



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

Office of the Associate Administrator
for Airports

800 Independence Ave., SW.
Washington, DC 20591

RECEIVED

OCT 27 2021

October 27, 2021

PART 16 DOCKETS

Mr. Glynn P. Falcon
900 East Hamilton Avenue, Suite 100
Campbell, CA 95008

Ms. Lori D. Ballance
Ms. Yana L. Ridge
Gatzke Dillon & Balance LLP
2762 Gateway Road
Carlsbad, CA 92009

Mr. Robert Rathie
Wellington Law Offices
857 Class Street, Suite D
Monterey, CA 93940

Re: FAA Docket 16-21-12

Dear Meses. Ballance and Ridge, and Messrs. Falcon and Rathie:

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

The Motion for Summary Judgment is granted, and the reasons are set forth in the enclosed Order.

Sincerely,

**KEVIN
WILLIS**

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KEVIN WILLIS
Date: 2021.10.27
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Kevin C. Willis
Director, Office of Airport Compliance
and Management Analysis

Enclosure

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

MARINA AVIATION, LLC
COMPLAINANT,

v.

CITY OF MARINA,
CALIFORNIA

RESPONDENT.

FAA Docket No. 16-21-12

RECEIVED

OCT 27 2021

PART 16 DOCKETS

ORDER

I. INTRODUCTION

Marina Aviation, LLC, (Marina) filed a Complaint on August 30, 2021, under 14 CFR Part 16 against the City of Marina, California (City), the sponsor of the Marina Municipal Airport (Airport). Marina states that its Complaint is premised upon the failure and/or the refusal of the City to either extend its lease agreement for its hangar leaseholds or to negotiate for the City to purchase the hangar leasehold properties. (FAA Exhibit 1, Item 1, page 12).

Specifically, Marina alleges the City violated Grant Assurances 22, *Economic Nondiscrimination*, Grant Assurances 23, *Exclusive Rights*, and Grant Assurance 29, *Airport Layout Plan*. (FAA Exhibit 1, Item 1, page 13).

On September 23, 2021, the City filed a Motion to Dismiss and/or for Summary Judgment. The Motion raises three primary arguments. First, the City argues that Marina failed to comply with 14 CFR section 16.23 by omitting key documents, failing to apprise the FAA of relevant facts and misrepresenting its legal status. (FAA Exhibit 1, Item 3, pages 12 and 18). Second, the City states that Marina failed to state a claim that warrants an investigation for violations of the City's compliance with Grant Assurance 22, 23, and 29. The City argues in the alternative that the City is entitled to summary judgment as a matter of law because no genuine issue of material fact exists as to the City's compliance with its sponsor commitments.¹ (FAA Exhibit 1, Item 3, pages 13, 14, and 18). Third, the City argues that Marina lacks standing to bring its Complaint. (FAA Exhibit 1, Item 3, page 17).

¹ 14 CFR § 16.26(b), (c).

On October 4, 2021, Marina filed a response to the City's Motion to Dismiss and/or for Summary Judgment. Marina opposed the Motion asserting reasons based on law and facts, and requested that the City's Motion be denied and overruled. Marina also seeks to strike the Declaration attached to the City's Motion and seeks permission to engage in limited discovery before the agency rules on the Motion. (FAA Exhibit 1, Item 4, Exhibit 3, pages 1-6, Exhibits 1 and 4).

The City's Motion for Summary Judgment is GRANTED, and the Complaint is DISMISSED.

II. THE PARTIES

A. The Airport

The Marina Municipal Airport is a public use airport with approximately 32 based aircraft and averages 115 operations per day. (<https://adip.faa.gov/agis/public#/airportData/SOAR>)

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 (NPIAS). As a condition of receiving Federal funding, the City 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 City of Marina has been the recipient of approximately \$8,709,516.00 since 1992.

B. The Complainant

Marina Aviation states that it is a California limited liability company in good standing, based at 621 Capitola Ave, Capitola, California. Marina Aviation is the assignee of the lease made between the Marina Airport/City of Marina and Merriner, Inc. Marina Aviation has been a commercial lessee/tenant of the Marina Airport since 2001. Under its previous lease, Marina Aviation leased an area approximately .39 acres on which the company had constructed and rented hangars to aircraft owners and operators at the Marina Airport. (FAA Exhibit 1, Item 1, page 1).

