

SERVED: July 21, 1994

NTSB Order No. EA-4210

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 5th day of July, 1994

_____)	
DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12975
v.)	
)	
CARMEN J. CIAMPA,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge William J. Fowler, Jr., issued on July 27, 1993, following an evidentiary hearing.¹ The law judge affirmed an order of the Administrator suspending respondent's private pilot certificate for 180 days, on finding that respondent had violated 14 C.F.R. 61.3(c), 91.9(a), 91.13(a),

¹The initial decision, an excerpt from the hearing transcript, is attached.

91.119(a)-(c), 91.131(a)(1), 91.215(c), 91.303(a)-(d).² We deny the appeal.

According to the testimony of three eyewitnesses (a Massachusetts State Police Officer in a nearby helicopter, and two air traffic controllers working in the Beverly Airport Tower), respondent operated his Cessna 172 aircraft within 100-200 feet of the ground in the Revere-Saugus, MA area on July 11, 1992, in the vicinity of a large regatta (including "Tall Ships") commemorating the 500th anniversary of Columbus' voyage. The nearby ground and water areas were congested, and respondent would not have been able to make a safe emergency landing. The testimony also indicated that respondent operated the aircraft within the Boston terminal control area (TCA) without clearance and without an operating transponder as required, operated the aircraft within the Beverly Airport Air Traffic Area without first establishing 2-way radio contact and without permission to do so, performed aerobatic maneuvers -- specifically, two steep dives in an aircraft not certificated for such activity -- and at the time did not have a current medical certificate.³

Respondent denied being in the area at the time, denied any low flight or aerobatics, and denied that his transponder was not

²The regulations are reproduced in the Appendix. In connection with the § 91.13(a) violation, it is significant that the law judge found that respondent was reckless in his actions.

³Another eyewitness testified to the low flight, but did not see acrobatic maneuvers due to her position on the ground. An employee of the FAA's Boston radar tracking center offered confirming testimony regarding respondent's location. Tr. at 210.

operating (although he admitted he did not have the required Mode C transponder, see § 91.215). Although respondent denied entering the Boston TCA, it became clear from his own testimony that he **was** flying within the TCA. Tr. at 256. Respondent unsuccessfully denied having a prior FAA violation, see Exhibit A-15,⁴ and the record established, despite respondent's testimony to the contrary, that he had not had a current medical since 1984.

On appeal, respondent contends that the aircraft was mis-identified and that the Administrator did not sustain his burden of proof. We cannot agree. One of the Beverly Tower controllers testified that he watched respondent's aircraft approximately from the time of the alleged aerobatics until after respondent landed the aircraft at the Beverly airport. The policeman in the helicopter stated that, after observing the aerobatics, he read the aircraft's number. The helicopter followed respondent's aircraft in to Beverly airport.

None of the Administrator's eyewitnesses reported any other aircraft in the area. Considering all the testimony, the law judge considered the extensive and corroborating testimony of the Administrator's witnesses as the more reliable, and respondent offers no convincing basis to disagree. Moreover, to the extent

⁴After being presented with a record of the violation, respondent admitted it occurred but then argued that he had been pardoned by the Governor and the offense had been "wiped out." Tr. at 269. Respondent did not explain how the Governor could pardon a Federal offense. In fact, it appears that the Governor pardoned a different aviation offense.

that issues of credibility are involved, we see no error by the law judge. See Administrator v. Smith, 5 NTSB 1560, 1563 (1987).⁵

Although he did not raise these matters before the law judge, respondent also argues that the State of Massachusetts had no authority to arrest him for violations of the Federal Aviation Act because the Federal government had preempted the field. Respondent also argues that, in light of the State proceedings, this proceeding constitutes double jeopardy.

First, we note that the arrest was made under provisions of State, not Federal law. Second, respondent confuses preemption principles and the Board's role. The Board does not rule on the constitutionality of the FAA's regulations. The question for the Board here is whether the regulatory standard is sufficiently defined to support imposition of a sanction. Administrator v. Lloyd, 1 NTSB 1826, 1828 (1972). See also Administrator v. Rochna, NTSB Order EA-3184 (1990), aff'd Rochna v. NTSB, 929 F.2d 13 (1st Cir. 1991); and Administrator v. Galloway, 1 NTSB 2104, 2105 (1972). Principles of Federal preemption may be invoked when a State law is inconsistent or somehow interferes with a Federal statute. That is not the case here. Moreover, this Federal action is a civil one. It need not preempt the State's exercise of its police power, and does not constitute double

⁵Respondent asks whether the "time difference" is fatal to the Administrator's case. The fact that the Administrator's various eyewitnesses estimated the time these events occurred and that their estimates varied by a few minutes is an insufficient basis to overturn the law judge's decision.

jeopardy.

Finally, respondent challenges the law judge's rejection of certain evidence. Exhibits R-1 and R-2 were introduced to show that the State's initial complaint against respondent was much narrower and only later was it expanded. The law judge rejected these exhibits as irrelevant. We also see no relevance, nor does respondent explain why he considers these exhibits important. Respondent also claims that the law judge erred in not admitting Exhibit R-3's character references. According to the transcript, that exhibit was never offered into evidence.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The 180-day suspension of respondent's private pilot certificate shall begin 30 days from the date of service of this order.⁶

HALL, Acting Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board, concurred in the above opinion and order.

⁶For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).

APPENDIX

§ 61.3(c)

(c) Medical certificate. Except for free balloon pilots piloting balloons and glider pilots piloting gliders, no person may act as pilot in command or in any other capacity as a required pilot flight crewmember of an aircraft under a certificate issued to him under this part, unless he has in his personal possession an appropriate current medical certificate issued under part 67 of this chapter. . . .

§ 91.9(a)

Except as provided in paragraph (d) of this section, no person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry.

§ 91.13(a)

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

§ 91.119(a)-(c)

Except when necessary for takeoff or landing, no person may operate an aircraft below the following altitudes:

(a) Anywhere. An altitude allowing if a power unit fails, an emergency landing without undue hazard to persons or property on the surface.

(b) Over congested areas. Over any congested area of a city, town, or settlement, or over any open air assembly of persons, an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet of the aircraft.

(c) Over other than congested areas. An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In those cases, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.

(There was no argument here that respondent's maneuvers were necessary for takeoff or landing.)

§ 91.131(a)(1)

(a) Operating rules. No person may operate an aircraft within a terminal control area designated in Part 71 of this chapter except in compliance with the following rules:

- (1) No person may operate an aircraft within a terminal control area unless that person has received an appropriate authorization from ATC prior to the operation of that aircraft in that area.

§ 91.215(c)

(c) Transponder-on operation. While in the airspace as specified in paragraph (b) of this section or in all controlled airspace, each person operating an aircraft equipped with an operable ATC transponder maintained in accordance with § 91.413 of this part shall operate the transponder, including Mode C equipment if installed, and shall reply on the appropriate code or as assigned by ATC.

§ 91.303(a)-(d)

No person may operate an aircraft in aerobatic flight -

- (a) Over any congested area of a city, town, or settlement;
- (b) Over an open air assembly of persons;
- (c) Within a control zone or Federal airway;
- (d) Below an altitude of 1,500 feet above the surface. . . .