

1 the record. The Administrator had seven exhibits marked
2 for identification, A-1 through A-7, and all except A-3
3 were received. A-3 was only identified and not received.
4 That was the undated letter from Officer McGibbon to FAA
5 Inspector Dolman.

6 The Respondent offered one exhibit, R-1(a), which
7 was the letter from the Chief of the Richmond FAA GADO
8 Office, Mr. Newell, to the Respondent advising her of the
9 investigation of a certain low-flying incident.

10 This proceeding is a result of that low-flying
11 incident.

12 The Order of Suspension, paragraph 1, recites
13 the Respondent is the holder of a certain Commercial Pilot's
14 Certificate, and the number is given there. She admits
15 this.

16 Paragraph 2 alleges that on March 16, 1979, she
17 acted as pilot in command of a Cessna 150 N66333 on a
18 flight in the vicinity of Virginia Beach, Virginia. The
19 Respondent denies that paragraph.

20 Paragraph 3 alleges that during such flight she
21 operated the aircraft over a congested area of Virginia
22 Beach at an altitude of less than 500 feet above the surface.
23 She denies that paragraph.

24 Paragraph 4 charges at the time of said incident
25 that aircraft was not registered.

1 By reason of those incidents, the Administrator
2 has charged that she violated the following Federal Aviation
3 Regulations: FAR Section 91.79(b), that is, operating an
4 aircraft over a congested area at an altitude of below
5 or less than 1,000 feet.

6 Section 91.27(a)(2) ^{by} alleged~~ing~~ she operated the
7 civil aircraft at a time when the aircraft did not have
8 a registration certificate issued to its owner within the
9 aircraft.

10 Section 91.9 in that she allegedly operated an
11 aircraft in a careless or reckless manner so as to endanger
12 the lives and property of others.

13 Now directing my attention to 91.27(a)(2) first,
14 that section briefly requires that (a) No person may operate
15 a civil aircraft unless it has within it the following:
16 (2) a registration certificate issued to its owner.

17 The testimony of GADO Inspector Dolman and
18 documents presented as Administrator's Exhibit A-4 indicate
19 that there was a massive mixup on registering this aircraft
20 from the time it first left the assembly line at Cessna;
21 and that as a matter of fact, it apparently did not have ~~an~~
22 official registration certificate for several years after
23 it left Cessna to the owner and that, after the fact, on or
24 about June 18, 1979, these records were finally straightened
25 out by a series of document filed by Oklahoma City FAA

1 Aircraft Records. One of the documents was an aircraft
 2 Bill of Sale which at the bottom indicates, "In testimony
 3 whereof we have set our hand and seal this 20th day of
 4 August 1974" and is signed by an official apparently of
 5 the Cessna Aircraft Company, and it apparently conveys
 6 the aircraft to Colonial Airlines Inc. In fact, above
 7 that on the Bill of Sale it says, "Does this 20th day of
 8 August 1974 hereby sale, grant, transfer and deliver all
 9 right, title and interest in and to such aircraft unto
 10 Colonial Airlines, Inc." and giving a Williamsburg, Virginia,
 11 address.

12 The testimony indicates that Colonial Airlines,
 13 Inc. was owned by Carl Baker, Jr., President, and that
 14 the successor corporation, Cavalier Flyers, Inc. president
 15 was also Carl Baker, Jr. I think what we have here with
 16 regard to this violation is a technical violation. Although
 17 I think it might have been made to stick against Mr. Baker,
 18 I think it is particularly unjustified as applied to a
 19 flight instructor who works for Mr. Baker. ~~There is even~~ ^{AND WHO WAS NEVER AN OWNER OR PART-OWNER OF THIS AIRCRAFT.}
 20 a question if it were claimed against Mr. Baker, ^{the owner,} that it
 21 could be made to stick in view of the fact that these
 22 documents ^{were finally executed by FAA Aircraft Records} ~~are~~ ^{that is, they} nunc pro tunc, as it were, attempted to
 23 legalize what had been intended to be done back on August 20,
 24 1974. (See the retroactive dates used by FAA in Exh. A-4.) In any event,
 25 this Respondent, as a mere employee of the aircraft owner, had no part in these machinations.
 The Respondent here is a Commercial Pilot, has

1 been flying for four years, she is a Flight Instructor,
2 aviation is her business; but she is not a lawyer, has not
3 had legal training, never been the officer of a business
4 corporation, never been a fixed-base operator or a Cessna
5 Dealer, she has never worked for the FAA or NTSB.

6 I recognize that a pilot is charged with responsi-
7 bility for making a reasonable attempt to ascertain that
8 the aircraft that he or she flies is registered and who
9 the owner is; but I see no reasonable way under these
10 circumstances that this Respondent could have been placed
11 on notice that this particular aircraft was ^(technically) unregistered
12 at the time she flew it.

