SERVED: August 10, 2022

NTSB Order No. EA-5935

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 10th day of August, 2022

BILLY NOLEN[1] Acting Administrator Federal Aviation Administration Complainant	)	
v.	)	Docket SE-30588
PUERTO RICO AIR MANAGEMENT SERVICES, INC. Respondent	)	

OPINION AND ORDER

1. Background

Respondent appeals Chief Administrative Law Judge Alfonso J. Montaño's (law judge) Order Entering Summary Judgment in Favor of the Administrator (Order) issued on February 22, 2021.[2] By that Order, the law judge affirmed the Administrator's revocation of respondent's air carrier certificate based on respondent's alleged violation of Federal Aviation Regulation (FAR)

[1] The original caption for this matter was *Daniel K. Elwell, Acting Administrator, Federal Aviation Administration v. Puerto Rico Air Management, Inc.*
[2] A copy of the Order Entering Summary Judgment in Favor of the Administrator is attached.

14 C.F.R. § 135.25(b).[3] Respondent appealed. As detailed below, we deny the respondent's appeal, and affirm the law judge's decision.

A. Facts

Respondent is the holder of an Air Carrier Certificate.[4] On or about June 9, 2015, a Cessna Model 208B with registration number N273LB was removed from respondent's operations specifications (Ops. Specs.), and since that time, respondent has not had any aircraft listed on its Ops. Specs. or operated a Part 135 flight.[5] Respondent subsequently purchased a Cessna 210M aircraft with registration number N778VK in July 2015.[6]

On July 13, 2017, respondent requested a conformity inspection for N778VK;[7] in a September 22, 2017, response, the FAA requested additional information from respondent as a prerequisite for the inspection.[8] On August 8, 2018, the Administrator issued a Notice of

[3] Section 135.25(b) provides in pertinent part that "[e]ach certificate holder must have the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in the certificate holder's operations specifications. In addition, for each kind of operation for which the certificate holder does not have the exclusive use of an aircraft, the certificate holder must have available for use under a written agreement (including arrangements for performing required maintenance) at least one aircraft that meets the requirements for that kind of operation."

[4] Respondent's Answer and Affirmative Defenses (Respondent's Answer) at 2 (Dec. 3, 2018); Complaint (Nov. 15, 2018); Order of Revocation (Nov. 7, 2018).

[5] Complaint at 1. Respondent denied these allegations in its Answer. Respondent's Answer at 1.

[6] Respondent's Opposition to Administrator's Motion for Summary Judgment (Respondent's Opposition) (Sept. 9, 2019), Exhibit (Exh.) 1, Affidavit of Tomas A. Romero, Manager of PRAMS, Exhibit A Purchase Agreement.

[7] Administrator's Motion for Summary Judgment (Motion), Exh. 4 (Sept. 27, 2017).

[8] *Id*., Exh. 5. The Administrator requested that respondent address the following issues: "1) The aircraft is currently on another 135 operations D085 OpSpecs [sic]. 2) Records show that an FAA Form 337 Return to Service dated 11-10-2015 has NOT been properly completed. 3) A current aircraft registration has not been produced for review after several inquiries from this office." *Id*. at 1.

Proposed Certificate Action, proposing to revoke respondent's air certificate for allegedly failing to comply with §135.25(b).[9]

On September 25, 2018, the FAA e-mailed respondent that respondent had until October 12, 2018, "to complete the necessary paperwork and schedule a time with your local FSDO [Flight Standards District Office]. . . to see if this aircraft is able to be added to your ops specs . . ."[10] On September 26, 2018, when respondent contacted the FSDO to set up a conformity inspection, the FAA supplemented its document request and requested the following from respondent: its Airworthiness Directive Compliance Status Record IAW regulatory requirements, evidence of up-to-date compliance with all associated Instructions for Continued Airworthiness issued against the aircraft, equipment list, and all required avionics checks and tests.[11] The Administrator stated that he did not receive the requested equipment from respondent.[12]

On October 11, 2018, the FAA conducted a document review and conformity inspection.[13] On October 26, 2018, the FAA disclosed the results from that review and inspection; the FAA noted the following deficiencies with respondent's document submissions: "a lack of a valid registration, a lack of multiple Airworthiness Directives (ADs) being tracked as complied with, a lack of Instructions for Continued Airworthiness (ICA's) being complied with, and an equipment list."[14] Based on the evidence, the FAA found "an unairworthy condition associated with" N778VK,[15] and deemed the N778VK not airworthy[16] and thus ineligible for

[9] *Id*., Exh. 8.
[10] *Id*., Exh. 7.
[11] *Id*., Exh. 8.
[12] Motion at 3; Exh. 9.
[13] *Id*.
[14] *Id*.
[15] *Id*.
[16] Respondent's Opposition at 2-4.

