

SERVED: June 25, 2015

NTSB Order No. EA-5751

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 June, 2015

_____)	
MICHAEL P. HUERTA,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-19445
v.)	
)	
CARLOS JOSE VIRELLES,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

1. Background

Respondent appeals the oral initial decision of Administrative Law Judge Stephen R. Woody, issued March 21, 2014.¹ By that decision, the law judge determined respondent violated 14 C.F.R. § 91.13(a),² but the Administrator failed to prove a violation of 14 C.F.R. § 61.113(a).³

¹ A copy of the law judge's initial decision, an excerpt from the hearing transcript, is attached.

² Section 91.13(a) provides, "No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

Based on his finding regarding § 61.113(a), the law judge reduced the Administrator's proposed suspension of 120 days, and ordered a 75 day suspension of respondent's private pilot certificate. Both appealed, but the Administrator subsequently withdrew his appeal. We grant respondent's appeal.

A. Facts

On August 9, 2012, respondent served as pilot in command of N10CV, a Bell 206B helicopter in the vicinity of Ponce, Puerto Rico. While carrying a passenger, respondent landed the helicopter on the roof of a single-story building owned by the passenger located at Calle Ferrociarril and Calle Concordia (the NetWave building). A passerby, Jim Orta, recorded a video of the helicopter when it departed the NetWave building, and subsequently complained to the Federal Aviation Administrator (FAA). The owner of the NetWave building testified the roof had been specially reinforced to support the weight of a helicopter, and the landing area was marked with a large "H".⁴ The FAA assigned Inspector Dennis Ortiz to investigate the complaint.

The flight on August 9, 2012 was not the first time respondent had landed a helicopter on the NetWave building.⁵ Nor was respondent the only pilot to land a helicopter there. A landing by another pilot may have been investigated by the FAA, although no enforcement action was taken against that pilot or against respondent related to his admitted earlier operations at the

³ Section 61.113(a) provides, "Except as provided in paragraphs (b) through (h) of this section, no person who holds a private pilot certificate may act as pilot in command of an aircraft that is carrying passengers or property for compensation or hire; nor may that person, for compensation or hire, act as pilot in command of an aircraft."

⁴ Tr. 153.

⁵ Tr. 149.

NetWave building.⁶

1. *FAA Evaluation of Landing Site*

After the FAA investigation against respondent began, the owner of the NetWave building filed a Notice of Landing Area Proposal (Form 7480-1) with the FAA.⁷ Under 14 C.F.R. § 157.1(c), such a notice is not required for a heliport which will be used intermittently for less than one year, at which flight operations will be conducted only under visual flight rules (VFR) conditions, and no more than 10 operations will be conducted in any one day at that site. In response, an FAA inspector reviewed the proposal and issued a report (the “7480 report”) dated May 20, 2013, finding the proposed landing site objectionable.⁸ The inspector provided no measurements in the 7480 report to surrounding buildings or objects. The only significant site-specific information—aside from the existence of buildings, powerlines and an antenna in the vicinity—were the facts that the ingress/egress slope did not meet the 8:1 recommendation⁹ and existence of a one-foot tall wall around the edge of the building.

Lack of approval by the FAA in a 7480 report does not necessarily mean a landing on a given site is a violation of the Federal Aviation Regulations. As noted above, the FAA does not require certification for helicopter landing sites which are used for intermittent VFR operations for less than one year. Rather, that decision is left to state or local authorities. The FAA review in a 7480 report is merely a statement of FAA opinion regarding the suitability of a particular landing site based on FAA guidelines.

⁶ Tr. 59.

⁷ The Administrator did not file the notice in evidence.

⁸ Exh. A-18.

⁹ The “8:1 recommendation” refers to the rise over run slope of the ingress/egress routes at the landing area.

2. *Administrator's Principal Evidence and Witnesses Related to § 91.13(a)*

The Administrator introduced into evidence a number of documents including photographs showing the NetWave building and surrounding area, as well as Mr. Orta's video. The Administrator also introduced the 7480 report. Notably, the Administrator did not call the inspector who performed the 7480 review as a witness in this matter. While Mr. Orta was recording the helicopter's departure from the NetWave building's roof, he did not observe any debris hitting any cars or pedestrians, but did observe a tarp flapping in the wind and at least one white plastic bag fly into the air.¹⁰ Mr. Orta also testified he had seen two other helicopters land on the NetWave building in the weeks immediately preceding the landing at issue.¹¹

In response to Mr. Orta's complaint Inspector Ortiz conducted an investigation into respondent's operations at the NetWave building.¹² He reviewed Mr. Orta's video of the takeoff and interviewed other witnesses who were in the area of the NetWave building on August 9, 2012.¹³ Inspector Ortiz did not review the 7480 report in the course of his investigation, because the 7480 report was dated after the Administrator issued the order of suspension.¹⁴ Inspector Ortiz also did not physically inspect the roof of the NetWave building or take any measurements of the landing area or distances from the landing area to any potential obstacles in the surrounding area.¹⁵ The record contains no evidence Inspector Ortiz examined or requested any

¹⁰ Tr. 25.

¹¹ Tr. 24.

¹² Tr. 36.

¹³ Tr. 38.

¹⁴ Exh. A-18.

¹⁵ Tr. 63.

documents or permits related to the construction of the NetWave building to determine the structural capacity of the roof or whether the roof had been specially reinforced to accommodate the weight of a helicopter.

Emil Cirone also is an aviation safety inspector employed by the FAA.¹⁶ Mr. Cirone provided expert testimony on behalf of the Administrator. Mr. Cirone never visited the NetWave building or personally took any measurements of the area. Rather, he reviewed the 7480 report and enforcement investigative report, as well as Mr. Orta's videotape and the photographs subsequently admitted into evidence.¹⁷ Based on that review, Mr. Cirone offered expert testimony that the NetWave building was not a suitable landing area, and significantly compromised safety.¹⁸

3. Respondent's Principal Witness Related to § 91.13(a)

Ismael Ortiz was formerly employed by the FAA as an aviation safety inspector and principal operations inspector for 13 years.¹⁹ Mr. Ortiz personally visited the NetWave building and measured the landing area and various distances to surrounding buildings and objects. Mr. Ortiz visited the rooftop landing area and took a number of measurements.²⁰ He testified as an expert witness, and concluded the NetWave landing site, while small, was not unsafe so long as pilots established and followed procedures for arrival and departure.²¹

¹⁶ Tr. 86.

¹⁷ Tr. 92, 103.

¹⁸ Tr. 94.

¹⁹ Tr. 182-83.

²⁰ Tr. 220-23.

²¹ Tr. 227.

