



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of Airport Compliance
and Management Analysis

800 Independence Ave., SW
Washington, DC 20591

March 15, 2024

Mr. Robert Walsh
131 Tri-Town Rd.
Addison, VT 05491

David S. Mackey
Christina S. Marshall
ANDERSON & KREIGER LLP
50 Milk Street, 21st Floor
Boston, MA 02109

RECEIVED

MAR 15 2024

PART 16 DOCKETS

Dear Ms. Marshall and Messrs. Walsh and Mackey:

Re: *Robert Walsh v. Nantucket Memorial Airport Commission - FAA Docket No. 16-23-16*

Enclosed is a copy of the determination of the Federal Aviation Administration (FAA) with respect to the above-referenced matter.

We find that the Nantucket Memorial Airport Commission (NMAC), sponsor and operator of the Nantucket Memorial Airport, is not currently in violation of its Federal obligations regarding Grant Assurance 22, *Economic Nondiscrimination*. We find NMAC's actions that resulted in denying Mr. Walsh access to the Airport were not unreasonable and were not unjustly discriminatory given the circumstances outlined in the pleadings.

Accordingly, the above-referenced matter is dismissed.

The reasons for dismissal are set forth in the enclosed Director's Determination.

Sincerely,

Michael Helvey
Director, Office of Airport Compliance
and Management Analysis

Enclosure

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, D C

RECEIVED
MAR 15 2024

PART 16 DOCKETS

ROBERT WALSH,

COMPLAINANT,

v.

NANTUCKET MEMORIAL
AIRPORT COMMISSION,

RESPONDENT.



FAA Docket No. 16-23-16

DIRECTOR'S DETERMINATION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) on a complaint filed under Title 14 of the Code of Federal Regulations, Part 16 (14 CFR Part 16) by Robert Walsh, (Complainant or Mr. Walsh) against the Nantucket Memorial Airport Commission (Respondent or NMAC), sponsor of the Nantucket Memorial Airport (ACK or Airport).

Mr. Walsh alleges that NMAC violated Grant Assurance 22, *Economic Nondiscrimination* by denying him access to the Airport. The Complainant claims that it is a violation of Grant Assurance 22(a) for the Airport to continue to illegally stop him from operating at ACK (FAA Exhibit 1, Item 2, p. 1).

NMAC denies that it engaged in unjust discriminatory behavior towards Mr. Walsh, and claims its actions are justified. It states "The Commission's steps to control Mr. Walsh's access to and activities at the Airport are based on conduct, which in the professional opinion of the Airport Manager and the Commission, is inconsistent with orderly and safe operations at the Airport. The Commission's actions do not violate Grant Assurance 22(a), which prohibits only 'unjust' discrimination." (FAA Exhibit 1, Item 6, p. 17).

With respect to the allegations presented in this Complaint, under the specific circumstances at the Airport as discussed below and based on the Administrative Record in this proceeding, the Director finds that NMAC is not in violation of Grant Assurance 22, *Economic Nondiscrimination* and that the actions taken by NMAC were reasonable and not unjustly discriminatory under the circumstances.

The FAA's decision in this matter is based on applicable Federal law, FAA policy, and review of the pleadings and supporting documentation submitted by the parties, which comprise the Administrative Record reflected in the attached FAA Exhibit 1.

II. PARTIES

A. Complainant

Mr. Walsh is a pilot and operated an air charter service called Nantucket Express, LLC¹, from Nantucket Memorial Airport between 2005 and 2019. Mr. Walsh had an agreement with NMAC allowing him to use space on the South Ramp to support his charter activities. The air carrier certificate for the Charter Company was revoked by the FAA (FAA Exhibit 1, Item 6, Exhibit 6A). Further his Airport Operations Area (AOA) credentials were revoked by the NMAC, and the Airport Manager issued a Notice of Restriction prohibiting Mr. Walsh's use of the Airport (FAA Exhibit 1, Item 6, Exhibit 4). Based on a Part 13 Complaint finding, Mr. Walsh was allowed to continue to fly into the Airport as a transient pilot until a second Notice of Restriction was issued (FAA Exhibit 1, Item 6, Exhibits 10 and 12).

B. Respondent

The Nantucket Memorial Airport Commission is the owner and sponsor of the Nantucket Memorial Airport. The Airport is a commercial service, Part 139 facility and has two runways: Runway 6/24 (6,303 feet long) and Runway 15/33 (4,500 feet long). The Airport has an Air Traffic Control Tower. Runway 6 and Runway 24 have ILS Category I precision instrument approaches. There are 21 aircraft based at the Airport and it supports over 60,000 annual operations (FAA Exhibit 1, Item 9).