13 The aircraft had been at that particular airport
14 for some five years as of the time she flew it, and she
15 had flown it before with students supplied by her employer,
16 it was owned by her employer, and her employer, at least
17 the President of the corporation, had custody of that
18 aircraft during all of that time. The Respondent was
19 employed by the owner of the aircraft for two-and-one-half
20 months prior to that subject flight. The employer himself,
21 that is, Carl Baker, Jr., the President of Cavalier Flyers,
22 the successor corporation, had access to that aircraft and
23 flew it, as did his other three flight instructors and students.

24 When a non-lawyer pilot, employed by a former
25 Cessna Dealer who has two remaining Cessna's for sale, is

1 directed by her employer to make a flight in a Cessna 150
 2 that she has seen at that airport being used many times
 3 before, and when she inspects with her students and sees
 4 what appears to be a permanent FAA Registration Card in
 5 the aircraft, and a FAA "N-number" painted on the side of
 6 the aircraft, I do not believe that she, as opposed to the
 7 owner, that she must question and go behind the face of
 8 that registration document. I do not believe that it is
 9 inconceivable that a flight instructor working for a fixed-
 10 base operator who at one time was a Cessna Dealer should not
 11 question the fact that ^{the} Cessna Aircraft Corporation is
 12 still the apparent nominal owner of that aircraft ^{of the face of the aircraft registration certif.} until
 13 the time of resale.

14 Whether this is legally the correct relationship ^(betw. Cessna and its dealers)
 15 under all of the circumstances is not for me to decide,
 16 and certainly not for a non-lawyer flight instructor to
 17 try to figure out.

18 The FAA Inspector testified that the FAA does
 19 have an enforcement action in progress now against the
 20 actual owner of the aircraft directed to the registration
 21 problem.

22 I also note that no FAA Inspector checked the
 23 aircraft to see what, if any, registration card was in
 24 fact in the aircraft at the time of the alleged incident,
 25 or at anytime since that incident up to this day. The FAA

1 Inspector (and I know that they are all overworked so that
2 this does happen) made his contacts on the telephone with
3 the fixed-base operator, the registered owner, to determine
4 not only the registration situation, but the facts of the
5 alleged low-flying incident.

6 The Respondent now resides in Florida. She is
7 a flight instructor, she has commercial, single and multi-
8 engine land and instrument ratings. She is a certified
9 flight instructor and multi-engine land instructor. She
10 has some 1,300 hours total flight time.

11 She testifies that she looked inside the aircraft
12 and saw what appeared to be a white aircraft registration
13 card and that Cessna Aircraft ^{Co.} was the registered owner.

14 The evidence indicates that this aircraft was
15 purchased from Cessna Aircraft about five years before the
16 date in question, on or about August 20, 1974, and that
17 it was purchased by Colonial Airlines, the predecessor
18 corporation to Cavalier Flyers, which was the owner on
19 the date in question.

20 With regard to the low-flying violation, I believe
21 Police Officer Douglas McGibbon when he says that he saw a
22 certain aircraft, a Cessna 150 and bearing the specific N
23 number N66333 on the flight in the vicinity of the inter-
24 section that he was directing traffic at. I believe his
25 testimony that it was flying substantially below 500 feet,

1 he estimated 200 to 300 feet. I believe his observation,
2 I believe his estimate. The only problem is, I think there
3 is a weak link here connecting this particular respondent
4 to the flight of that aircraft.

5 She testified that the aircraft engine was so
6 hot that she couldn't check the oil when it came in. In
7 her letter to the FAA, she admits flying the aircraft at
8 about 12:15. She claims that she took off around 12:15,
9 that was the time of departure from the Norfolk Airport;
10 I am now referring to FAA Exhibit A-7 in which she gives
11 the details of the flight. In the details she alleges that
12 she climbed to and maintained 500 feet, proceeded directly
13 to the Bay Bridge, that she remained in constant contact
14 with Norfolk Departure Control during the entire period of
15 the flight, and that she made two passes near the area of
16 interest which she testified was over the Bay Bridge. She
17 testified that none of her passes were below 500 feet, nor
18 were they ever made over beach or land areas, but were
19 done entirely over the waters of the Chesapeake Bay.

20 The intersection in question is about one-half to
21 one mile inland from the beach, and she testifies that her
22 flight never took her over that area of land, or any land,
23 except when she came in to return to the airport, and, of
24 course, when she departed from the airport towards Chesapeake
25 Bay.

1 The time element here is crucial because the
2 difference of fifteen minutes, one way or another, could
3 put another pilot in the seat of that aircraft.

