



allegation, as set forth in the Administrator's Order of Suspension (complaint), that respondent, a private pilot, violated section 61.118 of the Federal Aviation Regulations (FARs) by acting as pilot in command (PIC) of an aircraft carrying passengers for compensation.<sup>2</sup> The law judge then reduced the period of suspension from 90 to 45 days.<sup>3</sup> As discussed below, we deny respondent's appeal.

The complaint states, in pertinent part:<sup>4</sup>

1. You are the holder of a Private Pilot certificate number 2096798.
2. On or about April 27, 1994, you acted as pilot-in-command of a Cessna 182E identification number N1DZ in the vicinity of Scotia, New York.
3. During the above-described operation, you acted as pilot-in-command of an aircraft that was carrying passengers or property for compensation or hire when you did not hold a commercial pilot certificate.
4. Specifically, the Duanesburgh Sky Diving Club, for whom you were flying, receives compensation for parachute jumps.

The law judge found that David Bove, a passenger on the subject flight, paid \$200 to the Duanesburgh Sky Diving Club (Duanesburgh), not to become a member of the club, but to receive

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Respondent filed an appeal brief, to which the Administrator replied. Respondent then filed a response to the Administrator's reply brief. We grant the Administrator's motion to strike that reply as it was filed in contravention of section 821.48(e) of the Board's Rules of Practice.

<sup>2</sup>See Appendix for text of section 61.118.

<sup>3</sup>The Administrator did not appeal the reduction in sanction.

<sup>4</sup>Respondent admitted the allegations in paragraphs 1-2, and

skydiving instruction. Further, even though respondent was an unpaid volunteer, he was not sharing expenses with the passengers.

On appeal, respondent argues that he should not be found to have violated section 61.118 because, as the law judge concluded, he received no compensation for the flight. He also argues that the club is merely a social group consisting of people who enjoy skydiving and wish to promote the sport, not an enterprise for profit, and he flew for the club for his own enjoyment. Lastly, even assuming arguendo that the payment from the passenger was made to respondent, he asserts, the shared-expenses exception to 61.118 applies, in that the money was used to cover the cost of the skydiving expedition. We reject each argument in turn.

The facts adduced at hearing support the law judge's determination that the flight was for compensation or hire. It is uncontroverted that Mr. Bove contacted Duanesburgh to procure skydiving instruction after reading the club's listing in the local "yellow pages" telephone directory under "parachute instruction."<sup>5</sup> (Tr. at 18, 43.) He paid \$200 for the first flight and instruction, and discussed with respondent the possibility of getting a discount on future instruction if he paid in advance.<sup>6</sup> (Tr. at 19, 25.) Mr. Bove did not consider

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denied those in paragraphs 3-4.

<sup>5</sup>This was Mr. Bove's second flight/instruction with Duanesburgh. In 1992, he contacted the club (also after reading the yellow pages listing), paid for, and accomplished a parachute jump. (Tr. at 17.)

himself to be a member of the club or a sharer of flight expenses: he simply thought he was paying money for a service. (Tr. at 43.)

Whether the club is a profitable venture is not of importance here. Duanesburgh held itself out to the public as a place where aspiring skydivers could, for a fee, receive instruction and participate in a dive. As such, the paying passengers on board the skydiving flight at issue were entitled to have a properly-certificated pilot operate the aircraft.

As to respondent's alternative claim that, if Mr. Bove's payment is attributed to respondent, it was a permissible sharing of expenses, we again do not agree. First, there is no mention in the record that respondent incurred any expenses himself in relation to the subject flight. Furthermore, the shared-expenses exception is only valid where the pilot and passenger share a common purpose in the flight. Administrator v. Croy and Rich, NTSB Order No. EA-4306 at 3 (1994). According to respondent, he acts as pilot-in-command of such flights for Duanesburgh because he likes to fly and enjoys the company of skydivers.<sup>7</sup> (Tr. at 207.) The purpose of Mr. Bove taking the flight was to learn how to skydive. Thus, their principal reasons for participating in

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<sup>6</sup>Respondent testified that his wife owns the club and he is one of the founders. He is not, however, a paid employee of the club. (Tr. at 194.)

<sup>7</sup>In addition, while respondent said he does not fly to accrue flight time, he does log enough of his flight time to stay current and usually does not fly outside of his flights for the club. (Tr. at 206, 208, 212.)

the flight were distinct and different.<sup>8</sup>

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The 45-day suspension of respondent's private pilot certificate shall begin 30 days after service of this order.<sup>9</sup>

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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<sup>8</sup>Cf. Administrator v. Reimer, 3 NTSB 2306 (1980), where we found that, when a pilot's purpose is to gain flight time and the passenger's purpose is to skydive, the two do not share a common purpose.

<sup>9</sup>For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to FAR section 61.19(f).