

5th Circuit Court of Appeals Makes Landmark Ruling in Favor of Pilot, Reversing FAA and NTSB

(The Woodlands, Texas – August 8, 2016) The United States Court of Appeals for the 5th Circuit has ruled in favor of airman Richard Boeta and against the Federal Aviation Administration, which had sought to suspend Boeta’s airline transport pilot’s certificate for 60 days, in a case defended by former LPBA President Gary L. Evans and his firm, Coats & Evans, P.C. In issuing this ruling, the 5th Circuit took the very rare step of reversing decisions of both a National Transportation Safety Board Administrative Law Judge, who had upheld the suspension, and the National Transportation Safety Board, which had rejected Boeta’s initial appeal.

The 5th Circuit’s decision clarifies and reaffirms Congress’ efforts to promote aviation safety through the aviation safety reporting system, or “ASRS”. The ASRS permits pilots to a waiver of sanction for violating a Federal Aviation Regulation if they submit a confidential written ASRS report to NASA, which studies aviation safety incidents. In order to qualify for the waiver of sanction, the violation must be, “inadvertent and not deliberate,” among other requirements.

Boeta had been flying as a contract pilot for a Houston-based aircraft management company, which managed a Beechjet 400 for a local business. The management company contracted with a New Jersey-based Part 135 carrier to operate the Beechjet as a commercial charter aircraft. As part of this relationship, the Part 135 carrier secured FAA approval for operation of the Beechjet above 28,000 feet, in what is referred to as reduced vertical separation minimum, or “RVSM” airspace. To legally fly in RVSM airspace, the aircraft must be properly equipped and maintained, the pilots must be properly trained, and the FAA must approve the operator for RVSM operations.

Boeta served as a crewmember on the Beechjet, flying it in RVSM airspace while this arrangement between the Part 135 carrier, the management company and the aircraft’s owner was in place, after having been trained by the certificate holder and having conducted proving runs in the aircraft. Boeta then took time off from flying after his father passed away during August, 2011, as the relationship between the Part 135 carrier and the management company deteriorated. The air carrier asked the FAA to remove the Beechjet from its certificate, but informed no one else of the requested removal, including the management company or the owner of the Beechjet, nor Boeta. In fact, no one informed Boeta of this change in status, including the management company or the aircraft owner. When Boeta returned to flying, he served as pilot-in-command on a flight from Houston to Florida, the only difference apparent to Boeta being the form of the trip sheet. The aircraft was met by the FAA upon arrival, and during the course of a lengthy ramp check, Boeta learned the RVSM approval for the aircraft had been withdrawn when the aircraft was removed from the air carrier’s Part 135 certificate. Boeta filed an ASRS form with NASA within 10 days thereafter.

While none of the facts were disputed by the FAA, the FAA sought to suspend Boeta’s airman’s certificates, contending that while Boeta may not have intended to make an unapproved flight in RVSM airspace, his violation was not inadvertent, and thus Boeta was not entitled to the ASRS waiver of sanction, which was also found by the ALJ during the hearing, and affirmed on review by the NTSB.

The 5th Circuit disagreed, concluding that the FAA's efforts in this case to distinguish between unintentional and inadvertent conduct was simply not consistent with the English language or the intent of Congress. Further, by drawing such a distinction, the FAA would discourage airmen from voluntarily reporting the types of safety incidents ASRS is designed to catalogue, study and address. The Court noted, "it defies common sense to conclude that [Boeta] was anything but inadvertent when he, as a pilot capable of flying in restricted airspace, flew an airplane capable of flying in restricted airspace, without checking the paperwork evidencing that the operator (not the pilot!) of that craft was still authorized to commission such flights" (emphasis and exclamation point in original). The 5th Circuit also found that the air carrier, the management company, and the aircraft owner were all in much better positions to ascertain the status of the relationships than airman Boeta was, serving as a contract pilot. Furthermore, the 5th Circuit found that the agency agreement between the air carrier and Boeta had not been terminated, nor had the lease agreement between the air carrier and the aircraft owner, noting that the operator is responsible for "keep[ing] each of its employees and other persons used in its operations informed of the provisions of its [OpSpecs] that apply to that employee's or person's duties and responsibilities". Boeta had received no notice of the changed relationship.

Coats & Evans represents clients in aviation lawsuits, aviation transactions and aviation-related administrative matters. The firm's principals are active pilots and have over 15,000 combined flight hours. For more information about Richard Boeta's case or the firm's practice, contact Coats & Evans, 281-367-7732, or on the web at www.TexasAviationLaw.com.

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