

SERVED: August 2, 2016

NTSB Order No. EA-5785

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 1st day of August, 2016

_____)	
MICHAEL P. HUERTA,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Dockets SE-30143 and SE-30147
v.)	
)	
NADIM ROUKOZ EL KHOURY and)	
ARASH ALEX ABBASSI,)	
)	
Respondents.)	
_____)	

OPINON AND ORDER

1. Background

Respondents appeal the oral initial decision of Administrative Law Judge William R. Mullins, issued January 5, 2016, following a hearing.¹ In his decision, the law judge affirmed the Administrator's emergency order revoking Respondent Nadim El Khoury's commercial pilot certificate,² based on his determination Respondent El Khoury violated 14 C.F.R. §§ 61.59(a)(2)³

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

² Respondents waived the expedited procedures normally applicable to emergency cases.

and 61.3(d)(2)(i).⁴ The law judge also affirmed the Administrator's emergency order revoking Respondent Arash Alex Abbassi's airline transport pilot and flight instructor certificates, based on his determination Respondent Abbassi violated 14 C.F.R. § 61.59(a)(2). We remand this case to the law judge to make explicit credibility determinations, findings of fact, and conclusions of law.

A. Facts

Respondent Abbassi, a pilot and certified flight instructor (CFI), was the Director of Operations of Encore Flight Academy (Encore).⁵ Encore, through its instructors, provides ground and flight instruction to students pursuant to 14 C.F.R. Part 61.⁶ Respondent El Khoury held a commercial pilot certificate, but did not hold flight instructor or ground instructor certificates or a ground instructor rating.⁷ He was receiving training at Encore to become a CFI.⁸

On June 5, 2015, Respondent Abbassi, on behalf of Encore, signed a contract with Romeo Judeh to provide ground and flight instruction.⁹ After the contract was executed, Mr. Judeh received a reservation summary that listed his flight training schedule and indicated

³ Section 61.59(a)(2) states, "[n]o person may make or cause to be made ... [a]ny fraudulent or intentional false entry in any logbook, record, or report that is required to be kept, made, or used to show compliance with any requirement for the issuance or exercise of the privileges of any certificate, rating, or authorization under this part."

⁴ Section 61.3(d)(2)(i) provides that, "no person other than the holder of a flight instructor certificate issued under this part with the appropriate rating on that certificate may ... [g]ive training required to qualify a person for solo flight and solo cross-country flight."

⁵ Abbassi Compl. at ¶¶ 1, 2; Abbassi Answer at 1; Exh. A-5.

⁶ Abbassi Compl. at ¶ 3; Abbassi Answer at 1.

⁷ El Khoury Compl. at ¶¶ 1, 5; El Khoury Answer at ¶¶ 1, 5.

⁸ Tr. 257.

⁹ Exh. A-4; Tr. 73; Abbassi Compl. at ¶ 4; Abbassi Answer at 1.

Respondents Abbassi and El Khoury would be his instructors.¹⁰ Respondent Abbassi informed Mr. Judeh that Respondent El Khoury was one of Encore's best instructors.¹¹

Mr. Judeh testified Respondent El Khoury provided flight instruction to him on June 5, 6, 10, and 12, 2015.¹² Respondent El Khoury made the relevant logbook entries for the instruction he provided on these days in Mr. Judeh's student logbook, but did not initially sign them.¹³ At a later time, Respondents El Khoury and Abbassi applied a stamp bearing Respondent Abbassi's signature to the logbook entries indicating it was Respondent Abbassi who provided the flight instruction.¹⁴ Respondents El Khoury and Abbassi both denied providing any flight instruction to Mr. Judeh and denied applying Respondent Abbassi's stamp in Mr. Judeh's logbook.¹⁵

Mr. Judeh also testified Respondent Abbassi signed an endorsement certifying he provided Mr. Judeh ground instruction and that he was, therefore, prepared to take the aeronautical knowledge test. Respondent Abbassi admitted he signed an aeronautical knowledge test endorsement for Mr. Judeh, but explained he did so because he provided Mr. Judeh with ground instruction over the course of several days.¹⁶ Mr. Judeh denied receiving any ground instruction from Respondent Abbassi.¹⁷

¹⁰ Exh. A-6 at 1-2; Tr. 79-80. Mr. Judeh also testified Respondent Abbassi informed him that Respondent El Khoury would be his flight instructor. Tr. 77.

¹¹ Tr. 77, 123.

¹² Mr. Judeh testified Respondent El Khoury provided the flight instruction using a combination of Encore aircraft and an advanced aviation training device. Tr. 90, 101-03, 108-11.

¹³ Tr. 93-95, 101-04, 108-10, 115.

¹⁴ Respondent Abbassi's stamp bore his name, flight instructor certificate number, expiration date, and his signature. The stamp showed his certificate expiration date as "8/13." Tr. 98.

¹⁵ Tr. 263-65, 329, 349-50, 354.

¹⁶ Tr. 321-24, 334-36.

¹⁷ Tr. 125.

B. Procedural Background

i. The Administrator's Orders

On December 30, 2015, the Administrator issued an Amended Emergency Order of Revocation (EOR) to Respondent El Khoury and a Second Amended EOR to Respondent Abbassi, which became the complaints in this case. The El Khoury complaint alleges that, on June 5, 6, 10, and 12, 2015, Respondent El Khoury provided flight instruction to Mr. Judeh, in Encore aircraft and an advanced aviation training device, when Respondent El Khoury was not a CFI. The El Khoury complaint also contends Respondent El Khoury intentionally falsified the logbook by entering the instructional sessions into Mr. Judeh's logbook knowing that Respondent Abbassi would sign the entries or that Respondent Abbassi's stamp would be applied to the entries, thus indicating that it was Respondent Abbassi who provided the instruction. The El Khoury complaint further alleges that either Respondent El Khoury or Respondent Abbassi applied Respondent Abbassi's stamp to the logbook entries dated June 5, 6, and 10, 2015.

The Abbassi complaint alleges Respondent Abbassi knew Respondent El Khoury did not hold flight or ground instructor certificates, yet instructed him to provide flight instruction to Mr. Judeh. The complaint further contends Respondent Abbassi intentionally falsified the two logbook entries dated June 12, 2015 by applying his stamp to the entries certifying that he provided the flight instruction recorded therein. The Abbassi complaint also alleges Respondent Abbassi intentionally falsified Mr. Judeh's logbook by correcting the expiration date of his CFI from 2013 to 2015 on the stamped entries dated June 5, 6, 10, and 12, 2015 when he did not provide the flight instruction associated with those entries. Finally, the Abbassi complaint alleges Respondent Abbassi intentionally falsified an aeronautical knowledge test endorsement for

Mr. Judeh by writing his signature, date, and CFI number on an endorsement dated June 21, 2015 stating Respondent Abbassi provided ground training to Mr. Judeh and that he was prepared to take the aeronautical knowledge test when, in fact, Respondent Abbassi did not give Mr. Judeh any ground training.

ii. Hearing before the Administrative Law Judge

The law judge consolidated the cases, and they proceeded to hearing on January 4, 2016. Four witnesses testified on behalf of the Administrator: Mr. Judeh; Mr. Judeh's father, Neil; Mary Alice Oaks, a Federal Aviation Administration (FAA) Aviation Safety Technician; and David Voelker, an FAA Aviation Safety Inspector. Both respondents testified on their own behalf, and Elham Afshari, a former Encore office manager, testified on behalf of Respondent Abbassi.

