

SERVED: January 14, 1998

NTSB Order No. EA-4615

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 5th day of January, 1998

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

**ORDER DENYING PETITION FOR RECONSIDERATION**

Respondent has petitioned for reconsideration of our order, NTSB Order No. EA-4592, served September 24, 1997. In that order, we affirmed the Administrator's revocation of respondent's private pilot certificate based on drug-related criminal convictions, for which he is presently incarcerated. The Administrator has not replied. We deny the petition.

The basis of the petition is respondent's view that an October U.S. District Court opinion, in Ho and Ho, et al. v. San Francisco Unified School District, et al., requires dismissal of the Administrator's order on the grounds that it was precluded by the doctrine of *res judicata*. *Res judicata* is not a new principle of law and, thus, to the extent respondent believes this is newly decided case law that should influence our decision, his petition affords no basis for review. Further, for *res judicata* to apply, there must be identity of subject matter and identity of parties. Neither exists here. The subject matter is related, but the judicial proceeding involved violation of criminal statutes, while this action -- administrative --

involves violation of Federal regulations. The parties are also different, as the FAA was not a party in the criminal proceeding. See Administrator v. Yarborough, 3 NTSB 1498 (1978). Even were respondent's recitation of the Ho and Ho matter correct (and we see no need to review that decision), his recitation demonstrates the accuracy of this conclusion. None of the tests respondent describes from that opinion are met here. For example, the evidence to prove the criminal conviction was quite different from the evidence required in this proceeding. It is not enough, as respondent would appear to believe, that the two proceedings stem from the same event. In any case, *res judicata* would afford respondent no relief. It would not preclude a second action; it would merely require the findings of the first action to apply in the second and not be relitigated. We fail to see what benefit that would do respondent.

**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>1</sup>

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

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<sup>1</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).