B. Procedural Background

As a result of the foregoing, the Administrator issued an order, dated February 21, 2013, suspending respondent's private pilot certificate for a period of 120 days. The Administrator's order, which serves as the complaint in this case, alleged respondent violated 14 C.F.R. §§ 61.113(a), and 91.13(a). As to the § 61.113(a) violation, the Administrator proceeded on the theory respondent received compensation from his passenger on the flight in question. The form of alleged compensation was reimbursement by the passenger of the fuel cost for the flight as well as prior inclusion of the pilot on the passenger's business health plan.

With regard to the § 91.13(a) violation, the Administrator alleged respondent's operated the aircraft in a careless or reckless manner so as to endanger the life or property of another. Specifically, the Administrator contended the mere act of landing on the roof of the NetWave building constituted a violation of §91.13(a).

The case proceeded to hearing on March 21, 2014.

C. Law Judge's Oral Initial Decision

At the conclusion of the hearing, the law judge found the Administrator proved respondent violated § 91.13(a), but did not prove a violation of § 61.113(a). Accordingly, the law judge reduced respondent's suspension from 120 days to 75 days.

Regarding § 91.13(a), the law judge discussed at length the difference between the regulations, specifications and advisory circulars, and what regulatory scheme, if any, applied to the NetWave building as a landing area. Ultimately, the law judge concluded FAR Part 77 (Safe, Efficient Use, and Preservation of the National Airspace) did not apply to the landing area at issue, and FAR Part 157 (Notice of Construction, Alteration, Activation, and Deactivation of Airports) did not give the FAA authority to approve or disapprove use of a proposed landing

area.²²

While acknowledging the FAA's advisory circulars and determination in the 7480 report were recommendations only, in reaching his ultimate determination, the law judge concluded "the advisory circular provides important standards, specifications and safety parameters that constitute information critical to any determination regarding ...the safe and efficient use of airspace and the safety of persons and property on the ground."²³ The law judge made credibility determinations as to both expert witnesses, finding Mr. Cirone to be more credible on the question of whether the operation was careless or reckless.

D. *Issues on Appeal*

The parties initially cross appealed; however the Administrator subsequently withdrew his appeal as to § 61.113(a) and the resultant reduction of the sanction from a 120 day suspension to a 75 day suspension. Accordingly, we review only the law judge's ruling on § 91.13(a).

2. *Decision*

On appeal, we review the law judge's decision *de novo*, as our precedent requires.²⁴ We defer to the credibility findings of our law judges in the absence of a showing such findings are arbitrary and capricious. As we stated in *Administrator v. Porco*, we will not disturb such credibility determinations tied to factual findings supported by the record.²⁵ In this case, the law judge found both expert witnesses credible but found the Administrator's expert, Mr. Cirone,

²² Initial decision at 276.

²³ *Id.* at 277.

²⁴ *Administrator v. Smith*, NTSB Order No. EA-5646 at 8 (2013); *Administrator v. Frohmuth and Dworak*, NTSB Order No. EA-3816 at 2 n.5 (1993); *Administrator v. Wolf*, NTSB Order No. EA-3450 (1991).

²⁵ NTSB Order No. EA-5591 at 13-20 (2011), *aff'd*, 472 Fed.Appx. 2 (D.C. Cir. 2012) (per curiam).

slightly more credible. Based upon the below discussion, we believe the record did not provide factual evidence sufficient to meet the Administrator's burden of proof; as a result, we need not reach the law judge's credibility findings.

The FAA does not certify helicopter landing sites which will be used intermittently for less than one year and at which flight operations will be conducted only under VFR conditions. Design standards and specifications are contained in Advisory Circular AC 150-5390-2C, which is not mandatory.

The FAA standards are not the minimum parameters allowed for safe operation. They are the desired standard to ensure a wide margin of safety. Said another way, failing to meet the FAA advisory standards does not necessarily mean the operation in question was careless or reckless. The Administrator always bears the burden of proving a particular operation violates 14 C.F.R. § 91.13. The fact that an FAA inspector, *after the flight in question*, in a 7480 report found the landing site objectionable alone is insufficient to establish a *prima facie* violation of the FAR.

We agree with the law judge's holding that the FAA does not have authority to approve or disapprove use of the NetWave as a helicopter landing area. In the case *sub judice*, the Administrator argues, largely based upon the findings in the 7480 report, that respondent's operation was careless and reckless. However, the 7480 report itself did not present many objective facts by which the law judge could base his decision on whether the operation was careless or reckless. As noted in the facts above, the 7480 report was conclusory and contained only two objective measurements, those being the lack of an 8:1 ingress/egress slope and the presence of a one foot high wall around the landing area. While surrounding buildings and other objects in the vicinity were mentioned, their locations and distances were not described at all.

Notwithstanding the unsupported conclusions in the 7480 report, we find the record evidence presented by the Administrator fails to prove respondent's operation was careless or reckless. In investigating this case for the FAA, Inspector Ortiz never made any measurements of the landing area itself or the distances to surrounding structures or evaluated the load bearing capacity of the rooftop landing area. He testified he "concluded that that looks like a careless operation at least."²⁶ Inspector Ortiz did not testify as an expert.

Mr. Cirone, the Administrator's expert witness, claimed to have relied primarily on the video, although in his testimony, he mentioned the 7480 report a number of times.²⁷ As discussed above, we conclude the 7480 report provided few objective measurements on which Mr. Cirone could reasonably form an expert opinion. In reviewing the video, we note the video was shot from ground level and showed a rather narrow view of the helicopter take off. While the video shows buildings and other objects in the vicinity of the rooftop, it is impossible to determine from the video and photographs alone how close those potential obstacles were to the landing area or to the helicopter as it departed the rooftop. We also note, in his testimony, Mr. Cirone failed to explain how he evaluated the photographs and video to form the opinion that the buildings and objects were too close to the landing area—rather his testimony is conclusory in nature without facts to back up his conclusions.

Furthermore, Mr. Cirone never visited the area. He acknowledged the uncertainty of his testimony, stating "[t]his building just didn't look suitable to me....I'd have to go measure it to be sure, but it didn't look like it was safe."²⁸ In addition, when asked if he had other safety

²⁶ Tr. 45.

²⁷ Tr. 104.

²⁸ Tr. 94.

concerns regarding the NetWave building, Mr. Cirone admitted “I couldn’t analyze all of it without being on the scene and I have not been on the scene.”²⁹ In short, we find the record lacking sufficient specific facts on which Mr. Cirone could base his expert opinion that the respondent’s operation was careless or reckless.

In conclusion, the Administrator’s witnesses have provided almost no objective evidence regarding the landing site or respondent’s operation. To meet the Administrator’s burden, something more than an expert opinion that the landing area “didn’t look like it was safe... I’d have to go measure it to be sure” is necessary. We caution our result in this case is very fact specific—we do not conclude whether the NetWave building is a suitable landing area. Nor do we conclude respondent’s operation was not careless or reckless. Rather, we simply find the Administrator has not carried his burden of prove to affirmatively show respondent’s operation was careless or reckless so as to endangered the life or property of another in violation of 14 C.F.R. § 91.13(a).

