

SERVED: September 11, 2002

NTSB Order No. EA-4993

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. 800.24)
on the 11th day of September, 2002

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MONTE R. BELGER,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
	Complainant,)	
)	Docket SE-16168
	v.)	
)	
MANUEL S. DIAZ,)	
)	
	Respondent.)	
)	
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ORDER DENYING STAY

Respondent has requested a stay of NTSB Order No. EA-4990, served August 13, 2002, pending disposition of a petition for review of that order that he filed in the U.S. Court of Appeals on September 9, 2002.¹ The request, opposed by the Administrator, will be denied.

In his petition respondent implicitly acknowledges Board policy against granting a stay pending judicial appeal in an enforcement proceeding in which the sanction of revocation has been upheld. He argues, however, citing Administrator v. Coombs, NTSB Order No. EA-3750 (1992), that this case falls within an exception to the policy that applies to Board decisions that dispose of a revocation case on a procedural ground; that is, cases in which there was no "adjudicatory corroboration" of the Administrator's charges. Respondent reads this precedent too broadly.

¹In EA-4990, the Board affirmed the revocation of respondent's mechanic certificate for the intentional falsification of records relating to heavy maintenance performed on an air carrier aircraft.

While the allegations in the Administrator's complaint in this matter were not actually litigated, because the respondent did not file a timely answer denying them, the Board did consider the respondent's challenge to the sanction of revocation for the allegations the law judge deemed admitted. As the Board clearly explained in a decision denying reconsideration of the grant of a stay in Coombs, citing Administrator v. Balestra, 6 N.T.S.B. 1412 (1989), *stay denied* 7 N.T.S.B. 33 (1990), a stay will not be granted in a case decided on a procedural basis if the propriety of the law judge's affirmance of revocation was examined on the appeal to the Board. Administrator v. Coombs, NTSB Order No. EA-3792 (1993). In other words, adjudicatory corroboration of the sanction alone by the Board is sufficient to render the exception inapplicable.²

ACCORDINGLY, IT IS ORDERED THAT:

Respondent's petition for stay is denied.

Ronald S. Battocchi
General Counsel

²Because the respondent in Coombs had not submitted a timely appeal to the Board from the Administrator's revocation order, the action was dismissed without any examination of the allegations made or the sanction sought in the Administrator's complaint.