

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

DOUGLAS HAYNES,

COMPLAINANT,

v.

ADAMS COUNTY, COLORADO,

RESPONDENT.



FAA Docket No. 16-22-04

ORDER OF THE DIRECTOR

I. INTRODUCTION

Mr. Douglas Haynes (Mr. Haynes/Complainant) filed a Complaint on March 31, 2022 under 14 CFR Part 16 against Adams County, Colorado (County/Respondent), the sponsor of the Colorado Air and Spaceport (CFO/CASP).¹ Mr. Haynes alleges the County has violated Grant Assurance 30, *Civil Rights*, Title VI of the Civil Rights Act of 1964 (“Title VI”), and related laws. Specifically, Mr. Haynes alleges that the County failed to provide him with a suitable office space, attempted to illegally tow his vehicles, evicted him from his storage space,² hid his existence as a founding business at the airport, restricted his access to taxiways and run-up areas, and recommended Federal Aviation Administration (FAA) supported rules that directly limited his ability to establish and grow his business. (FAA Exhibit 1, Item 1, pp. 3-7.) Mr. Haynes also asserts that these actions were taken against him as a black man since 1984 and in contrast to what has been done or allowed for his white business competitors. (See FAA Exhibit 1, Item 1.)

In response, on April 28, 2022, the County filed a Motion to Dismiss or, in the Alternative, for Summary Judgment. The County argues that the complaint “(1) does not comply with 14 CFR § 16.23(b)(2); 2) does not state a claim that surpasses the plausibility standards of *Twombly* and *Iqbal*; 3) does not state a claim against the correct legal entity and 4) does not state a claim which adequately pleads the necessary elements of racial discrimination.” (FAA Exhibit 1, Item 4, pp. 2-3.) The County, in the alternative, moves for Summary Judgment pursuant to 14 CFR § 16.26(c)(1) and asserts that “When viewed in the light most favorable to the Complainant, the evidence will demonstrate no genuine issue of material fact on each and all of Complainant’s claims.” (FAA Exhibit 1, Item 4, p. 7)

¹ Pleadings refer to Colorado Air and Spaceport as CASP, however, the FAA recognized location identifier for this airport is CFO. The Order will use CFO, but includes CASP where used by the parties.

² The original complaint discussed attempt to evict, but during the pleadings the Complainant was evicted from his storage space.

On May 4, 2022, the Complainant filed a Response to the Respondent's Motion to Dismiss as permitted by 14 CFR. § 16.26(b)(3) and (c)(3). In his response, Mr. Haynes alleged for the first time that his business is a "disadvantaged business" and added references to violations of 49 CFR. Parts 26/23. (FAA Exhibit 1, Item 6, pp. 2, 9.)

II. PARTIES

A. The Airport

CFO is a public-use general aviation reliever airport with approximately 291 based aircraft which averages 207 operations per day. <https://adip.faa.gov/agis/public/#/airportData/CFO>. CFO was previously named Front Range Airport (FTG) and became CFO in 2014. The development of the airport was financed, in part, with FAA Airport Improvement Program (AIP) funding, authorized by the Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. § 47101, et seq. The AIP provides grants to public agencies for the planning and development of public-use airports that are included in the National Plan of Integrated Airport Systems.

The County is the sponsor of CFO and previously FTG. As the sponsor, the County has received \$53,166,538 in AIP funding since 1982, including funding for land acquisition. The County also received approximately \$608,662 in COVID relief funds under the Coronavirus Aid, Relief, and Economic Security Act (CARES), the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA), and the American Rescue Plan Act (ARPA) between 2020 and 2022. (FAA Exhibit 1, Item 7.) As the sponsor for CFO, and its predecessor FTG, the County signed the grants and assumed the grant assurances as part of the terms of the grant agreements.³ (FAA Exhibit 1, Items 8 and 9.) As a condition of receiving Federal funding, the County must comply with the FAA Sponsor grant assurances and related Federal law. The Grant Assurances are mandated by statute and are part of the terms of the Grant Agreement. The Grant Assurances require compliance with Title VI, Sec. 47123, and 14 CFR Part 21 and nondiscrimination by the airport sponsor as a condition of receiving an AIP grant. A copy of the grant assurances is available at: www.faa.gov/airports/aip/grant_assurances/

B. The Complainant

Mr. Douglas Haynes is a black man, a Colorado resident, and a tenant at CFO. Mr. Haynes is the CEO of DEHAS LTD dba Blue Ridge Nebula Starlines. (FAA Exhibit 1, Item 1.)