Part 135 operations.[17] Consequently, that aircraft was also not listed in the company's Ops. Specs.[18]

B. Procedural Background

On November 7, 2018, the Administrator issued an Order revoking respondent's air carrier certificate, which became the complaint in this case. The complaint alleged the following: (1) respondent is the holder of Air Carrier Certificate No. QZIA5351; (2) on or about June 9, 2015, N273LB, a Cessna Model 208B, was removed from respondent's Ops. Specs.; (3) with the removal of N273LB from respondent's Ops. Specs., no exclusive use aircraft existed on respondent's Ops. Specs.; and (4) respondent has not operated a Part 135 operation since, on or before June 9, 2015. The Administrator stated that as a result of respondent's failure to have the exclusive use of at least one aircraft, the Administrator determined that respondent did not have the qualifications necessary to hold an air carrier certificate.[19]

On December 3, 2018, respondent filed an answer, affirming only the first allegation and denying the remaining allegations regarding N273LB; respondent added that it purchased an aircraft—a Cessna 210M with Registration No. N778VK—on July 15, 2015 "and has had exclusive use of the aircraft since that time."[20]

On August 23, 2019, the Administrator filed a Motion for Summary Judgment (Motion). The Administrator stated that it gave respondent the opportunity to add N778VK to its Ops. Specs. on October 11, 2018, and N778VK was not acceptable to the Administrator due to the documentation issues that were noted in the FAA's October 26, 2018 letter. Citing *Administrator*

[17] Respondent's Opposition.
[18] *Id*. at 5.
[19] Complaint at 2.
[20] Respondent's Answer at 2.

v. Sunworld,[21] the Administrator concluded that revocation was the correct sanction because respondent lacked exclusive use of an acceptable aircraft. Accordingly, the Administrator requested summary judgment, affirmation that respondent violated 14 CFR § 135.25(b), and revocation of respondent's air carrier certificate.[22]

On September 9, 2019, respondent opposed the Motion, countering that it had exclusive use of N778VK as its sole owner and was actively working to restore its flight status. Respondent asserted that the Administrator could add N778VK to the Ops. Specs. with the understanding that the aircraft could not be operated until it was airworthy and met other Part 135 requirements.[23] Respondent distinguished itself from *Sunworld* by noting that that case involved a Part 121 carrier with a repossessed aircraft.

On September 13, 2019, the Administrator filed a Response to Respondent's Opposition, noting that allowing an unairworthy aircraft "on an operations specification holds an incredible danger to the flying public as the FAA has an obligation to ensure that aircraft are airworthy and safe for flight."[24] The Administrator reiterated respondent's admission that N778VK was not airworthy and was not on respondent's Ops. Specs. The Administrator asserted that respondent did not have exclusive use of at least one aircraft that met the requirements for at least one kind of operation authorized in its Ops. Specs.

C. Law Judge's Written Decision

On February 22, 2021, the law judge issued an Order Entering Summary Judgment in Favor of the Administrator, which affirmed the revocation of respondent's air carrier certificate.

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[21] NTSB Order No. EA-5373 (2008).
[22] Motion at 5.
[23] Respondent's Opposition at 5.
[24] Administrator's Response at 3.

The law judge found that under 14 C.F.R. § 135.25(b), respondent did not have exclusive use of an aircraft and had not conducted Part 135 operations as of, on, or about June 9, 2015. The law judge acknowledged that while respondent initially denied not having an aircraft on its Ops. Specs., respondent made no such argument in its reply to the Administrator's Motion. The law judge noted respondent's statement that respondent had taken extensive repairs to render aircraft N778VK airworthy, and found significant respondent's admission that, as of the time of the filing of respondent's response to the Administrator's Motion, N778VK remained unairworthy.

In addressing respondent's belief that the FARs did "not require an aircraft to be airworthy to be added to its operations specification,"[25] the law judge stated that respondent was in effect asking the law judge and the Administrator to ignore the provisions of § 135.25 because respondent could not meet the FAR requirements. The law judge agreed with the Administrator that respondent did not explain how the unairworthy N778VK met the requirements for at least one kind of operation authorized in the certificate holder's Ops. Specs. Additionally, the law judge observed that respondent cited no case law for his argument that an unairworthy aircraft could be listed on an Ops. Specs.

