

SERVED: February 14, 2012

NTSB Order No. EA-5617

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 14th day of February, 2012

J. RANDOLPH BABBITT,
Administrator,
Federal Aviation Administration,
Complainant,
v.
MARTIN T. MONTAGUE,
Respondent.

Docket SE-19064

OPINION AND ORDER

1. Background

Respondent appeals the written order of Chief Administrative Law Judge William E. Fowler, Jr., served in this proceeding on August 15, 2011.¹ By that order, the law judge denied respondent’s motion for acceptance of his late filed answer, granted the Administrator’s motion

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

to deem the factual allegations admitted, and entered judgment on the pleadings. We deny respondent's appeal.

a. *Facts*

On March 17, 2011, the Administrator issued an order suspending respondent's airman mechanic certificate with airframe and powerplant ratings for 45 days for various maintenance violations.² Respondent filed a timely notice of appeal on March 21, 2011. The Administrator reissued the order in this case as the complaint on March 23, 2011. Under 49 C.F.R. § 821.31, respondent's deadline for filing an answer to the complaint was April 12, 2011.³

As of June 22, 2011, the ALJ had not received respondent's answer so a staff member attempted to contact respondent's counsel to find out if the case had settled or if respondent had abandoned his appeal. Respondent's counsel, Charles Mathews, contacted the Office of ALJ on June 24, 2011, informing them he had filed an answer and would provide proof of service. On July 14, 2011, the Administrator filed a motion to deem the factual allegations admitted based upon respondent's failure to submit an answer.

On July 25, 2011 (3.5 months after the answer was due), respondent filed a reply motion, a motion to accept a late filed answer, and an answer.⁴ In the motion, respondent admitted the

² The order alleged respondent failed to make proper maintenance record entries under 14 C.F.R. § 43.9(a), failed to properly perform maintenance under 14 C.F.R. § 43.13(a) and (b), and failed to properly perform an inspection to determine aircraft airworthiness under 14 C.F.R. § 43.15(a).

³ On March 24, 2011, the NTSB Office of Administrative Law Judges (ALJ) case manager sent a docketing letter to respondent's counsel. The letter emphasized the importance of a timely filed answer, stating, "Failure to file an answer may be deemed an admission of the truth of the allegations in the complaint. Therefore: THE FILING OF A TIMELY ANSWER IS A VERY IMPORTANT STEP IN THE PROTECTION OF RESPONDENT'S APPEAL RIGHTS." See Case Management Letter, dated March 24, 2011 (emphasis in the original).

⁴ Respondent used NTSB Form 2005.1 for his answer. This form, publically available on the Office of ALJ's website, provides respondents (usually pro se litigants) a fill-in-the-blank answer.

answer was not timely filed but asserted good cause existed for accepting the late filed answer due to inadvertence and excusable neglect. In an affidavit, Mr. Mathews specifically contended he drafted the answer on April 1, 2011, and gave the answer to an associate at his firm to file. However, between April 1 and 12, the associate left the firm, never filed the answer, and never informed Mr. Mathews of this fact. Mr. Mathews further contends he only realized the answer was not filed when he received the Administrator's July 14th motion. To additionally support his argument, Mr. Mathews stated he had a ten-week long trial commencing May 4, 2011. The trial was in a different county than where his office was located so he was rarely in the office during the ten-week period. Respondent contended since good cause existed and no prejudice resulted to the Administrator, the law judge should accept the late filed answer.

b. Law Judge's Order

The law judge's order discussed the procedural history of the case at length. Citing Administrator v. Diaz,⁵ the law judge noted that the proper standard of review was whether a respondent could show good cause, not whether the Administrator could show prejudice. He concluded respondent's justification for the late filed answer did not constitute good cause and subsequently denied respondent's motion, granted the Administrator's motion, and entered judgment on the pleadings.

c. Issue on Appeal

Respondent appealed the law judge's order. Respondent contends the law judge erred in finding good cause did not exist for accepting the late filed answer based upon inadvertence and excusable neglect. On behalf of respondent, Mr. Mathews reiterates the two bases he raised below—1) he drafted the answer on April 1, 2011, but his associate failed to file it and 2) his

⁵ NTSB Order No. EA-4990 (2002), affirmed sub. nom., 65 Fed.Appx. 594 (9th Cir. 2003).

time was consumed by a ten-week trial commencing May 4, 2011. The Administrator opposes respondent's arguments, and urges us to affirm the law judge's decision.