III. BACKGROUND AND PROCEDURAL HISTORY

A. Complainant's Position

Mr. Haynes asserts that the County discriminated against him on the basis of race, color, or national origin when it did not provide him suitable office space like that of his white

³ On September 28, 1982, The County, as the sponsor for FTG accepted its first AIP grant (AIP No. 3-08-0016-01). On April 8, 1986, the County, as co-sponsor of FTG with the Front Range Airport Authority, accepted its first AIP grant for land (AIP No. 3-08-0016-05).

counterpart, Air Methods; illegally attempted to tow-off his automobiles; attempted to evict him from “unsuitable almost uninhabitable” storage; and that the foregoing actions directly limited his ability to establish, grow and sustain a flight club, training center, airline and spaceline. (FAA Exhibit 1 at p. 3, para.1 and p. 4, para. 2.)

Mr. Haynes also asserts that the County declined to post, or let him post, his business name/logo, at the airport or on its webpages as they did for his white business competitors like Sierra Nevada’s Dream Chaser and Virgin Galactic Spaceship 2. (FAA Exhibit 1 at p. 5, para. 3 and p. 6, para. 4.)

He argues that, in contrast to his white business competitors such as Air Methods, the County made efforts to restrict him from utilizing normal publicly accessible taxiways or standard test engine run-up areas. (FAA Exhibit 1 at pp. 6-7, para. 5 and p. 4, para. 2.) Finally, Mr. Haynes asserts that the County discriminated against him when it implemented limiting rules against his business such as “no schedule airliner flight allowed in the 80’s, or the more recently created/established, no unman [sic] eVTOL test flights” (FAA Exhibit 1, Item 1 at p. 7, para. 6.)

Mr. Haynes claims that, in an attempt to informally resolve the matters alleged in his complaint, he had one-on-one private meetings with airport administrators at both the spaceport and county authority levels for over a month and filed a prior Part 13 informal investigation with the Denver Airports District Office. (FAA Exhibit 1, Item 1 pp 8-9.)

B. Airport’s Position

The County filed a Motion to Dismiss and in the Alternative a Motion for Summary Judgment. The County argues that the Complaint is “facially invalid as it (1) does not comply with 14 CFR § 16.23(b)(2); 2) does not state a claim that surpasses the plausibility standards of Twombly and Iqbal; 3) does not state a claim against the correct legal entity and 4) does not state a claim which adequately pleads the necessary elements of racial discrimination.” (FAA Exhibit 1, Item 4 pp. 2-3.) The County, in the alternative, moves for summary judgment pursuant to 14 CFR § 16.26(c)(1) and asserts that “When viewed in the light most favorable to the Complainant, the evidence will demonstrate no genuine issue of material fact on each and all of Complainant’s claims.” (FAA Exhibit 1, Item 4 pp. 6-7.)

C. 14 CFR Part 13 Informal Complaint

On or about February 2, 2022, Mr. Haynes filed an informal complaint with the FAA, Denver Airports District Office (DEN ADO), via email regarding his lease termination and he provided additional information on February 22, 2022. (FAA Exhibit 1, Item 6, Exhibits 4 – 4b.) The DEN ADO contacted the County and began their investigation, and on February 21, 2022, the County responded via email. The County provided pictures from the storage unit and states, “The last page of his (Mr. Haynes) lease states ‘Only aircraft parts will be stored in storage unit T31 #1’. He has essentially set up an apartment within the storage unit. We have decided not to renew his

storage unit lease and will be addressing his actual t-hangar lease next.”⁴ (FAA Exhibit 1, Item 10.) The DEN ADO did not complete the Part 13 investigation before Mr. Haynes filed this Part 16 complaint on March 31, 2022.

Standard of Review of Motion to Dismiss and Motion for Summary Judgment

Under 14 CFR § 16.23, a person directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. The burden of proof is on Mr. Haynes to show noncompliance with a statute, regulation, order, agreement, or document of conveyance. 14 CFR § 16.23(k)(1). The proponent of a motion (including a motion to dismiss, or for summary judgment), request, or order has the burden of proof on that filing. *See* 14 CFR § 16.23(k)(2). Under 14 CFR § 16.26(a), a respondent may file, in lieu of an answer to a complaint, a motion to dismiss the complaint or a motion for summary judgment on the complaint.

