

SERVED: July 18, 2008

NTSB Order No. EA-5397

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 16th day of July, 2008

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ROBERT A. STURGELL,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	
v.)	Docket SE-18147
)	
MAGIC EXPRESS AIRLINES, INC.,)	
)	
Respondent.)	
)	
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OPINION AND ORDER

Respondent has appealed from the March 21, 2008 order of Administrative Law Judge William A. Pope, II, granting the Administrator's motion for summary judgment.¹ We deny respondent's appeal and affirm the Administrator's revocation of any and all air carrier certificates held by respondent.

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

The December 4, 2007 emergency order of revocation,² which serves as the complaint in this proceeding, alleged that Harold Coghlan, Magic Express's president and chief executive officer, submitted to CAE SimuFlite, a training provider for Magic Express, a check airman approval form with a signature purporting to be that of James P. Fox, the principal operations inspector (POI) assigned to Magic Express. The order further alleged that said form is fraudulent or intentionally false in that the signature is not that of the POI. The Administrator also alleged that, based upon that form, a simulator check was conducted for Mr. Coghlan and, based upon that check, he was permitted to continue to act as the check airman and as a pilot-in-command for Magic Express. Finally, the emergency order alleged that, based on these circumstances, respondent demonstrated that it lacks the qualifications to hold an air carrier certificate, and that it violated 14 C.F.R. § 61.59(a)(2) of the Federal Aviation Regulations (FARs); and the Administrator revoked respondent's Part 135 air carrier certificate.

Respondent admits that Mr. Coghlan printed the name of POI James Fox on the form in the space for principal operations inspector approval, that Mr. Coghlan signed Mr. Fox's name, and that the form is fraudulent or intentionally false in that the signature is not that of Mr. Fox.³

² Respondent waived the expedited procedures normally applicable to emergency revocation proceedings under the Board's rules.

³ Answer at 2; affidavit of respondent Magic Express Airlines by Harold Coghlan, submitted with respondent's reply to motion for summary judgment.

The Administrator filed a motion for summary judgment, asserting that no material issues of fact remained to be resolved. Board Rule of Practice 821.17(d) provides 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. The law judge granted the Administrator's motion, finding that there were no genuine issues of material fact remaining, and that Mr. Coghlan admitted, both in his answer and in his affidavit, that he falsely signed POI Fox's name without Mr. Fox's knowledge or permission, and knowing that the signature was false. In his order, at page 10, the law judge noted that Mr. Coghlan admitted that he "knowingly and intentionally falsely signed POI Fox's name for the 'sake of expediency' to pave the way for getting a check ride from CAE SimuFlite without raising any questions or problems." Mr. Coghlan stated, in his affidavit, at page 2, that he had been "unable to reach POI Fox as he had not returned my phone calls for about a week and I was scheduled to take a pilot check ride with SimuFlite." He said he signed the form "for [Mr. Fox]" so that he would not "have to reschedule my appointment and wait another several months for the check ride."

The law judge concluded⁴ that respondent, "through its agent, Harold Coghlan," admitted two of the elements of making an intentionally false statement, that "he intentionally made or caused to be made a false statement in the form of a false

⁴ Order at 10, citing Hart v. McLucas, 535 F.2d 516 (9th Cir. 1976).

signature," and that this was "with knowledge of its falsity." The law judge noted there are three elements the Administrator must prove to establish intentional falsification. Falsity and knowledge are the two elements admitted by respondent; the final element is materiality.⁵ For a statement to be material, it need only have a natural tendency to influence, or be capable of influencing, a decision of the agency in making a required determination.⁶ The law judge found there was no question the alleged falsification was material in that, based on the falsified form, SimuFlite conducted a simulator check for Mr. Coghlan "which he passed, thus gaining certification as a check airman" for Magic Express. The law judge stated that the "falsified" signature was "capable of influencing the FAA's decision to allow" Mr. Coghlan to act as a check simulator airman for Magic Express.⁷ Further, as the Administrator pointed out, the form was also capable of influencing the FAA's decision regarding the completion of a related audit, thereby adding to the materiality of the false signature.

Respondent asserts that there are material issues of fact to be resolved, and although he admitted to signing POI Fox's name, Mr. Coghlan "believed that signature was nothing more than a formality or a 'rubber stamp' since Respondent believed that the

⁵ See Hart v. McLucas, supra at 519.

⁶ Twomey v. NTSB, 821 F.2d 63, 66 (1st Cir. 1987).