2. *Decision*

We reject respondent's argument that good cause exists to excuse his untimely answer. The Board strictly adheres to the standards of timeliness set out in our Rules, only excusing procedural defects upon a showing of good cause.⁶ To the extent respondent argues good cause exists under a theory of excusable neglect, we expressly refused to adopt this more lenient standard of excusable neglect in cases involving untimely appeals.⁷ We find no reason to depart from this long-established jurisprudence.⁸

a. *Failure of Associate to File Brief*

Respondent's counsel argues the answer was inadvertently not filed because of his former associate. We find this argument meritless. As counsel of record, Mr. Mathews bore sole responsibility to timely file the answer on behalf of respondent. Our prior caselaw clearly shows a legal staff's procedural errors do not constitute good cause. In Administrator v. Hamilton, we noted, "[c]ounsel is expected to know and abide by procedural deadlines, and is responsible for actions of [] staff."⁹ In Administrator v. Earle, we affirmed Hamilton stating,

[c]ounsel who choose to rely on support staff to help them meet their responsibilities, by performing such tasks as docketing orders or tracking

⁶ See, e.g., Administrator v. Near, 5 NTSB 994 (1986); Administrator v. Hooper, 6 NTSB 559, 560 (1988), on remand from Hooper v. Nat'l Transp. Safety Bd., 841 F.2d 1150 (D.C. Cir. 1988); see also 49 C.F.R. § 821.11(a) (stating the Board may grant an extension of time to file any document upon a showing of good cause).

⁷ See Administrator v. TPI International Airways, Inc., NTSB Order No. EA-3931 (1993).

⁸ While we decline to depart from our jurisprudence on the timeliness of filings, it is apparent respondent's interests were not well served by his attorney in this case.

⁹ NTSB Order No. EA-3496 at n.4 (1992).

deadlines, run the risk that clerical mistakes, omissions, or errors may deprive them of actual notice that an important document requiring prompt attention or processing has been received. It follows that good cause would rarely exist for excusing a procedural default resulting from the taking of such a risk.¹⁰

In Earle, we also cautioned counsel that a heightened level of staff supervision would be warranted during a period of staff transition, such as in the case *sub judice*.¹¹

b. *Respondent's Counsel's Trials*

Mr. Mathews also argues he had good cause for failing to file the answer because he was engaged in a ten-week trial in a different county starting on May 4, 2011, and, thus, was often not at his office. He stated,

Trial is an all encompassing, all consuming endeavor which requires one hundred percent of an attorney's focus. To give the trial process any less would be a disservice to the profession. It would be a miscarriage of justice to attribute a lack of diligence to Mr. Mathews because he did not drop everything to file an Answer the Friday before a trial on Monday. If anything, Mr. Mathews was diligent in attending to and preparing for trial. Since the end of that trial, Mr. Mathews has diligently pursued Respondent's matter throughout the course of the appeal process.

Appeal Br. at 2.¹² We find this argument fails to constitute good cause. Mr. Mathews' ten-week long trial started 21 days *after* his answer was due to the law judge in this case. Further, we find the 3.5 month delay from the initial filing due date on Mr. Mathews' part (from April 12 to July 25) shows a complete lack of due diligence in pursuing this appeal. Mr. Mathews' focus clearly was not on respondent's case during this time.

¹⁰ NTSB Order No. EA-4769 at 2 (1999).

¹¹ Id. at n.4.

¹² Mr. Mathews refers to Friday, June 24, 2011, when the Office of ALJ made contact with him and the following Monday when he was in trial.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The law judge's order and sanction are affirmed.