As for respondent's affirmative defenses, the law judge did not find that respondent established a genuine issue of material fact. The law judge explained that respondent's first two affirmative defenses of having exclusive use[26] and of requesting a conformity inspection from the FAA for its reportedly compliant aircraft[27] were already discussed in the Order. Regarding the third affirmative defense of FAA's failure to provide the releasable portion of its

[25] Order at 5.
[26] Answer at 2.
[27] *Id*.

Enforcement Investigative Report,[28] the law judge noted that respondent did not assert or argue that "this allegation creates a genuine issue of material fact." For the last defense of being allowed to amend its responses to the complaint,[29] the law judge acknowledged that respondent was merely reserving the right to raise future affirmative defenses.

Regarding revocation of respondent's air carrier certificate, the law judge found that the sanction was appropriate. The law judge agreed with the Administrator that per *Sunworld*, "the Board has long held that revocation of an air carrier's operating certificate is the appropriate sanction when a carrier like respondent lacks an acceptable aircraft, is no longer conducting any operations in its certificate, and has effectively terminated its operations."[30] Accordingly, the law judge granted the Administrator's Motion for Summary Judgment and affirmed the revocation of respondent's air carrier certificate. Respondent timely filed a Notice of Appeal before serving its Appeal Brief on March 19, 2021. The Administrator filed a Reply Brief on April 14, 2021.

D. Issues on Appeal

On appeal, respondent argues the following: (1) the FAR requirement in § 135.25(b) for exclusive use is satisfied; (2) the FAA failed to honor respondent's request for a conformity inspection of N778VK; (3) it intended to continue its Part 135 operation; and (4) the revocation of respondent's air carrier certificate was substantial and extremely prejudicial. Accordingly, respondent requested reversal of summary judgment and a reinstatement of its air carrier certificate.

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[28] *Id*. at 3.
[29] *Id*.
[30] Order at 6 (quoting *Administrator v. Sunworld Int'l Airlines, Inc.*, NTSB Order No. EA-5357 at 6 (2008)).

2. Decision

While we give deference to our law judge's rulings on certain issues, such as credibility determinations, [31] we review cases, as a whole, *de novo*.[32]

A. 14 C.F.R. § 135.25(b).

Section 135.25(b) provides in pertinent part that "[e]ach certificate holder must have the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in the certificate holder's operations specifications."[33] Section 135.25(c) further clarifies that "a person has exclusive use of an aircraft if that person has the sole possession, control, and use of it for flight, as owner, or has a written agreement (including arrangements for performing required maintenance), in effect when the aircraft is operated, giving the person that possession, control and use for at least 6 consecutive months." According to a 2017 FAA Memorandum, the language in § 135.25(c) establishes that "the aircraft used to satisfy the exclusive use requirement of § 135.25(b) *must be in an operable condition*; hence, the regulatory text's inclusion of the phrase 'use of flight' in providing the list of requirements."[34]

1. Respondent failed to satisfy the exclusive use requirement.

In its appeal brief, respondent states that it purchased N778VK "for the purpose of compliance with the Part 135 requirement,"[35] and has been "in exclusive possession" of the

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[31] We will not disturb a law judge's credibility determination unless it is arbitrary and capricious. *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).
[32] *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).
[33] (Emphasis added).
[34] FAA Memorandum at 3 (Oct. 2, 2017) (emphasis added).
[35] Appeal Brief at 2. *See Affidavit of Romero ¶5 and Purchase Agreement of June 15*.

aircraft since July 2015.[36] In support of its exclusive use claim, respondent notes that the aircraft had not been leased or loaned to any other person, firm, or entity. It also notes that it actively maintained an office space and was working to restore the aircraft to flight status.[37]

The Board agrees with the Administrator that respondent's argument conflates possession with exclusive use,[38] and we have previously held that mere "ownership is not dispositive on the issue of exclusive use."[39] Rather, the legal interpretation per the FAA memorandum is that the aircraft must be in operable condition. By respondent's own admission, the only aircraft it possessed could not be operated because it was unairworthy and not listed on respondent's Ops. Specs.[40] While the Board acknowledges that respondent has met the first two requirements of "exclusive use" (sole possession and control of the aircraft), by having an inoperable aircraft, respondent failed to meet the last requirement—"use of it for flight" of at least one aircraft that meets the requirement for at least one kind of operation authorized in respondent's Ops. Specs. Thus, respondent failed to establish it had exclusive use of N778VK pursuant to § 135.25(b).