III. BACKGROUND AND PROCEDURAL PROCESS

A. Marina's Position

Marina's ground lease expired on May 22, 2021. Marina alleges that it had been trying to negotiate for a lease extension since December 2017. Marina alleges the City did not renew its lease but did extend other leases, thereby violating Grant Assurances 22, 23 and 29. (FAA Exhibit 1, Item 1, pages 11-12).

Marina also alleges that it attempted to either sell its hangars to the City, or to have the City extend the lease terms of its hangar leaseholds, as provided by City Resolution 2002-157. "Complainant is informed and believes, and thereon alleges, that the excuses and delays created by the City were done for the purpose of delaying the matter until after the original term of the

complainant's lease has passed wherein the City intended to take over complainant's leasehold premises, rights, tenants, and hangars, free and clear of any obligation to complainant." (FAA Exhibit 1, Item 1, page 12).

B. Airport's Position

The City filed a Motion to Dismiss and/or for Summary Judgment on September 23, 2021. In its Motion, the City states, the "City's rightful and warranted rejection of Marina Aviation's request to extend the Ground Lease term is based on Marina Aviation's continuing default and failure to make timely payments under the Ground Lease and the Repayment Agreement." The City claims Marina's "fatal flaw" is

its intentional omission of the relevant and dispositive fact of Marina Aviation's acknowledged failure to timely pay sums due and misrepresentation of its corporate status as in good standing instead of suspended, which suspension precludes Marina Aviation from entering into an enforceable lease extension and prosecuting a legal action. (FAA Exhibit 1, Item 3, page 5)

The City argues that Marina failed to state a claim for the City's violation of Grant Assurances 22, 23, and 29, to warrant further investigation by the FAA. The City claims "there is no genuine issue of material fact that the City is in compliance with its sponsor obligations." The City says its "rejection of the extension request submitted by a tenant in default and with suspended corporate status is justified as being in furtherance and in compliance of the City's obligation to operate the Airport for the use and benefit of the public on fair and reasonable terms without unjust discrimination." (FAA Exhibit 1, Item 3, page 5).

The City further claims that its "rejection of Marina Aviation's extension request due to the tenant's failure to timely pay rent and other sums due under the Ground Lease and the Repayment Agreement did not place a significant burden on Marina Aviation that is not placed on other Airport users." (FAA Exhibit 1, Item 3, page 5).

The City supports its position with a Declaration from the Airport Services Manager who asserts that "One of the many conditions the Airport and the City has set for all Airport tenants is the requirement to timely pay rent under their leases." (FAA Exhibit 1, Item 3, Declaration, page 3).

C. Complainant's Response to City's Motion

On October 4, 2021, Marina filed several documents objecting to the City's Motion to Dismiss and/or for Summary Judgment. Marina raises "seven fatal flaws, as the reasons that the City's Motion should be denied and overruled. (FAA Exhibit 1, Item 4, Exhibits (1) – (4)).

Marina, though it's Managing Member, Phil Lewis, admits he continued to bill hangar tenants in June and July 2021 even though its lease had expired in May 2021. Complainant states, "Marina Aviation's bookkeeper did indeed bill tenants for June and July. Marina Aviation LLC is still the proper leaseholder for the subject hangar, and will continue to be, and will have seek [sic] to have that judicially declared." Marina goes on to argue that it "will not, and does not, relinquish

title to the City while this pending administrative action is being investigated by the FAA.” (FAA Exhibit 1, Item 4, Exhibit 2, page 2).

Marina’s Managing Member also admits that it “held back on some of the ground lease payments to the City after November 2020 in the hope and intent that such action would result in a sit down with the City officials regarding the lease extension.” Marina contends that it “is now current with both the monthly lease payments and the \$200 per month repayment agreement obligations.” (FAA Exhibit 1, Item 4, Exhibit 2, page 3).