Mr. Judeh testified Respondent El Khoury provided him flight instruction on June 5, 6, 10, and 12, 2015.¹⁸ Mr. Judeh further testified that after each instructional session, he observed Respondent El Khoury make the following relevant entries in Mr. Judeh's student logbook:¹⁹

¹⁸ Tr. 87-88, 90-95, 101-03, 108-11.

¹⁹ Tr. 93-95, 101-04, 110, 15. Each entry contained other information not depicted in the table. Exh. A-7 at 3; Exh. A-10 at 3. Mr. Judeh testified that he had two logbooks while at Encore. He received the first logbook from Encore, and obtained a second logbook because he wanted a logbook that looked more professional. Tr. 93, 115. The logbook entries at issue in this case are in the first logbook Encore provided to Mr. Judeh, portions of which the law judge admitted into evidence at Exhibits A-7 and A-10.

Date	Aircraft Make & Model	Remarks, Procedures, Maneuvers
June 5, 2015	PA.28.151	slight flights; off stalls; landings; takeoffs
June 6, 2015	PA.28.151	slight flights; power off-on stalls; turn steep turn; around the point; S-turn
June 10, 2015	PFC 2	instrument work; basic attitude flying
June 12, 2015	PA.28.151	takeoffs; landings; go around pattern work
June 12, 2015	PFC 2	tracking VOR

Mr. Judeh also testified Respondent El Khoury did not sign the logbook entries when he made them, and Respondent El Khoury told him that Respondent Abbassi would sign the logbook entries because he was Mr. Judeh's primary instructor.²⁰ Mr. Judeh testified that on a later date, he was in the Encore lobby and gave his logbook to Respondent El Khoury who then took the logbook to Encore's back office where two other Encore staff members were also present.²¹ Mr. Judeh explained Respondent El Khoury returned to the lobby shortly thereafter and gave back the logbook to Mr. Judeh with Respondent Abbassi's stamp applied to the unsigned entries dated June 5, 6, and 10.²² Mr. Judeh testified he did not see Respondent Abbassi at the Encore office that day.²³ Mr. Judeh wrote a complaint asking the FAA to determine if Respondent El Khoury was a certified flight instructor on June 15, 2015.²⁴

Mr. Judeh's father, Neil, testified via FaceTime from Qatar. He testified that, on June 19, 2015, he confronted Respondent El Khoury about the logbook, and asked him when he was going to sign the logbook entries.²⁵ Neil Judeh asked Respondent El Khoury to show him his

²⁰ Tr. 95-96, 103-04, 110, 114-16.

²¹ Tr. 98-100, 387.

²² Tr. 99-101. Exh. A-7 at 4; Exh. A-10 at 4.

²³ Tr. 100.

²⁴ Tr. 152-53; Exh. A-1.

²⁵ Tr. 189-90.

flight instructor certificate, but Respondent El Khoury indicated he did not have it with him.²⁶

Neil Judeh further testified that, on another occasion, he asked Respondent El Khoury about his flight instructor certificate, and Respondent El Khoury told him that he received training to earn his flight instructor certificate from American Flyers in Santa Monica, California and his examiner was Pat Kerry.²⁷

Both Mr. Judeh and his father testified they met with Respondent Abbassi at Encore on June 21, 2015 and that, in their presence, Respondent Abbassi stamped the two remaining unsigned entries, dated June 12, 2015, and changed his CFI expiration date from 2013 to 2015 for all the logbook entries Respondent El Khoury made.²⁸ In addition, Messrs. Judeh both testified that Respondent Abbassi also signed an endorsement dated June 21, 2015 stating Respondent Abbassi provided ground training to Mr. Judeh and, therefore, he was prepared to take the aeronautical knowledge test.²⁹ Mr. Judeh testified he never received any flight or ground instruction from Respondent Abbassi notwithstanding his student logbook entries and endorsement stating the contrary.³⁰

Safety Technician Oaks testified she received Mr. Judeh's written complaint on June 15, 2015, and began an investigation.³¹ Ms. Oaks stated she and another FAA inspector went to Encore on June 17, 2015, and conducted a ramp inspection and inspected the Encore's aircraft records, flight logs, and a list of Encore's flight instructors.³² Ms. Oaks further testified

²⁶ Tr. 190-91.

²⁷ Tr. 191.

²⁸ Tr. 117-21, 157, 198-99; Exh. A-10 at 4.

²⁹ Tr. 124-25, 196; Exh. A-11.

³⁰ Tr. 125-26, 145-46.

³¹ Tr. 18.

³² Tr. 22.

she observed that Encore's flight logs and computer system listed Respondent El Khoury as an Encore flight instructor.³³

Inspector Voelker testified the June 5, 6, 10, and 12 logbook entries denote Mr. Judeh received flight instruction on those days.³⁴ He further testified the logbook entries would be required for a student to demonstrate the necessary qualifications for private pilot certification and solo cross-country flight privileges or to demonstrate eligibility to take the private pilot practical test or receive an endorsement for solo flight in a single engine airplane.³⁵ Inspector Voelker explained that 14 C.F.R. § 61.189(a) requires a flight instructor to sign the logbook of each student to whom that instructor has given flight or ground training.³⁶ Inspector Voelker also testified that the June 21 endorsement³⁷ signed by Respondent Abbassi is consistent with 14 C.F.R. § 61.103(d)(1), and it suggests Respondent Abbassi provided the required ground training to Mr. Judeh.³⁸ Inspector Voelker admitted the identity of the instructor who provided the required ground training would be irrelevant to FAA.³⁹ He further admitted he did not know

³³ Tr. 22-29; Exh. A-2; Exh. A-3 at 2.

³⁴ Tr. 218-19, 225-28.

³⁵ Tr. 218-20, 223-32.

³⁶ Tr. 222-23; Section 61.189(a) states, "[a] flight instructor must sign the logbook of each person to whom that instructor has given flight training or ground training."

³⁷ FAA Counsel incorrectly indicated the endorsement was dated May 11 during his questioning of Inspector Voelker. Tr. 232, 252. The endorsement was dated June 21. Exh. A-11.

³⁸ Tr. 232-34; Section 61.103(d)(1) provides, "[t]o be eligible for a private pilot certificate, a person must ... [r]eceive a logbook endorsement from an authorized instructor who: (1) [c]onducted the training or reviewed the person's home study on the aeronautical knowledge areas listed in § 61.105(b) of this part that apply to the aircraft rating sought; and (2) [c]ertified that the person is prepared for the required knowledge test."

³⁹ Tr. 246.

whether FAA would accept a stamped signature, rather than a written signature, on a logbook entry to bestow a license or privilege.⁴⁰

Respondent El Khoury testified he flew with Mr. Judeh on June 5, 6, and 12, but stated the flights were not instructional and that Mr. Judeh did not manipulate the controls.⁴¹

Respondent El Khoury explained he had already planned to fly an Encore aircraft on June 5, 6, and 12, and that Respondent Abbassi asked Respondent El Khoury to allow Mr. Judeh to accompany him on the flights.⁴² Respondent El Khoury also admitted he sat in the advanced aviation training device with Mr. Judeh on June 10 and 12, but denied it constituted instruction.⁴³

Respondent El Khoury testified he told Mr. Judeh he was training to earn a flight instructor certificate and denied telling Mr. Judeh's father he was a CFI.⁴⁴ Respondent El Khoury further denied making any entries in Mr. Judeh's logbook, denied applying Respondent Abbassi's stamp to any entry in Mr. Judeh's logbook, denied asking another person to apply Respondent Abbassi's stamp to any entry in Mr. Judeh's logbook, and denied ever seeing Mr. Judeh's logbook.⁴⁵

Respondent Abbassi testified he and Respondent El Khoury were not Mr. Judeh's flight instructors and stated he never flew with Mr. Judeh.⁴⁶ He testified that, on June 5, he informed Mr. Judeh his instructors would be Sevak Sargsyan and Fath Kang.⁴⁷ Respondent Abbassi also

⁴⁰ Tr. 249-50.