⁷ See Twomey, supra, and Administrator v. Cassis, 4 NTSB 555 (1982). See also, 14 C.F.R. § 135.337(b)(3), which prohibits a person from serving as a check airman unless that person has satisfactorily completed required proficiency or competency checks.

actual permission for taking his check ride resided with the document signed by" a previous POI. Respondent's Reply to Complainant's Motion for Summary Judgment, at 2, February 13, 2008.

We conclude that there are no material issues of fact to be resolved, that the Administrator was entitled to judgment as a matter of law, and that the law judge correctly granted the Administrator's motion for summary judgment. The law judge issued a well-reasoned order granting summary judgment, in which he summarized the relevant evidence and pleadings contained in the administrative record. Respondent argues that several "errors of fact," in the order granting summary judgment and in Mr. Fox's affidavit supporting the Administrator's motion, entitle respondent to an "opportunity ... to be heard in open session." This argument, however, in that the cited instances refer to issues that are not material to the disposition of the case, does not provide any reason to overturn the law judge's decision granting summary judgment in favor of the Administrator.⁸

Respondent also argues that the sanction of revocation is unduly harsh. We have long held, however, that revocation is the

⁸ We note that respondent could have addressed, in the reply to the motion for summary judgment, some of the issues it now raises. Board Rule 821.14(c) provides that a party may file a reply to a motion, "accompanied by such affidavits or other evidence as that party desires to rely upon...." Respondent failed to produce the evidence that would support its arguments and assertions regarding both the Administrator's motion below and this appeal of the law judge's order. Even had respondent done so, however, as stated *supra*, the asserted errors are irrelevant to the issue before us, which is whether material issues of fact remain to be resolved.

appropriate sanction for intentional falsification.⁹ Further, the availability of revocation as the sanction for intentional falsification is contained in the Administrator's written sanction guidelines. Nothing in this case warrants our departure from those guidelines.

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.

⁹ See Administrator v. Hodges, NTSB Order No. EA-5303 (2007); Administrator v. Cooper, NTSB Order No. EA-5212 (2006); Administrator v. Culliton, NTSB Order No. EA-5178 (2005); Administrator v. Diaz, NTSB Order No. EA-4990 (2002); Administrator v. Rea, 7 NTSB 1389 (1991).

Served: March 21, 2008

**UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
OFFICE OF ADMINISTRATIVE LAW JUDGES**

ACTING ADMINISTRATOR,
FEDERAL AVIATION ADMINISTRATION,
Complainant,

v.

Docket No.: SE-18147

MAGIC EXPRESS AIRLINES, INC.,
Respondent.

ORDER GRANTING SUMMARY JUDGMENT

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Respondent Magic Express Airlines, Inc. (Magic Express) has appealed to the National Transportation Safety Board from the Acting Administrator's Emergency Order of Revocation, dated December 4, 2007, which, pursuant to § 831.31(a) and § 821.55(a) of the Board's Rules of Practice in Air Safety Proceedings, serves as the complaint in this proceeding. By that order, the Acting Administrator revoked the Respondent's Part 135 Air Carrier Certificate No. G8XA402J, because of an alleged violation of FAR §§ 61.59(a)(2).

The complaint, in pertinent part, with the Respondent's answer¹ to each allegation in parenthesis, alleges that:

¹ The Respondent's (Waiver of Right to Emergency Track and Appeal & Answer to the FAA Acting Administrator's Complaint" was filed on December 14, 2007.