The Airport has been financed, in part, with funds provided by the FAA under the Airport Improvement Program (AIP) authorized by the Airport and Airway Improvement Act of 1982, as amended 49 U.S.C. § 47107, *et seq.*. Since 1982 NMAC has accepted \$123,951,320 in AIP funds, \$12,507,000 in COVID relief funds, and \$2,823,379 in Bipartisan Infrastructure Law (BIL) funds (FAA Exhibit 1, Item 8).

III. PROCEDURAL HISTORY

- 1) On July 10, 2023, the Complainant filed a Part 16 Complaint with the FAA (FAA Exhibit 1, Item 2).
- 2) On July 20, 2023, the FAA docketed the Complaint as FAA Docket 16-23-16 (FAA Exhibit 1, Item 3).
- 3) On July 31, 2023, the Respondent filed a Motion to Extend Time to Respond to the Complaint (FAA Exhibit 1, Item 4).
- 4) On August 14, 2023, the FAA issued an Order granting the Motion to Extend Time to Respond to the Complaint (FAA Exhibit 1, Item 5).
- 5) On September 13, 2023, the Respondent filed its Answer to the Complaint (FAA Exhibit 1, Item 6).

¹ Limited Liability Company

- 6) On September 25, 2023, the Complainant filed his Rebuttal [Reply] to the Answer (FAA Exhibit 1, Item 7).
- 7) On January 22, 2024, the FAA issued a Notice of Extension of Time (FAA Exhibit 1, Item 10).

IV. BACKGROUND

The background events in this matter are as follows:

- | | |
|----------------|--|
| 2005 to 2019 | Mr. Walsh operated an air charter service called Nantucket Express, LLC, and had an agreement with NMAC to use space on the South Ramp (FAA Exhibit 1, Item 6, p. 6). |
| July 2, 2019 | The Airport Manager issued a Notice of Restriction to Mr. Walsh based on a series of allegations of violations to NMAC's Rules and Regulations. ² The violations outlined in the Notice of Restriction included allowing someone else to use his airport credentials, leaving a disabled aircraft at the intersection of the runway and a taxiway, disorderly conduct, and not paying required fees (FAA Exhibit 1, Item 6, Exhibit 4). |
| July 12, 2019 | NMAC Commission upheld the Notice of Restriction and notified Mr. Walsh that he could request the Commission review it in 6 months. According to NMAC, neither Mr. Walsh nor his attorney responded to the invitation to review the notice after 6 months (FAA Exhibit 1, Item 6, Exhibits 7 and 8). |
| August 2, 2019 | Mr. Walsh filed a certiorari action in State Court claiming NMAC's actions were arbitrary and capricious (FAA Exhibit 1, Item 6, Exhibit 8, p. 5). |
| March 24, 2020 | In a separate matter, the FAA issued an Order of Revocation for the operating certificate for Nantucket Express, LLC (FAA Exhibit 1, Item 6, Exhibit 6A). |

² March 24, 2018, the FSDO informed NMAC that Mr. Walsh allowed someone else to use his airport credentials in violation of the Rules and Regulations. The individual had a federal criminal record and later was convicted of flying without a license. This was communicated to the Airport by FAA Flight Standards Office after an investigation (FAA Exhibit 1, Item 6, p. 7). On August 5, 2018, Mr. Walsh left a disabled aircraft he was piloting at the intersection of the Runway 15 and Taxiway G with a passenger onboard. On May 3, 2019, Airport personnel observed Robert Walsh accessing the T-hangar area to pick up a passenger, not signing into the FBO and departing without paying landing fees (FAA Exhibit 1, Item 6, p. 8). And on May 4, 2019, FAA informed the Airport that on April 26, 2019, Robert Walsh urinated in front of 3 FAA inspectors and dumped the full urinal in the grass at the Airport. NMAC believes that violates the section of the rules and regulations prohibiting disorderly conduct. Mr. Walsh disputes these allegations in a deposition dated April 7, 2023 (FAA Exhibit 1, Item 6, Exhibit 19).

