



National Transportation Safety Board Aviation Accident Final Report

Location:	Kaunakakai, HI	Accident Number:	LAX06LA155
Date & Time:	04/30/2006, 2000 HST	Registration:	N4574C
Aircraft:	Partenavia P68	Aircraft Damage:	Substantial
Defining Event:		Injuries:	2 Serious, 3 Minor

Flight Conducted Under: Part 91: General Aviation - Other Work Use

Analysis

The airplane descended into terrain during the takeoff initial climb from a private airstrip in dark night conditions. The four passengers had been flown to the departure airport earlier in the day. After several hours at the destination, the pilot and passengers boarded the airplane and waited for two other airplanes to depart. During the initial climb, the pilot banked the airplane to the right, due to the upsloping terrain in the opposite direction (left) and noise abatement concerns; this maneuver was a standard departure procedure. The airplane collided with the gradually upsloping terrain, coming to rest upright. The pilot did not believe that he had experienced a loss of power. The accident occurred in dark night conditions, about 1 hour after sunset. In his written report, the pilot said he only had 10 hours of total night flying experience.

Probable Cause and Findings

The National Transportation Safety Board determines the probable cause(s) of this accident to be: the pilot's failure to attain a proper climb rate and to maintain adequate clearance from the terrain during the initial climb in dark night conditions, which resulted in an in-flight collision with terrain.

Findings

Occurrence #1: IN FLIGHT COLLISION WITH TERRAIN/WATER
Phase of Operation: TAKEOFF - INITIAL CLIMB

Findings

1. (F) LIGHT CONDITION - DARK NIGHT
2. (C) PROPER CLIMB RATE - NOT ATTAINED - PILOT IN COMMAND
3. (C) ALTITUDE/CLEARANCE - NOT MAINTAINED - PILOT IN COMMAND
4. TERRAIN CONDITION - UPHILL

Factual Information

HISTORY OF FLIGHT

On April 30, 2006, about 2000 Hawaiian standard time, a Partenavia P68, N4574C, collided with terrain shortly after departing from a private airstrip about 14 nautical miles northwest of Kaunakakai on the island of Molokai, Hawaii. Tora Flight Adventures (TFA) was operating the airplane under the provisions of 14 CFR Part 91. The commercial pilot and one passenger sustained serious injuries, while the remaining three passengers sustained minor injuries. The airplane sustained substantial damage. Visual meteorological conditions prevailed, and a flight plan had not been filed. The flight was originating from the private strip with a planned destination of Honolulu, Hawaii, about 37 nautical miles (nm) southwest.

The National Transportation Safety Board investigator-in-charge (IIC) interviewed two passengers several days after the accident. They stated that the tour was purchased from a local broker, who advertised the trip in a pamphlet. The tour was promoted to the passengers as an evening adventure consisting of an airplane ride from Honolulu to Panda Ranch on Molokai for dinner and an "adventure experience." This was one of many tour options they could choose from, but they specifically selected it because of the opportunity to see the sights from the airplane.

The passengers further stated that after departing from Honolulu, they passed over Waikiki Beach, Diamond Head, and Hunauma Bay, before landing at Panda Ranch. At the destination, they were provided dinner and then later prepared to depart from Molokai. As part of the departure procedure they helped the pilot push the airplane near the runway area. The passengers stated that they boarded the same airplane that they had arrived in earlier in the evening. Two airplanes departed the runway just prior to their takeoff. The night was dark and one passenger stated that she kept her eyes affixed to the starry sky throughout the departure. The other passenger reported that after takeoff the airplane made a hard bank to the right and impacted terrain; he could not ascertain how high the airplane climbed during the departure due to the surrounding darkness. When the airplane came to rest the engines were still running.

During a telephone conversation with the Safety Board IIC, the owner of TFA stated that he spoke with the pilot after the accident. The pilot indicated that after departing from the grass surface of runway 07, the airplane would not climb. He made a right turn in compliance with the noise abatement procedures and the airplane lost altitude. The airplane descended into the terrain, coming to rest upright. The pilot did not believe that he had experienced a loss of power.

Several Federal Aviation Administration (FAA) inspectors examined the airplane wreckage the day after the accident occurred. The examination revealed no evidence of pre-accident mechanical malfunction or failure with the engines or airframe components. An FAA inspector talked to the pilot the day following the accident. The pilot stated that after departure he made a right turn, in accordance with the normal procedure, and subsequently collided into terrain. According to the inspector the pilot was in agreement that accident was a result of pilot error.