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent’s appeal is granted;
2. The law judge’s decision is reversed with regard to the 14 C.F.R. § 91.13(a), and the sanction is set aside.

HART, Chairman, DINH-ZARR, Vice Chairman, and SUMWALT and WEENER, Members of the Board, concurred in the above opinion and order.

²⁹ Tr. 103.

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

* * * * *

In the matter of: *

MICHAEL P. HUERTA, *
ADMINISTRATOR, *
FEDERAL AVIATION ADMINISTRATION, *

Complainant, *

v. *

Docket No.: SE-19445
JUDGE WOODY

CARLOS JOSE VIRELLES, *

Respondent. *

* * * * *

U.S. Bankruptcy Court
U.S. Courthouse
300 Recinto Sur Street
San Juan, Puerto Rico

Friday,
March 21, 2014

The above-entitled matter came on for hearing, pursuant
to Notice, at 10:00 a.m.

BEFORE: STEPHEN R. WOODY
Administrative Law Judge

APPEARANCES:

On behalf of the Administrator:

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ORAL INITIAL DECISION AND ORDER

ADMINISTRATIVE LAW JUDGE WOODY: This has been a proceeding under the provisions of 49 United States Code Section 44709, and the provisions of the Rules of Practice in Air Safety Proceedings of the National Transportation Safety Board. This matter has been heard before this administrative law judge and, as provided by the Board's Rules, I have elected to issue an oral initial decision in this matter.

Pursuant to notice, this matter came on for hearing on March 19th through 21st, 2014, in San Juan, Puerto Rico. The Administrator was represented by staff counsel, Mr. Deltrick Johnson, Esquire, of the Southern Region Regional Counsel's Office of the Federal Aviation Administration. And also present with him was Mr. Gerald Ellis, Esquire, from that same regional office. Respondent is represented by Mr. Gabriel Penagaricano, Esquire.

The parties were afforded a full opportunity to offer evidence, to call, examine, and cross-examine witnesses, and make arguments in support of their respective positions. I will not discuss all of the evidence in detail. I have, however,

1 considered all of the evidence, both oral and documentary. That
2 which I do not specifically mention is viewed by me has been
3 corroborative or as not materially affecting the outcome of this
4 decision.

5 The Respondent, Mr. Carlos Virelles, has appealed the
6 Administrator's Order of Suspension dated February 21st,
7 2013. Pursuant to Rule 821.31(a) of the Board's Rules, the
8 Administrator filed a copy of that order on March 11, 2013, as
9 finally amended on February 24, 2014, which serves as the
10 complaint in this case.

11 The Administrator ordered the 120-day suspension of the
12 Respondent's private pilot certificate based on Respondent's
13 alleged violations of Sections 61.113(a) and 91.13(a) of the
14 Federal Aviation Regulations, which I may refer to as FAR. Those
15 are codified at 14 Code of Federal Regulations.

16 Now, more specifically, the Administrator's complaint
17 alleges that on or about August 9th, 2012 the Respondent acted as
18 pilot in command of an aircraft, identification number November-
19 10-Charlie-Victor, a Bell helicopter, Model 206-Bravo, which was
20 carrying a passenger and for which compensation was paid, in
21 violation of Section 61.113(a). And further, that during that
22 same flight Respondent landed aircraft November-10-Charlie-Victor
23 on a building which was not a registered landing site and in an
24 area in close proximity to people and vehicles belonging to
25 others, which operation was careless or reckless so as to endanger

1 the life or property of another, in violation of Section
2 91.13(a). Now, the complaint as amended more particularly set
3 forth the specific allegations.

4 In his answer to the Administrator's complaint,
5 Respondent admitted to paragraphs 1 through 4. As he has admitted
6 to those allegations, they are deemed established for purposes of
7 this decision. The Respondent has denied paragraphs 5 through 9
8 and 11 of the complaint, with an indication that no response to
9 pleadings to paragraph 10 of the complaint was required.

10 With respect to exhibits, the Administrator's Exhibits
11 A-1 through A-6, A-8, A-10, A-12, and A-15 through A-18 were
12 admitted into evidence. Respondent's exhibits R-1 through R-3,
13 R-4, pages 1 to 4 only, and R-5 and R-6 were admitted into
14 evidence. Exhibit R-4, page 5, was offered, but not admitted into
15 evidence. Also admitted were ALJ exhibits 1 through 7; those
16 dealt with correspondence with respect to Respondent's expert
17 witness.

18 The Administrator presented the testimony of Mr. Jim
19 Orta, Mr. Dennis Ortiz, and Mr. Emil Cirone.

20 Mr. Jim Orta testified that he witnessed the
21 Respondent's helicopter on the roof of and taking off from the
22 one-story building located at Calle Ferrocarril and Concordia in
23 Ponce, Puerto Rico, which for simplicity sake I will refer as the
24 NetWave building or the landing site.

25 On August 9th, 2012, Mr. Orta had taken his children to

1 the dentist across the street from the building in question.
2 Mr. Orta is the individual who shot the video that is Exhibit
3 A-3. He had never seen a helicopter take off or land in such
4 proximity to people and vehicles and it struck him as odd that the
5 helicopter was in such close proximity. He showed the video to
6 his wife and also sent it to the FAA. There were vehicles passing
7 by in the street, but he did not see any vehicles stop while the
8 helicopter was taking off. He saw a tarp flapping near a vehicle
9 parked on the street and he saw plastic bags flying when the
10 helicopter was taking off; however, he did not see gravel flying
11 and did not see debris hit anyone or any vehicles.

12 Next Mr. Dennis Ortiz testified. He is an aviation
13 safety inspector in the San Juan Flight Standards District Office,
14 or FSDO, and has been for the past 2½ years. Prior to that he
15 worked in the aviation industry for 20 years. He holds a number
16 of certificates and ratings, including an airline transport pilot
17 certificate. After his office received a hotline complaint from
18 Mr. Orta, he was assigned to investigate the matter.

19 Mr. Orta provided photographs and a video, Exhibit A-3.
20 Mr. Ortiz reviewed the video and saw that the landing site was a
21 one-story building located next to a sidewalk where pedestrians
22 were passing. There were many vehicles parked on the street just
23 next to the building and the street was busy with traffic. There
24 was some construction materials in front of the building. There
25 were buildings surrounding the landing site, including a two-story

1 building adjacent to the landing site. He also saw debris flying
2 and cars slowing on that street.

3 Mr. Ortiz interviewed Mr. Orta, Ms. Sampoll, and
4 Mr. Virelles. He interviewed Ms. Sampoll at her place of business
5 across the street from the landing site, and also took the photos
6 that were admitted as exhibit A-5. Those photos show a tall
7 antenna adjacent to the landing site, a two-story building next
8 to, and another taller west of the landing site, power poles and
9 lines both east and west of the landing site, and a congested
10 street with vehicles parked on both sides. Construction in the
11 area was pretty well done when he took the photos.