Marina’s Managing Member states, “While I agree that Marina Aviation...owes the City some amount for back rent and interest, I don’t agree with their bookkeeping...They still have not accounted for a cashed \$7000 check...which would make Marina...current on any back rent and current on the long-term re-payment plan payments.” (FAA Exhibit 1, Item 4, Exhibit 2, pages 2-3).

Additionally, Marina’s Managing Member admits that its LLC status had lapsed, noting, “Once Marina Aviation LLC is fully reinstated this week from suspension by the FTB, it will seek enforcement of that agreement’s lease extension to the year 2054.”² Marina argues that “Contrary to the insinuations of the City, Marina Aviation did not include the repayment agreement as an exhibit to its complaint because, at the time of the filing, it was not relevant in as much as (1) the City never mentioned that late payments, arrearages, or the LLC account status was the reason for it refusing to meet or for its denial of a lease extension, and (2) Marina Aviation was current with both its ground lease and arrearage payments.” (FAA Exhibit 1, Item 4, Exhibit 2, pages 3-6).

Marina, as part of its Opposition to the Motion, attached a Confirmation of Submission from the State of California of an LLC Statement of Information along with payment of the filing fee for Marina Aviation LLC, dated October 4, 2021. (FAA Exhibit 1, Item 4, Exhibit 4, Exhibit 15).

Marina, in opposing the City’s Motion, also seeks to strike the Airport Services Manager’s Declaration. In addition, Marina seeks permission to engage in limited discovery to require the production of certain Marina City Council meeting minutes before the agency rules on the Motion. (FAA Exhibit 1, Item 4, Exhibit 3, pages 3 and 6, and Exhibits 1 and 4).

D. Standard of Review of Motion to Discuss 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 Marina to show noncompliance with a statute, regulation, order, agreement, or document of conveyance. § 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. See § 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.

² Here Marina appears to be alluding to the timeframe for paying off rent arrears, and argues that because it will take until 2054 to pay arrears, it is entitled to a lease of that length.

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 City must show either (1) the complaint, appears on its face, is 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 per 14 CFR § 16.26(c)(3).

IV. ANALYSIS AND DISCUSSION

Marina contends in its Complaint that the City is unfairly denying a lease extension that it had requested. Marina argues that despite its attempt to negotiate with the City, the extension was denied. Marina argues that it tried to negotiate for the sale of its hangars to the City. (FAA Exhibit 1, Item 1, page 12). Marina alleges that the City has violated Grant Assurance 22 and 23 by not offering a lease extension. Grant Assurances³ 22, 23, and 29 are summarized here:

Grant Assurance 22, Economic Nondiscrimination

The owner of any airport developed with Federal grant assistance is required 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.

Grant Assurance 23, Exclusive Rights

An airport sponsor is prohibited from granting an exclusive right for the use of the airport, including granting an exclusive right to any person or entity providing or intending to provide aeronautical services to the public.

Grant Assurance 29, Airport Layout Plan

Subject to the FAA Reauthorization Act of 2018, Public Law 115-254, Section 163, an airport sponsor will keep up to date at all times an airport layout plan of the airport.

³ The link to the Grant Assurances is included at FAA Exhibit 1, Item 5.

The FAA is treating the City'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. The FAA does not arbitrate or mediate lease negotiations through Part 16. Nor does the FAA enforce lease terms between parties to an agreement. Rather, the FAA enforces contracts between an airport sponsor and the federal government. (See *AmAv v. Maryland Aviation Administration*, FAA Docket No. 16-05-12, (March 20, 2006) (Director's Determination)).

Issue 1: Whether the City is in violation of Grant Assurance 22, *Economic Nondiscrimination* by not granting a lease extension to Marina.

Marina alleges the City violated Grant Assurance 22 by refusing to negotiate and offer a lease extension. Marina alleges that another tenant was provided with a 10-year lease extension, with its economic benefits, "and thereby the City permitted this tenant to enjoy a more favorable position regarding the term extension with the City than Marina Aviation, LLC." (FAA Exhibit 1, Item 1, page 13).

In its Motion, the City asserts that its rejection of Marina's request to extend the Ground Lease does not, and cannot, constitute unjust discrimination because of Marina's continuing default and failure to perform under the Ground Lease and the Repayment Agreement. (FAA Exhibit 1, Item 3, page 14).