- August 25, 2020 The Airport Manager sent Mr. Walsh a Supplemental Notice of Restriction in response to the FAA Order of Revocation (FAA Exhibit 1, Item 6, Exhibit 6).
- October 13, 2020 NMAC met to discuss the Supplemental Notice of Restriction. Mr. Walsh's attorney spoke on his behalf. NMAC voted in a closed session to keep the Supplemental Notice of Restriction in place until November 1, 2021, and after that time, to allow Mr. Walsh to access the Airport as a transient pilot with no security privileges (FAA Exhibit 1, Item 6, Exhibit 10).
- January 11, 2021 FAA New England Regional Office of Airports issued a 14 CFR Part 13 finding (FAA Exhibit 1, Item 6, Exhibit 10) in response to the informal complaint filed by Mr. Walsh in 2020 (FAA Exhibit 1, Item 6, Exhibit 9). The decision stated that NMAC's actions to discontinue its business relationship with Mr. Walsh and revoke his AOA credentials were justified. However, it also stated "The airport cannot restrict the Complainant from operating at the airport, as the Commission has no jurisdiction over the Complainant's pilot certificate." It further stated "[b]ased on the Complainant's transient status, the airport and Complainant should specify all requirements, protocols and applicable Rules and Regulations for the passage of the Complainant from the aircraft to the terminal and access back to the aircraft upon departure. The FAA also strongly reminds the Complainant that they are required to obey all requirements set forth by ACK as a transient operator." (FAA Exhibit 1, Item 6, Exhibit 10, p. 5).
- January 22, 2021 In response to the Part 13 finding, the Airport Manager sent a letter to Mr. Walsh permitting him to land and takeoff as a transient pilot with specific requirements that he would need to adhere to described below:
- 1)"You [Mr. Walsh] must park your automobile in a public parking space at the Airport, and pay all applicable parking fees;"
 - 2)"You must arrive and depart through the Airport FBO [fixed base operator], check in and check out in accordance with our FBO procedures, and promptly pay all applicable fees".
 - 3)"Your aircraft may only be parked on the South Apron".
 - 4)"Your aircraft may taxi only from the South Apron to the Airport's movement areas ... and you are not permitted to travel to any other areas of the airfield including, but not limited to the, the North Ramp, T-hangars, or the Tie Down Area"; and

5)“You must notify the Airport one hour in advance of any arrival or departure to or from the Airport.” (FAA Exhibit 1, Item 6, Exhibit 12).

- February 9, 2021 Mr. Walsh read a statement to NMAC at the Commission meeting (FAA Exhibit 1, Item 6, Exhibit 11). Following the public meeting, the Commission met in an executive session and discussed the interim requirements of access. It voted to allow Mr. Walsh access, as a transient pilot subject to the requirements above (FAA Exhibit 1, Item 6, p. 12).
- February 16, 2021 Mr. Walsh was notified of the conditions of his access via a letter from the Airport Manager (FAA Exhibit 1, Item 6, Exhibit 12).
- July 15, 2021 The Massachusetts Superior Court granted NMAC’s motion for judgment on the pleadings (FAA Exhibit 1, Item 6, Exhibit 8) in response to Walsh’s filing seeking review of the Notice of Restriction, *Robert Walsh vs. Town of Nantucket*. It found that NMAC’s decision was reasonable and within its authority.
- August 3, 2021 The Assistant Airport Manager sent Mr. Walsh a letter outlining violations of the conditions of his access, claiming he did not call ahead, did not call Operations on Unicom upon arrival, and taxied over a grass island. The letter warned him of the requirement to follow the conditions of his access (FAA Exhibit 1, Item 6, Exhibit 13).
- August 25, 2021 The Airport Manager sent a letter to Mr. Walsh re-instituting the Notice of Restriction “full ban” due to alleged violations throughout the summer of 2021, including another time when Mr. Walsh allegedly failed to call operations, taxied over a grass island, and parked in an undesignated spot and nearly hit another aircraft’s wing (FAA Exhibit 1, Item 6, Exhibit 14).
- September 7, 2021 Mr. Walsh’s attorney requested the Airport Manager delay the discussion on the full ban that was on the agenda for the September 14, 2021, Commission meeting (FAA Exhibit 1, Item 6, p. 13).
- September 14, 2021 The Commission met and agreed to the continuance to consider the Notice of Restriction but kept it in place during the continuance. NAMC claims it was never contacted by Mr. Walsh or his attorney on rescheduling the discussion on the notice (FAA Exhibit 1, Item 6, p. 13).
- Between December 2, 2021 and February 8, 2022 Several incidents occurred where Mr. Walsh flew into the Airport and was met by the Assistant Manager and/or a law

enforcement officer (LEO) and received a summons.³ According to the Airport Manager's email to the Flight Standards District Office (FSDO), during the February 8th incident, "Mr. Walsh was irate and erratic. He grabbed at the badge on the local PD's jacket, and I remain shocked that he wasn't arrested for that incident. He was verbally abusive to ACK staff. He does not seem able to comprehend the No Trespass and compiling citations made against him and seems to believe in a self-fabricated story that the FAA owns and operates ACK and staff are merely their custodians." (FAA Exhibit 1, Item 2, Exhibits B and D).