2. The FAA conducted a proper inspection of N778VK.

In its Answer and Affirmative Defenses, respondent stated that it had "corrected the deficiencies and requested a conformity inspection . . . to add the aircraft to its Operations Specifications, but the FAA has failed or refused to conduct the inspection."[41] In its Appeal Brief, respondent states that:

> the FAA never honored the request for a proper conformity inspection of this Aircraft—an Aircraft already recognized by the FAA to be conformed on another FAA Certificated Part 135.

[36] Appeal Brief at 2.
[37] Respondent's Opposition.
[38] Administrator's Reply Brief (Administrator's Reply) (Apr. 15, 2021).
[39] *Administrator v. WCA Transportation, Inc.*, NTSB Order No. EA-5607 at 6 (2011).
[40] Administrator's Reply; Respondent's Opposition at 5
[41] Respondent's Answer at 2.

> Instead, the FAA denied conformity . . . . based on a review of maintenance summaries—not proper maintenance records under 14 CFR 43.9—but rather a summary that the Administrator requested.[42]

The Board disagrees with respondent. There is no evidence to support respondent's assertion that the FAA refused or otherwise failed to conduct a conformity inspection.[43] To the contrary, the record demonstrates that the FAA was indeed responsive to respondent's request and conducted a conformity inspection on N778VK. As noted above, on September 25, 2018, the FAA e-mailed respondent acknowledging respondent's assertion that it had "an aircraft ready to be added to [its] ops specs [sic] for Puerto Rico Air Management Services, Inc.";[44] the e-mail continued, "The FAA will give you until October 12, 2018[,] to complete the necessary paperwork and schedule a time with your local FSDO . . . to see if this aircraft is able to be added."[45] The following day, respondent replied via e-mail, requesting that FAA schedule that inspection; in response to respondent's e-mail, FAA clarified that "[b]efore we can perform an inspection, we will need submittal of current documentation," which the FAA listed.[46]

By letter dated October 26, 2018, the FAA enclosed[47] the results of the "document review and Conformity Inspection performed on October 11, 2018 . . . ."; and the FAA reiterated

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[42] Appeal Brief at 3.
[43] Assuming arguendo that FAA failed to conduct an inspection, respondent admitted that its aircraft was unairworthy; thus, there is no material facts in dispute. The law judge acknowledged that respondent "asserts that its unworthy aircraft . . . should be allowed to be added to its operations specifications . . . . Respondent does not dispute that it could not operate as a Part 135 operation until an uncertain future date when . . . N77VK is determined to be airworthy." Order at 5. Further, the law judge continued: "As noted by the Administrator, [r]espondent does not explain how an unairworthy N77VK, its sole aircraft, which is incapable of flying, meets the requirements for at least one kind of operation authorized in the certificate holder's operations specifications." *Id*.
[44] Motion, Exh. 7.
[45] *Id*.
[46] *Id*., Exh. 8.
[47] The enclosures referenced in the FAA's letter are neither in the record nor in the docket.

what it had requested from respondent on September 26, 2018, and listed what it received and did not receive from respondent.[48] Based on respondent's submissions to the FSDO, the FAA found that N778VK was unairworthy,[49] which respondent has conceded. Therefore, contrary to respondent's assertion, the evidence of record demonstrates that the FAA was responsive to respondent's request for a conformity inspection, conducted the conformity inspection on October 11, 2018, and issued results of the document review and conformity inspection in an October 26, 2018 letter, which listed several discrepancies and thus the FAA deemed the N778VK unairworthy.

3. Respondent Terminated its Part 135 Operations.

In its Appeal Brief, respondent remarked that "[t]he evidence referenced in the Order reveal a continuous and systematic intent by [r]espondent to continue its Part 135 operation, and not terminate its operation,"[50] but admits that the aircraft in question is not airworthy and does not meet the Part 135 requirements. As we previously held in *Sunworld*:

> That respondent might be able to demonstrate its qualifications at some point in the future is not a valid defense in the instant proceeding. The Board's decision must be rendered on the basis of the record as it stands, which clearly shows a lack of qualifications. Any change in the respondent's capabilities to comply with the requirements applicable to an air carrier is a matter between respondent and the regulating agency (i.e., the DOT and the FAA) at such time that respondent reapplies for economic authority and an air carrier certificate.[51]

Based on the evidence of record, the Board finds meritless respondent's argument that it has not terminated operations. Notably, respondent admitted that it had not conducted

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[48] Motion, Exh. 9.
[49] *Id*.
[50] Appeal Brief at 7.
[51] *Sunworld* at 4 (citations omitted).

operations under Part 135 since July 15, 2015.[52] Thus, the law judge correctly analyzed the issues under our summary judgment standard, and appropriately granted summary judgment in favor of the Administrator.