1. At all times material herein Magic Express Airlines, Inc. ("Magic Express") was and is the holder of Part 135 air carrier certificate No. G8XA402J. *(Admitted)*
2.
 - a. At all times material herein Harold Coghlan was and is the President and Chief Executive Officer of Magic Express. *(Admitted)*
 - b. At all times material herein, FAA Inspector James P. Fox was and is the Principal Operations Inspector ("POI") assigned to Magic Express. *(Admitted, except that James P. Fox became the acting POI of record for "Magic Express" on or about June 7, 2007.)*
 - c. At all times material herein, CAE SimuFlite ("SimuFlite") was and is a training provider for Magic Express. *(Admitted)*
3.
 - a. On or about August 23, 2007, Harold Coghlan submitted or caused to be submitted to SimuFlite a form entitled "Check Airmen – CAE SimuFlite Record of Nominated Simulator Check Airmen" (Check Airmen Approval Form). *(Admitted)*
 - b. The "Certificate Holder Approval" section of the above Check Airmen Approval Form includes the signature of Harold Coghlan dated August 22, 2007 as "CEO/VP of Ops" on behalf of Magic Express. *(Admitted)*
 - c. The "Principal Operations Inspector Approval" section of the Check Airmen Approval Form includes a signature dated August 23, 2007 purporting to be that of James P. Fox. *(Admitted)*
4.
 - a. The above Check Airmen Approval Form is fraudulent or intentionally false in that the signature in the "Principal Operation Inspector Approval" block is not that of James P. Fox. *(Admitted, although Respondent believes that actual consent for the simulator check ride is contained on FAA Operations Specification A031, which gave and still gives Magic approval to use CAE SimuFlite training center and their check airmen for training and check rides, and alternatively, the Birmingham FSDO engaged in a scheme of intimidation tactics, abuse of authority, willful neglect of certificate holder(s)' requests, making it difficult if not nearly impossible to conduct day to day business.)*
 - b. Harold Coghlan made or caused to be made the above fraudulent or intentionally false signature. *(Admitted, except that Respondent believes that he (it) was forced into a course of action that would normally not be acceptable to Respondent.)*
5.
 - a. Section 135.337(c) (5) of the Federal Aviation Regulations requires approval of by the POI on the above Check Airmen Approval Form. *(Admitted in part, not admitted that FAR 135.337(c) (3) requires the CAE SimuFlite Form.)*
 - b. Based upon the above Check Airmen Approval Form, a simulator check was conducted for Harold Coghlan by CAE SimuFlite on or about September 2, 2007. *(Admitted)*
 - c. Based upon the above simulator check, Harold Coghlan was permitted to continue acting as the check airman and as a pilot in command for Magic Express. *(Denied)*
6. Based on the foregoing, Magic Express has demonstrated that it lacks the qualifications to be the holder of an air carrier certificate. *(Denied)*
7. By reason of the foregoing, Magic Express violated Section 61.59(a)(2) of the Federal Aviation Regulations in that no person may make or cause to be made any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made or used to show compliance with any requirement for the issuance or exercise of the privileges of any certificate, rating, or authorization under this part. *(Denied)*

As a result of the foregoing, the Acting Administrator finds that Magic Express lacks the qualifications necessary to hold any air carrier certificate. He therefore has determined that safety in air commerce of air transportation and the public

interest require the revocation of the above mentioned certificate. The Acting Administrator further finds that an emergency requiring immediate action exists with respect to safety in air commerce or air transportation. Accordingly, this Order is effective immediately. (*Denied*)

I.

On January 29, 2008, the Acting Administrator filed a “Motion for Summary Judgment,” in which he asserts that he is entitled to a summary judgment, because there are no remaining issues of material fact to be resolved at a hearing. The Acting Administrator states that in the Answer filed by the Respondent, the Respondent admitted that Harold Coghlan was and is the president of Magic Express, and that FAA Aviation Safety Inspector James Fox was and is the Principal Operations Inspector assigned to Magic Express. The Respondent further admitted that on or about August 23, 2007, Harold Coghlan submitted or caused to be submitted to CAE SimuFlite, a training provider for Magic Express, a CAE SimuFlite form entitled “Check Airmen – CAE SimuFlite Record of Nominated Simulator Check Airmen” for the Simulator BE-200 Series. The Respondent further admitted that the “Certificate Holder Approval” section of the form included the signature of Harold Coghlan, and that Harold Coghlan, not Inspector Fox, signed the signature purporting to be that of Inspector Fox in the “Principal Operations Inspector” section of the form. The Respondent further admitted that approval of check airmen by the POI is required, and that CAE SimuFlite conducted a simulator check for Harold Coghlan on or about September 2, 2007.

The Acting Administrator contends that the Respondent’s arguments that the form does not fall within the purview of FAR § 61.59(a)(2); that consent for the simulator check ride was conferred by § A031 of Magic’s Operations Specifications; and, the Birmingham Flight Standards District Office was to blame for the Respondent’s conduct, are without merit.

The Acting Administrator cites *Administrator v. Anderson*, NTSB Order No. EA-4564 (1997), and *Administrator v. Thunderbird Propellers, Inc.*, NTSB Order No. EA-4648 (1998), for the proposition that falsification of any documents used to show compliance with a requirement in Part 43 falls within the scope of FAR § 61.59 (a)(2), whether or not it is a document or form specifically required to be kept or used by the Acting Administrator. The Acting Administrator notes that FAA Order 8400.10, volume 3, chapter 3, section 2, in effect at the time of this incident, provides that “All check airmen approved for part 121 or 135 operations must be approved by the operator’s POI.” The CAE SimuFlite form entitled “Check Airmen – CAE SimuFlite Record of Nominated Simulator Check Airmen,” bearing the false signature of POI Fox affixed to it by Harold Coghlan, serves the function of the POI’s letter of approval for CAE SimuFlite employees to act as check airmen for Magic Express airmen. Without completing a Section 135.297

check ride at CAE SimuFlite, Harold Coghlan would not have remained qualified to continue to act as a pilot for Magic Express.