12 Mr. Ortiz also looked at the list of registered landing
13 sites on the airport contacts list at Exhibit A-6, which did not
14 include the landing site in question where the Respondent landed
15 on August 9th, 2012. Mr. Ortiz provided the documents to apply to
16 have the landing site included on the airports contacts list.
17 Exhibit A-18 is the assessment that was completed by the FAA,
18 which determined the proposal to establish a helipad on top of the
19 existing NetWave building in Ponce to be an objectionable landing
20 area proposal based on an adverse effect on the safe and efficient
21 use of navigable airspace and the safety of persons and property
22 on the ground. It appears primarily related to safety.

23 Mr. Ortiz interviewed the Respondent twice: once
24 telephonically and once in person. Mr. Virelles stated he landed
25 on the building twice, the second time being in August 2012 when

1 he took Mr. Rodriguez and one or two employees to the
2 location. Mr. Virelles also indicated that workers at the
3 location were told to wet the area down to help reduce flying
4 debris. He also offered that Mr. Rodriguez paid for Respondent's
5 medical plan. Mr. Ortiz then questioned whether perhaps
6 Mr. Virelles provided flights in exchange for payment of the
7 medical plan.

8 Mr. Ortiz also got a copy of the fuel receipt which
9 indicated Juanma under the account number. He e-mailed
10 Mr. Rodriguez and asked whether he had paid for the flight on
11 August 9th, 2012, and Mr. Rodriguez wrote back indicating he had
12 reimbursed Mr. Virelles for the flight. Exhibit A-2 is the e-mail
13 from Mr. Rodriguez.

14 Exhibit A-8 is the fuel ticket for fuel for
15 MR. Virelles's helicopter on August 9, 2012. It is addressed to
16 Royal, which is Mr. Virelles's business. He did not ask either
17 Million Air or Mr. Virelles who paid for the fuel in question.

18 Mr. Ortiz has read 14 Code of Federal Regulations
19 Section 157. He was aware that Section 157 does not apply to VFR
20 operations for a period of less than 30 days and not more than 10
21 operations per a day; however, he did not recall those
22 requirements do not apply to intermittent use of a site for VFR
23 operations that is used or intended to be used for less than one
24 year. Mr. Ortiz was aware of an investigation related to another
25 helicopter landing on the same site, but apparently no action was

1 taken for that incident.

2 During his investigation Mr. Ortiz did not measure any
3 distances to obstacles or go on top of the building to measure the
4 landing area. He is aware that other downtown heliports do exist,
5 including in congested areas. Several of those are listed in
6 Exhibit A-6. Mr. Ortiz did not check or access any of those
7 heliports as part of this investigation; each landing site is
8 different and must be assessed independently. Nor did he complete
9 the assessment of the proposed helipad on the NetWave building.
10 He drove Mr. Spearman to the site who conducted the assessment.
11 Such assessments are not within Mr. Ortiz's area of responsibility
12 or expertise.

13 Next Mr. Emil Cirone testified that he is employed by
14 the FAA as an aviation safety inspector and a principal operations
15 inspector over the past 18 years. He is currently a principal
16 operations inspector with surveillance and certification
17 responsibility for a number of carriers. He holds a variety of
18 FAA certificates, including air transport pilot, both airplane and
19 rotorcraft helicopter, as well as flight instructor for both
20 airplane and rotorcraft helicopter.

21 Before coming to the FAA, he held a number positions in
22 aviation beginning with his time as an Army aviator in both
23 airplanes and helicopters. His education, training, experience,
24 and certifications are more fully set forth in his resume, which
25 is exhibit A-17. In addition, he indicated he had been involved

1 in a number of helicopter accident investigations. He was
2 qualified and recognized as an expert in helicopter operations.

3 In preparation for his testimony, Mr. Cirone indicated
4 he reviewed the evidence in the case, to include the video at A-3,
5 the photographs at Exhibits A-4 and A-5, as well as Mr. Spearman's
6 evaluation recorded in Exhibit A-18.

7 Based on his review, he concluded the area in question
8 is not a suitable landing area and presented a significant
9 compromise in safety. Based on the photos and the report there
10 were obstacles penetrating all operational planes in which the
11 aircraft would operate, the area was too small an area to land in;
12 there was a large tower in close proximity to the landing area,
13 and he has not seen or been made aware of any engineering studies
14 indicating the building is suitable for landing a helicopter, nor
15 did he see any evidence in the photographs or video of a
16 superstructure to help distribute the weight of an aircraft
17 evenly. Further, the obstacle clearance requirements for an 8 to
18 1 rise over run, meaning 1 foot of rise for every 8 feet out, did
19 not look to be met, and the report at Exhibit A-18 confirmed that
20 that was the case.

21 Mr. Cirone indicated that typically when a landing site
22 or heliport is proposed that an inspection or evaluation of the
23 site is conducted by the FAA. Mr. Cirone has done such
24 evaluations in the past, which involved evaluating distances from
25 potential obstacles, and ingress and egress points and routes.

1 Instruments such as laser rangefinders and inclinometers are used
2 for such measurements. If the FAA finds the site objectionable,
3 there may be an opportunity to mitigate, for example, to remove a
4 tree or a light pole to eliminate an objectionable condition. If
5 mitigation is not possible or accomplished, then the objection
6 remains and the state will normally not allow the location to be
7 established or used as a heliport. In this case, the number of
8 obstacles, ingress and egress concerns, and close proximity to
9 persons and property raised many safety concerns which made the
10 proposed landing site objectionable.

11 Mr. Cirone has not personally viewed the location of the
12 landing site, arriving the night prior to the hearing. His
13 testimony was based upon his review of the evidence, primarily the
14 video, photographs, and Mr. Spearman's report at Exhibit A-18.
15 According to Mr. Cirone, the report at A-18 is not done pursuant
16 to 14 CFR Part 77, but based on 14 CFR Section 157.

17 The standards and specifications for heliport design are
18 not contained in a regulation but in an advisory circular, that
19 being AC 150/5390-2C. That's dated April 24th, 2012, and the
20 subject is heliport design. The advisory circular also contains
21 the specifications pertinent to particular helicopters. Including
22 the standards and specifications in the regulations themselves
23 will make the regulations too voluminous. The advisory circular
24 is not made mandatory by the FAA. The state or local governments
25 typically will not allow a site to be established or used as a

1 heliport if it does not meet standards and if the FAA finds the
2 proposed site objectionable.

3 Mr. Cirone agreed that the FAA does not certify or
4 register a landing site. That decision is made by state or local
5 agencies. Mr. Cirone does not know what requirements are imposed
6 by Puerto Rico. Mr. Cirone did not examine the building to
7 determine if it was structurally sound or determine if a
8 structural integrity study was done, nor was he made aware or did
9 he see any evidence of such a study being done. Mr. Cirone did
10 not use any instruments to conduct his own evaluation of the
11 landing site, only Mr. Spearman did that.