⁴¹ Tr. 264-66.

⁴² Tr. 262-63, 275-78, 294-95.

⁴³ Tr. 266-67, 291-92.

⁴⁴ Tr. 267-69.

⁴⁵ Tr. 264-67, 280-81.

⁴⁶ Tr. 308, 329.

⁴⁷ Tr. 340-41.

testified he asked Respondent El Khoury to allow Mr. Judeh to accompany him on a preplanned flight, but denied telling Mr. Judeh that Respondent El Khoury was an Encore flight instructor.⁴⁸

Respondent Abbassi testified he never stamped any entries in Mr. Judeh's logbook, and stated that former Encore office manager, Elham Afshari, applied his stamp to some of the entries in Mr. Judeh's logbook.⁴⁹ Respondent Abbassi admitted he signed the June 21 endorsement which stated, "I certify that I have given Romeo Neil Judeh the ground training required by FAR 61.105(b), and that [he] is prepared for the required knowledge test."⁵⁰ He explained he did so because he provided ground instruction to Mr. Judeh on multiple days, 2-3 hours total, and that Mr. Judeh took a replicated aeronautical knowledge test on Encore's computer system, and received a score of at least eighty-five percent.⁵¹ However, Respondent Abbassi could not remember the dates the ground training occurred or the topics covered.⁵² Respondent Abbassi testified Respondent El Khoury was designated as an instructor in Encore's scheduling software because it allowed him to enter aircraft reservations for himself into the computer system.⁵³

Ms. Afshari, Encore's former office manager, testified that she worked at Encore during the time Mr. Judeh was a student there, and she stopped working for Encore in late 2015.⁵⁴

Ms. Afshari denied Respondent El Khoury was an Encore instructor and explained he was listed as an instructor in Encore's flight scheduling software because it allowed him to schedule aircraft

⁴⁸ Tr. 315-16.

⁴⁹ Tr. 349-50, 354.

⁵⁰ Tr. 321-22; Exh. A-11.

⁵¹ Tr. 321-24, 334-36.

⁵² Tr. 334-36.

⁵³ Tr. 344-46, 355-56.

⁵⁴ Tr. 358-60.

for himself.⁵⁵ She stated that Respondent Abbassi told her Sevak Sargsyan and Fath Kang were going to be Mr. Judeh's flight instructors and that it was normal practice for Encore to assign two instructors to a new student.⁵⁶ She testified Mr. Judeh's father did not approve of Mr. Kang, and, therefore, Mr. Sargsyan was Mr. Judeh's instructor.⁵⁷ Ms. Afshari testified she applied Respondent Abbassi's stamp to two entries in Mr. Judeh's logbook, although she could not recall which entries, and that she corrected the CFI expiration date on several stamped entries.⁵⁸

C. Administrative Law Judge's Oral Initial Decision

At the conclusion of the hearing, the law judge read the complaints into the record, summarized the witness testimony and exhibits admitted into evidence, and noted relevant facts that appeared to influence his decision.⁵⁹ The law judge noted the respondents' self-interested motive and stated that Mr. Judeh and his father had nothing to gain from their testimony.⁶⁰ The law judge also noted the Encore documents listed Respondent El Khoury as an instructor while both respondents testified that he was not an Encore instructor.⁶¹ The law judge stated that he was "not sure about Ms. Afshari," and noted she testified that she applied the stamp to two entries but that there were more than two stamped entries at issue in the case.⁶² The law judge also stated that he did not understand why Respondent Abbassi allowed other people to access his stamp and that he adopted the stamped logbook entries as his own when he corrected his CFI

⁵⁵ Tr. 359-60, 362.

⁵⁶ Tr. 361, 372.

⁵⁷ Tr. 361-62.

⁵⁸ Tr. 364-72.

⁵⁹ Initial Decision at 424-46.

⁶⁰ Id. at 444.

⁶¹ Id.

⁶² Id. at 445.

expiration date.⁶³ The law judge spoke in broad, general terms about the credibility of the testimony from respondents and Ms. Afshari, and concluded:

[T]he totality of the evidence here reflects on the credibility of not only [Respondent] El Khoury and [Respondent] Abbassi, but the whole Encore operation with all of these either wrong or they would like for it to have been wrong entries about Mr. El Khoury being a flight instructor when he wasn't a flight instructor.⁶⁴

The law judge made no express credibility assessment of Messrs. Judeh, Safety Technician Oaks, or Inspector Voelker.

The law judge determined the Administrator proved Respondent El Khoury violated 14 C.F.R. §§ 61.59(a)(2) and 61.3(d)(2)(i); and Respondent Abbassi violated 14 C.F.R. § 61.59(a)(2), as charged.⁶⁵

D. Issues on Appeal

While Respondent El Khoury defined the scope of his appeal as limited to the sanction of revocation, he disagreed with the law judge's finding that he applied Respondent Abbassi's stamp to entries in Mr. Judeh's logbook and, thus, knowingly caused a false entry to be made.⁶⁶ Therefore, we liberally construe Respondent El Khoury's appeal as challenging the law judge's determination that the Administrator proved he applied Respondent Abbassi's stamp to the logbook entries dated June 5, 6, and 10, 2015 and that he knowingly caused a false entry to be made. He also argues revocation is not a reasonable sanction.⁶⁷

Respondent Abbassi also contends the Administrator failed to prove he applied his stamp to Mr. Judeh's logbook entries dated June 12, 2015 because Ms. Afshari testified she applied the

⁶³ *Id.* at 445-46.

⁶⁴ *Id.* at 446.

⁶⁵ *Id.* at 446-47.

⁶⁶ El Khoury Appeal Br. ¶¶ 1, 4, 5.

⁶⁷ *Id.* at ¶¶ 6-9.

stamp to some of the logbook entries.⁶⁸ In addition, he argues the act of correcting his CFI expiration date on the stamped logbook entries did not constitute making a false representation.⁶⁹ Respondent Abbassi further contends the Administrator failed to prove the stamped entries in Mr. Judeh's logbook are material because FAA would rely on a stamp rather than a handwritten signature.⁷⁰ He further argues the Administrator failed to prove that the identity of the ground instructor, as specified in his June 21 aeronautical knowledge test endorsement, is material.⁷¹ Respondent Abbassi also contends that the totality of the circumstances warrant a sanction less than revocation.⁷²

2. *Decision*

While we give deference to our law judge's rulings on certain issues, such as credibility determinations⁷³ or evidentiary rulings,⁷⁴ we review the case, as a whole, under *de novo* review.⁷⁵

We apply the three-prong test articulated in Hart v. McLucas in intentional falsification cases.⁷⁶ The Administrator must prove an airman: (1) made a false representation; (2) in reference to a material fact; and (3) with knowledge of the falsity of the fact.⁷⁷ In Administrator

⁶⁸ Abbassi Appeal Br. 9-11.

⁶⁹ Id. at 17 n. 7.

⁷⁰ Id. at 15-17.

⁷¹ Id. at 12-15.

⁷² Id. at 17-19.