The airplane came to rest about 2,300 feet from the north end of the 2,000-foot grass airstrip. The terrain between the airstrip and the wreckage was slightly upsloping with sparse

vegetation. An FAA inspector stated that the terrain rose at a steeper gradient to the west, making the standard departure from runway 07 a turn to the right (east), where the slope was gradual.

METEOROLOGICAL INFORMATION

A routine aviation weather report (METAR) for Kaunakakai reported the following conditions: wind from 350 degrees at 8 knots; visibility 10 statute miles; temperature 20 degrees Celsius; dew point 15 degrees Celsius; and the altimeter was 29.96 inches of mercury (inHg).

According to the U.S. Naval Observatory, on the evening of the accident, the time of sunset was 1854, with the end of civil twilight at 1917. The moon's illumination was 12 percent; the last new moon was 3 days prior to the accident.

ADDITIONAL INFORMATION

Regulations

According to Federal Aviation Regulations a commercial operator is defined as "a person who, for compensation or hire, engages in the carriage by aircraft in air commerce of persons or property, other than as an air carrier" and "where it is doubtful that an operation is for 'compensation or hire', the test applied is whether the carriage by air is merely incidental to the person's other business or is, in itself, a major enterprise for profit."

14 CFR Part 135 and Part 119 indicate that carriage in air commerce of persons or property for compensation or hire requires an air taxi/commercial operator operating certificate.

Specifically, 14 CFR Part 119.1 applies to "each person operating or intending to operate civil aircraft... as an air carrier or commercial operator, or both, in air commerce."

Operator

A review of the FAA records revealed that the operator did not hold a 14 CFR Part 135 Air Taxi and Commuter operating certificate. The operator stated that he was not required to carry such a certificate as the airplanes were solely utilized as a means of transportation from Honolulu to Panda Ranch and back. He specified that the passengers do not pay for the flight; rather, they are purchasing the experience at Panda Ranch.

The operator, also known as TFA, Tora Flight Adventure Club, John Hutton Corporation, Hawaii Sky Tours, and Rainbow Connections, had been in business at the Honolulu International Airport for about 5 years. On the company's website, it stated that it offered both evening and day tours. Other websites detailed that the operator provided scenic viewing of Hawaii by air, as their "aircraft can safely penetrate forbidden coves, waterfalls and valleys to ensure our tours are the highlight of any Hawaii vacation."

Several additional travel websites advertised tours with the operator for the Panda Ranch adventure. One asserts that en route to Molokai in a Partenavia, the customer will see Oahu, Molokai, Maui, Lanai, and Kohoolawe with narration from the pilot. It added that once at the ranch, customers would additionally be transported to a secluded beach via a helicopter. Another website stated that the trip started with "a private airplane tour over Maui, Lanai, and Molokai." The description boasted that after a day at Panda Ranch, the customer will be able to "capture more great photos of your day as you fly low over Waikiki while your pilot points out familiar landmarks and great sights."

FAA Oversight

Following the accident, a review was conducted of documented correspondence between TFA (primarily the representing lawyer) and FAA inspectors at the Honolulu Flight Standards District Office (FSDO); records from the FAA Program Tracking and Reporting System (PTRS) for TFA and the accident airplane were additionally reviewed. Copies of the correspondence are contained in the public docket for this accident.

The earliest correspondence was a letter dated August 2003 from the FSDO addressed to TFA. In pertinent part, the letter stated that the FAA had received several complaints that the operator was conducting an illegal 14 CFR Part 135 operation by performing passenger-carrying operations from Honolulu to Panda Ranch.

A representative of TFA replied to the complaint on October 3, 2003. The letter stated that, with their profit margin of 7 percent per passenger, they do not charge for air transportation to Panda Ranch.

On October 15, 2003, an FAA inspector who held the title of "Supervisor, Geographic Surveillance Unit" wrote a follow-up letter to the operator. It thanked TFA for a letter they sent on October 03, 2003, stating that the information provided within the document was of great help. It continued by saying that the FSDO must respond to all complaints that are received including the one filed against TFA indicating that they should be required to operate under the certification of 14 CFR Part 135. The letter added that its purpose was to inform TFA that the FSDO's investigation had "not established a violation of the Federal Aviation Regulations" and that the operator "may consider the matter closed."

