

SERVED: September 24, 1997

NTSB Order No. EA-4592

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 15th day of September, 1997

_____	)	
JANE F. GARVEY,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-14536
v.	)	
	)	
PERRY A. McCULLOUGH,	)	
	)	
Respondent.	)	
_____	)	

**OPINION AND ORDER**

Respondent, pro se, has appealed from the initial decision of Administrative Law Judge William R. Mullins, issued on October 17, 1996, granting the Administrator's motion for judgment on the pleadings in this proceeding.<sup>1</sup> The law judge affirmed an order of the Administrator revoking respondent's private pilot certificate, on finding that respondent had violated 14 C.F.R.

<sup>1</sup> The law judge's order is attached.

61.15(a)(2).<sup>2</sup> We deny the appeal.

Respondent's appeal raises a number of constitutional issues: namely, double jeopardy, due process, and equal protection matters. The Board has concluded on numerous occasions that principles of double jeopardy do not apply to these administrative proceedings. See, e.g., Administrator v. Franklin, 3 NTSB 978 (1978). We have also held that we have no authority to consider issues of selective prosecution by the Administrator. Administrator v. Kaolian, 5 NTSB 2193, 2194 (1987) ("We also find no merit in the argument that the law judge erred in refusing to allow respondent to present evidence of what respondent claimed was selective enforcement policies on the part of the FAA. Such evidence, which goes to the matter of prosecutorial discretion exercised by the enforcement agency, is clearly irrelevant to the Board's adjudication of this or any other case. The Board's role is to review the evidence in a particular case to determine if it supports the allegations against the particular respondent.").

Respondent is correct in his conclusion that the Board does not have the ultimate authority to rule on constitutional questions, and that his appeal here serves instead to preserve his right to so argue to the Court of Appeals, should he proceed to that forum. See, e.g., Administrator v. Lloyd, 1 NTSB 1826,

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<sup>2</sup> Section 61.15(a)(2) provides that convictions of drug-related Federal statutes are grounds for suspension or revocation of any certificate.

1828 (1972) (Board has no authority to review constitutionality of FAA regulations). But see Rochna v. NTSB, 929 F.2d 13 (1st Cir. 1991) (various constitutional challenges rejected).

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal is denied; and
2. The revocation of respondent's certificate shall begin 30 days from service of this order.<sup>3</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>3</sup> 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).