- February 10, 2022 FAA's New England Regional Flight Surgeon sent a letter to Mr. Walsh requesting information on his health to verify his medical certificate (FAA Exhibit 1, Item 2, Exhibit J and Item 6, Exhibit 15).
- February 14, 2022 NMAC filed an action with the State Court requesting "preliminary and permanent injunctions ordering Mr. Walsh to immediately cease and desist from piloting aircraft to or from the Airport or accessing the AOA or any other non-public area of the Airport." (FAA Exhibit 1 Item 6, Exhibit 3).
- February 17, 2022 Mr. Walsh landed at the Airport and was advised by Air Traffic Control (ATC) to taxi to the General Aviation ramp. Mr. Walsh attempted to call for a parking space on the Unicom Frequency. According to the incident report (FAA Exhibit 1, Item 2, Exhibit F), the FBO and Airport Operations were told not to respond to Mr. Walsh. Subsequently, Mr. Walsh called the FBO land line and was told they did not have any services available. Mr. Walsh replied that it was an emergency and that he needed safe harbor for his aircraft. FBO replied that he could request services in writing. Mr. Walsh again said it was an emergency and hung up. Mr. Walsh then called ATC and declared an emergency to get assistance to tie down his aircraft due to high winds. The emergency vehicle was dispatched and escorted Mr. Walsh and his aircraft to the tiedown area. Mr. Walsh was met by airport management and a LEO and was issued another summons. According to Mr. Walsh, Mr. Karberg declared the emergency secured, but Mr. Walsh indicated it was not secured until the aircraft was tied down. Per Mr. Walsh, another lineman came out 15 minutes later and he was able to tie down his aircraft (FAA Exhibit 1, Item 2, Exhibit E).
- April 12, 2022 FAA's Regional Flight surgeon sent another letter to Mr. Walsh indicating he had not provided the requested documentation and

³ The Airport refers to the violation of the trespass order as a summons and Mr. Walsh refers to it as a citation. In this DD the terms are used interchangeably.

directed him to surrender his medical certificate in 14 days (FAA Exhibit 1, Item 2, Exhibit J and Item 6, Exhibit 16).

April 20, 2022

Mr. Walsh's attorney requested permission for Mr. Walsh to fly to ACK. The Airport considered the request (FAA Exhibit 1, Item 6, Exhibit 17), but ended up denying it. The Airport admits that it was unaware of the FAA Surgeon's letter requesting the surrender of Mr. Walsh's medical certificate at that time (FAA Exhibit 1, Item 6, p. 17).

May 26, 2022

Mr. Walsh surrendered his medical certificate⁴ (FAA Exhibit 1, Item 6, Exhibit 19).

V. ISSUES

Upon review of the allegations and the relevant airport-specific circumstances, the FAA has determined that the following issue requires analysis to provide a complete review of the Respondent's compliance with applicable Federal law and policy:

Issue 1 – Whether NMAC violated Grant Assurance 22, Economic Nondiscrimination when it denied Mr. Walsh access to Nantucket Memorial Airport.

VI. APPLICABLE FEDERAL LAW AND POLICY

A. Airport Sponsor Grant Assurances

As a condition precedent to providing airport development assistance under the AIP, the FAA must receive certain assurances from the airport sponsor.⁵ Title 49 U.S.C. § 47107(a) sets forth certain sponsorship requirements to which an airport sponsor receiving Federal financial assistance must agree. The FAA has a statutory mandate to ensure that airport owners comply with these sponsor assurances. See FAA Exhibit 1, Item 1 in the Index for a list of all the grant assurances.

B. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101, assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. Commitments assumed by airport owners or sponsors in property conveyance or grant agreements are important factors in maintaining a high degree of safety and efficiency in airport design, construction, operation and maintenance, as

⁴ According to Mr. Walsh, he surrendered his Class II medical certificate, and he also claims that it is currently under review by FAA in Oklahoma City. He also believes that he can still fly as a private pilot and instructor (FAA Exhibit 1, Item 6, Exhibit 19). The letter from the FAA Surgeon states that "It has been determined that you are not qualified for any class of medical certificate at this time." It advised that "it is unlawful under 14 CFR section 61.53, for you to exercise airman privileges unless you hold an appropriate medical certificate." (FAA Exhibit, Item 6, Exhibit 16).

⁵ FAA Exhibit 1, Item 1

well as ensuring the public reasonable access to the airport. Pursuant to 49 U.S.C. § 47122, the FAA must ensure that airport owners comply with their Federal grant assurances.

C. The Complaint and Investigative Process

Pursuant to 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The Complainant should provide a concise but complete statement of the facts relied upon to substantiate each allegation and describe how the Complainant was directly and substantially affected by the things done or omitted by the respondents. The regulations governing Part 16 proceedings provide that, if the parties' pleadings supply "a reasonable basis for further investigation," the FAA should investigate "the subject matter of the complaint." 14 CFR § 16.29(a).