The City explained that in 2014, "the Airport conducted a comprehensive lease/rent review of all of its Airport tenants and determined that Marina Aviation did not pay all sums due in accordance with the terms of the Ground Lease." The City claimed that Marina Aviation's "missed rental payments and resulting late fees and interest continued to accrue and resulted in the amount of \$95,224 being past due and owing to the City as of January, 2015." (FAA Exhibit 1, Item 3, pages 6-7).

The City noted that "On January 8, 2015, on behalf of Marina Aviation, Mr. Lewis entered into a Repayment Agreement with Mr. Lewis agreeing to pay the City "\$95,224 through minimum monthly payments of \$200 to be applied to past due arrearage over and above the regular rent payment and again agreeing to the timely payment of that regular rent due under the Ground lease." (FAA Exhibit 1, Item 3, page 7).

The City's Motion claims that on July 21, 2020, the City Council says it considered in good faith Mr. Lewis' request (for a lease extension) but declined it based, in part, on Marina Aviation's poor past performance and continuing default under the Ground Lease. The City Council sought to ensure the intent of the Ground Lease and its termination provision is "carried out, which intent is for the Airport to receive the revenue from hangar tenants after the Ground Lease term expiration." The City's review of Mr. Lewis' payment history since entering into the Repayment Agreement has determined that "as of September 1, 2021, Mr. Lewis/Marina Aviation owes a total of \$93,827 and notes that in the "six years and five months since entering into the Repayment Agreement, Mr. Lewis paid rent on time on only 10 occasions." (FAA Exhibit 1, Item 3, pages 7-8).

The City also raised the point that “after termination of the Ground Lease, Mr. Lewis continued to collect rent from his former tenants, potentially in violation of California Penal Code 484, which prohibits a person from fraudulently renting out property owned by another and receiving rent under false pretenses.” The City states that on July 26, 2021, the Airport Services Manager sent a letter to the hangar tenants stating ownership of the T-hangars was now with the City and future rent should be paid to the City. (FAA Exhibit 1, Item 3, page 8).

The City claims it operates the Airport for the use and benefit of the public on fair and reasonable terms without unjust discrimination, and moves to have the Complaint dismissed.

Marina filed a Response in Opposition to the City’s Motion. (FAA Exhibit 1, Item 4, Exhibits (1) – (4)). Marina admits it continued to bill hangar tenants in June and July 2021, even though its lease had expired in May 2021. While Marina claims it does not agree with the City’s bookkeeping, it admits it owes the City some amount for back rent and interest. (FAA Exhibit 1, Item 4). Marina also posits that by the City entering into the Repayment Agreement with Marina, the City “effectively agreed in writing to a 39.67 year lease extension” and Marina’s “current lease has already been extended by written agreement to year 2054.” (FAA Exhibit 1, Item 4, Exhibit 3, page 5).

Marina also seeks to strike the Airport Services Manager’s Declaration and seeks permission to engage in limited discovery⁴ to require the production of certain Marina City Council meeting minutes before the agency rules on the motion. (FAA Exhibit 1, Item 4, Exhibit 3, pages 3 and 6, and Exhibits 1 and 4).

Marina contends that pursuant to Resolution 2002-157, the City extended the term of other aircraft hangar ground leases, but not its lease. (FAA Exhibit 1, Item 1, page 12). The City counters in its Motion that “Resolution 2002-157 requires the City to consider in good faith – and not automatically grant – requests from developers of private aviation hangar facilities.” (FAA Exhibit 1, Item 3, page 15). The City claims it did that “when it considered and rejected the extension based upon Marina Aviation/Mr. Lewis’ failure to perform under the Ground Lease and the Repayment Agreement.” (FAA Exhibit 1, Item 3, page 15).

Marina claims in its Opposition that the City does not dispute Resolution 2002-157 is “still in full force and effect,” and then asserts that “the City has refused, in bad faith,” to meet and confer with Marina Aviation regarding the lease extension. (FAA Exhibit 1, Item 4, Exhibit 3, page 5).