B. Sanction

While respondent contends that the sanction of revocation is prejudicial, we disagree. The FAA's sanction in this case is consistent with our precedent. Specifically, we have previously found revocation appropriate where, as here, an air carrier does not possess or have the right to exclusive use of an aircraft for several years. For example, in *Sunworld*, we noted that "[t]he Board has long held that revocation of an air carrier's operating certificate is the appropriate sanction when the carrier lacks an acceptable aircraft, is no longer conducting any operations under its certificate, and has effectively terminated its operations."[53] Similarly, in *Apel Air, Inc.*, we held that because the carrier did "not have appropriate operations specifications, listing at least one aircraft capable of performing at least one of the operations listed in its operations specifications, [Apel Air] is not qualified to hold an air carrier certificate. In such a case, revocation is the appropriate sanction."[54] Further in *Administrator v. Sun Airlines, Inc.*,[55] the Board upheld the revocation of the carrier's air taxi commercial operator certificate;

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[52] Respondent's Answer at 2.
[53] *Sunworld* at 6 (citations omitted).
[54] *Apel Air* at 9. Although § 135.25(b) was not before the NTSB, we noted that Apel Air admitted flying N86553, an aircraft that was not listed on Apel Air's Ops. Specs. *Id*. at 3, 8. Apel Air further admitted that the only aircraft listed on its Ops. Specs. was another aircraft (N650LP). *Id*. However, after N650LP had not been flown for months, the FAA advised Apel Air to remove the aircraft from its Ops. Specs.; in March 2009, the FAA delisted N650LP. *Id*. at n.8. The Administrator motioned for summary judgment, as Apel Air had no aircraft listed in its Ops. Specs and was no longer conducting Part 135 operations. *Id*. at 3.
[55] NTSB Order No. EA-378 (Sept. 6, 1972). The Administrator found, in pertinent part, that subsequent to the sale of N7976F, Sun Airlines, Inc. had no aircraft for use in its air taxi operation and was in violation of § 135.31(a), which at the time provided in pertinent part that

the Board explained that the carrier's lack of qualifications was "demonstration by [Sun Airlines, Inc.'s] operation of its aircraft for a 2-month period without an approved inspection program and by the continued operation under its certificate for an additional 2 months without the required exclusive possession of at least one plane."[56]

Based on our precedent, and respondent's own admission that it did not meet the exclusive use requirements under Part 135, we find no reason to disturb the law judge's affirmation of the Administrator's sanction of revocation.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied;
2. The law judge's order is affirmed; and
3. The Administrator's revocation of respondent's air carrier certificate is affirmed.

HOMENDY, Chair, LANDSBERG, Vice Chairman, GRAHAM, CHAPMAN, Members of the Board, concurred in the above opinion and order.

"[e]ach certificate holder must have the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in his operations specifications." *Id*. at 1859 n.6.

[56] *Id*.

SERVED: February 22, 2021

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

* *

STEPHEN M. DICKSON, Administrator
FEDERAL AVIATION ADMINISTRATION,
Complainant,

v. Docket SE-30588

PUERTO RICO AIR MANAGEMENT
SERVICES, INC.,
Respondent.

* *

ORDER ENTERING SUMMARY JUDGMENT
IN FAVOR OF THE ADMINISTRATOR

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On November 7, 2018, the Administrator issued an order revoking Respondent's air carrier certificate number QZIA535L for failure to comply with the requirements of 14 C.F.R. § 135.25(b). Puerto Rico Air Management Services, Inc., (PRAMS) represented by counsel, filed an appeal from that order with this office on November 15, 2018. The Administrator reissued the order as the complaint, and Respondent submitted an answer to the complaint. The Administrator filed a Motion for Summary Judgment on August 23, 2019, in which he argued that there are no genuine material issues of fact to be resolved, and that the Administrator is entitled to judgment as a matter of law.

The Administrator's complaint alleges the following:

1. At all times material herein, Puerto Rico Air Management services Inc. (PRAMS) was and is now the holder of Air Carrier Certificate No QZIA535L.

2. On or about June 09, 2015, N273LB, a Cessna Model 208B, serial number 208B0237 was removed from PRAMS's operations specifications.

3. As the result of the removal of N273LB from PRAMS's operations specifications, no exclusive use of aircraft exists on PRAMS's operations specifications.

