeding, alleged that a Boeing 727-227F, N86426, the only aircraft listed in respondent's operations specifications, was repossessed on November 11, 2004, and that respondent ceased air carrier operations on that date. Because of the cessation of active operations, the Department of Transportation (DOT) suspended respondent's Certificate of Public Convenience and Necessity, also known as economic authority, on November 15, 2004; notified respondent on February 10, 2005, that it no longer met the requirements of 14 C.F.R. § 119.63, Recency of Operation, and that it did not meet the certification requirements for an air carrier as specified in its operations specifications; and on November 7, 2005, revoked its economic authority for "dormancy." The complaint alleges that, as a result of these circumstances, respondent violated several provisions of the Federal Aviation Regulations (FARs), 14 C.F.R. Parts 119 and 121.²

Respondent admits that the only aircraft on its operations specifications was repossessed.³ Answer at 1, 6-7. Respondent

² The Administrator specifically alleged that respondent violated §§ 119.5(i) (lack of economic authority from DOT to operate as a direct air carrier); 119.7(a) (lack of operations specifications); 119.65(a)(1)-(5) (lack of qualified full-time personnel in the positions of director of safety, director of operations, chief pilot, director of maintenance, and chief inspector); and 121.123 (lack of competent personnel and adequate facilities and equipment for the proper servicing, maintenance, and preventive maintenance of aircraft and auxiliary equipment).

³ Respondent disputes the legality of that repossession, but, as the law judge found, that is a matter for the civil courts to

also admits that it has not caused any aircraft to be flown since November 11, 2004, and that its Certificate of Public Convenience and Necessity is in dormant status. Id. at 2-4. Respondent admits that, when representatives of the FAA inspected its facilities on April 20, 2006, the list of its current management personnel was the same as when it ceased flight operations, and that no management personnel were present at the base of operations at the time of the inspection. Id. at 2-3. In its October 26, 2006 answer, respondent also admits that its maintenance and training records at the time of that April 20, 2006 inspection were current only as of November 2004, or in other words, were clearly out of date. Id. at 3.

On December 18, 2006, the Administrator filed a motion for summary judgment, asserting that no material issues of fact remained to be resolved. The Board's Rules of Practice, at 49 C.F.R. § 821.17(d), provide that a party may file a motion for summary judgment on the basis that the pleadings and other supporting documentation establish that there are no material issues of fact to be resolved.

Respondent denies that it has admitted the facts of this case and argues that it "will be able to demonstrate at the hearing that it has met applicable requirements for its operations...." Memorandum of Law, dated January 25, 2007.

(..continued)

determine. The only issue that is relevant for this case is that respondent does not possess or have the right to exclusive use of an aircraft.

Respondent's answer, however, establishes that it has not conducted any Part 121 air carrier flights since the only aircraft in its operations specifications was repossessed on November 11, 2004, and that it has not, since then, had an active aircraft on its operations specifications. That respondent might be able to demonstrate its qualifications at some point in the future is not a valid defense in the instant proceeding. The Board's decision must be rendered on the basis of the record as it stands, which clearly shows a lack of qualifications. Any change in respondent's capabilities to comply with the requirements applicable to an air carrier is a matter between respondent and the regulating agency (i.e., the DOT and the FAA), at such time that respondent reapplies for economic authority and an air carrier certificate. See Administrator v. Systems-International Airways, Inc., NTSB Order No. EA-4145 at 3 (1994), citing Administrator v. Sun Airlines, Inc., 1 NTSB 1859, 1861 (1972).

Respondent further contends that the Administrator's motion for summary judgment is not supported by sworn affidavits. The Board's Rules of Practice, at 49 C.F.R. § 821.14(b), state that motions shall be accompanied by affidavits or other evidence as the moving party desires to rely upon. The Administrator attached to its motion for summary judgment: (1) the complaint; (2) the answer; (3) the November 15, 2004 letter from DOT, suspending respondent's economic authority; (4) the November 7, 2005 letter from DOT, revoking respondent's economic authority "for reason of dormancy"; (5) the April 12, 2005 letter from FAA

revoking respondent's operations specifications; (6) an April 21, 2006 statement regarding the FAA's inspection of respondent's facilities on April 20, 2006; and (7) the April 25, 2006 letter from FAA, requesting the surrender of respondent's air carrier certificate based on the results of the April 20, 2006 inspection of respondent's facilities. This evidence satisfies the provisions of the Board's Rules of Practice, and supports the Administrator's contention that there are no material issues of fact in dispute.

Respondent has filed a cross-motion for summary judgment on the grounds that the complaint is stale. As the law judge correctly stated, the Board will not dismiss a complaint under the Board's stale complaint rule, 49 C.F.R. § 821.33, where there is a legitimate issue of lack of qualification. Administrator v. Hagan, NTSB Order No. EA-3985 (1993); Administrator v. Westcor Aviation, Inc., 6 NTSB 1445 (1989).

Respondent also contends that the allegations in the complaint are similar to the allegations made in a prior Notice of Proposed Certificate Action (NOPCA), which was resolved in respondent's favor. Respondent reiterates this fact in its pleadings, often citing the Administrator's November 2, 2005 letter stating that respondent "may consider this matter closed." The record shows that an inspection of respondent's facilities was conducted in May 2005, that a NOPCA against respondent was issued on June 6, 2005, and that the NOPCA was subsequently withdrawn by that November 2, 2005 letter. The instant enforcement action is based, in part, on an inspection that was

conducted on April 20, 2006. The fact that some of the same regulatory violations are still present in the instant proceeding, in that respondent has been unable to rectify them, certainly does nothing to mitigate respondent's position. Nothing precludes the Administrator from refining a case against a respondent if violations persist. As the Administrator points out, this is not a reviving of the old case, it is the beginning of a new, separate case. We do not accept respondent's argument that continued dormancy of its operations precludes a new enforcement action subsequent to a previously withdrawn case.

The law judge issued a well-reasoned order granting the Administrator's motion for summary judgment and denying respondent's cross-motion for summary judgment, and a well-reasoned order denying respondent's motion for reconsideration, in which the law judge summarized the relevant evidence and pleadings contained in the administrative record. We adopt those discussions as our own and will not repeat them here.

None of the arguments respondent raises provide any reason to overturn the law judge's decision granting summary judgment in favor of the Administrator and upholding the revocation of respondent's air carrier certificate.

The Board has long held that revocation of an air carrier's operating certificate is the appropriate sanction when the carrier lacks an acceptable aircraft, is no longer conducting any operations under its certificate, and has effectively terminated its operations. See Administrator v. Air Illinois, Inc., 6 NTSB 436 (1988); System-International Airways, Inc., supra; Sun

Airlines, Inc., supra; Administrator v. Southern Institute of Aviation, Inc., 5 NTSB 1278 (1986). As the law judge found, the admitted facts conclusively demonstrate respondent's lack of qualification to hold an air carrier certificate.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's order granting summary judgment is affirmed; and
3. The Administrator's revocation of any and all air carrier certificates held by respondent is affirmed.

ROSENKER, Chairman, SUMWALT, Vice Chairman, and HERSMAN, HIGGINS, and CHEALANDER, Members of the Board, concurred in the above opinion and order.