In March 2005 another FAA inspector contacted TFA with concerns that their airplanes were being utilized to transport passengers as an illegal 14 CFR Part 135 operation. A representative for TFA responded in a letter by stating that an investigation was conducted in August 2003 at which point the FAA determined that TFA was not in violation of any FARs. The representative added that nothing had changed since that date with regard to the way TFA conducted its operations. The FAA replied on May 26, 2005, stating that the flight operations of TFA were under investigation.

FAA inspectors met with the owner and the Director of Operations (DO) of TFA on June 22, 2005, for an application meeting for an Air Carrier certificate. Then on August 31, 2005, the FAA sent a Letter of Intent (LOI) stating that the flight operations at TFA required an Air Carrier Certificate, which the operator did not possess contrary to the Federal Aviation Regulations (FARs). The FAA indicated that if TFA proactively began the process of becoming a certificated air carrier and was certificated in a timely manner, no enforcement action would be taken. The LOI was additionally informing TFA that the certification process was on hold and a meeting must be scheduled no later than September 30, 2005.

The LOI added that the FSDO was concerned that the following actions of TFA indicated an attitude of non-compliance and disregard of safety:

- Pilots being reprimanded for calling Flight Service Station for a weather briefing
- Tours being conducted outside the 25-mile limit established for Part 91 operations
- No established drug testing program for pilots of tours
- Tour operations not conducted in compliance with SFAR 71

- Hazardous materials being carried
- Aircraft being flown in un-airworthy condition
- Passengers flown in a Robinson R22 helicopter by an unqualified pilot
- Employees of TFA being advised that they were expected to operate as directed by management regardless of 14 CFR Part 135 rules once certification was complete, to the point of falsification of records if necessary to show compliance.

On November 02, 2005, a representative from TFA responded to the FAA in a letter stating that the allegations in the LOI were not credible, and that the owner of TFA had no knowledge of aircraft being flown in un-airworthy condition and that no passengers have ever been flown in a helicopter for compensation or hire.

On April 25, 2006, an FAA inspector again sent a LOI stating that the FSDO had recently become aware that TFA was providing air tours of Molokai, Maui, and Lanai. It indicated that those operations required an Air Carrier Certificate, which TFA did not possess. A cease and desist letter, with the same date, was sent from the FAA inspector to TFA stating that the FSDO had determined that certain flight operations conducted by TFA were contrary to the FARs. The operations included, but were not limited to the following:

- Transportation of passengers from point to point
- Air tour operations exceeding 25 statute miles from the point of departure
- Air tour operations that are not non-stop

It further stated that air tour operations conducted under 14 CFR Part 91 only allow a non-stop flight conducted within 25 statute miles of that point of departure. It indicated that TFA offered and conducted air tours from Honolulu that extend 45 statute miles from the departure point with a stop; they additionally offered and conducted helicopter tours from Panda Ranch, which include a stop. It added that TFA also offered flights from Honolulu to Panda Ranch that included a tour of Molokai, West Maui, and Lanai. The inspector stated that those operations required an operator to possess an Air Carrier Certificate as directed by 14 CFR Part 119 and 14 CFR Part 135. The letter stated that all operations conducted contrary to those regulations "should cease" upon the receipt of the letter.

A representative of TFA sent a letter to the manager of the FSDO on May 05, 2006. It stated that there was a discrepancy in the way FAA inspectors had interacted with TFA. It quoted the October 15, 2003, letter from an FAA inspector that stated that TFA operations were in compliance with the FARs and then referenced the LOI and the cease and desist letter.

Scope of Tours Booked

The Safety Board IIC interviewed two of the three primary tour agencies that arranged excursions and booked customers with TFA. The agencies both noted that their customer base consisted primarily of Japanese nationals who wanted 1-day tours. They noted that TFA was the only company that offered a 1-day tour to Molokai. The agencies, which booked several passengers on the accident flight, provided estimates of their passenger bookings with TFA. One agency stated that in 2005 they booked over 1,325 customers with TFA, and for the last several years consistently averaged over 100 customers a month. Every tour encompassed the customers being transported to Panda Ranch. The other agency stated that in 2000, they booked about 850 passengers with TFA, of which about 60 visited Panda Ranch. In 2005 the

agency booked about 210 passengers with TFA, all of which went to the ranch.