Upon review of the Motion for Summary Judgment and Marina’s Opposition to the Motion, the Director finds that the City has not violated Grant Assurance 22 by denying Marina a lease extension due to difficulties collecting rent payments owing over a multi-year period.

⁴ Per 14 CFR § 16.23 (l), except for good cause shown through motion and supporting documents, discovery is not permitted except as provided in §§ 16.213 and 16.215.

A sponsor is under no obligation to continue a business relationship with a tenant if the tenant is not meeting its obligations under the terms of a lease agreement. Not adhering to minimum standards or not paying rent are reasonable bases for a finding of default. A material breach may be a valid basis for removing an airport tenant without violating the grant assurances. (See *Rick Aviation, Inc., v. Peninsula Airport Commission*, FAA Docket No. 16-05-18, (November 6, 2007) (Final Decision and Order) page 21). The same rationale can be applied to a sponsor's good faith decision not to extend a lease agreement.

Here Marina admits that it held back some ground lease payments, which supports the City's actions not to extend the lease agreement.

Upon review of the County's Motion and Marina's Response in Opposition, the Director finds under Issue 1 that the Complaint, when viewed in a light most favorable to Marina, should be summarily adjudicated in the City's favor as a matter of law.

Issue 2: Whether the City is in violation of Grant Assurance 23, Exclusive Rights, by not offering a lease extension to Marina.

Marina claims that as a direct and proximate result of the City's actions, omissions, and delays, the City is in violation of Grant Assurance 23. Marina asks that the City stop engaging in providing of exclusive rights and usage to an airport tenant that received preferential treatment at the airport to the exclusion and elimination of other airport users and tenants. (FAA Exhibit 1, Item 1, pages 13 and 14).

In its Motion, the City states, "Marina Aviation's complaint does not state a claim for the violation of Grant Assurance 23, and there is no genuine issue of material fact as to the City's compliance with it." The City claims it did not place a significant burden on Marina that is not placed on other airport users by expecting and requiring Marina and other tenants to timely pay rent and other sums due under their respective leases. (FAA Exhibit 1, Item 3, page 15).

As stated above, Marina's Opposition to the City's Motion alleges certain fatal flaws, including an allegation that the City's Motion is not verified, and relies upon the "objectionable" Declaration of the Airport Services Manager for evidentiary support. (FAA Exhibit 1, Item 4, Exhibits (1) – (4)). Marina contends that the City does not dispute that it gave a more favorable treatment to other tenants than it offers Marina Aviation, but adds nothing further to support its allegation that the City is not in compliance with Grant Assurance 23. (FAA Exhibit 1, Item 4, Exhibit 3, page 5).

In order for the FAA to find a sponsor in violation of its federal obligations under a Part 16 proceeding, not only must the complainant include sufficient factual evidence to support its allegations, but also establish by a preponderance of substantial and credible evidence that the sponsor has violated its federal obligations. In a formal Part 16 complaint, the complainant has the burden of proof to establish the complaint's allegations by a preponderance of substantial and reliable evidence. (See *BMI Salvage Corporation & Blueside Services, Inc., v. Miami-Dade*

County, Florida, FAA Docket No. 16-05016, July 25, 2006, (Director's Determination) page 12).

Marina alleges, but does not support, its allegation that the City is in violation of Grant Assurance 23. In this case, the record clearly shows that Marina lost the potential for a lease extension due to its failure to pay lease rates on a timely basis. Evidence presented shows that the parties agreed to a Repayment Agreement for past due funds. (FAA Exhibit 1, Item 3, Exhibit 4). Additionally, the City submitted a running ledger for Marina from January 1, 2015, and ending September 1, 2021. This document shows that Marina remains substantially in arrears. (FAA Exhibit 1, Item 3, Exhibit 11) The Complainant made no showing that the City's denial of the lease extension had any basis in protecting another tenant on the Airport.

An airport sponsor that denies a lease extension for failure to pay rent is not granting a prohibited exclusive right and does not violate Grant Assurance 23. Instead, to require all other tenants to pay timely and not expect the same from Marina Aviation would be to grant an exclusive right to Marina to the disadvantage of other tenants. The City is well within its rights to decline to renegotiate a lease extension with a tenant in default.