⁷³ Administrator v. Porco, NTSB Order No. EA-5591 at 13 (2011), *aff'd sub nom.*, Porco v. Huerta, 472 Fed.Appx. 2 (D.C. Cir. 2012) (*per curiam*).

⁷⁴ Administrator v. Ledwell, NTSB Order No. EA-5582 (2011).

⁷⁵ 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); Administrator v. Schneider, 1 N.T.S.B. 1550 (1972) (in making factual findings, the Board is not bound by the law judge's findings).

⁷⁶ 535 F.2d 516, 519 (9th Cir. 1976).

⁷⁷ Id.

v. Dillmon,⁷⁸ after remand from the Court of Appeals for the District of Columbia Circuit,⁷⁹ we clarified our analysis of this three-prong test, to emphasize a law judge's credibility determinations occupy an important role in analyzing whether the Administrator has fulfilled the third prong of the test.⁸⁰ While the Board has emphasized that a law judge's express credibility findings are essential to analyzing the third prong of the Hart v. McLucas test, express credibility findings are also critical where, as here, the respondents contest the first prong of the test and argue they did not make the false representations at issue. In Administrator v. Langford, we stated:

[W]e are reluctant to substitute our own credibility determinations for the law judge's or supplement the law judge's determinations in any manner. Our law judges need to make clear credibility findings tied to specific findings of fact based upon the testimony and evidence presented at the hearing. For this reason, we refuse to rely on implied credibility determinations which may only be gleaned from the law judge's final ruling in a given case.⁸¹

In the case *sub judice*, Mr. Judeh testified Respondent El Khoury made the logbook entries dated June 5, 6, 10, and 12, and that he took Mr. Judeh's logbook and returned it to him with Respondent Abbassi's stamp applied to the June 5, 6, and 10 entries. Mr. Judeh and his father both testified they observed Respondent Abbassi apply his stamp to the June 12 logbook entries and correct his CFI expiration date on all of the entries in question. Conversely, Respondent El Khoury denied making any entries in Mr. Judeh's logbook, applying Respondent Abbassi's stamp to any entries in the logbook, or even seeing the logbook. Respondent Abbassi

⁷⁸ NTSB Order No. EA-5528 (2010).

⁷⁹ 588 F.3d 1085 (D.C. Cir. 2009).

⁸⁰ Administrator v. Langford, NTSB Order No. EA-5673 at 8 (2013) (citing Administrator v. Dillmon, NTSB Order No. EA-5528; Singleton v. Babbitt, 588 F.3d 1078, 1082-1083 (D.C. Cir. 2009)).

⁸¹ Langford, *supra* note 80 at 8 (citing Administrator v. Langford, NTSB Order No. EA-5625 (2012)).

also denied applying his stamp to the logbook. Ms. Afshari admitted applying the stamp to some, but not all, of the logbook entries in question. The law judge's resolution of the issues in this case required him to assess the credibility of each witness and make express credibility determinations based explicitly on factual findings in the record, which he failed to do.

The law judge summarized the evidence and made broad statements about the credibility of the witnesses associated with Encore, but he did not articulate clear credibility determinations concerning all of the witnesses. Specifically, after noting the numerous Encore documents that listed Respondent El Khoury as an instructor, the law judge stated, “that relates to the credibility of everybody that testified for both of [the] respondents.”⁸² The law judge indicated that Respondent Abbassi telling Respondent El Khoury to fly with Mr. Judeh “reflects on the credibility of [the] witnesses.”⁸³ The law judge was “not sure about Ms. Afshari.”⁸⁴ The law judge also stated he was “satisfied the evidence would show” Respondent El Khoury applied the stamp to some of the entries in Mr. Judeh’s logbook.⁸⁵ The law judge stated, “the totality of the evidence here reflects on the credibility of not only [Respondent] El Khoury and [Respondent] Abbassi, but the whole Encore operation...”⁸⁶ Aside from briefly noting Messrs. Judeh would not benefit from the litigation, the law judge made no explicit finding about their credibility.⁸⁷ In addition, the law judge did not state what weight he accorded, if any, the testimony of Inspector Voelker and Safety Technician Oaks.

⁸² Initial Decision at 444.

⁸³ Id. at 445.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Id. at 446.

⁸⁷ Id. at 444.

It is well settled that we cannot rely upon implied credibility findings nor will we substitute our own credibility determinations for the law judge's or supplement the law judge's determinations in any manner.⁸⁸ As the law judge suggested,⁸⁹ all of the witnesses' versions of the events that allegedly took place at Encore cannot be true. The crux of this case was who was telling the truth and who was not. The Board is unable to properly review the merits of this case without clear credibility findings concerning the witnesses, and the law judge "is in the best position to evaluate the demeanor of the witnesses."⁹⁰ We continue to emphasize the importance of explicit determinations based explicitly on factual findings in the record concerning the credibility, or lack thereof, of the witnesses in intentional falsification cases.

The law judge determined the Administrator proved Respondent El Khoury violated 14 C.F.R. §§ 61.59(a)(2) and 61.3(d)(2)(i); and Respondent Abbassi violated 14 C.F.R. § 61.59(a)(2); however, the law judge did not provide specific findings of fact based upon the evidence adduced at the hearing. In addition, the law judge did not make express conclusions of law concerning each of the three prongs of the Hart v. McLucas test. We note the law judge made no explicit findings concerning the materiality of the entries at issue or whether the entries were made knowingly by respondents. The law judge also made no explicit finding whether the Administrator met his burden of proof concerning the aeronautical knowledge test endorsement at issue. To properly consider whether the Administrator met his burden of proof in this case, the law judge must provide findings of fact and an explanation concerning how he weighed the

⁸⁸ Langford, *supra* note 80 at 8; *see also* Pasternack v. FAA, 596 F.3d 836, 838 (D.C. Cir. 2010).

⁸⁹ Initial Decision at 445.

⁹⁰ Administrator v. Southworth, NTSB Order No. EA-4742 at 5 (1999).

evidence in reaching his conclusion that the Administrator met all three prongs of the Hart v. McLucas test as to each respondent.⁹¹

Based on the foregoing, we direct the law judge to provide a decision setting out credibility determinations, findings of fact, and conclusions of law based upon the evidence and testimony adduced at the hearing sufficient to allow the Board to perform its review, should any of the parties decide to appeal the law judge's decision on remand. Because we remand this case to the law judge, we decline to reach the merits of respondents' remaining arguments at this juncture.

ACCORDINGLY, IT IS ORDERED THAT:

The case is remanded to the law judge to make explicit credibility determinations, findings of fact, and conclusions of law consistent with this Opinion and Order.

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

⁹¹ See Administrator v. Langford, NTSB Order No. EA-5625 at 4 (2013).

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Docket No.
SE-30143
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O R A L I N I T I A L D E C I S I O N
A N D O R D E R

JUDGE MULLINS: Let's go on the record at this time. This has been a proceeding before the National Transportation Safety Board held under the provisions of Section 44709 of the Federal Aviation Act of 1958 as amended on the appeals of Nadim R. El Khoury and Mr. Arash A. Abbassi, who I'll refer to them as Respondent El Khoury or Respondent Abbassi.

The El Khoury docket number is SE-30143, the Abbassi docket number is SE-30147, and these two cases were consolidated for hearing.

The matters came on for hearing here in Los Angeles yesterday, the 4th day of January of 2016. We commenced at 1:30 in the afternoon. Went until five o'clock last night. Have to be out of here at five o'clock.

