

## **Team BlackSheep Drone Pilot Raphael Pirker Settles FAA Case**

**HONG KONG, January 22, 2015** Team BlackSheep lead pilot Raphael “Trappy” Pirker has settled the civil penalty proceeding initiated by the U.S. Federal Aviation Administration in 2013 concerning his flight of a styrofoam Zephyr II model aircraft (or “drone”) at the University of Virginia in October 2011. The favorable settlement, involving a payment of \$1,100 USD, does not constitute an admission of any of the allegations in the case or an admission of any regulatory violation.

We are pleased that the case ignited an important international conversation about the civilian use of drones, the appropriate level of governmental regulation concerning this new technology, and even spurred the regulators to open new paths to the approval of certain commercial drone operations. The decision to settle the case was not an easy one, but the length of time that would be needed to pursue further proceedings and appeals, and the FAA’s new reliance on a statute that post-dates Raphael’s flight, have diminished the utility of the case to assist the commercial drone industry in its regulatory struggle.

When Raphael decided to defend the case in 2013 rather than pay the FAA’s \$10,000 fine, it was clear that the FAA took action against him because his flight was commercial in nature. The case presented the first opportunity to test the FAA on its policy, published in 2007, banning commercial use of model aircraft even in the absence of any express law or regulation on the point, a policy that had frustrated countless businesses and entrepreneurs for years. In its legal filings in the case, the FAA conceded that its 2007 policies, which were often quoted in threatening letters to businesses, “are not mandatory.” Instead, to pursue an alleged safety violation, the FAA resorted to a broad definition of “aircraft.” The Administrative Law Judge concluded that model aircraft have never been regulated, and that the reliance on the definition of “aircraft” would be absurd, and he dismissed the case.

When the FAA appealed, we were pleased that several parties filed amicus (“friend of the court”) briefs in support of Raphael, including a group of 16 of the largest and most prestigious media organizations in the United States who argued that the FAA’s commercial ban violated the First Amendment freedom of the press. The case stood for the proposition that before government regulates (let alone bans) use of a new technology, it should first understand the actual risks and benefits of the technology and consult with the people and companies who will feel the impact of those regulations. The case inspired many people to express their thoughts about what regulations would be appropriate for the individuals and companies developing and using this great technology -- not only for business purposes but also for humanitarian and environmental causes.

The NTSB Board in November decided the appeal very narrowly, reversing the Administrative Law Judge and holding that a model aircraft operator is subject to a single aviation regulation, 14 CFR 91.13(a), concerning “careless or reckless operation that endangers the life or property of another.” Whether any aspect of Raphael’s flight was actually “reckless” was not decided. The NTSB Board did not comment on whether commercial use is or is not prohibited, but did recognize a fundamental problem with the FAA’s current position: “certain provisions of the [federal aviation regulations] may not be logically applicable to model aircraft.”

Although we support the safe operation of drones, we continue to disagree with the NTSB Board decision because it leads to various problematic inconsistencies. The notion that airborne objects of any size and weight are already regulated just like passenger aircraft remains untenable, contradicted by common sense, the FAA's own historical documents, and the text of the regulation which indicates, for example, that aircraft operational regulations apply to "each person on board an aircraft." The logic of the decision would turn every backyard from which a person flies a model airplane into a regulated "airport" (defined as "an area of land or water that is used or intended to be used for the landing and takeoff of aircraft"). There also appears to be no explanation for why the NTSB has never investigated any of the (thankfully rare) serious model aircraft accidents as would be required by statute (49 U.S.C. § 1132).

Despite our disagreement with the decision, under the legal rules governing aviation penalty cases, the NTSB Board's decision cannot be further appealed (to a federal court) until the conclusion of a hearing concerning recklessness. Recently, the judge who would preside over that hearing ordered the FAA to first formally explain its authority to pursue aviation penalties against a foreign national, a defense Raphael's lawyer raised and a potential basis for dismissal that could have resulted in another appeal by the FAA. Regardless of how that issue, or the hearing if it did take place, might turn out, each appeal would first return the case to the NTSB Board. After that lengthy step, a further appeal could next be heard by the U.S. Court of Appeals for the D.C. Circuit. Combined, the hearing and appeals process would take years. Meanwhile, the FAA has asserted a completely new legal theory for restricting commercial operations and regulating drones, namely a statute that was passed by Congress in 2012. Because Raphael's flight was in October 2011, his case would never address the validity of the FAA's new purported legal basis for asserting commercial restrictions. Additionally, the FAA's proposed rules for small commercial unmanned aircraft are finally anticipated to be released early this year, and finalized by 2016, likely before all the steps above would reach a final conclusion. Although we wish we could do more with this case to assist the industry, as a practical matter it is no longer positioned to do so. (Other cases challenging the FAA's position on the 2012 statute are already pending.)