HERSMAN, Chairman, HART, Vice Chairman, and SUMWALT, ROSEKIND, and WEENER, Members of the Board, concurred in the above opinion and order.

Served: August 15, 2011

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

J. RANDOLPH BABBITT,
ADMINISTRATOR,
FEDERAL AVIATION ADMINISTRATION,

Complainant,

v.

Docket SE-19064

MARTIN THERION MONTAGUE,

Respondent.

**ORDER DENYING RESPONDENT'S MOTION FOR ACCEPTANCE
OF LATE-FILED ANSWER, GRANTING ADMINISTRATOR'S MOTION
TO DEEM ALLEGATIONS OF FACT ADMITTED, AND ENTERING
JUDGMENT ON THE PLEADINGS IN FAVOR OF ADMINISTRATOR**

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On March 17, 2011, the Administrator of the Federal Aviation Administration ("FAA") issued an order suspending respondent's airman mechanic certificate with airframe and powerplant ratings, and inspection authorization, for 45 days, for alleged violations of §§ 43.9(a), 43.13(a) and (b), and 43.15(a) of the Federal Aviation Regulations ("FAR," codified at 14 C.F.R.).¹

¹ As is pertinent to this case, the cited FARs provide:
"§ 43.9 Content, form, and disposition of maintenance, preventive maintenance, rebuilding, and alteration records
(a) *Maintenance records entries.* . . . [E]ach person who maintains, performs preventive maintenance, rebuilds, or alters an aircraft, airframe, aircraft engine, propeller, appliance, or component part shall make an entry in the maintenance record of that equipment.

The Administrator's order contains the following factual allegations:

1. You are now, and at all times mentioned herein were, the holder of Airman Mechanic Certificate No. [omitted] with Airframe and Powerplant Ratings, and the holder of [an] Inspection Authorization.
2. At all times mentioned herein, civil aircraft N6909L, a Cessna, Model 310K, was an aircraft with a U.S. airworthiness certificate.
3. At all times mentioned herein, a component was installed in N6909L pursuant to a Supplemental Type Certificate (STC): the Brackett Air Filters.
4. On or about July 11, 2010, you performed an annual inspection on N6909L, and you made a record entry in the aircraft log-books indicating that N6909L (aircraft, engine, and propeller), at 260.0 Hobbs, was in an airworthy condition and was approved for return to service.
5. You failed to accomplish the above-described annual inspection properly in that you failed to determine whether the aircraft, or portion(s) thereof, met all applicable airworthiness requirements.
6. You failed to determine whether the following portions of the aircraft under inspection met all applicable airworthiness requirements:
 - a. The right main gear tire had sidewall damage, weather-checking, and a crack deeper than one ply. The crack exceeded the manufacturer's limit for remaining in service.

§ 43.13 Performance rules (general).

(a) Each person performing maintenance, alteration, or preventive maintenance on an aircraft, engine, propeller, or appliance shall use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by its manufacturer, or other methods, techniques, and practices acceptable to the Administrator, except as noted in § 43.16 [(which provides additional performance rules for inspections)]. He shall use the tools, equipment, and test apparatus necessary to assure completion of the work in accordance with accepted industry practices. If special equipment or test apparatus is recommended by the manufacturer involved, he must use that equipment or apparatus or its equivalent acceptable to the Administrator.

(b) Each person maintaining or altering, or performing preventive maintenance, shall do that work in such a manner and use materials of such a quality that the condition of the aircraft, airframe, aircraft engine, propeller, or appliance worked on will be at least equal to its original or properly altered condition (with regard to aerodynamic function, structural strength, resistance to vibration and deterioration, and other qualities affecting airworthiness).

“§ 43.15 Additional performance rules for inspections.

(a) *General.* Each person performing an inspection required by part 91, 125, or 135 of this chapter shall —

(1) Perform the inspection so as to determine whether the aircraft, or portion(s) thereof under inspection, meets all applicable airworthiness requirements.”