In accordance with 14 CFR § 16.33(b) and (e), "a party adversely affected by the Director's Determination may file an appeal with the Associate Administrator for Airports within 30 days after the date of service of the initial determination." If no appeal is filed within the time period specified in paragraph (b) of this section, the Director's Determination becomes the final decision and order of the FAA without further action.

VII. ANALYSIS

Issue 1 – Whether NMAC violated Grant Assurance 22, Economic Nondiscrimination when it denied Mr. Walsh access to Nantucket Memorial Airport.

Mr. Walsh's Position

Mr. Walsh claims NMAC is "[i]n Violation of Grant Assurance 22a" when the "[Assistant Airport Manager] continues to illegally stop me from operating at [the Airport]" (FAA Exhibit 1, Item 2, p. 1). Mr. Walsh references the Part 13 Finding by the New England Regional Office of Airports, dated March 12, 2021, to support his claim that NMAC is discriminating against him by denying him access. The Complainant believes that NMAC violated Grant Assurance 22(a) by illegally having personnel, without probable cause or jurisdiction, stop him from operating at the Airport (FAA Exhibit 1, Item 7, p. 1).

The Complainant references a specific incident on February 8, 2022, when he was met by Airport Operations, security, and LEO when he landed. He claims he pointed to the LEO's badge and indicated that he had a similar badge issued by the Massachusetts Department of Transportation that allowed him to be unescorted on any airport in the state. He indicated that the LEO issued him another citation.

Mr. Walsh alleges that the Airport has been colluding with the FAA stating "[i]t appears that Karberg [Assistant Airport Manager] and the [Boston] FSDO colluded to make this false statement known to [the NE Regional Flight Surgeon]." (FAA Exhibit 1, Item 2, p. 2).

NMAC's Position

NMAC claims that it has the authority and responsibility to establish and implement rules and regulations to operate its Airport in a safe and efficient manner. NMAC states:

The Commission's access restriction is based on evidence, including evidence provided by the FAA, that Mr. Walsh poses a continued threat to Airport safety. Mr. Walsh has, on numerous occasions, not only violated local law and policy, but violated Federal rules and regulations (FAA Exhibit 1, Item 6, p. 20).

NAMC notes that it communicated the conditions of Mr. Walsh's use of the Airport as a transient pilot, however he continued to disregard the rules and in doing so presents a safety and security risk at the Airport. It claims, "Mr. Walsh's Complaint cannot meet this burden as he fails to prove, or even plausibly suggest, that the Commission engaged in "unjust discrimination" in violation of Grant Assurance 22(a) when it suspended his access to the airfield." (FAA Exhibit 1, Item 6, p.18).

Further, NMAC cites several Part 16 Determinations and the FAA Order 5190.6B, *Airport Compliance Manual* to support its claim that its actions to deny Mr. Walsh were not unreasonable.⁶ NMAC provides a copy of its Rules and Regulations, copies of correspondence with Mr. Walsh, and the minutes from NMAC meetings to demonstrate Mr. Walsh's pattern of behavior and the response from NMAC.

NMAC denies the allegation that there has been any collusion with the Boston FSDO, the FAA's New England Regional Airports Division compliance specialist, or any other person or entity to deny Mr. Walsh any rights that he may enjoy (FAA Exhibit 1, Item 6, p.5).

In response to Mr. Walsh's claim that his state issued badge entitles him to be on any public use airport in the state, NMAC claims "the Commission states that an access badge issued by a general aviation non-commercial airport such as Plymouth does not transfer access authority to a commercial airport such as Nantucket." (FAA Exhibit 1, Item 6, p.3).

NMAC contends that Mr. Walsh's allegation that NMAC's conduct violates Grant Assurance 22(a), Economic Nondiscrimination is meritless.

Director's Determination

Mr. Walsh claims that NMAC violated Grant Assurance 22(a) by denying him access to the Airport. NAMC admits it restricted Mr. Walsh's access, but claims its actions were reasonable and do not violate Grant Assurance 22(a), which prohibits only "unjust" discrimination.

⁶ NMAC cites "Grant Assurance 22 prohibits such an airport sponsor from exercising its proprietary rights to deny aeronautical access *unreasonably*. This allows a sponsor to apply a standard for reasonable security, professional behavior, and rules of tenancy." *SeaSands Air Transport, Inc.*, 2006 WL 4393154, at *13." and "multiple infractions of established standards, potential violations of Federal rules and regulations, and non-compliance with local law and policy," the FAA has declined to find "it unreasonable for [the sponsor] to restrict [the individual's] access to the Airport" in order to protect its rights and assets. *Glyn Johnson d/b/a Zoo City Skydivers v. Yazoo Cnty.*, FAA 16-04-06, 2006 WL 559138, at *26 (Feb. 9, 2006), as well as the FAA's Airport Compliance Manual that states "The airport sponsor may ... prohibit access by an individual or individual service provider that has not complied with the airport's minimum standards or operations rules for safe use of airport property."