The Acting Administrator further contends that the approval of CAE SimuFlite and named employees as a training provider for Magic Express was not accomplished by adding the name of CAE SimuFlite to Magic Express' operations specifications. The addition of SimuFlite as a training provider to Magic Express' operations specifications, alone, does not confer on SimuFlite authority to give Section 135.297 check rides to Magic Express airmen. Approval by the POI is required before SimuFlite can give Section 135.297 check rides to Magic Express airmen. § A031 of Magic Express's Operations specifications requires a biannual audit of each training provider. The purpose of the audit is to ensure that each person employed by the training provider is trained, qualified, and authorized to conduct the approved training, testing, and checking in accordance with the certificate holder's approved training program. Magic Express had not completed an audit of SimuFlite before the "Check Airmen – CAE SimuFlite Record of Nominated Simulator Check Airmen," form containing the false signature of POI Fox was sent by Harold Coghlan to CAE SimuFlite. POI Fox instructed Harold Coghlan in May 2007 that the audit was due and had to be completed prior to his receiving training at CAE SimuFlite.

The Acting Administrator states that blaming the Birmingham FSDO for the conduct of Harold Coghlan is not a legal defense to violation of the Federal Aviation Regulations.

The Acting Administrator states that as a key management official who plays an active role in running Magic Express' daily operations, and the primary person who interacts with the FAA, it appropriate to impute Harold Coghlan's actions to Magic Express for sanction purposes. Citing *Administrator v. Diaz*, NTSB Order No. EA-4990 (2002), the Acting Administrator contends that the appropriate sanction for even one instance of intentional falsification is revocation.²

On February 13, 2008, the Respondent filed its "Reply to Complainant's Motion for Summary Judgment," in which the Respondent asserts that there are material issues of fact to be resolved, and the Acting Administrator is not entitled to summary judgment. The Respondent admits that he, signed POI Fox's name, but believed that the signature was nothing more than a formality or a "rubber stamp," and that actual authority to take the check airman check ride resided with the document signed by Emil A. Cirone, Government Exhibit 1A.³ The Respondent contends that under *Hart v. Lucas*, 535 F.2d 516, 519 (9th Cir.

² Attached to this Order for quick reference are Government Exhibits 1A, 1C, 1E, 1I, and 1G, in whole or in pertinent part.

³ Exhibit 1A is a form entitled "SimuFlite Record of Approved Check Airmen for Magic Express Airlines, Inc., which Harold A. Harold Coghlan signed and dated May 25, 2001. The signature of Emil A. Cirone is undated.

1976), the elements of intentional falsification are: (1) an intentional false representation; (2) in reference to a material fact; (3) made with knowledge of its falsity; (4) with intent to deceive; and (5) with reliance on the representation. Respondent asserts there was no intent to deceive.

Respondent contends that he (i.e., Harold Coghlan) may have been mistaken that permission to take his check ride rested with Emil A. Cirone, but what the Respondent (Harold Coghlan) should have known is not the issue. The issue is what the Respondent (Harold Coghlan) believed to be true. Whether or not the Respondent (Harold Coghlan) knew that it was impermissible for him to sign the form should be left to the trier of fact.

Finally, the CAE SimuFlite audit submitted to POI Fox by Magic Express on or about September 22, 2007, was approved by POI Fox on or about September 26, 2007, without his signature on the form entitled, "Record of Approved Check Airmen," indicating his signature was not necessary.

On February 15, 2008, the Acting Administrator filed his "Reply to Respondent's Reply to Motion for Summary Judgment," in which the Acting Administrator asserts that the undisputed evidence shows that Harold A. Coghlan had the intent to falsify the check airmen approval form, because he signed POI Fox's signature to the form, and that entry was fraudulent or intentionally false. Because he (Harold Coghlan) knew that POI Fox had neither signed the form nor authorized Harold Coghlan to sign on his behalf.

The Acting Administrator states that the evidence remains undisputed and unequivocal that the check airmen approval form was required within the meaning of FAR § 61.59(a)(2). There is no evidence that POI Fox approved the audit materials submitted by Harold Coghlan on or about September 23, 2007, with or without POI Fox's signature.