On a related note, Marina alleges the City violated Grant Assurance 29, *Airport Layout Plan*, (ALP) due to the City's actions, omission, and delays. Marina states, "the City has chosen to ignore its ALP and Resolution 2002-157 preventing private ownership and leaseholds for hangar owners, developers and other members of the public without a public hearing or modifications of the ALP." (FAA Exhibit 1, Item 1, pages 13 and 14).

The City asserts Marina failed to state a claim for the City's violation of Grant Assurance 29. The City claims Marina does not allege anywhere in the Complaint what City's actions violated this assurance and does not seek any relief as to this assurance. (FAA Exhibit 1, Item 3, page 17).

While Marina alleged the City violated Grant Assurance 29, it provided no additional information or evidence to allow the Director to review this allegation. Marina Aviation has not provided any evidence that the City is in violation of its ALP obligations other than to allege that enforcement of the Resolution is somehow connected to the ALP. There is insufficient evidence to investigate or substantiate an allegation of a violation under Grant Assurance 29. Therefore, the Director finds that the claim warrants no further action by this office.

Additionally, the issue about Marina's current legal corporate status may be moot. In any case, for FAA's purposes, the issue is not dispositive as to the City's right to decline to execute a lease extension with a tenant in default for failing to make timely lease payments.

Accordingly, upon review of the Motion for Summary Judgment and the Complainant's Response in Opposition, the Director finds under Issue 2 that there is no issue of material fact, and that the Complaint, when viewed in a light most favorable to Marina, should be summarily adjudicated in the City's favor as a matter of law.

V. 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 City has violated Grant Assurance 22, *Economic Nondiscrimination*, Grant Assurance 23, *Exclusive Rights* or Grant Assurance 29, *Airport Layout Plan*. 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.

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

Date

**Index of Administrative Record
FAA Docket 16-21-12
FAA Exhibit 1**

Marina Aviation, L.L.C., Complainant

v.

City of Marina, Respondent

- Item 1 Marina Aviation, LLC v. City of Marina – Complaint, dated August 30, 2021**
- Exhibit 1 Lease between the City of Marina and Merriner, Inc. (Ground and T Hangar Lease, dated May 22, 1996 and terminating May 22, 2021)
- Exhibit 2 Amendment No. 1 to Lease between the City of Marina and Merriner, Inc., dated August 4, 1998.
- Exhibit 3 Amendment No. 2, Marina Aviation Ground Lease and Agreement to Construct T-Hangars, dated March 28, 2001.
- Exhibit 4 Resolution No. 2002-157, A Resolution of the City of Marina Establishing a Polity for the Terms of Ground Leases for Privately Developed Aviation Hangars at Marina Municipal Airport, dated September 24, 2002.
- Exhibit 5 Amendment No. 1 to Selby Ground Lease and Agreement to Construct Improvements, dated October 28, 2002.
- Exhibit 6 Multiple emails from December to August 20, 2020 regarding potential box hangar purchase. Email dated August 14, 2020 states that Council decision was to not extend the lease held by Complainant.
- Exhibit 7 Letter (undated) from Phil Lewis to City of Marina regarding request for lease extension for T-Hangar building and proposed a 7-year lease extension from May 2021 until May 2028.
- Exhibit 8 Letter from Glynn P. Falcon, Attorney, to City of Marina, and representing Phil Lewis and Marina Aviation on lease extension request. Dated June 28, 2021.
- Exhibit 9 Email to Mr. Falcon from the City of Marina acknowledging Airport Hangar Lease Extension request, dated June 28, 2021.
- Exhibit 10 Letter from the City of Marina to Stuart Bispo, stating that Lease for T-Hangar, Unit A-17 was now under the ownership of the City and would be managed by the Airport Division, dated July 26, 2021.
- Item 2 Notice of Docketing, dated September 3, 2021.**

