

SERVED: September 12, 1997

NTSB Order No. EA-4586

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 26th day of August, 1997

JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-13974
v.)	
)	
ZEUS ENTERPRISES, INC.)	
)	
Respondent.)	
)	

ORDER DISMISSING APPEAL

In this case the Administrator suspended the airworthiness certificate of a Beech Aircraft Model E-55, N777EV, owned by respondent Zeus Enterprises (Zeus). The matter was consolidated for hearing with another case, SE-14276, in which the Administrator sought to suspend the certificate of Alphin Aircraft Company (Alphin), the repair station that performed the maintenance that the Administrator believed had rendered the Zeus aircraft unairworthy. After the hearing was underway, Alphin entered into a settlement agreement with the Administrator and withdrew its appeal. Subsequently, and over the Administrator's objection, the law judge granted a motion by Alphin, pursuant to section 821.9(a) of the Board's rules, to intervene in the remaining case, ruling that Alphin had a legitimate interest in defending its work; the issues of the case would not be unduly broadened by Alphin's participation; and Zeus did not object to

the motion.¹ He nevertheless expressly limited Alphin's participation to "the technical aspects of the work it performed on Zeus' aircraft."² (Tr. at 743-45.) The rest of the hearing (about 9 of the 12 days consumed) was conducted with Alphin as an intervenor, instead of as a respondent.

On November 27, 1996, Administrative Law Judge William A. Pope, II, issued a written initial decision affirming the grounding of Zeus' Beech aircraft.³ From that decision, only Alphin has appealed.⁴ For the reasons discussed below, we have determined that Alphin's appeal should not be allowed because it presents legal objections that are beyond the scope of the limited participation it was given by the law judge to assist in clarifying technical issues. We will, accordingly, grant the Administrator's motion to dismiss.

In its appeal brief, Alphin argues broadly that the Administrator's complaint against Zeus did not, for a variety of reasons, adequately raise the issue of the aircraft's airworthiness, either substantively or procedurally. Alphin also registers its disagreement with the law judge's ultimate findings and conclusions respecting the evidence the Administrator and the respondent adduced. It does not, however, identify any flaw in

¹ While we have no quarrel with the law judge's exercise of his discretion to limit the extent to which Alphin should be allowed to participate as an intervenor, we do not necessarily endorse his decision to allow intervention for any purpose. If the parties needed assistance in having technical issues involving Alphin's maintenance work on the aircraft clarified, and it is far from clear that they did, they could have called as witnesses various Alphin employees. Moreover, given Alphin's settlement of the case against its certificate, wherein it would have had a full opportunity to vindicate its work on N777EV and its name, we question whether Alphin continued to have a legitimate interest in defending its repair work in the case against Zeus.

² When Alphin objected to the limitation and stated that it wished to dispute the way the complaint against Zeus characterized the work performed by Alphin, the law judge reemphasized the limits placed on Alphin's participation and flatly refused to entertain its objection to statements in that complaint. (Tr. at 748-49.)

³ A copy of the written initial decision is attached. It contains the pertinent portions of the Administrator's complaint against the Zeus aircraft.

⁴ Alphin filed an appeal brief; the Administrator filed a reply. The Administrator filed a motion to dismiss the intervenor's appeal, to which Alphin replied.

the initial decision which could be said to reflect an error by the law judge in his disposition of any technical issues that Alphin may have helped clarify during the hearing, and, with respect to which, Alphin arguably may have the right to obtain review by the Board. As to the non-technical, legal grounds on which Alphin seeks to challenge the initial decision, we conclude that the circumscribed right of intervention it received from the law judge does not provide it with standing to press those objections on appeal to us.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted; and
2. The appeal of intervenor Alphin is dismissed.

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