12 In viewing the overhead photo at Exhibit R-2, page 4,
13 Mr. Cirone opined that the landing site appeared totally unsafe
14 based on the size of the landing area and the proximity to
15 obstacles, people and property.

16 In discussing regulations versus specifications,
17 Mr. Cirone indicated the specifications provide standards and
18 tolerances that are not normally included in regulations because
19 that would make the regulations too lengthy. With respect to the
20 advisory circular on heliport design, it is directed at designers
21 of heliports in order to build safe heliports and includes safety
22 parameters designed to produce safe operations. If the designer
23 or builder does not follow the advisory circular, then safety can
24 be compromised and bad things can happen.

25 Next, the Respondent presented the testimony of Mr. Juan

1 Rodriguez, Mr. Jose Torres Mas, Mr. Ismael Ortiz Jesus, and
2 Respondent Carlos Virelles.

3 The Respondent, Mr. Virelles, testified that he is a
4 businessman who own five minimarkets through a corporation and
5 also owns Royal Corporation, which owns a hangar and the
6 helicopter in question here. He is the only person who operates
7 the helicopter and he does not carry passengers for hire or charge
8 anyone to ride in the helicopter.

9 He has been friends with Mr. Rodriguez since about 2004,
10 but the two have no business relationship. Mr. Virelles indicated
11 he was carried on Mr. Rodriguez's medical insurance plan for about
12 8 to 12 months while he was looking for a new plan after
13 cancelling his when the rates were increased. According to
14 Mr. Virelles, there was no consideration to fly Mr. Rodriguez in
15 return for carrying the Respondent on the medical insurance
16 plan.

17 On August 9th, 2012, Mr. Rodriguez came into
18 Mr. Virelles's hangar and told him he had an emergency and asked
19 him to fly Mr. Rodriguez to Ponce. Mr. Virelles agreed. They
20 were in Ponce about hour. Mr. Virelles indicated there was no
21 construction that day and there was no debris on the helipad. He
22 identified Exhibit R-4, page 2, as the photograph he took of the
23 landing site in Ponce and identified three areas he indicated
24 could have been emergency landing areas if need be. All were
25 parking lots that had vehicles in them in varying

1 numbers. Mr. Virelles also indicated the H marking on the roof in
2 the photograph was present on August 9, 2012.

3 Mr. Virelles indicated he fueled the aircraft before
4 leaving for Ponce and then again upon his return. Exhibit R-2 was
5 identified as including copies of the fuel tickets from Million
6 Air along with a paid receipt from Million Air and Mr. Virelles'
7 American Express bill showing a corresponding charge on that
8 date for the fuel purchase. He indicated that the "Juanma"
9 notation on the receipt was his handwriting and was noted there so
10 Mr. Virelles could accurately mark his logbook.

11 Mr. Virelles agreed that he had been friends with
12 Mr. Rodriguez for 10 years and they had done favors for one
13 another in that time. He had no other reason to go to Ponce on
14 August 9th, 2012, other than to take Mr. Rodriguez. He also
15 agreed that Mr. Rodriguez had arranged to have workers wet the
16 roof on that day to reduce flying debris.

17 Mr. Juan Rodriguez testified that he is in
18 telecommunications, operating from his business from a number of
19 locations, including the NetWave building in Ponce, as depicted in
20 the video at Exhibit A-3. He stated that as of August 9th, 2012
21 the building was completed. He also stated that he decided to put
22 a helipad in the building since he owns a helicopter. When he
23 decided to put in the helipad he indicated he had a structural
24 engineer complete a study and reinforce the building to
25 accommodate a helicopter.

1 He and Mr. Virelles have been friends for many years but
2 do not have any business relationship. On August 9th, 2012,
3 Mr. Rodriguez indicated he needed to go Ponce because of an outage
4 at the building. He asked Mr. Virelles to fly him there. He
5 stated he did not pay Mr. Virelles anything for that flight. He
6 agreed that, as friends, he and Mr. Virelles did favors for one
7 another. He also confirmed that he told Mr. Ortiz via e-mail in
8 November 2012 that he had reimbursed Mr. Virelles for the flight
9 on August 9th, 2012; however, he said he later checked and found
10 out from his staff that Mr. Virelles had not been reimbursed. He
11 indicated he did not check before corresponding or responding to
12 Mr. Ortiz's e-mail.

13 He also indicated that he intended to reimburse
14 Mr. Virelles initially, but later in studying for his private
15 pilot's certificate and in talking with his instructor, decided he
16 should not pay him. He indicated he never had any conversations
17 with Mr. Virelles about payment or reimbursement for the flight.

18 Jose Torre Mas testified that he's a licensed commercial
19 helicopter pilot and that he has landed on the NetWave building
20 two to three times. Those landings occurred, according to
21 Mr. Torres, within one to two months prior to Respondent's August
22 9th, 2012 landing there. He landed on the roof, which he stated
23 was not in close proximity to people or property. He did not
24 notice any debris flying that might impact people or vehicles in
25 the area.

1 Next, Mr. Ismael Ortiz testified that he lives in San
2 Juan and has been flying for approximately 45 years. He holds
3 several certificates, including airline transport pilot
4 certificate, both airplane and rotorcraft helicopter, as well as
5 flight instructor, both airplane and helicopters. He was employed
6 by the FAA as both an aviation safety inspector and principal
7 operations inspector for a period of 20 years before retiring in
8 2010. His certifications, education, experience, and work history
9 are all set forth more fully in his resume at Exhibit R-3. He was
10 qualified as an expert in helicopter operations.

11 Mr. Ortiz is familiar with the landing site in question
12 on the NetWave building. The video at A-3 accurately depicts the
13 site. Mr. Ortiz stated that he visited the site several months
14 after the August 9th, 2010 incident and looked for any obstacles
15 that might impact landing a helicopter there. He flew to the
16 location with Mr. Virelles. He measured the landing area, which
17 he said was 27 feet wide and 101 feet long, measuring the entire
18 length of the building. He also measured the distance to the
19 adjacent building on the left, which he said was 28 feet from the
20 center point from the landing area. He also measure the distance
21 to the power lines that are located on the right side of the
22 building and across the street, which he said was approximately 50
23 feet from the center point of the landing area. He confirmed that
24 there are some obstacles around the site that one has to take care
25 to avoid, but he did not find the landing site to be so compressed

1 between surrounding buildings as to affect safety of flight. He
2 opined that there was ample room at the site for passengers to
3 embark or disembark.

4 When he visited the site months later, he found no
5 debris present, although he does not know if debris was present on
6 August 9, 2012, other than what he saw in the video. In the video
7 he did not see debris being thrown into the roadway or impacting
8 people or property in the area. He indicated he did not see any
9 danger to people or property on the ground. He opined that if
10 certain conditions were met, such as clearly established
11 procedures for pilots flying into and out of the site to enhance
12 safety, that the site could be safely used. Mr. Ortiz did not
13 attempt to determine how much weight the roof could accommodate
14 and agreed that he would not recommend anyone operating where
15 there were known safety issues.