- b. The left main gear tire tread was worn at least to the base of the majority of the grooves. The wear exceeded the manufacturer's limit for remaining in service.
 - c. The engine control lever for the left engine mixture could not be set to the full rich mixture position without interference from a button of the Loran equipment.
 - d. The aircraft records did not include the recording of the major alteration, [FAA] Form 337, for the installed Brackett Air Filters.
 - e. The placard required by AD [(Airworthiness Directive)] 2004-21-05 was not installed at the heater control valve within the pilot's clear view.
7. On or about July 11, 2010, prior to approving N6909L for return to service after the above-described annual inspection, you performed maintenance on N6909L by cleaning and reusing the Brackett Air Filters.
 8. The continued airworthiness inspection procedures for the Brackett Air Filters specify replacement only, on percentage contamination.
 9. Thus, you did not use the methods, techniques, and practices prescribed in the current manufacturer's maintenance manual or Instructions for Continued Airworthiness prepared by [the aircraft's] manufacturer, or other methods, techniques, and practices acceptable to the Administrator. Further, cleaning and reusing the Brackett Air Filters did not leave N6909L in a condition at least equal to its original or properly altered condition.
 10. You failed to make a maintenance record entry for the above-described maintenance.

Thereafter, on March 21, 2011, respondent, through counsel, filed with this office an appeal from that suspension order. This office's Case Manager then transmitted to respondent's counsel on March 24, 2011 a letter acknowledging the receipt of that appeal, which informed said counsel that respondent was required to submit an answer to the Administrator's complaint within 20 days of the complaint's service upon him. Specifically, that acknowledgement letter stated, in relevant part (emphasis original):

Your attention is particularly directed to Section 821.31(b) [of the Board's Rules of Practice in Air Safety Proceedings], which requires that Respondent file an answer to the FAA's complaint within 20 days of service of the complaint. (The complaint is a copy of the order that is re-filed by the FAA for formal pleading purposes.) It is important to note that the "date of mailing" is the "date of service" in all documents pertaining to this proceeding. An answer, according to our Rules, must contain an admission or denial of each and every paragraph of the charges/allegations in the FAA's order/complaint. Failure to file an answer may be deemed an admission of the truth of the allegations in the complaint. Therefore: THE FILING OF A TIMELY ANSWER

IS A VERY IMPORTANT STEP IN THE PROTECTION OF RESPONDENT'S APPEAL RIGHTS. . . . An optional answer form is available in Adobe Acrobat format on the NTSB Website under the heading "Legal Matters."

That appeal acknowledgment letter further informed respondent's counsel that the Board's Rules of Practice in Air Safety Proceedings (49 C.F.R. Part 821) could be downloaded from the Board's website, and that a paper copy of those rules was available upon request.

The Administrator reissued the suspension order as the complaint in this proceeding, pursuant to Rule 31(a) of the Board's Rules (codified at 49 C.F.R. § 821.31(a)), on March 23, 2011.² Thus, under Rule 31(b) (codified at 49 C.F.R. § 821.31(b)), respondent's deadline for filing an answer to the complaint was April 12, 2011.³

On May 12, 2011, the Administrator amended the suspension order/complaint, to omit all references to respondent's inspection authorization. As a result, the 45-day suspension ordered on March 17, 2011 remains in force only with respect to his airman mechanic certificate with airframe and powerplant ratings.⁴

As of June 22, 2011, no answer had been received from respondent, and personnel from this office, at the direction of the Case Manager, telephoned his counsel to inquire as to whether, in light of the aforesaid amendment, the case had settled or respondent had, for other reasons, decided to abandon his appeal. Said counsel was not available at the time, but returned that telephone call on June 24, 2011, at which time he related that the case "was in no way settled and he wanted to go forward with this matter."⁵ When counsel was informed that this office had not yet received an answer from respondent, "[h]e . . . stated that he did file an [a]nswer," and "said he would send [it] to us again with proof of mailing."⁶ However, this office received nothing from respondent or his counsel during the next several weeks.