1 We reconvened at nine o'clock this morning and it's almost
2 five o'clock now on the afternoon of the 5th.

3 The matter has been heard before me, William R.
4 Mullins, and I am an administrative law judge for the
5 National Transportation Safety Board. And as is provided
6 by the Board's rules, I will issue a bench decision in this
7 proceeding.

8 These complaints, and they were emergency
9 complaints, were brought on by the Enforcement Division of
10 the Federal Aviation Administration. I guess the Western
11 Division Enforcement Team. I guess that's -- is that the
12 appropriate name? In any event, and both cases -- or the
13 Order of Revocation is seeking to revoke the airmen
14 certificates of both of these respondents.

15 The hearing for -- the emergency hearing was to
16 have been heard by the 28th of December. And the parties
17 agreed to waive the emergency provisions provided that we
18 could start the trial yesterday, and we did.

19 So, the emergency provisions of this proceeding
20 have been waived, but we have proceeded in a fairly -- a
21 very timely fashion right after the holidays.

22 The matter came on for hearing that was pursuant
23 to notice that was given to the parties. The Administrator
24 was present throughout these proceedings, was represented
25 by Mr. Adam Runkel, counsel of the Western Pacific Region

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1 and Enforcement Team.

2 And Respondent El Khoury was present and
3 represented at all times by Mr. Scott Williams, Esquire.
4 And Respondent Mr. Abbassi was present at all times and
5 represented by his counsel, Mr. Parham Hendifar, Esquire.
6 And both Mr. Williams and Mr. Hendifar live here in the L.A.
7 area.

8 Mr. Runkel used to live here in the L.A. area,
9 although I understand he's from up in the Seattle area now.

10 The parties were afforded a full opportunity to
11 offer evidence, to call, examine and cross examine
12 witnesses. In addition, the parties were afforded an
13 opportunity to make argument in support of their respective
14 position.

15 At this time, I will read into the record the
16 complaints as amended. Mr. El Khoury, there was an amended
17 complaint and it provides as follows:

18 Paragraph 1. You are the holder of commercial
19 pilot certificate number 3670291.

20 Paragraph 2. At all times referenced herein
21 Alex Abbassi was the Director of Operations/President of
22 Encore Flight Academy, also known as Encore Flight
23 Corporation, Encore, located in Van Nuys, California and
24 held a flight instructor certificate.

25 Paragraph 3. Encore through its instructors

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1 provided ground and flight instruction to students under
2 14 CFR Part 61.

3 Paragraph 4. At all times referenced herein
4 you were employed as an instructor for Encore.

5 Paragraph 5. At all times referenced herein
6 you did not hold an FAA flight instructor certificate or
7 an FAA ground instructor certificate or a ground instructor
8 rating.

9 Paragraph 6. You failed practical
10 examinations for a flight instructor certificate on March
11 13th, 2015, and May 13th, 2015.

12 Paragraph 7. Mr. Abbassi assigned or directed
13 you to provide ground and flight instructions to Romeo Neil
14 Judeh.

15 Paragraph 8. You told Mr. Judeh and his father
16 on numerous occasions that you held a CFI.

17 Paragraph 9. You provided flight instruction
18 to Mr. Judeh on the dates in the aircraft and for the amount
19 of time listed below. First date is June 5th, 2015,
20 N300EF. And it's 2.1 hours. June 6th, 2015, N315EF, 1.7
21 hours. And June 12th, 2015, N310EF, 1.3 hours.

22 Paragraph 10. The flight instruction
23 referenced in Paragraph 9 was required to qualify Mr. Judeh
24 for solo flight and solo cross-country flight.

25 Paragraph 11. You provided 1.7 hours of

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1 training in a flight training device to Mr. Judeh on June
2 10th, 2015.

3 And Paragraph 12. You provided 0.8 hours of
4 training in a flight training device to Mr. Judeh on June
5 12th, 2015.

6 Paragraph 13. You entered the flight
7 instruction and training referenced in Paragraph 9, 11 and
8 12 into Mr. Judeh's Encore Flight Academy pilot log,
9 parentheses, Mr. Judeh's pilot log, close parentheses.

10 Paragraph 14. You did not sign your name for
11 the entries referenced in Paragraph 13.

12 Paragraph 15. You made the entries referenced
13 in Paragraph 13 knowing that Mr. Abbassi would sign or that
14 a stamp with his signature would be applied to those
15 entries.

16 Paragraph 16. Either you or Mr. Abbassi
17 applied a stamp with Mr. Abbassi's signature that states
18 Alex Abbassi 3009355 expires 8 of 13, to the entries of Mr.
19 Judeh's pilot log for the flight instruction given on June
20 5 and 6 and for the training given on June 10th.

21 Paragraph 17. The entries referenced in
22 Paragraph 16 were false in that Mr. Abbassi did not provide
23 the flight instruction or training associated with those
24 entries.

25 Paragraph 18. On or about June 21st, 2015, Mr.

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1 Abbassi applied a stamp with his signature that states Alex
2 Abbassi 3009355 expires 8 of 13, to entries in Mr. Judeh's
3 pilot log for the flight instruction given on June 12th,
4 and for the training given on June 12th.

5 Paragraph 19. The entries referenced in
6 Paragraph 18 were false in that Mr. Abbassi did not provide
7 the flight instructions or training associated with those
8 entries.

9 Paragraph 20. The entries referenced in
10 Paragraphs 16 and 18 are required to be kept and made or
11 used to show compliance with any requirement for the
12 issuance or exercise of the privileges of a certificate,
13 rating or authorization under 14 CFR Part 61.

14 Paragraph 21. In regard to entries referenced
15 in Paragraph 16 to which you applied a stamp with Mr.
16 Abbassi's signature, you made those false entries knowing
17 that Mr. Abbassi had not conducted flight instruction or
18 training.

19 Paragraph 22. In regard to entries referenced
20 in Paragraphs 16 and 18 to which Mr. Abbassi applied a stamp
21 with his signature, you caused those false entries to be
22 made by entering the flight instruction and training in Mr.
23 Judeh's pilot log knowing that Mr. Abbassi would sign for
24 those entries.

25 Paragraph 23. You told Mr. Judeh on several

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1 occasions if anyone asked who gave this instructive, that
2 he should say it was Mr. Abbassi.

3 As a result, you violated the following Federal
4 Aviation Administration regulations: A, 14 CFR
5 61.59(a)(2), which states that no person may make or cause
6 to be made any fraudulent or intentionally false entry in
7 any logbook, record or report that is required to be kept,
8 made or used to show compliance with any requirement for
9 the issuance or exercise of the privilege of any
10 certificate, rating or authorization under this part, and
11 B, 14 CFR 61.3(d)(2)(i), which states that except as
12 provided in Paragraphs (d)(3) of this section no person
13 other than the holder of a flight instructor certificate
14 issued under this part with appropriate rating on that
15 certificate may give training required to qualify person
16 for solo flight and solo cross-country flight.

17 And as a result of those allegations and -- oh,
18 it says, pursuant to 14 CFR 61.59(b) a fraudulent or
19 intentionally false entry in any logbook, record or report
20 that is required to be kept, made or used to show compliance
21 with any requirement for the issuance or exercise of
22 privilege of any certificate, rating or authorization
23 under Part 61 is a basis for revocation of any airman
24 certificate, rating or authorization you hold.