16 Now, having summarized the testimony and other evidence,
17 I will now discuss the evidence as it applies to the allegations
18 in the complaint.

19 Many of the facts of this case are not in dispute.
20 There is no disagreement that Mr. Virelles was the pilot in
21 command of aircraft November-10-Charlie-Victor on August 9th,
22 2012, that he carried a passenger or passengers in his helicopter,
23 and that landed on and then took off from the one-story NetWave
24 building in Ponce, Puerto Rico. Nor is there disagreement that if
25 Mr. Virelles accepted compensation for the flight on August 9th,

1 2012, that he violated 14 Code of Federal Regulations Section
2 61.113(a).

3 What remains in dispute is: one, whether Mr. Virelles
4 accepted compensation for the flight in question on August 9,
5 2012; and two, whether Mr. Virelles' actions in landing on and
6 taking off from the NetWave building on that date constituted
7 careless or reckless operations so as to endanger the life or
8 property of another.

9 Now, with respect to the issue of compensation or hire,
10 the Administrator cited a number of cases. One or more of those
11 citations addressed the issue of cost sharing as a potential
12 exception for the prohibition against operating as pilot in
13 command for compensation or hire. Since there is no evidence and
14 there's been no argument here regarding cost sharing, those cases
15 are clearly inapplicable to the situation at hand.

16 The Administrator also cited other cases standing for
17 the proposition that for purposes of Section 61.113(a),
18 compensation need not be direct or even monetary in nature and can
19 be in the form of goodwill. Those cases are distinguishable here
20 as, unlike those situations, here there is no evidence of a prior
21 or ongoing business relationship between the Respondent and
22 Mr. Rodriguez, or that their relationship involved anything other
23 than friendship.

24 While there is evidence establishing that Mr. Rodriguez
25 carried Mr. Virelles on his medical insurance plan for some period

1 of time, there is no credible evidence to suggest that the flight
2 in question was provided in consideration for that and thereby
3 constituted a form of indirect compensation. Indeed, the other
4 evidence presented by the Administrator, that Mr. Rodriguez
5 suggested in an e-mail that his company reimburse Mr. Virelles for
6 the flight, runs contrary to any assertion that the flight was
7 provided in return for the medical insurance coverage since
8 presumably no further compensation will be required if in fact
9 such a quid pro quo arrangement was in place.

10 And while I may find Mr. Rodriguez's explanation
11 somewhat dubious that despite his original intent to reimburse
12 Mr. Virelles for the flight, months later he discovered through
13 his staff that no payment had in fact been made, there is no
14 concrete evidence of any payment or exchange of funds. Beyond
15 receipt of the e-mail, little was done to confirm any transaction
16 took place. The more concrete and stronger evidence consists of
17 the fuel billing receipts, paid vouchers and corresponding credit
18 card records at Exhibit R-2, all in the Respondent's name and
19 showing his payment for the fuel.

20 In the end, I find that the Administrator has failed to
21 carry his burden establishing by a preponderance of credible
22 evidence that the flight in question was made for compensation or
23 hire.

24 With respect to the allegations of careless or reckless
25 operation, I would note as a preliminary matter, for purposes of

1 14 CFR Section 91.13, carelessness is defined as a lack of due
2 care required under the circumstances. In Board precedent it is
3 well settled that for purposes of 14 CFR Section 91.13, it is not
4 necessary for the Administrator to prove actual endangerment or
5 actual injury; proving potential endangerment is enough. And that
6 principle has been cited in a litany of cases, one example of
7 which is Administrator v. Westhoff, and that's an NTSB Order EA-
8 3596, and that's a 1992 case.

9 Now, as a second somewhat preliminary matter, there was
10 much discussion and testimony regarding whether FAR Part 157 or
11 perhaps Part 77 applied to the landing site; more specifically,
12 one of the aeronautical studies completed by the FAA and
13 documented in Exhibit A-18 was completed pursuant to Part 77 or
14 Part 157. Given the extent of the testimony and discussion on
15 this issue, as noted yesterday, I took judicial notice of both
16 Parts 157 and 77.

17 Now, Part 77 addresses safe, efficient use and
18 preservation of navigable airspace. It prescribes in subpart (b),
19 and that's, I think, in Section 77.9, when notice of the FAA is
20 required for proposed construction or alteration of structures,
21 subpart (b) prescribes the form -- and that's an FAA Form 7460-1 -
22 - which must be submitted to the FAA to provide such
23 notice. Subpart (d) further describes the conduct of the
24 aeronautical studies for construction or alteration for which such
25 notice is required.

1 The construction or alteration of the NetWave building
2 meets none of the criteria in Section 77.9 requiring notice to FAA
3 or directing completion of an aeronautical study under Part
4 77. The form prescribed for the notice under Part 77, the FAA
5 Form 7460-1 is not the form referenced in the aeronautical study
6 at exhibit A-18, nor is the determination made in the report
7 consistent with the determination that is prescribed by Part 77,
8 which is a determination of hazard to air navigation or no hazard
9 to air navigation. Instead, Exhibit A-18, page 2, references FAA
10 Form 7480-1, which is the form prescribed for notice to the FAA
11 under Part 157 at Section 157.5, and the post-aeronautical study
12 determination of an objectionable landing area proposal is
13 consistent with the determination prescribed under Section
14 157.70.

15 Now, there was also some question regarding the
16 applicability of Part 157 in light of Section 157.1(b) and (c),
17 which provide exceptions to the notice requirements in that part.
18 However, whether notice under Part 157 is strictly required is not
19 critical to my determination here. As Mr. Cirone conceded, Part
20 157 bestows no authority upon the FAA to approve or disapprove use
21 of a proposed landing or to preclude its inclusion on the list of
22 registered landing sites or airport facilities. It merely
23 provides the FAA an opportunity to complete a study to fully
24 evaluate the suitability of a proposed site and to consider its
25 effects on the safe and efficient use of the airspace and the

1 safety of persons and property on the ground.

2 The FAA determination is advisory only, but it can have
3 an impact on local authorities' decisions about whether to certify
4 or license a facility in accordance with local laws. In the same
5 way that the determination is advisory, the advisory circular on
6 heliport design which guides the evaluation is likewise not made
7 mandatory by the FAA except in limited circumstances that are not
8 applicable here. However, the advisory circular provides
9 important standards, specifications and safety parameters that
10 constitute information critical to any determination regarding the
11 suitability of a proposed site and its effect on the safe and
12 efficient use of airspace and the safety of persons and property
13 on the ground, and of ultimately to my determination here.

14 There is no question that the landing site in question
15 here is not a registered landing site, but the fact that a landing
16 site is not registered does not in and of itself establish that
17 use of that site for takeoffs and landings constitutes careless or
18 reckless operation.