² Under Rule 31(a), "[t]he order of the Administrator from which an appeal has been taken shall serve as the complaint. The Administrator shall . . . file the complaint with the Board within 10 days after the date on which he or she was served with the appeal by the respondent, and shall simultaneously serve a copy of the complaint on the respondent."

³ Rule 31(b) specifically provides that "[t]he respondent shall . . . file with the Board an answer to the complaint within 20 days after the date on which the complaint was served by the Administrator," and that "[f]ailure by the respondent to deny the truth of any allegation or allegations in the complaint may be deemed an admission of the truth of the allegation or allegations not answered."

⁴ The Administrator subsequently explained, on July 14, 2011, that this was done because respondent's inspection authorization expired on March 31, 2011. See Administrator's Motion to Deem Complaint's Allegations Admitted at 2.

⁵ Internal Memo to Docket File, dated June 24, 2011.

⁶ *Id.*

The Administrator later filed a motion to deem the complaint's factual allegations admitted on July 14, 2011, based on respondent's failure to have submitted an answer as of that date. Thereafter, on July 25, 2011, respondent's counsel filed a combined reply to that motion and motion for acceptance of a belatedly-filed answer to the complaint, which was accompanied by the answer respondent sought to have accepted. Also submitted along with that filing was a sworn statement, in which respondent's counsel attested that he drafted an answer to the complaint in this matter on or about April 1, 2011, which he provided to an associate attorney who had since left his practice, along with filing and service instructions.⁷ Said counsel further attested that "the Answer was not timely served, which I only found out about at a later date,"⁸ and that, "[i]n addition, I began a trial on May 3, 2011. This trial lasted approximately ten weeks, which was many more weeks longer than anticipated. During the vast majority of these ten weeks, I had to drive to San Bernardino from Pasadena and was unable to work from my office during most days. This unexpected absence, along with the loss of the associate attorney whom I had instructed to file and serve the answer I drafted, resulted in excusable neglect as the Answer I had drafted in this matter was inadvertently not filed."⁹ In respondent's combined reply to the Administrator's motion to deem the complaint's allegations admitted and motion for acceptance of the late-filed answer, his counsel states (at 2) that he "only received notice that the Answer [he drafted and gave to his former associate to file and serve] had not been filed when [he was] served with the Administrator's Motion to Deem Allegations Admitted." In that filing, it is argued that, because respondent's belated submission of an answer was the result of inadvertence and excusable neglect, and the Administrator's case has not been prejudiced thereby, the answer should be accepted and the case should proceed to hearing.

The Administrator subsequently filed a reply to respondent's motion for acceptance of his belatedly-filed answer on August 5, 2011.

For the reasons set forth below, the undersigned will deny respondent's motion for acceptance of his answer, grant the Administrator's motion to deem the factual allegations of the complaint admitted and enter a judgment on the pleadings in this matter in favor of the Administrator.

In *Administrator v. Diaz*, NTSB Order EA-4990 (2002), affirmed *sub nom.*, *Diaz v. Department of Transportation*, 65 Fed. Appx. 594 (9th Cir. 2003), the Board, noting that the submission of an answer is critical to the air safety enforcement appeal litigation process, affirmed an NTSB administrative law judge's ruling not accepting a respondent's late-filed answer, and, on the basis of the resulting deemed admissions, entering a judgment on the pleadings against him. There, the Board held that the standard to be applied in deciding whether a late-filed answer should be accepted is whether the respondent has shown good cause for the delay in its submission, and it specifically rejected the respondent's contention

⁷ Declaration of Charles Ted Matthews ¶ 2.