4. PRAMS has not operated a part 135 operation since on or before June 09, 2015.

5. To date, PRAMS does not have the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in PRAM's operations specifications.

The Administrator contends that as the result of the allegations set forth in the complaint, Respondent is in violation of Section 135.25(b). That section reads that each certificate holder must have the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in the holder's operations specifications. In addition, for each kind of operation for which the certificate holder does not have the exclusive use of an aircraft, the certificate holder must have available for use under a written agreement (including arrangements for performing required maintenance) at lease one aircraft that meets the requirements for that kind of operation. However, this paragraph does not prohibit the operator from using or authorizing the use of the aircraft for other than operations under this part and does not require the certificate holder to have exclusive use of all aircraft that the certificate holder uses.

In its Answer, Respondent denied the allegations in paragraphs 2, 3, 4 and 5. Respondent also raised four affirmative defenses. Administrator's Exhibit 2. Respondent denies the allegation that the removal of aircraft N273LB left the respondent without an aircraft on its operations specifications on June 9, 2015.

In his Motion for Summary Judgment, the Administrator argues that, despite Respondent's denials in its answer to the allegations in this case, summary judgment is appropriate based on several facts. The Administrator argues that Respondent has not operated as a part 135 carrier since on or about June 9, 2015 and has not had an aircraft on its operations specifications as of that time. Administrator's Exhibit 5.

On July 13, 2017, Respondent asked the Administrator to conduct a conformity and inspection check on a different aircraft, N778VK. The FAA informed Respondent that certain issues would have to be addressed relative to the aircraft before a conformity and inspection check could be conducted. Administrator's Exhibit 5.

On August 8, 2018, the Administrator served Respondent with a Notice of Proposed Certificate Action. Respondent informed the Administrator at that time that Respondent owned an aircraft and was prepared to add the aircraft to its operations specifications. Administrator's Exhibit 7. After discussions between Respondent and the Administrator as to what information was required for the aircraft to be added to Respondent's operations specifications, aircraft N778VK was presented by Respondent to be added to the operations specifications on October 11, 2018.

On October 26, 2018, the Administrator informed Respondent by letter that aircraft could not be added to PRAMS' operations specifications because, in addition to other reasons, the aircraft lacked a valid registration, Respondent lacked documentation of compliance with multiple airworthiness directives, and Respondent lacked documentation of compliance with instructions for continued airworthiness. In addition, the Administrator alleged that the aircraft lacked an equipment list. Based on these facts, the Administrator

determined that aircraft N778VK was in an unairworthy condition and therefore denied PRAMS' request to add the aircraft to its operations specifications.

The Administrator maintains that at the time he issued the Order of Revocation, Respondent did not have exclusive use of any aircraft. Despite that Respondent denied the allegation that the previous aircraft on the operations specifications, N273LB, had been removed from the operations specifications, the Administrator argues it is clear that there was no aircraft on Respondent's operations specifications on June 9, 2015.

The Administrator further argues that while Respondent asserts it purchased aircraft N778VK on July 15, 2015, Respondent admits the aircraft required significant repairs to render it eligible for inclusion in its operations specifications. Administrator's Exhibit 2 at 2. Respondent also admits that the Administrator conducted a conformity inspection and found that N778VK had several deficiencies which rendered the aircraft not acceptable by the FAA for inclusion in the operations specifications. Id. Thus, the Administrator argues that Respondent had admitted that aircraft N778VK, of which it claimed it have exclusive use since July 15, 2015, had deficiencies which rendered it unfit to be added to Respondent's operations specifications on October 11, 2018.

Respondent filed an opposition to the Administrator's Motion for Summary Judgement with which he included the Affidavit of Thomas P. Romero, the Manager of PRAMS. Respondent described the factual history of the case and the attempts to have aircraft N778VK repaired and rendered acceptable for inclusion in PRAMS' Operations Specifications. Respondent asserts that aircraft N778VK could not be placed on the operations specifications due to issues relative to non-compliance with airworthiness directives. Respondent maintains that action was taken to comply with those airworthiness directives but the mechanic who performed the necessary work did not complete the airworthiness directive summary. According to Respondent that issue was corrected, and Respondent requested another conformity inspection by the Administrator.

Respondent asserts that, prior to that conformity inspection, the aircraft, which was being relocated for minor repairs, sustained a nose gear strut seal failure which resulted in a propeller strike. That propeller strike, according to Respondent, required substantial inspections and repairs. Respondent asserts that after those repairs were completed, N778VK was returned to service relative to airframe, engine and propeller, including the compliance with the airworthiness directive and instructions for continued airworthiness.