19 In the case at hand, the evidence established that
20 regardless of the applicability of Part 157, at some point after
21 the flight on August 9th, 2012, Mr. Rodriguez submitted a FAA Form
22 7480-1 and an aeronautical study was completed that evaluated the
23 suitability of the proposed landing site, all consistent with Part
24 157, rather than Part 77. The process for completing the
25 aeronautical study was explained in detail by Mr. Cirone, who has

1 conducted numbers of studies and whose testimony in this regard I
2 found to be well supported and credible. He described the process
3 and instrumentation used for precisely measuring distances,
4 ingress or egress points, and the necessary slope for safe arrival
5 and departure, as well as observe obstacles for potential
6 penetration into the safe operating area.

7 Although Mr. Cirone did not personally observe the area,
8 he was able to review the video and the photographs, had the
9 benefit of the detailed aeronautical study, combined with his
10 significant experience having conducted such studies before.
11 Based on his review, he concluded that the NetWave building was
12 unsafe as a landing area and its use presented a significant
13 danger to the safety of persons and property in the vicinity.

14 In so concluding, he cited a number of factors,
15 including multiple obstacles such as taller buildings, power lines
16 and poles, and a large antenna, in all operational quadrants in
17 which the aircraft was operating; that the area was too small an
18 area to land in or maneuver the aircraft; the remarkably close
19 proximity of the adjacent two-story building and large antenna
20 immediately adjacent to the landing area; the very close proximity
21 of vehicles and pedestrians on the street immediately adjacent to
22 the landing area subjected to potential damage or injury from
23 flying debris, or worse, in the event of an engine failure or
24 contact with the numerous obstacles in close proximity; the
25 location of the proposed heliport compressed between buildings and

1 other obstacles and thereby restricting the safe operating
2 environment; and the absence of a clear 8 to 1 slope for safe
3 ingress or egress from the area.

4 While Respondent has suggested that the video does not
5 show flying debris striking people or vehicles near the landing
6 area, it does in fact show debris and the tarp adjacent to the
7 landing area and street affected by rotor wash. Further,
8 Respondent's own testimony regarding the need to wet down the
9 landing area to reduce flying debris, is at least a tacit
10 acknowledgment of the danger of flying debris in the vicinity of
11 the landing area. As noted previously, a showing of actual
12 endangerment or harm is not required; potential endangerment is
13 sufficient.

14 I found Mr. Cirone to be a knowledgeable and credible
15 witness and his conclusions well supported by the photographic,
16 video, and documentary evidence. I also found Respondent's
17 expert, Mr. Ortiz, to be a credible witness, but his conclusions
18 and analysis to be less persuasive. While Mr. Ortiz did visit and
19 personally observe the landing area, his study of the area was
20 more limited in nature than the detailed aeronautical study and
21 his conclusions were less well supported. For instance, his
22 measurements considered or addressed only a couple of potential
23 obstacles, that is, the adjacent building and the power lines
24 across the street, while ignoring other obvious ones, for example,
25 other buildings and power lines surrounding the landing area and

1 the large antenna immediately next to the landing area.

2 Even his limited measurements confirm the dangerously
3 close proximity of the adjacent building, only 28 feet from the
4 center point at the landing area, with little margin for error
5 considering the rotor diameter. And although he ultimately
6 concluded he saw no danger to people or property in the vicinity
7 of the landing area, even he conceded that care had to be taken to
8 avoid obstacles surrounding the landing area and he recommended
9 special procedures be put in place with pilots operating into and
10 out of the landing area to ensure safety.

11 Mr. Cirone also discussed the fact that he has not seen
12 or been made of aware any engineering studies indicating the
13 building is suitable for landing a helicopter, nor did he see any
14 evidence in the photographs or video of a superstructure to help
15 distribute the weight of an aircraft. He indicated in the event
16 of a hard landing or engine failure, if the landing area has not
17 been adequately reinforced, the roof of the building could fail
18 and result in significant damage to the property or injury or even
19 death.

20 Nor was Respondent's expert, Mr. Ortiz, able in his
21 study of the site to determine how much weight the roof could
22 accommodate. The only evidence regarding reinforcement of the
23 building is Mr. Rodriguez's testimony in this regard. It's worth
24 noting that the purported reinforcement of building was raised for
25 the first time during Mr. Rodriguez's testimony and is

1 uncorroborated by any tangible evidence, such as an engineering
2 report or other building plans.

3 Coupled with his somewhat dubious explanation regarding
4 his late discovery of nonpayment to Respondent despite his intent
5 to do so, I find his testimony regarding structural reinforcement
6 of the building less than fully credible. However, even fully
7 accepting his assertions to be true, I would nonetheless find the
8 other substantial evidence of potential endangerment to be more
9 than sufficient.

10 Respondent also argues that there are other landing
11 sites in congested areas of Puerto Rico that are just as dangerous
12 as the NetWave building but that are included on the list of
13 registered landing sites. In support of this he proffered photos
14 at Exhibit R-4, which purport to show a number of these
15 sites. Now, it's noted by Mr. Dennis Ortiz in his testimony and
16 by Mr. Cirone in his discussion of aeronautical studies, each
17 proposed landing site must be independently evaluated upon
18 characteristics that are unique to that location and its
19 surroundings. Attempting to compare various landing sites,
20 particularly with extremely limited and obviously incomplete
21 information, is neither pertinent nor useful to determining
22 whether an alleged violation occurred in this instance.

23 Based on the forgoing, I find that the Administrator has
24 established by a preponderance of the reliable, probative and
25 credible evidence that Mr. Virelles' actions in landing on and

1 taking off from the NetWave building on August 9, 2012, constitute
2 a careless operation of an aircraft so as to endanger the life or
3 property of another.

4 In light of the forgoing discussion and conclusions, I
5 make the following specific findings with respect to the amended
6 complaint. First of all, as noted, paragraphs 1 through 4 were
7 admitted by Respondent and those I find to be established by the
8 evidence.

9 With respect paragraph 5, I find that the building
10 Respondent landed November-10-Charlie-Victor on located at Calle
11 Ferrocarril and Concordia was not a registered landing site. And
12 with respect to that, I would just refer you to my discussion
13 earlier about the significance of that finding.

14 In respect to paragraph 6, I find that Respondent landed
15 November-10-Charlie-Victor in an improper area in close proximity
16 to people and vehicles belonging to others.

17 Paragraph 7. I find that Respondent's above-operation
18 was careless or reckless when he landed November-10-Charlie-Victor
19 in an improper area.

20 Paragraph 8. I find Respondent's above-operation was
21 careless or reckless so as to endanger the life or property of
22 another.

23 Paragraph 9. I find the evidence does not establish
24 that Respondent received compensation for the above-described
25 flight.

