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U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
WASHINGTON, DC

U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF HEARINGS
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FEDERAL AVIATION ADMINISTRATION,
Complainant,

vs.

JOAQUIN RODRIGUEZ
Respondent.

FAA Docket No. CP05SO0049
FAA Case No. 2005SO290003
DMS No. FAA-2005-22885

Judge Ronnie A. Yoder

AGENCY'S MOTION TO DEEM ALLEGATIONS ADMITTED

The Complainant, by and through the undersigned attorney, pursuant to Sections 13.218 of the Rules of Practice in FAA Civil Penalty Actions (14 C.F.R. §13.218) and the Order Of Chief Administrative Law Judge, served February 1, 2006, hereby moves the Administrative Law Judge to determine that the Allegations in the complaint have been admitted, and if a hearing is necessary in this matter, that the unscheduled hearing, if necessary at all, will only be for the purpose of determining the sanction involved in the matter. As grounds for this motion, Complainant states the following:

1.

In a letter dated October 14, 2005, sent in response to a Final Notice of Proposed Civil Penalty, Respondent requested a hearing in this matter. The return address on this

letter was, "Joaquin Rodriguez, 525 Boxwood Dr., Yaphank (sic), N.Y. 11967". *Exhibit 1.*

2.

On October 27 2005, Complainant filed the complaint in this matter with the Hearing Docket and served a copy on Respondent. *Exhibit 2.* Complainant sent the complaint to "Joaquin Rodriguez, 525 Boxwood Dr., N. Shirley, N.Y. 11967", Respondent's last known address and the same address to which the Final Notice was sent. North Shirley, N.Y. is another city on Long Island, New York in the same zip code. *Exhibit 3.*

3.

The complaint was returned to Complainant marked "moved, left no address, unable to forward, return to sender" on November 9, 2005. *Exhibit 4.* Since that time, Complainant has made several attempts to serve the complaint on Respondent.

4.

Most recently, on November 25, 2005, via certified mail, Complainant sent the Respondent a copy of the complaint at 525 Boxwood Dr., **Yaphank**, NY 11967. After several attempts at delivery, the U.S. Post Office returned the complaint and marked it "Unclaimed". *Exhibit 5.*

5.

Another copy of the complaint was sent to Respondent via regular 1st class U.S. Mail on December 27, 2005. *See, Exhibit 5.* This copy of the complaint has not been returned.

6.

Pursuant to 14 C.F.R. §13.211(g), the complaint was validly served on Respondent no later than December 27, 2005.¹

7.

Pursuant to 14 C.F.R. §13.209(a) and §13.211(e) Respondent had 35 days (30 days plus 5 for mail service) to file an answer. The complaint itself explicitly reminded Respondent of this deadline. Under these rules, Respondent's answer was due approximately February 1, 2006.

8.

To date, Respondent has not filed an answer to the complaint.

9.

According to §13.209(f), a person's failure to file an answer without good cause shall be deemed an admission of the truth of each allegation contained in the complaint.

¹ 14 C.F.R. §13.211(g) "*Valid service.* A document that was properly addressed, was sent in accordance with this subpart, and that was returned, that was not claimed, or that was refused, is deemed to have been served in accordance with this subpart. The service shall be considered valid as of the date and the time that the document was deposited with a contract or express messenger, the document was mailed, or personal delivery of the document was refused."

See, FAA v. Budde W. Playter, FAA Docket No. CP89GL0257 (March 19, 1990)

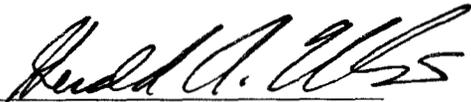
(“Although this is a severe penalty for failure to file an answer, the rule is clear and does not permit exceptions.”).

10.

Complainant requests a ruling on this motion as soon as possible, to allow adequate preparation of a response to the honorable ALJ’s February 1, 2006 order.

WHEREFORE, Complainant respectfully moves the Administrative Law Judge to deem as an admission of truth each allegation in the complaint, and if a hearing is still deemed necessary, that it should be only for the purpose of determining the amount of the sanction in this matter.

Respectfully submitted this 8th day of February, 2006.



GERALD A. ELLIS
Attorney
Office of the Regional Counsel

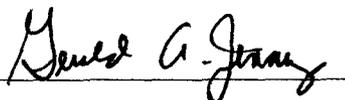
CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion To Deem Allegations Admitted has been mailed via FEDERAL EXPRESS indicated below:

The Honorable Ronnie A. Yoder (original + 1 copy)
Chief Administrative Law Judge
Office of Hearings, M-20
Room 5411
U.S. Department of Transportation
400 Seventh Street, S.W.
Washington, DC 20590

TEL: 202-366-2142
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Joaquin Rodriguez (1 copy)
525 Boxwood Dr.
Yaphank, NY 11967



FEB 8 2008

Dated

Touqua Passages
525-Bowling Dr
Yonkers NY 10467

RECEIVED
OCT 21 2005
FAA, REGIONAL COUNSEL
SOUTHERN REGION

LONG ISLAND NY 117
17 OCT 2005
PM

USA
37

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GOVERNMENT
EXHIBIT
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