On February 19, 2008, the Respondent filed "Respondent's Reply to Acting Administrator's Reply to Respondent's Reply to Complainant's Motion for Summary Judgment," again asserting that there are genuine issues of material fact to be resolved. The Respondent contends that Harold Coghlan "believed that signing for POI Fox on the CAE SimuFlite form was a formality – a 'rubber stamp,' as he stated in an attached affidavit. The Respondent further contends that Harold Coghlan "believed that the actual permission for taking his check ride resided with the Operations Specification A-031 and the Magic Express Training Program," again citing Coghlan's attached affidavit. Therefore, there remains an issue of material fact as to Coghlan's intent and the materiality of his signing POI Fox's name on the CAE SimuFlite form.

The Respondent further contends that POI Fox approved a CAE SimuFlite audit on or about September 27, 2007, without signing it, indicating his signature was not necessary. See Fox affidavit dated January 29, 2008.

II.

FAR § 61.59(a)(2) provides as follows:

No person may make or cause to be made any fraudulent or intentionally false entry in any logbook, record, or report that is required to be kept, made, or used to show compliance with any requirement for the issuance or exercise of the privileges of any certificate, rating, or authorization under this part.

In order to prove the charge of intentional falsification, the Administrator must prove that the Respondent, acting through its president, chief executive officer, vice president of operations, and agent, Harold Coghlan, made or caused to be made a false statement, with knowledge of its falsity, and the statement was made in reference to a material fact. *Hart v. McLucas, supra*. Proof of fraud requires proof of two additional elements, an intent to deceive and action taken in reliance upon the representation. *Twomey v. NTSB*, 821 F.2d 63, 66 (1st Cir. 1987). In order for a statement to be material, it need only be capable of influencing the decision of the agency. *Twomey v. NTSB, supra* at 66; *Administrator v. Cassis*, NTSB Order EA-1831 (1982); *Administrator v. Anderson*, NTSB Order EA-4564 (1997); *Administrator v. Richards*, NTSB Order EA-4813 (2000).

Government Exhibit 1E is a photocopy of a CAE SimuFlite Record of Nominated Simulator Check Airmen, with a list of names of CAE SimuFlite employees, which includes the statement: "Following the completion of appropriate operator specific training, if required, the following individuals are eligible to be nominated by the certificate holder as simulator check airmen." At the bottom of the form is "Certificate Holder Approval." Above that is the statement: "Signatures indicate approval of the above named CAE SimuFlite employees to serve as simulator check airmen for the Certificate Holder. Return one copy of this form to CAE SimuFlite Regulatory Compliance, and retain additional copies for your records." The Certificate Name is listed as "Magic Express Airlines, Certificate Number G8XA402J," Harold A. Coghlan's name and signature are entered as "CEO/VP of Ops." Coghlan's name and signature are dated "8-22-07." The printed name of James P. Fox is entered under "Principal Operations Inspector." Beneath the name of James P. Fox is an illegible signature. The name and signature of James P. Fox are dated "8-23-07."

The sworn affidavit of Harold A. Coghlan, dated February 16, 2008, states:

I, Harold A. Coghlan, stated and declare on information and belief as follows:

1. I, Harold A. Coghlan, am now and have been at the times herein an officer of Magic Express Airlines, Inc. ("Magic");
2. As stated in my Answer to the Acting Administrator's Complaint, I printed POI Fox's name to the SimuFlite form in question and signed as a matter of a formality or a "rubber stamp" and it was not my intent to falsify the document. I was unable to reach POI Fox as he had not returned my phone calls for about a week and I was scheduled to take a pilot check ride with SimuFlite. So as not to have to reschedule my appointment and wait another several months for a check ride, and for expediency sake, I signed the form (Government Exhibit 1E) for him believing it would not be an issue since we had approval in our Operations Specifications and our FAA-approved training program to use CAE SimuFlite. I believed that the Operations Specification A-031 and the FAA approved training program constituted authority to sign the form on his behalf.
3. I believed that I already had permission to take check rides with CAE SimuFlite and that permission rested with the operations specification A-031 and with the "Magic" training program approved by the FAA. (Government Exhibit 1A).
4. On September 19, 2007, POI Fox said to me and several other employees of "Magic" that were present, that "Magic" was to perform an audit of the SimuFlite training program and/or any other contractors that "Magic" wanted to use to train its pilots. Until such time as an audit was performed and approved by POI Fox, he said that FAA permission to use any training contractor or vendor was immediately cancelled as of his conversation on that date. Permission would not be reestablished until such time as "Magic" submitted an audit and said audit was approved by POI Fox.
5. An audit of CAE SimuFlite was performed on September 22, 2007 by "Magic" in response to POI Fox's direct request of September 19, 2007.
6. On or about September 27, 2007, POI Fox issued and mailed an approved Operations Specification A-031 approving CAE SimuFlite as the sole training vendor since the successful audit was performed only on SimuFlite. POI Fox had deleted all other training vendors when he issued the newly approved A-031 Operations Specification. A copy of this A-031 Operations Specification and POI Fox's letter dated on or about September 27, 2007 approving CAE SimuFlite resides in the "Magic" file at the Birmingham FSDO and in the FAA Operations Specifications Computer Software.
7. It is the aforementioned approved A-031 Operations Specifications and the FAA approved training program on which I relied as authority to sign POI Fox's name on his behalf.