- Item 3 City of Marina Motion to Dismiss and/or for Summary Judgement, dated September 23, 2021. Included Declaration of Jeffrey Crechriou.**
- Exhibit 1 Ground Lease and Agreement to Construct T-Hangars, dated May 22, 1996.
- Exhibit 2 Assignment of Lease between Merriner, Inc. and Marina Aviation LLC, dated March 28, 2001. Amendment No. 2 to Ground Lease and Agreement to Construct T-Hangars, dated March 28, 2001.
- Exhibit 3 Resolution No. 2002-157. A Resolution of the City of Marina Establishing a Policy for the Terms of Ground Leases for Privately Developed Aviation Hangars at Marina Municipal Airport, dated September 24, 2002.
- Exhibit 4 Marina Municipal Airport Repayment Agreement for Past Due Account, dated, January 8, 2015.
- Exhibit 5 Business Search Results, dated September 22, 2021, stating that Marina Aviation is under a 'suspended' status by the State of California.
- Exhibit 6 Letter (undated), from Phil Lewis to Jeff Crechriou, Airport Services Manager, regarding a request for lease extension for T-Hangar building and proposed a for 7-years extension from May 2021 until May 2028.
- Exhibit 7 Email from Jeff Crechriou to Phil Lewis stating the decision was not to extend the lease, dated August 14, 2020.
- Exhibit 8 Letter dated June 4, 2021 from Jeff Crechriou to Phil Lewis stating that the lease between Marina Aviation and the City had a 25 year term that ended May 22, 2021. Letter stated that 'Upon termination of this lease, all improvements made by Lessee on the leased property ...shall become the property of the City without payment of any consideration therefor.'
- Exhibit 9 Invoices, dated June 22, 2021, from Marina Aviation to tenants with amounts due.
- Exhibit 10 Letter from City of Marina to hangar tenant stating that as of May 23, 2021, the T-Hangar Building is under City ownership, dated July 26, 2021.
- Exhibit 11 Running Ledger entries for Rent, Fees, Penalties, from January 1, 2015 until September 1, 2021.
- Item 4 Marina Aviation LLC's Opposition Papers to the City of Marina' Motion to Dismiss and/or for Summary Judgment, dated October 4, 2021.**

- Exhibit 1 Marina Aviation's Motion to Conduct Limited Discover of Marina City Council Meeting Minutes & Financial Records Relating to Marina Aviation LLC., dated October 4, 2021.
- Exhibit 2 Declaration of Marina Aviation's LLC's Managing Member, Phil Lewis, in Opposition to Motion to Dismiss Complaint, October 4, 2021.
- Exhibit 3 Marina Aviation's Opposition to City's Motion to Dismiss &/or for Judgment. Exhibits include:
Exhibit 11 – Image of check dated June 1, 2021, for \$7,000, payable to City of Marina and includes Invoice dated July 1, 2021, for \$64,306.34.
Exhibit 12 – Flyer for Marina Air Faire, October 11, 2008.
Exhibit 13 – Marina Municipal Airport Repayment Agreement for Past Due Account and email dated November 22, 2020, and forwarded on September 28, 2021.
- Exhibit 4 Objections to the Declaration of City's ASM, Jeff Crechriou and Motion to Strike, dated October 4, 2021.

Exhibit 14 – Letter dated June 28, 2021 from Glynn Falcon to City of Marina, City Manager, Mayor and Jeff Crechriou regarding request to negotiate on a lease extension before filing formal complaint with the Federal Aviation Administration.

Exhibit 15 – State of California Confirmation of Submission, LLC Statement of Information along with payment of the filing fee for Marina Aviation LLC, dated October 4, 2021.
- Item 5 Federal Aviation Administration Airport Sponsor Assurances, dated February 2020. (https://www.faa.gov/airports/aip/grant_assurances/)**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 27, 2021, I sent via electronic mail and via FedEx a true copy of the foregoing document addressed to:

FOR COMPLAINANT

Mr. Glynn P. Falcon
900 East Hamilton Avenue, Suite 100
Campbell, CA 95008
Glynn.Falcon@FalconLawOffice.com

FOR RESPONDENT

Mr. Robert Rathie
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attys@wellingtonlaw.com

Ms. Lori D. Ballance
Ms. Yana L. Ridge
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Copy to:
FAA Part 16 Airport Proceedings Docket (AGC-600)
FAA Office of Airport Management and Management Analysis (ACO-100)



Natalie Curtis
Office of Airport Compliance
and Management Analysis