A motion to dismiss a complaint must state the reasons for seeking dismissal of either the entire complaint or of specified claims in the complaint. To prevail, the County must show either that: (1) the complaint appears on its face to be outside the FAA's jurisdiction; (2) the complaint, on its face, does not state a claim that warrants an investigation or further FAA action; or (3) the complainant lacks standing, under 14 CFR §§ 16.3 and 16.23, to file a complaint. The respondent is expected to file a supporting memorandum of points and authorities. The complainant is permitted to file an answer to a motion to dismiss with a statement of reasons for opposing dismissal, per 14 CFR § 16.26(b)(3).

A motion for summary judgment may seek dismissal of the entire complaint or of specified claims and issues. To prevail, the respondent must show there is no genuine issue of material fact for Part 16 adjudication and that the complaint, when viewed in the light most favorable to the complainant, should be summarily adjudicated in the respondent's favor as a matter of law. The respondent is expected to file a statement of the material facts as to which respondent contends there is no genuine issue of material fact, and may include affidavits and documentary evidence. 14 CFR § 16.26(c)(1)(2). The complainant is permitted to file an answer to a motion summary judgment with a statement of the material facts as to which the complainant contends there is a genuine issue of material fact, per 14 CFR § 16.26(c)(3).

When a complainant alleges a disparate treatment claim of discrimination under Title VI, it must be supported by evidence of discriminatory intent. Examples of direct evidence include explicit selection criteria and statements from a decision-maker that a person or group will be treated differently because of a protected basis, including race or national origin. Absent direct evidence of discriminatory intent, the *McDonnell Douglas* burden-shifting analysis governs a Title VI claim of discrimination against an individual. *See* DOJ Title VI Legal Manual, Section I, Part B (April 22, 2021). Under *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), complainants must first establish a *prima facie* case of discrimination by demonstrating (A) they are a member of a protected class; (B) they suffered an adverse action; and C) they

⁴ To ensure the protection of privacy, the Director has not included the referenced pictures as part of this docket. The pictures show a bed, two televisions, coat rack, particleboard, weight bench, cooler, and many other nonaeronautical personal effects. There are no aeronautical uses identified by the Director in these pictures.

were treated differently than similarly situated individuals who are not of the same protected class.

The complainant has the initial burden of alleging facts to support a *prima facie* case of discrimination. The party accused of discrimination can rebut the *prima facie* case, but has the burden to show a legitimate nondiscriminatory reason for the action. That reason must then be evaluated to ensure it is not merely pretext for a discrimination. (See DOJ Title VI Legal Manual, Section VII, Part C citing *Brooks v. Cty. Comm'n of Jefferson Cty.*, 446 F.3d 1160, 1162–63 (11th Cir. 2006), *McDonnell Douglas*, 411 U.S. at 804; DOJ Title VI Legal Manual, Section VI, Part B citing *Brooks v. Cty. Comm'n of Jefferson Cty.*, 446 F.3d 1160, 1162–63 (11th Cir. 2006)).

IV. PRELIMINARY MATTERS

A. Properly Named Sponsor

The County provides that it “assumed direct control” of FTG (the predecessor to CFO) in 2014 when the Front Range Airport Authority (Authority) dissolved. (FAA Exhibit 1, Item 4 p. 2.) The County argues that since the Authority operated the airport until 2014, “the County cannot be held responsible for the actions of its predecessor at the airport. To the extent that Complainant’s claims predate 2014, CASP and Adams County are not the appropriate sponsor pursuant to 14 CFR § 16.3 for this action.” (FAA Exhibit 1, Item 4 p. 4.)

As explained above, FAA records indicate that the County has accepted AIP funding since 1982 as the sponsor of FTG and now CFO. The County signed the grants and accepted the grant obligations. As an airport sponsor, the County cannot escape liability for grant obligations simply because it does not provide for the day to day operation of the airport.

Therefore, the Director will evaluate this complaint against the County as the sponsor of both FTG and CFO for the allegations presented by Mr. Haynes.

B. Allegations of Violations under the Disadvantaged Business Enterprise Program and 49 CFR Parts 23 and 26.

In his initial complaint, Mr. Haynes did not reference the Disadvantaged Business Enterprise (DBE) Programs under 49 CFR Parts 23 and 26. The County, in its Motion for Summary Judgment, stated that Mr. Haynes cannot provide evidence of noncompliance with 49 CFR § 26.105 (FAA Exhibit 1, Item 4 p. 6.) In his Response to the County’s Motion, Mr. Haynes claimed for the first time that his business is a “disadvantaged business” and added references to violations of 49 CFR Parts 23 and 26. (FAA Exhibit 1, Item 6 pp. 2, 9)