⁸ *Id.*

⁹ *Id.* ¶ 3.

that the appropriate inquiry should be whether the Administrator was prejudiced by the delay.¹⁰

Generally, a finding of good cause requires a showing that circumstances beyond a party's control prevented that party from knowing of the matter requiring a timely response and/or from acting upon it within the prescribed time limit, despite the exercise of due diligence. Here, respondent's counsel was clearly informed by the Case Manager's March 24, 2011 appeal acknowledgment letter that respondent was required to submit an answer within 20 days after the date on which the complaint was issued, and that the filing of a timely answer was very important to the protection of respondent's appeal rights, in that a failure to submit a timely answer could result in the complaint's factual allegations being deemed true. While counsel for respondent has represented that he drafted an answer within the applicable 20-day timeframe, on or about April 1, 2011, any failure of his then-associate/employee to file and serve the answer prior to the April 12, 2011 deadline must be attributed to him. Moreover, any lack of awareness on the part of said counsel that his then-associate failed to file and serve the answer in early April 2011 was overcome when he was informed, during a June 24, 2011 telephone conversation with personnel from this office, that an answer had not yet received from respondent. Nevertheless, although he insisted that he had previously filed an answer on respondent's behalf and stated that he "would send [it] to us again with proof of mailing," he neither did so nor otherwise contacted the office regarding the status of respondent's answer until after the Administrator had filed the motion to deem admitted the factual allegations of the complaint approximately three weeks later. Thus, despite the circumstances cited by counsel as "inadvertence" and "excusable neglect" for the belated filing of the answer here — which the undersigned believes, in reality, reflects a lack of diligence — it must be found that good cause did not exist for his failure to submit respondent's answer to the complaint in this case until approximately 3½ months after the deadline for filing that pleading had passed.

As a result, the undersigned will, pursuant to *Diaz*, deem all of the factual allegations of the complaint to have been admitted by respondent. Since such deemed admissions of fact are sufficient to establish violations of FAR §§ 43.9(a), 43.13(a) and (b), and 43.15(a), it will also be found that he violated those FAR provisions, as is charged in the complaint.

¹⁰ NTSB Order EA-4990 at 4-5. See also Rule 11(a) of the Board's Rules of Practice (codified at 49 C.F.R. § 821.11(a)), and *Administrator v. Hooper*, 6 NTSB 559, 560 (1988), on remand from *Hooper v. Nat'l Transp. Safety Bd.*, 841 F.2d 1150 (D.C. Cir. 1988).

In *Diaz*, the respondent — as does respondent in the instant case (see Respondent's Reply to Administrator's Motion to Deem Complaint's Factual Allegations Admitted and Motion for Acceptance of Answer at 3) — cited a prior Board decision in *Application of Grant*, NTSB Order EA-3919 (1993) in support of the position that a standard of "lack of prejudice," rather than good cause, should be applied to determine whether an untimely-filed answer should be accepted. However, the Board disagreed, observing that *Grant* "was decided in the specific context of the Equal Access to Justice Act (EAJA), and [the Board's] special implementing rules" relating thereto, where "the answer [i]s not critical to the process and [i]s permissive. . . . An answer to an EAJA application is far different from an answer to [a] complaint [in a safety enforcement case], which the case management letter directs be filed or risk having the allegations [of the Administrator's complaint] assumed true." NTSB Order EA-4990 at 5-6.

Turning to the propriety of the 45-day suspension ordered by the Administrator in this case, the undersigned notes that the FAA's Enforcement Sanction Guidance Table (FAA Order 2150.3A, Appendix 4) provides for the imposition of suspensions ranging from 30 to 60 days for failure to accomplish a proper inspection (Fig. B-3-e.(3) at p. B-23); 30 to 120 days for improper approval of an aircraft for return to service (Fig. B-3-e.(9) at p. B-23); and 30 to 60 days for failure to make a maintenance record entry (Fig. B-3-e.(10) at p. B-23).¹¹ Thus, the aggregate 45-day suspension imposed by the Administrator for all three of the violations established by his deemed factual admissions would appear to be lenient under those guidelines. Such a sanction is also in keeping with prior Board decisions involving a similar set of FAR violations. See *Administrator v. Scott*, NTSB Order EA-4030 (1993) (45-day suspension for violations of §§ 43.9(a), 43.11(a)(1) and 43.13(a)); *Administrator v. Marx*, NTSB Order EA-4855 (2000) (60-day suspension for violations of §§ 43.9(a), 43.13(a) and (b), and 43.15(a)); *Administrator v. Hampton*, NTSB Order EA-5189 (2005) (60-day suspension for violations of §§ 43.9(a) and 43.13(a)); *Administrator v. Nyerges*, NTSB Order EA-5483 (2009) (120-day suspension for violations of §§ 43.9(d), and 43.13(a) and (b)); and *Administrator v. Turmero*, NTSB Order EA-5547 (2010) (90-day suspension for violations of §§ 43.9(a), 43.11(a), 43.13(a) and 43.15(a)).