The sworn affidavit of James Philip Fox, dated 1/29/08 (Government Exhibit 1), states:

BEFORE me the undersigned personally appeared James Philip Fox, to me well known, upon being duly sworn did depose and state:

1. I am currently employed in the position of Principal Operations Inspector ("POI"), Federal Aviation Administration ("FAA"), Alabama Northwest Flight Standards District Office ("FSDO"), 1500 Urban Center Drive, Suite 250, Vestavia Hills, Alabama.
2. I am currently assigned as the POI for Magic Express Airlines ("Magic") and was Magic's POI in August 2007. My duties as the POI for Magic include handling FAA matters relating to Magic's certificate and operations, as well as maintaining the files pertaining to Magic held at the Alabama Northwest Florida FSDO.
3. Harold Coghlan ("Coghlan") is the CEO and VP of Operations for Magic. He is the key management official for Magic, plays an active role in running Magic's daily operations, and interacts with the FAA on behalf of Magic. In August 2007, Coghlan was also an approved check airman for Magic.
4. Attached as "Exhibit 1A" is a true and accurate copy of the form entitled "SimuFlite Record of Approved Check Airmen," dated May 25, 2001. The form is maintained in the ordinary course of business in Magic's records at the Alabama Northwest Florida FSDO. It indicates that Coghlan requested and received from Magic's former POI approval of the SimuFlite check airmen listed.
5. On or about February 15, 2006, Flights Standards Handbook Bulletin for Air Transportation (HBAT) 06-03 became effective. It noted that if the biennial training provider audits required by Operations Specifications ("Ops Specs") section A031 were not completed, approval of the training provider would be suspended. A true and accurate copy of HBAT 06-03 is attached as "Exhibit 1B." A true and accurate copy of section A031 of Magic's Ops Specs in effect on February 15, 2006 is attached as "Exhibit 1C."
6. As of May of 2007, Magic had never completed and was overdue for the required audit of CAE SimuFlite ("SimuFlite"); a training provider listed in section A031 of Magic's Ops Specs. As a result in May 2007, I instructed Coghlan that his required audit of SimuFlite was due and to be completed prior to receiving training at SimuFlite.
7. Attached as "Exhibit 1D" is a true and accurate copy of a record of the 14 C.F.R. 135.293/297/299 check ride completed on February 20, 2007. Coghlan was due to take his next 14 C.F.R. 135.297 check ride in August of 2007.
8. On or about September 22, 2007, Ms. Darla Pruitt, the Manager-Global Administration for SimuFlite, informed me that Coghlan had completed training at SimuFlite during August of 2007. When I inquired how Coghlan had been able to complete training at SimuFlite without a check airmen

approval document, Ms. Pruitt informed me that an authorization was on file and faxed me a copy of the approval document. A true and accurate copy of the document faxed to me by Ms. Pruitt is attached as "Exhibit 1E." A true and accurate copy of Ms. Pruitt's statement, indicating that the document had been sent to SimuFlite by fax on August 23, 2007, is attached as "Exhibit 1F." I did not sign the document attached as "Exhibit 1E" and would not have signed it on August 23, 2007, because Coghlan had not completed the required audit of SimuFlite. A true and accurate copy of the training records I received from Ms. Pruitt is attached as "Exhibit 1G."