Mr. Haynes did not allege any facts demonstrating any violations by the County in the administration of its DBE or Airport Concession Disadvantaged Enterprise (ACDBE) programs. He also did not provide any evidence that he is, or has applied to be, a contractor on a Department of Transportation (DOT)-assisted contract or concessionaire at the airport. In addition, under 49 CFR Parts 23 and 26, Colorado businesses participating in the DBE or

ACDBE programs must be certified by the Colorado Unified Certification Program (UCP) and listed in the Colorado UCP directory. (See 49 CFR §§ 23.31, 26.31, and 26.81.) Although Mr. Haynes identifies his businesses as “disadvantaged businesses,” he did not provide any evidence of certification. The Director searched the Colorado UCP Directory as to Mr. Haynes’ and his businesses’ certification status, and there is no record that Mr. Haynes’ businesses are certified as either DBE’s or ACDBE’s. (FAA Exhibit 1, Item 11.)

Mr. Haynes did not state a claim that warrants FAA investigation into the County’s ACDBE or DBE programs and therefore, Mr. Haynes’ conclusory allegations of discrimination under 49 CFR Parts 23 or 26 are dismissed.

C. Grant Assurance 22, Economic Nondiscrimination

Mr. Haynes alleges the County discriminated against him by its efforts to deny him access to the taxiway and standard engine run-up areas in contrast to his white business competitors. (FAA Exhibit 1, Item 1, at p. 6, para. 5.) While Mr. Haynes does not allege a violation Grant Assurance 22, *Economic Nondiscrimination*, the Director has considered whether the allegations presented should also be reviewed under this grant assurance.

Grant Assurance 22 requires the owner of any airport developed with Federal grant assistance to operate the airport for the use and benefit of the public and to make it available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms, and without unjust discrimination. With regard to an allegation of an unreasonable denial of access under Grant Assurance 22, *Economic Nondiscrimination*, a complaint must clearly and concisely include a description in the initial Complaint of the aeronautical access that was denied, how such access was effectively denied, and why the sponsor’s actions were unreasonable. (See *BMI Salvage Corporation & Blueside Services, Inc. v. Miami-Dade County, Florida*, FAA Docket No. 16-05-16, Director’s Determination, p. 12, (July 25, 2006)).

Beyond alleging attempted denial of access to the taxiway and run-up areas, Mr. Haynes does not provide an explanation of how his access was denied or why the sponsor’s actions were unreasonable. Therefore, the Director finds that Mr. Haynes does not state a claim that warrants investigation of a violation of Grant Assurance 22, *Economic Nondiscrimination*.

V. ANALYSIS AND DISCUSSION

Mr. Haynes alleges that the County discriminated against him when it failed to provide him with suitable office space, attempted to illegally tow his vehicles, evicted him from storage space, hid his existence as a founding business at the airport, made efforts to restrict his access to taxiways and run-up areas, and recommended FAA supported rules that directly limited his ability to establish and grow his business.

In all of these actions Mr. Haynes alleges violations of Grant Assurance 30, *Civil Rights*, and Title VI of the Civil Rights Act of 1964. Grant Assurance 30, *Civil Rights* states:

The owner of an airport will promptly take any measures necessary to ensure that no person in the United States shall on the grounds of race, creed, color, national origin, sex, age or disability will be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in any activity conducted with, or benefiting from, funds received from this grant.

The Director has identified the following issue for review:

Issue 1. Whether, viewing the evidence in the light most favorable to Mr. Haynes, there is any genuine dispute of material fact regarding whether the County is in violation of Grant Assurance 30, *Civil Rights*, Title VI of the Civil Rights Act of 1964, and related laws, by (1) not providing Mr. Haynes with suitable office space, (2) attempting to illegally tow his vehicles, (3) evicting him from storage space, (4) hiding his existence as a founding business at the airport, (5) making efforts to restrict his access to taxiways and run-up areas, and (6) recommending FAA supported rules that directly limited his ability to establish and grow his business.

The FAA is treating the County's Motion to Dismiss or, in the alternative, for Summary Judgment as a Motion for Summary Judgment. The Director, therefore, analyzes the Motion for Summary Judgment from the perspective of Grant Assurance compliance and as provided in 14 CFR § 16.26.

Respondent's Motion for Summary Judgment

Issue 1. Whether, viewing the evidence in the light most favorable to Mr. Haynes, there is any genuine dispute of material fact regarding whether the County is in violation of Grant Assurance 30, *Civil Rights*, Title VI of the Civil Rights Act of 1964, and related laws, by (1) not providing Mr. Haynes with suitable office space, (2) attempting to illegally tow his vehicles, (3) evicting him from storage space, (4) hiding his existence as a founding business at the airport, (5) making efforts to restrict his access to taxiways and run-up areas, and (6) recommending FAA supported rules that directly limited his ability to establish and grow his business.