According to Respondent, continued inspection of the aircraft revealed corrosion in the aircraft wing spar which Respondent maintains was beyond the limits of repair and replacement was required. Respondent maintains that it is currently in the process of seeking a replacement for the wing spar or of the wing. Neither of these parts are currently manufactured, according to Respondent.

Respondent admits that during the time in issue in this case PRAMS has not conducted Part 135 operations. However, PRAMS maintains it has not intended to cease operations and continues to rent space for the operation at Miami International Airport.

However, Respondent does not explain how it is continuing a Part 135 air carrier operation without a single airworthy aircraft.

As to legal arguments, Respondent maintains that 14 C.F.R. Section 135.25(a) precludes an air carrier from operating an aircraft which is not airworthy, and 14 C.F.R. 135.25(b) requires each air carrier to have exclusive use of at least one aircraft that meets its type operation on its operations specifications. Respondent maintains that there is nothing in the regulations that required the aircraft to be airworthy in order to be added to PRAMS' operations specifications. PRAMS argues that apparently the FAA has added the requirement that the aircraft be airworthy at the time it is added to the operations specifications. Respondent maintains that there is no reason that the Administrator could not include the currently inoperable aircraft, N77VK, to PRAMS' operations specifications and that PRAMS would not conduct Part 135 operations utilizing aircraft N77VK, until the aircraft was rendered airworthy. Respondent goes on to argue that the cases cited by the Administrator in support of his motion are distinguishable from the case before me.

The Administrator filed a response to Respondent's opposition, in which he asserts Respondent raised new argument in the response to the Administrator's Motion for Summary Judgment. The Administrator argues that Respondent, in his reply, now maintains that the FAA should allow Respondent to add an unairworthy aircraft to its Operations Specifications, which Respondent admits could not be used in its operation. The Administrator notes that Respondent asserts it will not use the unairworthy aircraft in its operations specifications until the aircraft is determined to be airworthy. The Administrator argues that Respondent fails to explain how an unairworthy aircraft would meet a type of operation specified in Respondent's operations specifications. According to the Administrator, adding an unairworthy aircraft to Respondent's operations specifications, which PRAMS agrees it will not utilize, is essentially asking the FAA to ignore 14 CFR 135.25 which precludes a Part 135 certificate holder from operating an aircraft which is not airworthy and is unsafe to fly. The Administrator concludes by asserting that while Respondent has attempted, in the past, to pass conformity inspections to add N778K to the operations specifications, Respondent now asserts that conformity inspections are unnecessary and should essentially be ignored.

DISCUSSION

Under Rule 17(d) of the Board's Rules of Practice, a party may file a motion for summary judgment on the basis that the pleadings and other supporting documentation establish that there are no material issues of fact to be resolved and the party is entitled to judgment as a matter of law. The Administrator argues that there are no genuine issues of fact in this case which require litigation. The Administrator argues that Respondent has not operated as a Part 135 operator since on or about June 9, 2015, and has not had an aircraft on its operations specifications as of that time. The Administrator cites applicable case law to support his legal arguments.

I find the arguments advanced by the Administrator, that there are no genuine issues of material fact to be litigated in this case, to be compelling. The evidence and

arguments advanced by the Administrator clearly establish that Respondent does not currently have the exclusive use of an aircraft on its certificate and has not had the exclusive use of an aircraft since on or about June 9, 2015.

Respondent does not dispute that it has not conducted Part 135 operations as of on or about June 9, 2015. While Respondent denied, in its answer to the complaint, the allegation that it did not have an aircraft on its operations specifications, Respondent makes no such argument in its reply to the Administrator's Motion for Summary Judgment. Thus it is clear that Respondent does not currently deny that it has not had an aircraft on its operations specifications as of on or about June 9, 2015. Respondent maintains that it has taken extensive repairs and inspection to render aircraft N77VK airworthy and to be added to its operations specifications. PRAMS admits that it has been unsuccessful in its attempt to work with the Administrator to have the aircraft found to be airworthy and to allow it to be added to its operations specifications. Respondent admits that, as of the time of the filing of its response to the Administrator's Motion for Summary Judgment, aircraft N77VK remained unairworthy.