1 With respect to paragraph 10, there has been no evidence
2 that was presented with respect to paragraph 10, therefore, I find
3 the Administrator has not established by preponderance of evidence
4 the allegations or the information with respect to prior violation
5 history in paragraph 10, and I'll discuss that more fully as I
6 discuss the sanction.

7 With respect to paragraph 11, I find that as a result
8 Respondent violated the following section of the Federal Aviation
9 Regulation: 14 CFR Section 91.13(a), in that no person may
10 operate an aircraft in a careless or reckless manner so as to
11 endanger the life or property of another.

12 Having found that the Administrator has proven those
13 specifically enumerated allegations in the Administrator's
14 complaint by preponderance of the reliable, probative, and
15 credible evidence, I now turn to the sanction imposed by the
16 Administrator in this case.

17 On August 3, 2012, Public Law 112-153, known as the
18 Pilot's Bill of Rights, was signed into law by the President. The
19 law applies to all cases before the National Transportation Safety
20 Board involving the reviews of actions of the Administrator of the
21 Federal Aviation Administration to deny airman medical
22 certification under 49 United States Code Section 44703 or to
23 amend, modify, suspend or revoke airman certificates under 49
24 United States Code Section 44709. That law became effective
25 immediately upon its enactment.

1 The Pilot's Bill of Rights specifically strikes from 49
2 United States Code Section 44709 and 44710 language that in cases
3 involving amendments, modifications, suspensions, or revocations
4 of airman certificates, the Board, quote, "is bound by all validly
5 adopted interpretations of laws and regulations the Administrator
6 carries out in a written agency policy guidance available to the
7 public relating to sanctions to be imposed under this section,
8 unless the Board finds an interpretation is arbitrary, capricious,
9 or otherwise not according to law," end quote.

10 Now, while I am no longer bound to give deference to the
11 FAA by statute, that agency is entitled to judicial deference due
12 all other federal agencies under the Supreme Court decision in
13 Martin v. Occupational Safety and Health Review Commission at 49
14 U.S. 144; 111 S.Ct. 1171.

15 In applying the principles of judicial deference to the
16 interpretations of laws, regulations and policies that the
17 Administrator carries out, I must analyze what are the facts and
18 circumstances in each case to determine if the sanction selected
19 by the Administrator is appropriate. In the case before me, the
20 Administrator has argued that I should I give deference to the
21 Administrator's choice of sanction, in that a 120-day suspension
22 is appropriate based upon both the Section 91.13(a) and 61.113(a)
23 violations, and further taking into consideration Respondent's
24 violation history.

25 Respondent has argued no violation occurred and thus no

1 sanction is appropriate. He made no argument with respect to a
2 lesser or alternative sanction in the event that I find a
3 violation or violations occurred.

4 Given that the Administrator's recommended sanction is
5 based upon violations of both Sections 91.13(a) and 61.113(a) and
6 my finding that no Section 61.113(a) violation has been
7 established, a reduction in the sanction is appropriate. Although
8 the Administrator has asked that I consider Respondent's violation
9 history as an aggravating factor, he presented absolutely no
10 evidence establishing such a violation history. Rather, he urged
11 for the first time in closing argument that I consider the fact
12 that Respondent did not specifically deny the allegation of prior
13 violations as establishing clear existence. Given the absence of
14 any evidence in this regard, I decline to consider any potential
15 violation history as an aggravating factor for sanction purposes.

16 The Sanction Guidance Table, an excerpt of which is at
17 Exhibit A-10, calls for a 30- to 120-day suspensions for a Section
18 91.13(a) violation involving landing on and taking off from an
19 improper area. In view of the this guidance and consistent with
20 my findings above, I find that sanction is appropriate and
21 warranted in the public interest in air commerce and air safety.
22 I further find, however, that the Order of Suspension should be
23 reduced to a period of 75 days.

24 Consistent with that, I enter the following order:

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ORDER

IT IS HEREBY ORDERED that the Order of Suspension, the complaint herein, be, and is hereby, modified; that Respondent's private pilot certificate held by him be, and hereby is, suspended for a period of 75 days.

Entered this the 21st day of March 2014, in San Juan, Puerto Rico.

STEPHEN R. WOODY
Administrative Law Judge

APPEAL

ADMINISTRATIVE LAW JUDGE WOODY: That concludes my oral initial decision in this matter.

I need to advise the parties of their appeal rights. Either party has that right to appeal my decision.

Mr. Penagaricano, if I could ask you to approach the bench, I'd like to hand you a written recitation of your rights.

MR. PENAGARICANO: When may I expect to receive a written copy of your verbal dissertation?

ADMINISTRATIVE LAW JUDGE WOODY: I believe the answer to your question is approximately two weeks. This will go to be transcribed and then it will be sent to you and I believe that's approximately a two-week time period.

1 Sir, I'd ask you if you would -- I've given you three
2 copies. If you would hand one to Administrator's counsel.

3 MR. JOHNSON: Thank you.

4 ADMINISTRATIVE LAW JUDGE WOODY: Thank you very
5 much. As I say, this is a written recitation of the parties'
6 appeal rights. Both parties have the opportunity to appeal my
7 decision if they so desire.

8 Does either party desire for me to orally advise appeal
9 rights or do you intend, Mr. Penagaricano, to discuss that with
10 your client yourself?

11 MR. PENAGARICANO: No, that's all right. I have
12 knowledge of what the appeal rights are and I will take the action
13 that I deem appropriate.

14 ADMINISTRATIVE LAW JUDGE WOODY: All right, sir. And
15 the Administrator, I assume, is familiar with these as well and
16 doesn't need me to verbally advise?

17 MR. JOHNSON: Yes, your honor.

18 ADMINISTRATIVE LAW JUDGE WOODY: Okay. The only thing
19 I would emphasize to you both, gentlemen, is the very important
20 time frame for filing. Timely -- you know, absent extraordinary
21 circumstances, untimely notice of appeal is not looked upon
22 favorably by the Board and may result in your appeal being
23 dismissed. So please keep those time frames in mind that are set
24 forth in your written appeal rights.

25 Gentlemen, is there anything of an administrative nature

1 that we should discuss before we terminate the proceeding?

2 MR. JOHNSON: No, Your Honor.

3 MR. PENAGARICANO: No.

4 ADMINISTRATIVE LAW JUDGE WOODY: Well, I thank you all
5 very much for your time and professionalism these past few days.
6 With that, we will terminate the proceedings. Thank you very
7 much.

8 (Whereupon, at 10:57 a.m., the hearing in the above-
9 entitled matter was adjourned.)

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CERTIFICATE

This is to certify that the attached proceeding before the
NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: Carlos Jose Virelles

DOCKET NUMBER: SE-19445

PLACE: San Juan, Puerto Rico

DATE: March 21, 2014

was held according to the record, and that this is the original,
complete, true and accurate transcript which has been compared to
the recording accomplished at the hearing.

Robert Napolitano
Official Reporter