Mr. Haynes alleges that the County discriminated against him in violation of Grant Assurance 30, *Civil Rights* and Title VI of the Civil Rights Act of 1964. The County argues that Mr. Haynes does not "state a claim with all necessary elements of discrimination" (FAA Exhibit 1, Item 4, p. 4). To establish a *prima facie* case the complainant must establish that they: (A) are a member of a protected class; (B) suffered an adverse action; and (C) were treated differently than similarly situated individuals who are not of the same protected class. If a *prima facie* case is made, the burden shifts to the County to rebut the case with a legitimate non-discriminatory reason that is not merely a pretext for discrimination. (*See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)).

It is uncontroverted that Mr. Haynes, a black man, is a member of a protected class. In reviewing the County's Motion for Summary Judgment, the Director evaluates each allegation. The Director must review the allegations for evidence of discriminatory intent. For allegations supported by indirect evidence of discriminatory intent, the Director evaluates the allegations

to determine (I) if Mr. Haynes establishes the remaining elements of a *prima facie* case, (II) if he does, whether the County offers a legitimate non-discriminatory reason that is not merely a pretext for discrimination and (III) The Complainant can rebut the County by showing that the reason is pretext for discrimination.

(1) Office Space:

Mr. Haynes alleges that the County did not provide him with suitable office space “as promised over and over again even though I have been on the waiting list for years but looked over more than once to the benefit of my fellow white business competitors.” He provides that Air Methods is such a competitor. Mr. Haynes states that this claim is “substantiated by both Airport administration records, and numerous FAA title 14 violation based on investigation/filings notes obtains [sic] as recent as in 2014 and now 2022, but as far back as 1984.” (FAA Exhibit 1, Item 1, at p. 3, para. 1.)

The County states that it does not have a waiting list for office space or any record that Mr. Haynes submitted an application for office space or signed a lease for office space. Additionally, the County argues that Mr. Haynes does not articulate how other businesses were treated differently or if they were similarly situated. (FAA Exhibit 1, Item 4, p. 6.)

Mr. Haynes argues in his Response to the County’s Motion that he entered a month-to-month lease with the County “for his use of an aircraft storage hangar, Unit T 31 #1, commencing September 1, 2014 . . . as a temporary means of providing the respondent a substitute office space until one could be made available to him while placing him on a waiting list.” (FAA Exhibit 1, Item 6, pp. 10-11.) As evidence, Mr. Haynes included a copy of the January 31, 2022 “Notice of Termination”, that he received from the County, but there is no reference to the space being a “substitute for office space” (FAA Exhibit 1, Item 6, Exhibit 2.) He states that “For decades, and until one of the spaceports [sic] white business named Air Methods, scaled down the CASP has had no suitable amount of office space available for all of its tenants to occupy.” (FAA Exhibit 1, Item 6, at p. 14, para. 3.) He alleges, that he “was tricked into believing for years that there was a waiting list and therfor [sic] blocked from advancing his business.” (FAA Exhibit 1, Item 6, at p. 14, para. 3.)

Mr. Haynes’ “Storage Unit Lease” does not mention office space or that it is for temporary office space. (FAA Exhibit 1, Item 4, Exhibit 2.) Instead the lease states, “The Storage Unit shall be used and occupied by Tenant solely for the storing of aircraft parts owned by tenant.” (FAA Exhibit 1, Item 4, Exhibit 2, p.1.)

The County provides that there is office space available that he may apply for, but they have not received a request from him. (FAA Exhibit 1, Item 4, p. 7.) Mr. Haynes does not provide evidence that he applied for the waiting list and was denied or that tenants outside of his protected class were given office space while he was denied it. While Mr. Haynes references Air Methods, he does not allege that they were on a waiting list for space and provided space ahead of his needs.

Mr. Haynes fails to make a *prima facie* case as he does not identify someone outside of his protected class that was treated differently under the same circumstances. There is no

direct evidence of discrimination, and the County offered a legitimate non-discriminatory reason for not providing office space – Mr. Haynes has not applied for office space and his lease makes no mention of office space. There is no evidence that the County’s reason is a pretext for discrimination. Because the Director finds that Mr. Haynes failed to make a *prima facie* case, summary judgment is proper on this issue.