Having failed in its attempts to add an unairworthy aircraft (N77VK) to its operations specifications, Respondent, for the first time, now maintains that the regulations do not require an aircraft to be airworthy to be added to its operations specifications. PRAMS asserts that its unworthy aircraft, which is unsafe for flight, should be allowed to be added to its operations specifications to permit it to retain its Part 135 Certification. Respondent does not dispute that it could not operate as a Part 135 operation until an uncertain future date when aircraft N77VK is determined to be airworthy. The Administrator is accurate in his argument that Respondent is asking the FAA and the undersigned to ignore the requirements of 14 C.F.R 135.25 simply because Respondent cannot meet the requirements of the regulation. As noted by the Administrator, Respondent does not explain how an unairworthy N77VK, its sole aircraft, which is incapable of flying, meets the requirements for at least one kind of operation authorized in the certificate holder's operations specifications.

Respondent cites no case law to support its legal position that an aircraft does not have to be airworthy to be added to a Part 135 Carrier's Operations Specifications. Respondent only attempts to distinguish the applicable case law cited by the Administrator. I do not find Respondent's arguments relative to the case law to be substantive or persuasive.

As to Respondent's affirmative defenses, the first two relate to the issues discussed herein relative to the addition of aircraft N778VK to Respondent's operations specifications and are fully addressed herein. The third affirmative defense simply states that the Administrator has not provided the releasable portions of his Enforcement Investigative Report. Respondent did not argue this in its response to the Administrator's Motion for Summary Judgment nor does it assert that this allegation creates a genuine issue of material fact. Respondent's fourth affirmative defense simply reserves the right to raise future affirmative defenses. I do not find that any of Respondent's affirmative defenses establish a genuine issue of material fact which requires litigation.

Respondent does not have exclusive use of an aircraft

Based on the arguments and the evidence before me, including Respondent's admissions, I find that the Administrator has established that Respondent does not meet the requirements of 14 C.F.R. 135.25(b) which requires that each certificate holder must have the exclusive use of at least one aircraft that meets the requirements for at least one kind of operation authorized in the certificate holder's operations specifications. Thus, this case does not present a genuine issue of material fact and Summary Judgment is appropriate as a matter of law.

Revocation is the appropriate sanction in this case

Respondent does not dispute that it does not have an aircraft on its operations specifications to meet the requirement of 14 C.F.R. 135.25(b). Respondent instead argues it should be allowed to add an unairworthy aircraft to its operations specifications while it is working to achieve the regulatory requirement. Thus, Respondent maintains that its air carrier certificate should not be revoked.

As the Administrator correctly asserts, the Board has long held that revocation of an air carrier's operating certificate is the appropriate sanction when the carrier lacks an acceptable aircraft, is no longer conducting any operations under it certificate, and has effectively terminated its operations. *Administrator v. Sunworld,* NTSB Order EA-5357 (2008). I find the Administrator's arguments clearly establish revocation is the appropriate sanction. I cannot find that the question of whether revocation is the appropriate sanction presents a genuine issue of material fact which would require litigation.

Based on the exhibits submitted and arguments advanced, which I have considered in a light most favorable to Respondent, I cannot find that this case presents any genuine issues of material fact to be litigated. I therefore **grant** the Administrator's Motion for Summary Judgment and find that he is entitled to judgment as a matter of law. I further **affirm** the Administrator's choice of the sanction of revocation.

THEREFORE, IT IS ORDERED that the Administrator's Motion for Summary Judgment is **GRANTED** AND THE SANCTION OF REVOCATION IS **AFFIRMED.**

Entered this 22nd day of February, 2021, at Washington, D.C.

Alfonso J. Montaño

Alfonso J. Montaño
Chief Administrative Law Judge

APPEAL (DISPOSITIONAL ORDER)

Important: All appeal-related filings described below must also be simultaneously served on all other parties to this proceeding.

Any party to this proceeding may appeal this order by filing a written notice of appeal within 10 days after the date on which it was served (the service date appears on the first page of this order) to:

National Transportation Safety Board
Office of Administrative Law Judges
E-mail: aljappeals@ntsb.gov

Please note: During the pandemic, all filings must be via email to ALJappeals@ntsb.gov.

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

National Transportation Safety Board
Office of General Counsel
E-mail: Boardappeals@ntsb.gov

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

A brief in reply to the appeal brief may be filed by any other party directly with the Office of General Counsel within 30 days after that party was served with the appeal brief.

All papers, including motions and replies, submitted thereafter should be filed directly with the Office of General Counsel.

The Board directs your attention to Rules 7, 8, 43, 47, 48 and 49 of its Rules of Practice (49 C.F.R. §§ 821.7, 821.8, 821.43, 821.47, 821.48 and 821.49) for further information regarding appeals.

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