25 MR. RUNKEL: Your Honor, forgive the

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1 interruption. Complainant orally amended the Complaint,
2 Paragraphs 11 and 12 to --

3 JUDGE MULLINS: Oh, yes, and I have that marked
4 and I didn't -- Paragraphs 11 and 12 earlier were amended
5 on motion to strike "flight training device" and to put
6 "advanced aviation training device" in both of those
7 paragraphs.

8 MR. RUNKEL: Thank you.

9 JUDGE MULLINS: Thank you. Mr. Abbassi's
10 Order of Revocation reads, Paragraph 1 -- and this is the
11 second amended -- at all times referenced herein you were
12 the holder of an airline transport pilot certificate number
13 3009355 and a flight instructor certificate with an
14 expiration date of August 31st, 2015.

15 Paragraph 2. At all times referenced herein
16 you were the Director of Operations/President of Encore
17 Flight Academy also known as Encore Flight Corporation,
18 Encore, located in Van Nuys, California.

19 Paragraph 3. Encore through its instructor
20 provided ground and flight instruction to students under
21 14 CFR Part 61.

22 Paragraph 4. You signed a contract dated June
23 5th, 2015, on behalf of Encore to provide ground and flight
24 instructions to Romeo Neil Judeh.

25 Paragraph 5. At all times referenced herein

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1 Nadim Rukos (phonetic) El Khoury was employed by Encore as
2 an instructor.

3 Paragraph 6. You knew that Mr. El Khoury did
4 not hold an FAA flight instructor certificate or an FAA
5 ground instructor certificate or ground instructor rating.

6 Paragraph 7. You knew that Mr. El Khoury had
7 failed practical examinations for a flight instructor
8 certificate on March 13th, 2015, and May 13th, 2015.

9 Paragraph 8. You assigned or directed Mr. El
10 Khoury to provide ground and flight instruction to Mr.
11 Judeh.

12 Paragraph 9. Mr. El Khoury provided flight
13 instruction to Mr. Judeh on the dates of the aircraft and
14 for the amount of time listed below. And these were the
15 dates in Mr. El Khoury's complaint, but they're June 5th,
16 6th and 12th. And the aircrafts were N300EF, N315EF and
17 310EF. And the hours on the consecutive days were 2.1, 1.7
18 and 1.3.

19 Paragraph 10. Mr. El Khoury provided 1.7 hours
20 of training -- and this was the amendment that we talked
21 about -- in an advanced aviation training device to Mr.
22 Judeh on June 10th, 2015.

23 And Paragraph 11. Mr. El Khoury provided 0.8
24 hours of training in an advanced aviation training device
25 to Mr. Judeh on June 12th, 2015.

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1 Paragraph 12. Mr. El Khoury entered the flight
2 instruction and training referenced in Paragraphs 9
3 through 11 into Mr. Judeh's Encore Flight Academy pilot
4 log.

5 Paragraph 13. Either you or Mr. El Khoury
6 applied a stamp with your signature that states that Alex
7 Abbassi 3009355, expires 8 of 13, to the entries in Mr.
8 Judeh's pilot log for the flight instruction given on June
9 5th and 6th and for the training given on June 10th.

10 Paragraph 14. The entries referenced in
11 Paragraph 13 were false in that you did not provide the
12 flight training or training associated with those entries.

13 Paragraph 15. On or about June 21st, 2015, you
14 corrected the expiration date of your CFI on the stamped
15 entries referenced in Paragraph 13 by writing a five over
16 the three to reflect an expiration date of 2015.

17 Paragraph 16. You made the corrections
18 referenced in Paragraph 15 even though you knew that you
19 did not actually provide Mr. Judeh the flight instruction
20 or training associated with those entries.

21 Paragraph 17. On or about June 21st, 2015, you
22 applied a stamp with your signature that states Alex
23 Abbassi 3009355, expires 8 of 13, to entries in Mr. Judeh's
24 pilot log for the flight instruction given on June 12th and
25 for the training given on June 12th.

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1 Paragraph 18. You corrected the expiration
2 date of your CFI on the stamped entries referenced in
3 Paragraph 17 by writing a five over the three to reflect
4 an expiration date of 2015.

5 Paragraph 19. The entries referenced in
6 Paragraph 17 were false in that you did not provide the
7 flight instruction or training associated with those
8 entries.

9 Paragraph 20. At the time you applied and
10 corrected the entries referenced in Paragraph 17, you knew
11 that you had not given the flight instruction or training
12 associated with those entries.

13 Paragraph 21. The entries referenced in
14 Paragraph 13 and 17 are required to be kept, made or used
15 to show compliance with any requirement for the issuance
16 or exercise of the privileges of a certificate, rating or
17 authorization under 14 CFR Part 61.

18 Paragraph 22. You signed an entry dated June
19 21st, 2015, in Mr. Judeh's pilot log that states private
20 pilot aeronautical knowledge FAR 61, 35 AI and 61.105(b),
21 I certify that I have given Romeo Neil Judeh the ground
22 training required by FAR 61.105(b) and that he or she is
23 prepared for the required knowledge test. You also
24 entered your CFI number 3009355 and the expiration date of
25 8/15.

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1 Paragraph 23. The entry referenced in
2 Paragraph 22 is false in that you did not give Mr. Judeh
3 any ground training.

4 Paragraph 24. At the time you made the entry
5 referenced in Paragraph 22, you knew you had not given Mr.
6 Judeh any ground training.

7 And Paragraph 25. The entry referenced in
8 Paragraph 22 is required to be kept, made or used to show
9 compliance with requirements for the issuance or exercise
10 of the privileges of a certificate, rating or authorization
11 under 14 CFR Part 61.

12 As a result, you violated 14 CFR 61.59(a)(2),
13 which states that no person may make or cause to be made
14 any fraudulent or intentionally false entry in any logbook,
15 record or report that is required to be kept, made or used
16 to show compliance with any requirements for the issuance
17 or exercise of the privileges of any certificate, rating
18 or authorization under this part.

19 And pursuant to 14 CFR 61.59(b), a fraudulent
20 or intentionally false entry in any logbook, record or
21 report that is required to be kept, made or used to show
22 compliance with any requirement for the issuance or
23 exercise of the privilege of any certificate, rating or
24 authorization under Part 61 is a basis for revocation of
25 any airman certificate, rating or authorization you hold.

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1 All right. Those are the two complaints that
2 have been dealt with yesterday and today. There were seven
3 witnesses called.

4 The Administrator had four witnesses; Ms. Oaks,
5 Mary Oaks, Mr. Romeo Judeh, Mr. Neil Judeh and Mr. David
6 Voelker. Ms. Oaks and Mr. Voelker are with the FAA. Ms.
7 Oaks is an aviation safety technician and Mr. Voelker is
8 an aviation safety inspector. Then Mr. El Khoury
9 testified, Mr. Abbassi testified and Ms. Elham Afshari
10 testified.

11 There were a number of exhibits. I'll cover
12 those just briefly. Exhibit A1 was the statement of Romeo
13 Judeh that was sent to the FAA dated 6/15/15 outlining the
14 fact that he and his father believed that Mr. El Khoury was
15 not a flight instructor although he had been given this
16 flight inspection.

17 A2 is a picture of the scheduling sheet from
18 Encore, aircraft scheduling sheet which shows that Mr.
19 Judeh and Mr. El Khoury were scheduled on certain flights.

20 A3 is a picture of the computer scheduling
21 software from Encore and it shows that Mr. El Khoury --
22 represents Mr. El Khoury is a flight instructor.

23 A4 is the contract that was signed between Mr.
24 Judeh and Encore in the amount of \$11,200. And there was
25 \$3,000 paid up front for an accelerated schedule for him

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1 to get his private pilot's license.