Grant Assurance 22(a) states:

[An airport sponsor] will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.

The question then becomes whether NMAC's action regarding Mr. Walsh's access were unreasonable and/or unjustly discriminatory. To evaluate the reasonableness of NMAC's actions requires a look at when, why, and how NMAC's actions occurred.

NMAC's Actions

The Airport Manager issued the first Notice of Restriction to Mr. Walsh on July 2, 2019, in response to several safety and security incidents on the Airport involving Mr. Walsh. One specific security incident was reported to the Airport by the Boston FSDO following an investigation⁷ that involved serious security violations. The Airport Manager referenced the Airport Rules and Regulations that authorized him to take this action (FAA Exhibit 1, Item 6, Exhibit 4).

NMAC discussed the vote to ratify the Notice of Restriction in accordance with the Airport's Rules and Regulations. Mr. Walsh was invited to attend the meeting and spoke on his own behalf (FAA Exhibit 1, Item 6, Exhibit 5).

On March 24, 2020, the FAA Northeast Team of the Chief Counsel Enforcement Division revoked the air carrier certificate for Nantucket Express, LLC, operated by Mr. Walsh resulting from an investigation identifying numerous violations (unrelated to the activity cited in the Notice of Restriction). Subsequently, the Airport Manager supplemented the Notice of Restriction with the additional information from the FAA. The supplement was brought to the Commission on October 13, 2020, and Mr. Walsh's attorney spoke at the meeting, claiming the restriction was arbitrary and capricious (FAA Exhibit 1, Item 6, Exhibit 7). The Commission voted in a closed session to extend the Notice of Restriction through November 1, 2021, and then after that date to allow Mr. Walsh to operate as a transient pilot only (FAA Exhibit 1, Item 6, p. 10).

The FAA New England Regional Airports Division issued its Part 13 informal decision on January 11, 2021, finding that NMAC violated Grant Assurance 22(a) when it attempted to deny Mr. Walsh from all use of the Airport. The decision stated that Mr. Walsh maintained a current pilot's license and, as such, NMAC should allow Mr. Walsh access to the Airport as a transient pilot. The decision stated that "the airport and Complainant should specify all requirements, protocols and applicable Rules and Regulations for the passage of the Complainant from the aircraft to the terminal and access back to the aircraft upon departure. The FAA also strongly

⁷ "Following an investigation, the Flight Standards Service at the FAA reported to the Airport that, on March 24, 2018, Mr. Walsh allowed an individual other than himself to use his airport issued access credential to gain entry to the AOA. This was a violation of Section VI.1 of the Rules and Regulations." (FAA Exhibit 1, Item 6, p.7).

reminds the Complainant that they are required to obey all requirements set forth by ACK as a transient operator.” (FAA Exhibit 1, Item 6, Exhibit 11).

Based on the Part 13 decision, NMAC responded, and the Commission voted to allow Mr. Walsh access the Airport as a transient private pilot under specific requirements described in the background section above (pp. 4-5). The record does not show that Mr. Walsh disputed the conditions, which were communicated to Mr. Walsh from NMAC in a letter dated February 16, 2021 (FAA Exhibit 1, Item 6, Exhibit 12).

On August 3, 2021, the Airport Manager sent Mr. Walsh a letter warning that he had not been following the requirements of his access and documented specific dates and times of his noncompliance (FAA Exhibit 1, Item 6, Exhibit 13). It stated he repeatedly did not call ahead as required and did not call the Unicom frequency to get a parking spot. It further noted that Mr. Walsh taxied across a grass island that is not suitable for taxiing aircraft and intentionally avoided the ramp staff. The letter explained that the transient apron is congested and calling the Unicom frequency allows the operation staff to safely manage this congestion. According to NMAC, Mr. Walsh continued to disregard the conditions and on August 25, 2021, the Airport Manager reissued the Notice of Restriction instituting a full ban due to continued noncompliance.

NMAC further informed Mr. Walsh he would no longer be permitted on the AOA or nonpublic areas of the Airport and doing so would be considered trespassing. The letter stated “You have repeatedly failed to provide advance notice of your operation, operated your aircraft across grass island not suitable for taxiing, and deliberately avoided Airport ramp control and oversight. Both as a series of individual events and as a pattern of behavior, your repeated willful violation of Airport regulations is inconsistent with orderly and safe operations at the Airport.” (FAA Exhibit 1, Item 6, Exhibit 14). This letter claimed that Mr. Walsh nearly hit another aircraft’s wingtip.