Pilot Information

Certificate:	Flight Instructor; Commercial	Age:	45, Male
Airplane Rating(s):	Multi-engine Land; Single-engine Land	Seat Occupied:	Left
Other Aircraft Rating(s):	None	Restraint Used:	Seatbelt, Shoulder harness
Instrument Rating(s):	Airplane	Second Pilot Present:	No
Instructor Rating(s):	Airplane Single-engine	Toxicology Performed:	No
Medical Certification:	Class 2 None	Last FAA Medical Exam:	04/01/2006
Occupational Pilot:		Last Flight Review or Equivalent:	02/01/2006
Flight Time:	2100 hours (Total, all aircraft), 110 hours (Total, this make and model)		

Aircraft and Owner/Operator Information

Aircraft Make:	Partenavia	Registration:	N4574C
Model/Series:	P68	Aircraft Category:	Airplane
Year of Manufacture:		Amateur Built:	No
Airworthiness Certificate:	Normal	Serial Number:	310
Landing Gear Type:	Tricycle	Seats:	7
Date/Type of Last Inspection:	03/01/2006, Annual	Certified Max Gross Wt.:	4320 lbs
Time Since Last Inspection:		Engines:	2 Reciprocating
Airframe Total Time:	1900 Hours	Engine Manufacturer:	Lycoming
ELT:	Installed, not activated	Engine Model/Series:	IO-360 Series
Registered Owner:	John Hutton Corp.	Rated Power:	200 hp
Operator:	John Hutton Corp.	Operating Certificate(s) Held:	None
Operator Does Business As:	Tora Flight Adventures	Operator Designator Code:	

Meteorological Information and Flight Plan

Conditions at Accident Site:	Visual Conditions	Condition of Light:	Night/Dark
Observation Facility, Elevation:	HMK, 454 ft msl	Distance from Accident Site:	14 Nautical Miles
Observation Time:	1954 HST	Direction from Accident Site:	45°
Lowest Cloud Condition:	Clear	Visibility	10 Miles
Lowest Ceiling:	None	Visibility (RVR):	
Wind Speed/Gusts:	8 knots /	Turbulence Type Forecast/Actual:	/
Wind Direction:	350°	Turbulence Severity Forecast/Actual:	/
Altimeter Setting:	29.96 inches Hg	Temperature/Dew Point:	20° C / 15° C
Precipitation and Obscuration:	No Obscuration; No Precipitation		
Departure Point:	Kaunakakai, HI	Type of Flight Plan Filed:	None
Destination:	Honolulu, HI (HNL)	Type of Clearance:	None
Departure Time:	2000 HST	Type of Airspace:	

Airport Information

Airport:	Panda Airport (HI49)	Runway Surface Type:	Grass/turf
Airport Elevation:	250 ft	Runway Surface Condition:	Dry
Runway Used:	07	IFR Approach:	None
Runway Length/Width:	2000 ft / 55 ft	VFR Approach/Landing:	None

Wreckage and Impact Information

Crew Injuries:	1 Serious	Aircraft Damage:	Substantial
Passenger Injuries:	1 Serious, 3 Minor	Aircraft Fire:	None
Ground Injuries:	N/A	Aircraft Explosion:	None
Total Injuries:	2 Serious, 3 Minor	Latitude, Longitude:	21.147778, -157.258333

Administrative Information

Investigator In Charge (IIC):	Zoë Keliher	Report Date:	04/25/2007
Additional Participating Persons:	Gerry Parrot; Federal Aviation Administration; Honolulu, HI		
Publish Date:			
Investigation Docket:	NTSB accident and incident dockets serve as permanent archival information for the NTSB's investigations. Dockets released prior to June 1, 2009 are publicly available from the NTSB's Record Management Division at pubinq@ntsb.gov , or at 800-877-6799. Dockets released after this date are available at http://dms.nts.gov/pubdms/ .		

The National Transportation Safety Board (NTSB), established in 1967, is an independent federal agency mandated by Congress through the Independent Safety Board Act of 1974 to investigate transportation accidents, determine the probable causes of the accidents, issue safety recommendations, study transportation safety issues, and evaluate the safety effectiveness of government agencies involved in transportation. The NTSB makes public its actions and decisions through accident reports, safety studies, special investigation reports, safety recommendations, and statistical reviews.

The Independent Safety Board Act, as codified at 49 U.S.C. Section 1154(b), precludes the admission into evidence or use of any part of an NTSB report related to an incident or accident in a civil action for damages resulting from a matter mentioned in the report. A factual report that may be admissible under 49 U.S.C. § 1154(b) is available [here](#).