9. All air carrier certificate holders, including Magic, must obtain POI approval of a training provider's employee for use as a check airman for that certificate holder prior to using that employee as a check airman. Approval of the training provider's individual employees as check airmen is not conferred by mere addition of the training provider itself to the certificate holder's Ops Specs. Attached as "Exhibit 1H" is a true and accurate copy of FAA Notice N8000.355, Appendix 2, which published the Order 8400.10, volume 3, chapter 3, section 2, pertaining to check airmen approval that was in effect on August 23, 2007.
10. On or about September 23, 2007, Coghlan faxed to me his audit of SimuFlite. Attached as "Exhibit 1I" is a true and accurate copy of the audit materials that he submitted. They include a copy of the form "Check Airmen – CAE SimuFlite Record of Nominated Simulator Check Airmen" for the Simulator BE-200 Series, with the space for my signature left blank.

III.

Summary judgment is appropriate where "the pleadings and other supporting documents establish that no material issues of fact exist, and that the party is therefore entitled to judgment as a matter of law." *Administrator v. Kizer*, NTSB Order No. EA-5339 (2007), at page 5.

There are no genuine issues of material fact remaining in this case. The admitted facts, and the reasonable inferences drawn from them, establish that Magic Express Airlines, Inc., through Harold Coghlan, its President, CEO/VP Operations, an officer of Magic Express Airlines, Inc., made or caused to make a knowing and intentionally false material entry, namely the false signature of POI James P. Fox, on a form entitled "Check Airmen – CAE SimuFlite Record of Nominated Simulator Check Airmen."

In both his answer to the Complaint, and in his sworn affidavit filed in this proceeding, Harold Coghlan admitted that on or about August 22, 2007, he intentionally printed the name of POI James P. Fox on the form in the space for Principal Operations Inspector Approval, and on August 23, 2007, falsely signed

POI Fox's name, without the knowledge or permission of POI Fox, on a form entitled "Check Airmen – CAE SimuFlite Record of Nominated Simulator Check Airmen," knowing that the signature was false.

A clearer admission by Coghlan that he knew that he had no authority to sign for POI Fox, and that he intentionally and knowingly falsely signed POI Fox's name on the Check Airmen Approval form he submitted to CAE SimuFlite on or about August 23, 2007, is difficult to imagine. Clearly, as Coghlan admitted, he knowingly and intentionally falsely signed POI Fox's name for the "sake of expediency" to pave the way for getting a check ride from CAE SimuFlite without raising any questions or problems.

Thus, the Respondent, through its agent, Harold Coghlan, has admitted two of the elements of making an intentionally false statement, that is, he has admitted he intentionally made or caused to be made a false statement in the form of a false signature on the Check Airmen Approval form, with knowledge of its falsity. *Hart v. McLucas, supra*.

The third element of making an intentionally false statement is materiality. Here, there is no genuine issue of materiality. FAR § 135.337(c)(5)⁴, requires that CAE SimuFlite be approved by the principal operations inspector in order for designated employees of CAE SimuFlite to act as check airmen for Magic Express Airlines, Inc., and, as in this case, give Harold Coghlan, Magic Express' President, CEO/VP Operations, a required simulator check. It is not disputed that based on the falsified Check Airmen Approval Form, which Harold Coghlan had submitted to CAE SimuFlite on or about August 23, 2007, and that CAE SimuFlite conducted a simulator check for Harold Coghlan on or about September 2, 2007, which he passed, thus gaining certification as a check airman for Magic Express Airlines, Inc. Clearly, the falsified signature by Coghlan was capable of influencing the FAA 's decision to allow Coghlan to act as a check simulator airman for Magic Express. Coghlan's plan unraveled when POI Fox learned from CAE SimuFlite that it was not at the time approved to give simulator checks to Magic Express employees, because his signature on the Check Airman Approval Form was false.

In his affidavit, Harold Coghlan raises a defense that he believed that he had permission to take check rides with CAE SimuFlite under Section A031 of Magic Express' Operations Specifications and approved training program. That defense is patently without legal merit. The evidence of record establishes that Harold Coghlan submitted the falsified form to CAE SimuFlite for the purpose of causing CAE SimuFlite to give him a simulator check that he needed, in order for

⁴ FAR § 135.337(c)(5) provides: (c) No certificate holder may use a person, nor may any person serve as a check airman (simulator) in a training program established under this subpart unless, with respect to the aircraft type involved, that person meets the provisions of paragraph (b) of this section, or--5) Has been approved by the Administrator for the check airman (simulator) duties involved.

him to continue to function as a check airman for Magic Express. Whether CAE SimuFlite may have had the authority to give Coghlan the simulator check without the falsified Check Airmen Approval Form on September 2, 2007, is irrelevant. While denying that it was his intent to falsify the document, at the same time he admitted that he had falsely signed POI Fox's name because he had been unable to reach POI Fox, and he was scheduled to take a pilot check ride with CAE SimuFlite, and did not want to have to wait several months to reschedule his appointment. He said that he falsely signed the form with POI Fox's name for expediency's sake, believing it would not be an issue because he had approval in Magic Express' Operations Specifications.