NMAC indicated that Mr. Walsh continued to fly into the Airport as a transient pilot in violation of the reinstated Notice of Restriction. Mr. Walsh does not dispute this claim. The Director observes that with each incident tensions continued to escalate, and a LEO was involved on multiple occasions. Mr. Walsh claims that the Assistant Airport Manager repeatedly and illegally stopped him on the ramp and had LEO issue him a summons.

Director’s Analysis of NMAC’s Actions

The Director notes that NMAC followed its published Rules and Regulations, which state:

Sometimes a violation of these Rules and Regulations will be so severe that in the opinion of the person with enforcement authority, that the violator/s should be prohibited from the use of the Airport. In this instance, the act will be immediately reported to the Airport Commission, who will be the final decision authority as to the severity of the punishment. However, the person with enforcement authority has the power to immediately restrict an individual from the Airport until such time as the Airport Commission rules on the issue.” (FAA Exhibit 1, Item 6, Exhibit 2)

The Director also notes that after each Notice of Restriction, a Commission vote was held and Mr. Walsh or his attorney was allowed to speak.⁸ NMAC's participation in the process ensures that the actions of the Airport Manager were not arbitrary and provides accountability. Further, NMAC adjusted its position in response to the FAA Part 13 determination by restoring access to Mr. Walsh but put in place requirements for access in accordance with the Part 13 finding. The record provides no evidence that Mr. Walsh argued against the requirements or attempted to negotiate different conditions. However, he continued to not follow the requirements, as well as the general operating rules of the Airport (e.g., taxiing across a grass island). NMAC warned Mr. Walsh that it would reinstate the Notice of Restriction if rule violations persisted. However, Mr. Walsh continued to not comply. Only after the continued noncompliance did NMAC reinstate the Notice with a full access ban under threat of prosecution for trespassing.⁹ Mr. Walsh continues to claim "[t]he airport has no jurisdiction to stop and detain me on the SIDA [Secure Identification Display Area] ramp, or to issue me illegal trespass citations." (FAA Exhibit 1, Item 7, p.1).

The Director disagrees with Mr. Walsh and notes that NMAC, as the airport operator, has authority over the operation of the ramp and is ultimately responsible for the safety and security of the Airport. Mr. Walsh claims that his badge issued by the State provides him access to any public airport. However, the badge only provides access to general aviation airports (FAA Exhibit 1, Item 2, Exhibit M). Nantucket is a commercial service Part 139 certificated airport and has additional required levels of security. Further NMAC is responsible to ensure the airport operates in a safe and secure manner and in accordance with its Airport Certification Manual in order to maintain its FAA Part 139 Certificate.

NMAC has the authority to issue and revoke AOA privileges for the Airport. It revoked Mr. Walsh's AOA privileges and put requirements on his access as a transient pilot. These requirements were designed to assist the Airport in maintaining the required level of safety and security.

For the National Airspace System to function, various organizations and individuals play critical roles. The FAA Air Traffic Organization, the FAA Flight Standards, the Transportation Security Administration, airport operators, tenants, aeronautical users, and the flying public all must follow reasonable rules and regulations and interact in a manner that allows the system to function in a safe and secure manner. Just as an airport sponsor has the responsibility to operate its airport in a safe and efficient manner to meet its Federal obligations, a pilot has a responsibility to follow reasonable operational rules and regulations and to respect the authority of the airport and the FAA to administer those rules.

⁸ According to the meeting minutes, when Mr. Walsh or his attorney did speak in front of NAMC, they spoke about his experience as a pilot and that he was a safe pilot who flew into Nantucket frequently and disallowing him access would be a burden. His attorney further claimed that the Airport Rules and Regulations do not specifically define penalties. Mr. Walsh never did address or attempt to apologize for his continued erratic behavior. (FAA Exhibit 1, Item 6, Exhibit 7).

⁹ Mr. Walsh claims that each trespassing summons was thrown out by the Court but provides no evidence to support this claim.

The Director reviewed NMAC's actions, the Airport Rules and Regulations, and the requirements of Mr. Walsh's access put in place by NMAC and finds the Airport's requirements of access were reasonable for the following reasons:

- 1) Monitoring user activity for safety and compliance with airport rules and regulations is a core function of managing an airport. Mr. Walsh's history of violations of the rules and regulations resulting in his AOA credentials being revoked by NMAC required NMAC to be cautious and to monitor Mr. Walsh's use as a transient pilot to ensure the safety and efficiency of the Airport.
- 2) The requirements are not unreasonably complex or difficult to comply with and do not appear to have created an undue burden. Mr. Walsh never argues that the requirements were a burden, only that they were applied solely to him. In that regard, Mr. Walsh is correct – his actions alone are the basis of the restrictions and conditions of access imposed by NMAC. There is no evidence in the record of any other user requiring NMAC to take similar actions.
- 3) Requirements 1 to 4 (see pages 4-5 above) put in place by NMAC are fairly standard procedures that generally may apply to any transient pilot using the FBO facilities at the Airport, and airports in general.
- 4) The fifth requirement of providing prior notice was not a prior permission rule, but rather a notification so the Airport could be ready to ensure that Mr. Walsh followed the rules and did not compromise the safety and security of the Airport.