2 Some of the testimony was 30 days and some was
3 40 days, but I think the Judehs believed it was going to
4 be a 30-day.

5 A5 is Mr. Abbassi's business card showing he is
6 the Director of Ops for Encore.

7 A6 was a customer reservation form that was
8 obtained from Encore.

9 A7 was the logbook of Mr. Judeh.

10 A8 was the total of time for the sim and ground.
11 It was a handwritten thing.

12 A9 was the Encore Flight receipt for Romeo
13 Judeh.

14 A10 was the logbook of Mr. Judeh. And there
15 were, I think, about three different exhibits of his
16 logbook, but they were all of the same dates and stuff. And
17 there was the original logbook, and then he made a new one
18 and filled those dates in. And then the Respondents
19 offered also one. And they're all -- I'll mention those.

20 A11 is Mr. Abbassi's endorsement for the
21 knowledge test that he gave to Mr. Judeh. And A11(a) is
22 a subsequent endorsement that Mr. Judeh got because he said
23 he didn't have any -- this training that Mr. Abbassi said
24 he had and he got it somewhere else.

25 A12 is the resume of Inspector Voelker.

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1 A13 is a list of all the FAA regulations that
2 were cited here for flight instruction and pilot
3 certification.

4 A14 is the Sanction Guidance Table presented by
5 the Administrator.

6 A20 is the logbook of Mr. El Khoury.

7 A21 and A22 relate to the advanced aviation
8 training devices that Encore had and their authorization.

9 The Respondent El Khoury --

10 MR. HENDIFAR: Excuse me.

11 JUDGE MULLINS: -- didn't have any exhibits,
12 but Respondent Abbassi had what was marked as RA1, which
13 was the deposition -- an excerpt of the deposition of
14 Inspector Voelker.

15 Respondent's Exhibit 2 was a cancelled rental
16 ticket from Encore.

17 Respondent's RA3 was Advisory Circular 6165E,
18 which relates to flight instructors.

19 RA10 is a logbook again of Mr. Judeh.

20 And R6 was another statement -- or a statement
21 from Mrs. Oaks', the aviation safety technician.

22 MR. HENDIFAR: Excuse me, Your Honor. I think
23 you missed Exhibit A17 that we had moved to be admitted and
24 it was an email by Mr. Judeh.

25 JUDGE MULLINS: I don't have it in here, but can

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1 you show that -- okay. Then there's another one that I know
2 -- I know the exhibit you're talking about, but I don't have
3 it here, but there was an email from Mr. Judeh to Ms. Oaks.

4 MR. HENDIFAR: Which said that I'm going to
5 cancel the contract.

6 JUDGE MULLINS: Okay.

7 MR. RUNKEL: Objection. I mean, it says a lot
8 more than that, Your Honor.

9 JUDGE MULLINS: Well, but, you know, we'll talk
10 about that. And I did -- well, that would be another one,
11 but it was -- in all of these -- not all, but a number of
12 these exhibits -- almost all of the exhibits involving the
13 Encore Flight School documentation, Mr. El Khoury was shown
14 as a flight instructor.

15 Ms. Oaks, who was the aviation safety
16 inspector, says she initiated this investigation. She
17 went to Encore and she took pictures of these exhibits, a
18 computer picture, and also got copies of the aircraft
19 logbooks and so forth. And she did receive and identify
20 the complaint, a letter of 6/15/15 from Mr. Romeo Judeh.

21 And I'm going to be very brief in talking about
22 these witnesses specifically in general. I'll come back
23 to that.

24 The second witness called was Mr. Judeh and he
25 flew with Mr. El Khoury. And he said that he observed Mr.

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1 El Khoury make the logbook entries. And he told -- he was
2 told by Mr. El Khoury that Mr. Abbassi would have to sign.

3 And that he observed Mr. El Khoury take the
4 logbook back into the back office after the flight after
5 he had seen this logbook entry. And when he came back out,
6 the logbook had this stamp with Mr. Abbassi's name on it
7 although the date was wrong.

8 The date on the stamp was wrong, because it
9 reflected that the -- Mr. Abbassi's flight instructor
10 certificate expired in '13 when it -- or it had been -- it
11 was to expire in '13 and then '15. Anyway, that won't --
12 I'll come back to that.

13 He said that his -- Mr. Judeh talked about his
14 father looking up -- had asked him -- his father is an
15 airline pilot for Qatar Airlines over in the Middle East
16 and he testified from there. And I'll talk about that in
17 a minute.

18 But any event, his father was concerned that Mr.
19 El Khoury wasn't signing off these logbook entries. They
20 were getting -- somebody else was putting the stamp. And
21 Mr. Judeh, Sr. is a former certified flight instructor and
22 he knew that that was not accurate.

23 And he raised the issue and started raising the
24 issue, which ultimately -- and he said the ultimate reason
25 for the termination of the contract was that Mr. El Khoury

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1 could never produce a flight instructor certificate.

2 Mr. Neil Judeh, Mr. Judeh, Sr., testified this
3 morning by FaceTime. He was in Qatar. I guess I
4 understand there's like 11 hours difference in time zones,
5 but anyway his testimony was that -- and it was consistent
6 with young Mr. Judeh that Mr. Judeh is -- and he testified
7 -- young Mr. Judeh, and I'll get both of their testimonies
8 sort of combined here, but Young Mr. Judeh is a student at
9 University of Arizona in Tucson.

10 And he was home -- his parents live here in the
11 Van Nuys area. And his dad wanted him to get a pilot
12 certificate. And they wanted this accelerated program so
13 he could get his pilot license last summer.

14 After this contract fell apart, he went back to
15 Tucson and testified that he did go ahead in the summer
16 months in August and got his private pilot certificate with
17 another flight school down there, apparently.

18 But in any event, they talked about the fact
19 that Mr. El Khoury was giving the instruction, that he
20 didn't have a license. And they even the day that the
21 contract was terminated or the day before, and I get those
22 dates kind of confused, but they confronted Mr. Abbassi
23 about it and why Mr. El Khoury wouldn't sign it.

24 And Mr. Abbassi went through and in their
25 presence changed the date from 13 to 15 by scratching

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1 through those dates.

2 The fourth and final witness called by the
3 Administrator was Mr. Voelker who is an aviation safety
4 inspector. And he discussed several of these regulations
5 that applied to obtaining a pilot certificate and the
6 requirements for a flight instructor and so forth.

7 Mr. El Khoury -- then the Administrator rests.
8 Mr. El Khoury took the stand and he testified that he was
9 just flying around with Mr. Judeh, that he was never to be
10 his flight instructor, that he wasn't a flight instructor,
11 that he was only out there flying, practicing to learn to
12 be a flight instructor. And he said that Mr. Abbassi had
13 Mr. El Khoury fly with him.

14 Mr. Abbassi was called to testify and he talked
15 about this contract. And he said that he had never told
16 the Judehs or Romeo Judeh that Mr. El Khoury was a flight
17 instructor, but he did say that he told them that the day
18 that they signed this contract for accelerated flight
19 instruction that he was going to put Mr. Judeh flying with
20 Mr. El Khoury.

21 He talked about -- Mr. Abbassi talked about his
22 business and how he's developed that business over the
23 years, which I thought was laudatory, but we'll face these
24 other problems here in a minute.