The *Pirker* case has had several positive effects within the commercial drone industry. It not only prompted a vigorous international public discussion about the existing framework, but also has encouraged regulators to open new paths forward. For example, in the United States, prior to the March 2014 *Pirker* decision, the FAA steadfastly told companies that no regulatory exemptions for the commercial use of unmanned aircraft would be available because of the lack of regulations, and that everyone would have to keep waiting for final rules. Two months after the original decision in the case, in May 2014, the FAA surprised the industry by announcing a new program to approve commercial operations (premised on a creative reading of a 2012 statute). We believe that the national discussion prompted by the *Pirker* case caused regulators to look for a way to say something other than "no" to the thousands of entrepreneurs and innovators who were frustrated by the lack of progress.

As we stated in March when the initial decision in the case was in favor of Raphael, Team BlackSheep takes safety very seriously. Raphael was prepared to defend the safety of his flight in Virginia if the fight were worth having. The video of the flight has been widely misinterpreted by the FAA and others. The flight route was carefully mapped in advance and approved by University personnel. An email was circulated by the University advising those on

campus of the planned flight. Two spotters stood beside Raphael during the flight, monitoring the airspace and activity on the ground. With respect to the helipad that appears in the video, Raphael was in contact with the helipad operator and was cleared to fly his model aircraft after being assured that there was no nearby air traffic. The allegation that someone on the ground took “evasive action” is demonstrably untrue upon a careful viewing of the video, which instead shows Raphael’s assistant attempting to catch the styrofoam Zephyr II model airplane.

These incorrect allegations and many others were dropped from the Amended Order of Assessment at Raphael’s lawyer’s request prior to settlement, to straighten the record as best we could in the absence of a hearing. We mention these facts here to encourage others to practice safe drone operations, particularly near active airports. Many of the Team’s aerial videos demonstrate dramatic flying styles using equipment that has been rigorously tested, flown by drone pilots with proven experience. These operations involve safety measures and operational protocols that are not visible in the final production videos. Raphael has 19 years of experience piloting radio-control drones, including test flights in extreme weather conditions, and the Team boasts a perfect zero-injury safety record.

Many of the drone-related headlines generated over the past year, while the case was pending, have apparently involved newcomers using off-the-shelf drone products with little or no experience, in locations that are objectionable. These types of poorly planned or inexperienced operations are of concern to Team BlackSheep as well. We strongly encourage all drone pilots to become fully familiar with their equipment, develop their skills over time, and to take measures to ensure safety in their operating environment, regardless of the laws or regulations that may apply.

About Team BlackSheep:

Team BlackSheep currently sells drones to more than 79 countries worldwide, including the United States, for aerial videography, agricultural use, facilities inspection and the recreational hobby community. For more information, please visit: <http://www.team-blacksheep.com>

Contact:

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## SETTLEMENT AGREEMENT

**RE: Raphael Pirker, 2012EA210019**

On January 16, 2015, Raphael Pirker ("Respondent") and the Federal Aviation Administration ("FAA") agreed to settle the above referenced case without further proceedings. The terms of the settlement agreement are as follows:

1. Respondent agrees to pay \$1,100.00 (the "settlement proceeds") by January 22, 2015, to the FAA in full and final settlement of this matter. The settlement proceeds will be paid to the FAA via wire transfer.

2. Upon execution of this settlement agreement, the FAA will issue an Amended Order of Assessment, with a reduced civil penalty in the amount of \$1,100.00, containing the same factual allegations and the findings of violation made in the June 27, 2013 Order of Assessment, with the exception of the following allegations which shall be omitted:

- a. 9(a), 9(c), 9(d), 9(e), 9(f), 9(i), 9(l), and 10.

The following line shall be inserted into the Amended Order of Assessment:

Respondent does not admit to any allegation of fact or law herein, and by not contesting this Amended Order of Assessment is resolving the matter solely to avoid the expense of litigation.

3. It is understood and agreed that neither Respondent's execution of this settlement agreement nor payment of the settlement proceeds constitutes Respondent's admission of any of the facts or regulatory violations alleged in the FAA's June 27, 2013 Order of Assessment or the Amended Order of Assessment that will issue pursuant to this settlement agreement. Respondent is resolving this matter to avoid the expense of litigation.

4. Upon execution of this settlement agreement and the FAA's filing of its Amended Order of Assessment, Respondent will withdraw with prejudice his appeal of the June 27, 2013 Order of Assessment that he filed with the National Transportation Safety Board on July 16, 2013 and that is currently docketed as Case No. CP-217RM.

5. Respondent will not contest the amount or validity of the settlement proceeds due under this agreement nor will he contest any of the factual allegations or findings of violation made in the Amended Order of Assessment in any administrative or judicial forum.