Falsifying POI Fox's signature is most clearly not authorized by Section A031 of Magic Express' Operations Specifications dated September 1, 2005, which was in effect in August 2007, and on September 2, 2007. It provides, in part:

- g. A review and audit by the certificate holder of each training agreement of each subject training organization listed below [which included CAE SimuFlite, Inc.] must be completed at least once every two years (based on this operations specification paragraph effective date) and presented to principal inspector for acceptance. This audit shall include a review of the items listed in subparagraphs a-f. The acceptance of this operation is considered to have been completed in the month required if completed in the calendar month before or after the month in which it is due.

Thus, an audit of CAE SimuFlite which was due by September 1, 2007, had not been accomplished and employees of CAE SimuFlite had not been approved as check airmen for Magic Express, and it is clear, and not disputed, that he submitted the falsified Check Airmen Form to SimuFlite on or about August 23, 2007, to satisfy that requirement and be able to take the simulator flight test on September 2, 2007.

It is immaterial whether or not Harold Coghlan actually may have had authority to use CAE SimuFlite to give him a check ride on September 2, 2007. He apparently believed he did not, because he submitted to CAE SimuFlite in August 2007, the false Check Airmen Approval Form. But, regardless of that, it is well established that the fact a false entry was not necessary does not limit the Board's finding of materiality to that circumstance only. *Administrator v. Cassis, supra.*

Even assuming, for purposes of discussion, only, that Harold Coghlan somehow was authorized by Section A031 of Magic Express' Operations Specifications dated September 1, 2005 to falsely sign POI Fox's name, that does not amount to a bona fide defense to the charge that, acting for Magic Express, he violated FAR § 61.59(a)(2) by making or causing to be made an intentionally false entry in a record used to show compliance with the required

procedures for authorization of CAE SimuFlite to administer a simulator check to him. Just as in *Administrator v. Richards, supra*, even if the POI's signature and approval was not necessary, something which in fact is clearly not the case, Coghlan falsified POI Fox's signature on the Check Airmen Approval form, and submitted the form with the false signature of POI Fox falsely indicating that POI Fox had approved CAE SimuFlite to provide the training that Coghlan needed to meet the FAA's requirements for him to act as a check airman for Magic Express. Therefore, the intentionally false signature of POI Fox placed on the Check Airmen Approval form was material.

I find, therefore, that there is no genuine issue of material fact that Respondent, acting through its agent Harold Coghlan, made or caused the making of a knowing, material, intentionally false statement, in violation of FAR 61.59(a)(2).⁵

The remaining issue is the appropriateness of the sanction of revocation. It is well established by Board precedent that one instance of intentional falsification supports revocation. *Administrator v. Diaz, supra*, citing numerous cases. Here, the falsification by Harold Coghlan on Respondent's behalf shows that the Respondent does not possess the care, judgment, and responsibility expected of a certificate holder. The sanction of revocation is appropriate in this case.

Summary judgment is appropriate where "the pleadings and other supporting documents establish that no material issues of fact exist, and that the party is therefore entitled to summary judgment as a matter of law." *Administrator v. Kizer, supra*, at page 5. There are no genuine issues of material fact remaining in this case, and there is no question to be resolved as to the appropriateness of the sanction of revocation of Magic Express Airlines, Inc.'s Part 135 air carrier certificate No. G8XA402J. Therefore, the Acting Administrator's Motion for Summary Judgment is GRANTED, and the Emergency Order of Revocation is AFFIRMED.

ENTERED this 21st day of March 2008, at Washington, D.C.

WILLIAM A. POPE, II
Judge

⁵ Although in light of this finding, I find it unnecessary to reach the issue of whether the false signature of POI Fox was also fraudulent. However, were that to be necessary and appropriate, I would find that it was fraudulent, because there is no real dispute that Coghlan intended for CAE SimuFlite, and by extension, the FAA, to believe that CAE SimuFlite had been approved by POI Fox to conduct simulator flight checks for Magic Express, when that was not true, and further that CAE SimuFlite administered a simulator check to Harold Coghlan, which was capable of influencing the FAA, relying on the false signature of POI Fox provided by Coghlan to obtain a simulator check he needed.