

FAA Ordered to Pay More Than \$120,000 for Attorney Fees and Expenses Following Return of Air Carrier Certificate

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WASHINGTON, D.C., September 2, 2009 **Xpress Press** In an unprecedented decision served on August 27, 2009, the Honorable William A. Pope, II, NTSB Administrative Law Judge (ALJ), Ordered the Federal Aviation Administration (FAA) to pay a Florida-based air ambulance operator \$120,169.35 for attorney fees and expenses pursuant to the Equal Access to Justice Act ("EAJA") 49 C.F.R., § 826.1 et. seq. (NTSB Docket No. 342-EAJA-SE-18284). According to the law judge, the "Administrator failed to achieve his ultimate goal in the prosecution of the underlying action," which was the revocation of Air Trek's air carrier certificate.

The revocation order initially contained 38 factual allegations and 14 regulatory violations. By the fourth day of the nine-day hearing, the FAA attorney had withdrawn half of the factual allegations, and 8 Federal Aviation Regulation (FAR) violations. The Administrator offered no real explanation for the withdrawals.

The ALJ found that the Administrator was "simply inadequately prepared to proceed on the allegations that were withdrawn, had not investigated them thoroughly, and lacked the evidence to sustain his burden of proof." According to the ALJ, "it is obvious that the Administrator should not have proceeded to a hearing on allegations of wrongdoing that he was not adequately prepared to prove." Therefore, he held that the FAA did not have a reasonable basis for proceeding with the charges, and therefore found that the agency proceeded "without substantial justification."

The FAA appealed the law judge's initial decision. In denying the appeal, the NTSB found that the FAA's appeal brief was "long on argument and short on proof." Specifically, the NTSB stated that "there is insufficient evidence to support many of the Administrator's allegations" and therefore, "we do not find that the Administrator has established sufficient support for the complaint's allegation regarding lack of qualifications, as well as other allegations that the law judge dismissed."

As a result of the FAA's baseless revocation, Air Trek was grounded for nearly fifteen months. Prior to the revocation order, the company had been in operation for 30 years with no violation history. On August 20, 2009, the FAA returned Air Trek's original air carrier certificate. One week later, the law judge ordered the FAA to pay more than \$120,000 for defending the unwarranted certificate action.

According to Dana Carr, Air Trek's co-owner and Director of Operations, "although the FAA's revocation order was rejected by the law judge and the NTSB, Air Trek has been grounded for more than a year and has lost millions of dollars. Now that Air Trek is back in full operation and the law judge has ordered the FAA to pay a fraction of our attorneys' fees and expenses, we feel somewhat vindicated from this horrible nightmare." Air Trek provides worldwide air ambulance and executive charter services on-demand. Air Trek can be contacted at 1-800-MED-JETS (633-5387) or www.medjets.com.

Throughout the hearing and appeal, Air Trek was represented by Gregory S. Winton, Esq. of Aviation Law Experts, LLC, along with co-counsel, Darol H.M. Carr, Esq. of the Farr Law Firm. Winton, a former FAA trial attorney, has been practicing aviation law exclusively for the past 20 years. Winton has been awarded attorney fees against the FAA totaling approximately \$250,000 on behalf of his clients over the past 4 years. According to Winton, Air Trek has received the largest reported EAJA award against the FAA to date.

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