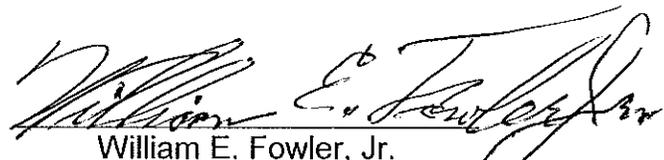
THEREFORE, IT IS ORDERED that respondent's motion for acceptance of his late-filed answer to the Administrator's complaint in this proceeding is DENIED;

IT IS FURTHER ORDERED that the Administrator's motion to deem the factual allegations of the complaint (Paragraphs 1 through 10) admitted is GRANTED;

IT IS FURTHER ORDERED that, based on such deemed admissions, respondent is found to have violated §§ 43.9(a), 43.13(a) and (b), and 43.15(a) of the Federal Aviation Regulations, as charged by the Administrator in the complaint; and

IT IS FURTHER ORDERED that a JUDGMENT ON THE PLEADINGS, affirming the aforesaid violations and the 45-day suspension of respondent's airman mechanic certificate with airframe and powerplant ratings that has been imposed therefor, is hereby ENTERED in favor of the Administrator.

Entered this 15th day of August, 2011, at Washington, D.C.


 William E. Fowler, Jr.
 Chief Administrative Law Judge

¹¹ Under 49 U.S.C. § 4709(d)(3), "the Board is bound by . . . written agency policy guidance available to the public related to sanctions to be imposed under this section unless the Board finds [it] arbitrary, capricious, or otherwise not in accordance with law."

APPEAL (DISPOSITIONAL ORDER)

Any party to this proceeding may appeal this order by filing a written notice of appeal within 10 days after the date on which it was served (the service date appears on the first page of this order). An original and 3 copies of the notice of appeal must be filed with the:

National Transportation Safety Board
Office of Administrative Law Judges
Room 4704
490 L'Enfant Plaza East, S.W.
Washington D.C. 20594
Telephone: (202) 314-6150 or (800) 854-8758

That party must also perfect the appeal by filing a brief in support of the appeal within 30 days after the date of service of this order. An original and one copy of the brief must be filed directly with the:

National Transportation Safety Board
Office of General Counsel
Room 6401
490 L'Enfant Plaza East, S.W.
Washington, D.C. 20594
Telephone: (202) 314-6080
FAX: (202) 314-6090

The Board may dismiss appeals on its own motion, or the motion of another party, when a party who has filed a notice of appeal fails to perfect the appeal by filing a timely appeal brief.

A brief in reply to the appeal brief may be filed by any other party within 30 days after that party was served with the appeal brief. An original and one copy of the reply brief must be filed directly with the Office of General Counsel in Room 6401.

NOTE: Copies of the notice of appeal and briefs must also be served on all other parties to this proceeding.

An original and one copy of all papers, including motions and replies, submitted thereafter should be filed directly with the Office of General Counsel in Room 6401. Copies of such documents must also be served on the other parties.

The Board directs your attention to Rules 7, 43, 47, 48 and 49 of its Rules of Practice in Air Safety Proceedings (codified at 49 C.F.R. §§ 821.7, 821.43, 821.47, 821.48 and 821.49) for further information regarding appeals.

ABSENT A SHOWING OF GOOD CAUSE, THE BOARD WILL NOT ACCEPT LATE APPEALS OR APPEAL BRIEFS.