SERVED: October 21, 1998

NTSB Order No. EA-4711

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 6th day of October, 1998

JANE F. GARVEY, Administrator, Federal Aviation Administration, Complainant, v. ALFRED J. MARCUSSEN, Respondent.	Docket SE-15130

OPINION AND ORDER

Respondent has appealed from the oral initial decision of Administrative Law Judge William R. Mullins, issued on April 14, 1998, following an evidentiary hearing.[1] The law judge affirmed an order of the Administrator, on finding that respondent had violated 14 C.F.R. 61.3(a), 61.31(c), 61.31(d)(1), 61.56(c), and 91.13(a) in connection with a passenger-carrying flight on July

[1] The initial decision, an excerpt from the transcript, is attached.

18, 1997.[2] We deny the appeal.

Respondent has admitted the facts, and all the Part 61 allegations. Respondent was the pilot in command, with his wife as passenger, of a twin engine Cessna for which he lacked the proper ratings and had missed his biennial flight review. Respondent, on landing, failed properly to manually extend the landing gear. The gear collapsed on the runway and the aircraft was damaged.[3] Although respondent admitted the events as alleged by the Administrator and admitted the Part 61 violations, he denies being careless (found by the law judge), and urges modification of the sanction from the 180-day suspension proposed by the Administrator and adopted by the law judge to a civil penalty of $4,000.

As the law judge, we are dismayed by respondent's general lack of understanding of regulatory requirements, including the requirement that he obtain a multiengine rating before flying multiengine aircraft with passengers.[4] Respondent also misunderstands the carelessness/recklessness prohibition, as well as our authority to modify this sanction.

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[2] The Part 61 charges prohibit acting as pilot in command without having valid and proper certificates, ratings, and flight reviews. Section 91.13(a) prohibits careless or reckless operations that endanger the life or property of another.

[3] Manual operation was required when the aircraft experienced an electrical failure.

[4] Respondent had been flying this aircraft since 1993 without the multiengine rating. He believed he had been properly operating as a student pilot. He also was unaware of the biennial flight review requirement.

We are not questioning whether respondent exercised skill in landing the aircraft safely when the landing gear was collapsing, or whether people at the airport may have complimented his ability. What the Administrator is charging is that respondent created the danger he later managed mostly to avoid when he failed to ensure, prior to landing, that he had properly extended the gear manually. According to the Administrator, that failure was careless, and we cannot on this record disagree. Respondent's testimony on this point, and his lack of an aircraft manual, do not create a great deal of confidence in his familiarity with this aspect of aircraft operation. Tr. at 28.

As to sanction, it appears the law judge's extended dialogue with counsel for the Administrator regarding his dissatisfaction with Board precedent concerning sanction and deference led respondent to believe we had discretion in this case to change the sanction to one of civil penalty. We do not. The Administrator's sanction guidance table, Exhibit A-2, prescribes a 60-120 day suspension for single violations of one of the cited regulations. In the circumstances, 180 days for multiple violations does not seem inappropriate.[5]

[5] And, contrary to respondent's apparent belief, the "Enforcement Flow Chart" offered to all respondents by our Office of Administrative Law Judges does not stand for the proposition that respondent or the law judge may choose a civil penalty or a sanction, it only indicates that both are possible.

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and

2. The 180-day suspension of respondent's private pilot certificate shall begin 30 days from service of this order.[6]

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

[6] For the purpose of this order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration pursuant to 14 C.F.R. 61.19(f).