4 When the GADO Inspector called and spoke to the
5 owner of the aircraft, that is, the president of the corpor-
6 ation that owned it, Mr. Carl Baker, he admitted that he
7 had flown that plane on that day. In the telephone conver-
8 sation, he claimed that he had been flying around 9:00 in
9 the morning. Mr. Baker was not produced as a witness;
10 neither was there any production of the logs of the aircraft,
11 or any time logs, ~~MOBES~~ meter, tach sheets, or other scheduling
12 record.

13 There was no live witness to testify that this
14 particular pilot was at the controls of this particular
15 time and, worse than that, the only person who supplied
16 documentation putting her in the aircraft at that time was
17 another pilot, Mr. Baker, who admitted he flew the aircraft
18 on the date in question. The point being that this self-
19 serving statement served to exculpate him from the same
20 charges or could have. So this is the type witness that
21 I would expect to see produced and subject to cross-examina-
22 tion. It is not just a question of prohibiting hearsay
23 testimony, but this type of witness whose testimony serves
24 to exculpate him from the possibility of the same charge
25 is suspect and should be subject to cross-examination.

1 It is very possible that the Respondent flew
 2 this particular flight and that she flew low over the
 3 subject area. However, the FAA has the burden of proof,
 4 and I don't think that one phone call, or even a series of
 5 phone calls, resulting in self-serving statements by another
 6 pilot, who admitted flying that same day, fulfills the burden
 7 of proof required in this proceeding.

8 I must note at this point that the FAA Counsel
 9 very diligently requested a continuance ^{*/} to obtain the
 10 live witnesses that could fill in this weakness in the
 11 testimony. However, under the principles of due process ^{AND}
 12 fair play ^{required by} the Administrative Procedures Act, I don't
 13 believe that this is fair to the Respondent when she
 14 appears for her day in court, having traveled all the
 15 way up from Florida, by the way, and having retained an
 16 attorney, that she should now be faced with two ^{widely-separated} days in
 17 court because her case turned out to be more unexpectedly
 18 strong than the FAA was prepared for.

19 On that basis, I denied the FAA's motion for
 20 a continuance so that they could produce the kind of
 21 ^(or UNBIASED DOCUMENTATION) witnesses that I referred to, that I would like to have
 22 seen here in the first place.

23 I should note for the record that FAA General
 24 Aviation District Office Inspectors are extremely over-
 25 worked and I find in a number of these cases that the first

^{*/} It is important to note that this motion for continuance was made not only after the FAA had completed its case-in-chief but also after the Respondent had completed her entire case-in-chief. It is elemental that when both sides appear at the start of the hearing, if they make no preliminary motions for delay, they are asserting that they are ready for hearing.

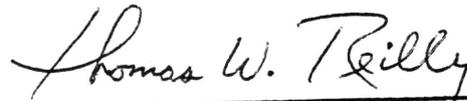
1 time they get a satisfactory response on the telephone that
2 appears to point the finger at one particular pilot, they
3 often will not investigate further because they don't have
4 the time to see if other possibilities are equally valid.

5 This case cries out for investigating further
6 what other possible pilots might have flown this aircraft
7 at or about the time of this low-flying incident to eliminate
8 the fair possibility that someone else flew it just before
9 Susan Humphreys took that aircraft.

10 I find, therefore, that the Federal Aviation
11 Regulation Sections cited by the Administrator, including
12 the careless or reckless section, 91.9, which is, of course,
13 a derivative violation of the low-flying section, have
14 not been proven by a fair preponderance of the credible
15 evidence. I therefore reverse the Administrator's Order
16 of Suspension against the Respondent.

17 I find that safety in air commerce and the public
18 interest do not require the suspension of her commercial
19 pilot's certificate.

20 EDITED AND ISSUED IN WASHINGTON, D.C.
21 THIS 18th DAY OF DECEMBER, 1979.

22 

23 Administrative Law Judge Thomas W. Reilly

24 APPEAL

25 Any party to this proceeding may appeal this
initial decision or order by filing with the Board a notice

1 of appeal within 10 days after this date. Such appeal
2 must be perfected with 40 days after this date by filing
3 with the Board a brief in support of such appeal.

4 Appeals may be dismissed by the Board on its own
5 motion or on motion of a party in cases where a party
6 fails to perfect its appeal by the timely filing of the
7 brief.

8 Your attention is directed to Sections 821.43,
9 821.47, and 821.48 of the Board's Rules of Practice in Air
10 Safety Proceedings for further information regarding appeals.

11 An original and four copies of each document must
12 be filed with the National Transportation Safety Board, Docket
13 Section (LJ-10), P. O. Box 23269, L'Enfant Plaza Station,
14 Washington, D. C. 20024, as provided in Section 821.7 of
15 the Board's Rules, with copies served upon the other parties.
16 The timely filing of an appeal herein shall stay the order
17 in this initial decision.

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