25 And then the final witness who was called was

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1 Ms. Elham Afshari. And she testified that she used to work
2 at Encore. That the Judehs came in and bugged her. And
3 so, she got Mr. Abbassi's stamp and stamped a couple of
4 these entries.

5 And then they came back a couple of days later
6 and she went ahead and marked through the 13 and put the
7 15 to reflect the correct expiration date on the CFI.

8 She broke down and cried, talked about all of
9 her personal problems, she wasn't with them anymore, and
10 that completed her testimony.

11 All right. Those are the -- I've covered the
12 Complaint, just basically the witnesses, and I want to make
13 some observations of the evidence.

14 First of all, let me make the comment that Mr.
15 Williams talked about the burden of proof in this case.
16 This is not a fraud case. It's an intentional
17 falsification case.

18 And as Mr. Runkel correctly pointed out, the
19 classic case before the Board is Hart versus McLucas. And
20 the Circuit Court, I think it was fifth circuit, but it
21 doesn't make any difference, clearly distinguished between
22 fraud and deceit and intentional falsification.

23 And I believe that the Board has on several
24 occasions today indicated that the burden of establishing
25 intentional falsification is the preponderance of the

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1 evidence.

2 The next thing, and I hate to say this, but I've
3 got to say this, someone is lying in this case today. It's
4 not, you know, different versions of the same facts.
5 Someone is lying and I have to come down on one side or the
6 other.

7 So, the first thing you do is you look at in
8 determining credibility, who has the most to benefit from
9 this litigation.

10 Mr. Judeh doesn't have anything to benefit. He
11 has a license. He went down to Arizona and paid and got
12 his license. Mr. Judeh, Sr., who's over in Qatar, he
13 doesn't have anything to gain from this. The only folks
14 that have to gain are all the people that are associated
15 with Encore Flight Academy.

16 The second thing you look at is where are the
17 discrepancies. The first discrepancy is just it is
18 amazing how many documents generated by Encore Aviation
19 says that Mr. El Khoury is a flight instructor, and now they
20 show up today and say, he's not a flight instructor, we just
21 messed that up, you know.

22 You can't discount that. That relates to the
23 credibility of everybody that testified for both of these
24 respondents, because Mr. El Khoury says, I'm not a flight
25 instructor. Well, what was he doing out there with Mr.

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1 Judeh? And Mr. Abbassi says he's not a flight instructor,
2 but why after signing this accelerated contract the first
3 thing he tells Mr. Judeh is go fly with Mr. El Khoury? That
4 just doesn't make sense. That reflects on the credibility
5 of these witnesses.

6 And I'm not sure about Ms. Afshari. She said
7 there was only two entries that she made with that stamp.
8 And there was a bunch of those entries on that stamp and
9 they were all changed. And when they were changed by Mr.
10 Abbassi, he adopted that signature as his own.

11 When Mr. El Khoury made the entry in the logbook
12 and showed it as dual instruction, and this wasn't even a
13 soloed student pilot, and he made that entry and then he
14 didn't sign off on it, he caused an intentionally false
15 entry which he later -- and I'm satisfied the evidence would
16 show that he went back in that office and he took Mr.
17 Abbassi's stamp and stamped it. And, therefore, he caused
18 that intentional falsification entry to be made.

19 In addition to all of these entries that Encore
20 has made showing that Mr. El Khoury is a flight instructor,
21 I can't understand why a certified flight instructor, Mr.
22 Abbassi, would let anyone have his stamp. And apparently
23 Ms. Afshari said she had it. And the Judehs or Romeo has
24 testified that he went back -- Mr. El Khoury went back.
25 When he came back out, there was a stamp on there when Mr.

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1 Abbassi wasn't there.

2 Any event, I think the totality of the evidence
3 here reflects on the credibility of not only Mr. El Khoury
4 and Mr. Abbassi, but the whole Encore operation with all
5 of these either wrong or they would like for it to have been
6 wrong entries about Mr. El Khoury being a flight instructor
7 when he wasn't a flight instructor.

8 And I think Mr. Runkel correctly pointed out the
9 integrity of the record keeping of all things related to
10 aviation is just super critical. And any deviation from
11 that results in the kind of litigation that we have going
12 on here today.

13 O R D E R

14 JUDGE MULLINS: It's therefore ordered that a
15 preponderance of the reliable and probative evidence in
16 this case, and particularly the findings versus the
17 credibility of the complainant's witnesses versus the
18 respondent's witnesses requires an affirmation of the
19 Order of Revocation in each case.

20 And specifically I find as to Mr. El Khoury
21 there was shown a regulatory violation of FAR 61.59(a)(2)
22 and 61.59 -- oh, this is Mr. Abbassi. Excuse me. Mr. El
23 Khoury is a regulatory violation of 61.59(a)(2) and 14 CFR
24 61.3(d)(2)(i) and, therefore, that Order of Revocation is
25 affirmed.

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1 And as to Mr. Abbassi I find that there was
2 established the regulatory violation of FAR 61.59 (a)(2)
3 and that Order of Revocation will be affirmed. And here,
4 Mr. Court Reporter, if you'd put a signature block for my
5 signature.

6

7

EDITED ON

8

February 4, 2016

William R. Mullins

9

Judge

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THE COURT REPORTER: Let's go off the record
12 for a moment.

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(Whereupon, the proceedings went off the record
14 for a brief period.)

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JUDGE MULLINS: Mr. Hendifar and Mr. Williams,
each of you is entitled to appeal this order and you may
do so by filing your Notice of Appeal within ten days of
this date. The Notice of Appeal needs to go to the National
Transportation Safety Board Office of Administrative Law
Judges, Room 4704 at 490 L'Enfant Plaza East, S.W.,
Washington, DC. And if you file your Notice of Appeal
within ten days, then your brief in support of that appeal
must be filed within 50 days of this date. And that appeal
will go to that same street address, but to the Office of
General Counsel at Room 6401.

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1 Now, I had indicated to both of you in a
2 telephone conference that the Board does give priority to
3 appeals from emergency cases where the emergency has been
4 waived. Beyond that I can't give you any kind of idea of
5 how long that will take. That's up to the General
6 Counsel's Office and the Board, but I would like both of
7 you -- oh, and I also need to mention to you that the filing
8 of your Notice of Appeal and the filing of your briefs and
9 appeal, that time restrictions are critical. The Board
10 does not tolerate any delay in the filing of those, either
11 the notice or the brief. And I would ask both you gentlemen
12 to step up and I'd like the record to reflect that I'm
13 handing to both respondents a copy of these rights to
14 appeal. All right. Mr. Williams, do you have any
15 questions about the order today?

16 MR. WILLIAMS: I have none, Your Honor.

17 JUDGE MULLINS: Anything from you, Mr.
18 Hendifar?

19 MR. HENDIFAR: No.

20 JUDGE MULLINS: Anything from the
21 Administrator?

22 MR. RUNKEL: Would you please ensure that the
23 respondents if they do file appeals and notices, that they
24 serve a copy on the complainant as well?

25 JUDGE MULLINS: That would be up to you to make

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1 sure they do that. That's in our regulation. You want me
2 to read -- get out our rules of practice and read it to them?

3 MR. RUNKEL: I just wanted to make sure that
4 there was a notification.

5 JUDGE MULLINS: Well, I know what you want, Mr.
6 Runkel, but they have the rules of practice, they know what
7 our rules say.

8 MR. RUNKEL: Thank you, Your Honor.

9 JUDGE MULLINS: Okay. We're in recess.
10 Thank you.

11 (Whereupon, at 5:31 p.m., the hearing was
12 adjourned.)

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