

SERVED: April 8, 2011

NTSB Order No. EA-5576

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

Issued under delegated authority (49 C.F.R. § 800.24)  
on the 8<sup>th</sup> day of April, 2011

<hr/>		)	
J. RANDOLPH BABBITT,		)	
Administrator,		)	
Federal Aviation Administration,		)	
		)	
Complainant,		)	
		)	Docket SE-19050
v.		)	
		)	
O.W.L. Fly, Inc.,		)	
		)	
Respondent.		)	
		)	
<hr/>		)	

**ORDER DISMISSING APPEAL**

Respondent has filed a notice of appeal from the oral initial decision of Administrative Law Judge William R. Mullins, issued in this case on March 29, 2011. In his decision, Judge Mullins affirmed the Administrator's emergency order revoking respondent's air agency certificate for a lack of qualifications based on a finding that respondent continued to operate as a certificated repair station while, and after, respondent's air agency certificate was suspended, in violation of 14 C.F.R. §§ 144.5(a) and 144.55(a).

The Board's Rules of Practice require a notice of appeal from a law judge's decision in an emergency case be filed within 2 days after the date on which the oral initial decision was rendered, and must be perfected by an appeal brief filed within 5 days after the filing of the notice of appeal.<sup>1</sup> Respondent's notice of appeal was due to be filed no later than March 31. Therefore, respondent's notice of appeal, which was filed with the FAA via e-mail on April 2, 2011, was untimely.<sup>2</sup>

Likewise, respondent has not filed an appeal brief as required to perfect his appeal. Briefs in emergency proceedings must be filed and served by overnight delivery service or by facsimile confirmed by personal or first-class mail delivery of the original.<sup>3</sup> Respondent's appeal brief was due to be filed no later than April 5. As of the date of this order, the Board has not received an appeal brief by overnight mail or facsimile, and respondent has not provided good cause for the delay.<sup>4</sup> Therefore, even if respondent has served a brief by first-class mail that has not yet been received, it will be considered untimely.<sup>5</sup>

---

<sup>1</sup> 49 C.F.R. § 821.57(a) and (b).

<sup>2</sup> We note our rules do not permit the filing of any documents via e-mail. The law judge provided respondent with the correct address for filing a notice of appeal. Additionally, 49 C.F.R. § 821.57(a) requires a respondent simultaneously serve both the Board and the FAA.

<sup>3</sup> 49 C.F.R. § 821.57(b).

<sup>4</sup> See, e.g., Administrator v. Hooper, 6 NTSB 559 (1988) (without good cause to excuse a failure to file a timely appeal brief, or a timely request to file one out of time, a party's appeal will be dismissed).

<sup>5</sup> Administrator v. Briggs, NTSB Order No. EA-4502 at 3 n.4 (1996) (where a respondent in an emergency proceeding served his appeal brief by first-class mail alone and the Board gave notice that it would, "hereafter treat any brief whose receipt by us is delayed through lack of compliance with our rule on service as untimely and, absent good cause for the failure to comply, subject to dismissal on the motion of the other party or on the Board's own initiative.").

**ACCORDINGLY, IT IS ORDERED THAT:**

Respondent's appeal from the law judge's oral initial decision in this case is dismissed.

William C. Love  
Acting General Counsel