(2) Vehicle Towing:

Mr. Haynes alleges that the County’s attempts to illegally tow his vehicles in “contrast to my fellow white business counterparts based here at the spaceport . . . has directly limit[ed] [his] ability to . . . establish, grow, or sustain” his businesses. (FAA Exhibit 1, Item 1, at p. 3, para. 1 and p. 4, para. 2.)

The County states that it has no record of towing Mr. Haynes’ vehicles and notes that Mr. Haynes did not provide any evidence that his vehicles were towed or how other people were treated differently. The County argues that Mr. Haynes’ lease requires him to comply with all lawful rules, regulations, laws, and ordinances at the airport and that “Adams County zoning regulations prohibits the outdoor storage of unlicensed and/or inoperable vehicles.” The County explains that, “As standard practice, CASP will warn tenants with unlicensed, expired, and/or inoperable vehicles that their vehicles will be towed if the violation of the Adams County zoning code is not corrected.” (FAA Exhibit 1, Item 4, p. 8.)

In his Response to the County’s Motion, Mr. Haynes takes issue with the attestation of Mr. Kloska. He argues that the attempts to tow his vehicles occurred prior to when Mr. Kloska was hired and therefore he has no way of “knowing or defending such occurrences” and moves for the attestation be removed. (FAA Exhibit 1, Item 6, at pp. 15-16, para. 4.) Given that Mr. Haynes has not provided any evidence that his vehicles were ever towed, it is unnecessary to rule on this request.

Mr. Haynes does not provide any evidence that his vehicles were towed or there was an attempt to tow the vehicles. Additionally, Mr. Haynes does not provide evidence that the County treated him differently than other similarly situated individuals not in his protected class when the County allegedly notified him of its intent to tow his vehicles.

Accordingly, on this item, Mr. Haynes has not established a *prima facie* case sufficient to prevail on summary judgment. There is no direct evidence of discrimination, and the County offered a legitimate non-discriminatory reason for its action – his lease stipulates that he must abide by all rules, regulations, laws and ordinances at the airport and the County was enforcing zoning laws related to vehicle parking. Mr. Haynes did not controvert the language of his lease or the County’s enforcement of its zoning laws. A sponsor’s Grant Assurance obligations require that aeronautical facilities be used or be available for use for aeronautical activities. (See “FAA Policy on the Non-Aeronautical Use of Airport Hangars,” 81 Fed. Reg. 38906, 38907 (June 15, 2016)). Mr. Haynes did not show that the reason for the notice was pretext.

Because the Director finds that Mr. Haynes failed to make a *prima facie* case, summary judgment is proper on this issue.

(3) Eviction:

Mr. Haynes argues that the County discriminated against him when they evicted him from his storage space. (FAA Exhibit 1, Item 1, at p. 4, para. 2.) The County argues that the “Complainant received no different treatment from similarly situated persons. He had a lease with CASP, refused to follow the rules for using CASP facilities, and was evicted in similar fashion to other tenants of non-protected classes.” (FAA Exhibit 1, Item 4, p. 9.) The County provides that it did not single out Mr. Haynes and also evicted the Lucien Frank Company, a tenant not of Mr. Haynes’ protected class. (FAA Exhibit 1, Item 4, p. 9.) The County provided exhibits documenting the lease terminations of the Lucien Frank Company. (FAA Exhibit 1, Item 4, Exhibit 6.)

In its Motion, the County states that “Inspections of the [Haynes] unit revealed numerous substantial violations . . . including storage of materials other than airworthy aircraft and ground handling equipment.” (FAA Exhibit 1, Item 4, p. 8.) The County provided a notice of lease termination for the end of the next month and Mr. Haynes refused to remove his belongings. The County initiated and prevailed on a complaint for forcible entry and detainer. (FAA Exhibit 1, Item 4, pp. 8-9.) As discussed above, during the DEN ADO’s investigation into Mr. Haynes’ informal complaint under 14 CFR Part 13, the County alleged that Mr. Haynes had essentially set up an apartment and provided photos.

Mr. Haynes, in his Response, argues that there was “No list or description, of items that constituted what an ‘aviation related’ item was created or agreed to by others [sic] party” and claims that he had passed 16 “surprise inspections” during which he had occupied his “space as both a storage space and temporally [sic] office in the same fashion and procedures as before.” (FAA Exhibit 1, Item 6, p. 11.)

