

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Oahu Aviation Flight School, Inc.
Registered Owner of Aircraft N3180P
Honolulu, Hawaii

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File No. EB-00-HL-112

NAL/Acct. No 200132860001

FORFEITURE ORDER

Adopted: February 23, 2001

Released: February 27, 2001

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of two thousand dollars (\$2,000) against Oahu Aviation Flight School, Inc. (“Oahu Aviation”), for violating Section 87.193 of the Commission’s Rules (“the Rules”) ¹ by transmitting false distress calls. The noted violations involve false distress calls resulting from the repeated accidental activation of an emergency locator transmitter (“ELT”).

2. On December 13, 2000, the Honolulu, Hawaii, Resident Agent Office (“Honolulu Office”) issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) in the amount of eight thousand dollars (\$8,000).² Oahu Aviation filed its response on December 21, 2000.

II. BACKGROUND

3. On November 21, 2000, the United States Coast Guard reported to the Honolulu Office that a signal on the distress and safety frequency 121.15 MHz had activated the Search And Rescue Satellite System (“SARSAT”). An agent from the Honolulu Office tracked the signal to an ELT aboard an unattended aircraft located at Oahu Aviation’s place of business, 99 Iolana Place, Honolulu, Hawaii, and determined that the ELT’s activation was “false,” i.e., not as a locating aid for survival purposes.

4. On November 22, 2000, an agent at the Honolulu Office informed Oahu Aviation by telephone that its ELT was defective and requested that it be removed and repaired. An employee of Oahu Aviation stated that she would contact maintenance to have the violation corrected. In addition, the Honolulu Office issued an Official Notice of Violation (“NOV”) to Oahu Aviation on November 22, 2000, citing violation of Section 87.193 of the Commission’s Rules. The return receipt indicates that the United States Postal Service delivered the NOV to Oahu Aviation on November 24, 2000.

5. On December 3, 2000, the United States Coast Guard reported to the Honolulu Office that a signal on the distress and safety frequency 121.15 MHz had activated SARSAT. An agent from the Honolulu Office tracked the signal to the same ELT aboard an unattended aircraft located at Oahu

¹ 47 C.F.R. § 87.193.

² *Notice of Apparent Liability for Forfeiture*, NAL/No. 200132860001 (Enf. Bur., Honolulu Office, released December 13, 2000).

Aviation's place of business, 99 Iolana Place, Honolulu, Hawaii, and determined that the ELT's activation was false.

6. In response to the NAL, Oahu Aviation seeks cancellation of the proposed forfeiture. Oahu Aviation states that, following the first false ELT activation, an avionics shop found no malfunction and reinstalled the ELT after changing the batteries. Oahu Aviation further states that, following the second false ELT activation, it installed a new ELT. In addition, Oahu Aviation apologized for the false activations and promised to take "every precaution to prevent any further disruption."

III. DISCUSSION

7. As the NAL explicitly states, the Honolulu Office assessed the proposed forfeiture amount in this case in accordance with Section 503 of the Act,³ Section 1.80 of the Rules,⁴ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). Section 503(b) of the Communications Act of 1934, as amended ("Act")⁵ requires that, in examining Oahu Aviation's response, the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶

8. Section 87.193 of the Rules provides that: "Transmissions by emergency locator transmitters (ELTs) are intended to be actuated manually or automatically and operated automatically as part of an aircraft or survival craft station as a locating aid for survival purposes."

9. False ELT activations disrupt the Commission's work schedule. Disruption of the Commission's work schedule compromises public safety because it may divert attention from true emergencies and other high priority matters. It is undisputed that, on two occasions, an equipment malfunction activated the ELT aboard one of Oahu Aviation's aircraft and that the steps taken following the initial false activation were not sufficient to prevent a second false activation. In these circumstances, cancellation of the proposed forfeiture is not warranted. However, because of the accidental nature of the false activations, we find that the proposed forfeiture amount of \$8,000 is excessive.⁷

10. Taking the above statutory factors into account as well as the factors set forth in the *Policy Statement*, we conclude that the proposed monetary forfeiture should be mitigated to \$2,000.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,⁹ Oahu Aviation **IS LIABLE FOR A MONETARY**

³ 47 U.S.C. § 503(b).

⁴ 47 C.F.R. § 1.80.

⁵ 47 U.S.C. § 302a.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ Compare *James Scott Martin*, 7 FCC Rcd 3524 (1992).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

FORFEITURE in the amount \$2,000 for repeatedly violating the provisions of Section 87.193 of the Rules, which permits an ELT to be activated only as a locating aid for survival purposes.

12. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules¹⁰ within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹¹ Payment shall be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note "NAL/Acct. No 2001132860001" referenced above. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

13. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by Certified Mail --Return Receipt Requested to Oahu Aviation Flight School, Inc., at 99 Iolana Place, Honolulu, Hawaii 96819-1840.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁰ 47 C.F.R. § 1.80.

¹¹ 47 U.S.C. § 504(a).

¹² See 47 C.F.R. § 1.1914.