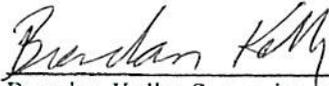
6. The parties agree to bear their own costs in connection with this matter. Respondent agrees not to initiate any litigation under any statutory provision or rule to collect legal fees or costs arising from or related to this case. Respondent further agrees

to waive all potential causes of action against the FAA, its employees and agents, both past and present, arising from or related to the referenced proceeding.

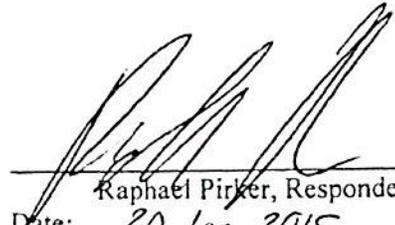
7. Both Respondent and the FAA (by its counsel) have reviewed the terms of this settlement agreement, understand its terms, and voluntarily agree to all its terms.

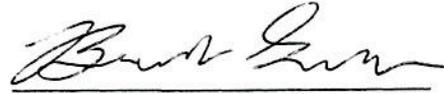
8. This agreement accurately reflects the terms of the settlement between the parties and is binding on the parties and is in final resolution of the above-referenced matter. Respondent understands that there will be no further review of this matter in any forum.

9. This settlement agreement may be executed in counterparts, which when taken together as whole, shall constitute a final, binding document. Electronic and facsimile copies shall be deemed to be originals.

  
Brendan Kelly, Supervisory Attorney  
Federal Aviation Administration

Date: 1/22/15

  
Raphael Pirker, Respondent  
Date: 20 Jan 2015

  
Brendan M. Schulman, Counsel for  
Respondent

Date: 1/21/15



U.S. Department  
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January 22, 2015

REGISTERED MAIL

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Switzerland

Docket No. 2012EA210019

AMENDED ORDER OF ASSESSMENT

Pursuant to a settlement agreement executed by the parties, the Order of Assessment dated June 27, 2013 is hereby amended to read as follows:

On April 13, 2012, you were advised through a Notice of Proposed Assessment that the FAA proposed to assess a civil penalty in the amount of \$10,000.

After consideration of all the available information, it appears that:

1. On or about October 17, 2011, you were the pilot in command of a Ritewing Zephyr powered glider aircraft in the vicinity of the University of Virginia (UVA), Charlottesville, Virginia.
2. The aircraft referenced above is an Unmanned Aircraft System (UAS).
3. At all times relevant herein you did not possess a Federal Aviation Administration pilot certificate.
4. The aircraft referenced above contained a camera mounted on the aircraft which sent real time video to you on the ground.
5. You operated the flight referenced above for compensation.
6. Specifically, you were being paid by Lewis Communications to supply aerial photographs and video of the UVA campus and medical center.
7. You deliberately operated the above-described aircraft at extremely low altitudes over vehicles, buildings, people, streets, and structures.

8. Specifically, you operated the above-described aircraft at altitudes of approximately 10 feet to approximately 400 feet over the University of Virginia in a careless or reckless manner so as to endanger the life or property of another.
9. For example, you deliberately operated the above-described aircraft in the following manner:
  - a. You operated the aircraft through a UVA tunnel containing moving vehicles.
  - b. You operated the aircraft within approximately 50 feet of numerous individuals.
  - c. You operated the aircraft within approximately 20 feet of a UVA active street containing numerous pedestrians and cars.
  - d. You operated the aircraft on at least three occasions under an elevated pedestrian walkway and above an active street.
  - e. You operated the aircraft directly towards a two story UVA building below rooftop level and made an abrupt climb in order to avoid hitting the building.
10. By reason of the above, you operated an aircraft in a careless or reckless manner so as to endanger the life or property of another.

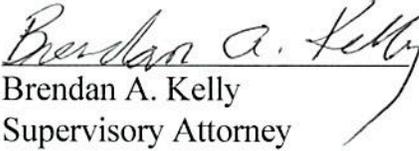
By reason of the foregoing, you violated the following section(s) of the Federal Aviation Regulations:

- a. Section 91.13(a), which states that no person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

NOW THEREFORE, IT IS ORDERED, pursuant to 49 U.S.C. §§46301(a)(1) and (d)(2) and 46301(a)(5), that you be and hereby are assessed a civil penalty in the amount of \$1,100. In accordance with the settlement agreement executed regarding this matter, you have agreed to pay the civil penalty to the FAA via wire transfer on January 22, 2015.

Respondent does not admit to any allegation of fact or law herein, and by not contesting this amended Order of Assessment is resolving the matter solely to avoid the expense of litigation.

Alfred R. Johnson, Jr.  
Regional Counsel

By:   
Brendan A. Kelly  
Supervisory Attorney

cc: Brendan Schulman, Esq. (Federal Express and electronic mail)