Additionally, Mr. Haynes states that “all the other white business[es] at the airport were given months on end to correct any and all violations of their facility”. (FAA Exhibit 1, Item 6, at p. 10, para. 2.) He identifies Air Methods and Virgin Galactic as having received “more communication of criteria’s inspections, and time to correct discrepancies” (FAA Exhibit 1, Item 6, at p. 21, para. 11.) Mr. Haynes does not provide any evidence to support this claim. Finally, Mr. Haynes argues that Lucien Frank Company is not a “relative comparison” to him because they were leasing storage/office space and not a hangar. ((FAA Exhibit 1, Item 6, p. 36, para. 33.)

The record shows that the parties entered into a “Storage Unit Lease and Operations Agreement” on September 1, 2014. The lease states, “The Storage Unit shall be used and occupied by Tenant solely for the storing of aircraft parts owned by the tenant” (FAA Exhibit 1, Item 4, Exhibit 2, p. 1.) The “Covenants of Tenant” states in part, “Tenant hereby agrees to comply with the following requirements: A. To use the premises only to house airworthy aircraft, along with any necessary aircraft ground handling equipment associated with said aircraft.”. (FAA Exhibit 1, Item 4, Exhibit 2, p. 2.)

Mr. Haynes confirmed that he was using the space as an office and does not argue that he was only using it to store airworthy aircraft, aircraft parts or necessary aircraft ground handling equipment as required by the lease. The County also evicted Lucien Frank Company, who was a tenant outside of Mr. Haynes’ protected class. While Mr. Haynes

argues that he is not similarly situated with Lucien Frank Company, he does not provide any evidence that Air Methods or Virgin Galactic violated their lease and were provided with additional time to rectify. In addition, Mr. Haynes' argument that he is not similarly situated to the Lucien Frank Company, another tenant of the County at the airport, does not identify a relevant distinction to a determination of whether the County acted with discriminatory intent in enforcement of lease provisions.

Mr. Haynes fails to make a *prima facie* case as he does not provide evidence of a similarly situated user outside of his protected class who violated their lease terms and was given additional time to comply or was not evicted.

There is no direct evidence of discrimination on this allegation, and the County provided a legitimate non-discriminatory reason for Mr. Haynes' eviction – violation of the lease terms. Mr. Haynes' complaint admits that he used the space as “storage” and a temporary office for many years. Past allowances do not guarantee continued use in violation of a lease. Additionally, County's reasons for lease termination are in accordance with FAA policy that hangars located on airport property must be used for an aeronautical purpose, unless otherwise approved by the FAA Office of Airports” (*FAA Policy on the Non-Aeronautical Use of Airport Hangars*, 81 Fed. Reg. 38906, 38910, Section II.a. (June 15, 2016)).

Because the Director finds that Mr. Haynes failed to make a *prima facie* case, summary judgment is proper on this issue.

(4) Business Activity:

Mr. Haynes states that the County violated his civil rights by their efforts to:

“hide my existences as one of the successful founding businesses of both the airport in 1984 and spaceport in 2019, by falsely testifying about my company's operational status in federal court, not posting any of my business names/logos, or allowing me to display them myself, at the airport or even in the spaceport's officially publishes documents/online webpages set up for public media accessible consumption.”

(FAA Exhibit 1, Item 1, at p. 5, para. 3.)

Mr. Haynes states that until a few years ago Sierra Nevada displayed an A-frame billboard of the Dream Chaser and that the Virgin Galactic Spaceship 2 at the airport. He states that his claim is substantiated by “Airport administration officially publishes online webpages <https://coloradoairandspaceport.com/> media records, numerous FAA title 14 violation based investigation notes obtains [sic] as recent[ly] as in 2014 and now 2022, but dating as far back as 1984.” (FAA Exhibit 1, Item 1, at p. 6, para. 4.)

14 CFR § 16.23(b)(2) requires complainants to “include all documents then available in the exercise of reasonable diligence, to be offered in support of the complaint, and to be served upon all persons named in the complaint as persons responsible for the alleged action(s) or omission(s) upon which the complaint is based”. Additionally, the

complainant must “[p]rovide a concise but complete statement of the facts relied upon to substantiate each allegation.” (14 CFR § 14.23(b)(3)).

Mr. Haynes does not provide any evidence that he requested to post his business name/logo at the airport or on webpages or displays. Beyond providing the URL address of the airport’s website, Mr. Haynes did not submit any evidence to support his allegation that others not in his protected class were provided these opportunities. The complainant has the burden of establishing his case and cannot rely upon the Director to search a website or a facility for documents to support the allegations.

On this item, Mr. Haynes does not provide evidence that he was treated differently than similarly situated individuals who are not of his protected class. Therefore, the Director finds that Mr. Haynes failed to make a *prima facie* case and summary judgment is proper on this issue.