Summary

The Director finds that NMAC's Rules and Regulations are not unreasonable, and thus the actions taken by NMAC in accordance with its Rules and Regulations as applied to Complainant are likewise reasonable. NMAC took actions to mitigate potentially unreasonable restrictions: 1) At the FAA's request, it adjusted its Notice of Restriction based on the Part 13 finding to provide access to Mr. Walsh as a transient pilot, and 2) It established reasonable requirements for Mr. Walsh's transient access that did not cause an undue burden and were appropriate given the Complainant's history. The requirements were communicated to Mr. Walsh in writing. It first provided a warning to Mr. Walsh and upon further noncompliance with the requirement, it moved to restore the Notice of Restriction.

NMAC's actions were not arbitrary or capricious, but were methodical, deliberate and gave Mr. Walsh multiple opportunities to comply and act in accordance with the Airport Rules and Regulations, as well as the requirements for his access. However, Mr. Walsh continued to fail to comply.

The FAA requires airport sponsors to provide reasonable access to all types of aeronautical users, but, importantly, it also requires them to operate their airport in a safe and efficient manner. In rare instances, the need to ensure the safety and efficiency of the airport may result in a reasonable restriction of access on some level. The FAA expects airports to maximize access and does not permit access to be denied without just cause.¹⁰

In this case, the restriction is limited to one individual in response to the specific actions and inactions of that individual documented by the sponsor. Mr. Walsh believes it is his right to access the public airport as a transient pilot, however, repeated violations of rules and regulations related to access may negate that right. If an aeronautical user is not following reasonable airport rules and regulations and has demonstrated a clear lack of respect for the authority of the airport sponsor, the result can in certain circumstances include a denial of access. Nothing in the record suggests that Mr. Walsh was arbitrarily targeted for enforcement actions. Mr. Walsh could have maintained access to the Airport by complying with the reasonable requirements set forth by NMAC.

The Director notes that interactions between the parties unfortunately continued to escalate between December 2021 through February 2022. However, it is not in the Director's purview to judge these individual events, only the reasonableness of the access restrictions set by NMAC and if they violated the Federal grant assurances.

Regarding Mr. Walsh's FAA medical certificate and the claims of the Airport colluding with FAA staff, such claims are outside the scope of 14 CFR Part 16. Under 14 CFR § 16.1(a), the FAA's jurisdiction is specifically limited to proceedings involving complaints against federally assisted airports arising under legal authority including portions of the Federal Aviation Act of 1958, as amended, 49 USC § 40101, et seq.; the Airport and Airway Improvement Act of 1982, as amended and recodified at 49 USC § 47107 et seq.; and regulations, grant agreements, and documents of conveyance pursuant to those Acts.

The Director finds the actions taken by NMAC were not unreasonable and were not unjustly discriminatory given the circumstances documented in the pleadings. He further finds NMAC's actions did not violate Grant Assurance 22.

Conclusion

Upon consideration of the submissions, responses by the parties, the administrative record herein, applicable law and policy, and for the reasons stated above, the Director of the FAA Office Airport Compliance and Management Analysis finds and concludes:

NMAC is not in violation of Grant Assurance 22, *Economic Nondiscrimination*.

¹⁰ Grant assurance 22 might, depending on the circumstances, prevent a sponsor from banning an entity from the airport in perpetuity, without opportunity for rehabilitation (See *SeaSands Air Transport, Inc. v. Huntsville-Madison County Airport Authority*, FAA Docket 16-05-17, Director's Determination, p. 17 (August 28, 2006)).

ORDER

ACCORDINGLY, it is ordered that:

1. The Complaint is dismissed.
2. All Motions not expressly granted in this Determination are denied.

RIGHT OF APPEAL

This Director's Determination under FAA Docket No. 16-23-16 is an initial agency determination and does not constitute final agency decision and order subject to judicial review under 49 U.S.C. § 46110. [14 CFR § 16.247(b)(2).] A party to this proceeding adversely affected by the Director's Determination may file an appeal with the Associate Administrator within 30 days after the date of service of the initial determination. If no appeal is filed within the time period specified, the Director's Determination becomes the final decision and order of the FAA without further action. A Director's Determination that becomes final because there is no administrative appeal is not judicially reviewable. [14 CFR § 16.33.]

MICHAEL W
HELVEY

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Michael Helvey
Director, Office of Airport Compliance
and Management Analysis

March 15, 2024

Date