(5) Access to Taxiways and Run-up Areas:

The Complainant asserts that, in contrast to his white business competitors such as Air Methods, the County has made efforts to restrict him “from utilizing normal publicly accessible taxi ways, and or standard test engine run-up areas” (FAA Exhibit 1, Item 1, p. 6, para. 5.)

The County argues that it has not denied Mr. Haynes access to taxiways or run-up areas. The County explains that it has safety policies and procedures that apply equally to all users and it notes that Mr. Haynes has not cited a “specific incident or what ‘efforts’ CASP has taken to prevent his access or how, if at all, he was actually prevented from accessing them.” It provides that “Normal run-ups of aircraft engines occur at will and are un-regulated and happen all the time in designated areas” (FAA Exhibit 1, Item 4, p. 10.)

In his initial complaint and his response to the County’s motion, Mr. Haynes does not provide any evidence that he was denied access to the runways, taxiways or run-up areas of the airport. On this item, Mr. Haynes has not provided evidence of an adverse action. Therefore, the Director finds that Mr. Haynes failed to make a *prima facie* case and summary judgment is proper on this issue.

(6) Proposing Regulations:

Mr. Haynes complains that the County acted to “suggest, or willfully recommend FAA supported rules that directly limit [his] ability to grow or sustain” his business. He references “personal limiting rules suggested/filed/created against my business such as no schedule airliner flight allowed in the 80’s, or the more recently created/established, no unman eVTOL test flights”. (FAA Exhibit 1, Item 1, at p. 7, para. 6.) He argues that the allegations are substantiated by:

Via one-on-one private meetings with me, the airport administrators clear learned/conceived and knew I was the only operation on the air/spaceport seeking to engaging in such activities, so therefore moved to effectively block any and all attempts, thereby severally disrupting my ability to succeed for decades. Airport

Administration records, and numerous FAA title 14 violation based investigation notes obtains as recent as 2019 to 2022, but as far back as 2016.

(FAA Exhibit 1, Item 1, pp. 7-8, para. 6.)

The County argues in its Motion that Mr. Haynes does not provide “any evidence CASP ‘recommend[ed] FAA supported rules to target his operations in a discriminatory manner.” The County notes that Mr. Haynes has not identified what rules conflict with his business and he has not provided any evidence that they have recommended rules to target Mr. Haynes’ operations in a discriminatory manner. (FAA Exhibit 1, Item 4, pp. 10-11.)

While Mr. Haynes makes reference to limitations on scheduled airliner flights in the 1980’s and no allowances for unmanned eVTOL flights, he does not identify the rules or provide any evidence of discriminatory intent behind these rules or restrictions. Beyond uncorroborated references to one-on-one private meetings, airport administration records, and investigation notes obtained between 2016 to 2022, Mr. Haynes did not show any evidence to support his allegations, for example evidence of adverse actions or that the reason for the unspecified actions was to target the complainant, and not for safety or another legitimate nondiscriminatory purpose. He does not provide any evidence of the meetings, administration records, or notes that he references.

On this item, Mr. Haynes has not established a *prima facie* case sufficient to prevail on summary judgment.

Upon review of the Motion for Summary Judgment, the Director finds that there is no issue of material fact, and that the complaint, when viewed in a light most favorable to Mr. Haynes, should be summarily adjudicated in the County's favor as a matter of law.

VI. FINDINGS AND CONCLUSION

After consideration of the pleadings and record, and viewing the complaint in the light most favorable to the Complainant, the Director finds no indication that the County has violated Grant Assurance 30, *Civil Rights* or Title VI of the Civil Rights Act of 1964 (“Title VI”).

The Director finds that there are no claims that warrant further action, and that the Complaint can be dismissed in its entirety as a matter of law.

ORDER


ACCORDINGLY, it is ordered that:

1. Respondent's Motion for Summary Judgment is **GRANTED**;
2. The Complaint is **DISMISSED**; and
3. All other Motions not specifically granted herein are **DENIED**.

RIGHT OF APPEAL

This Order of the Director is an initial agency determination and does not constitute a final agency action and order subject to judicial review. 14 CFR § 16.247(b)(2). A party to this proceeding adversely affected by the Director's Order may appeal the initial determination to the FAA Associate Administrator for Airports under 14 CFR § 16.33(c)(e) within 30 days after service of the Director's Order.

**KEVIN
WILLIS**

 Digitally signed by
KEVIN WILLIS
Date: 2022.06.09
11:44:56 -04'00'

Kevin C. Willis
Director, Office of Airport Compliance
and Management Analysis

Date