



U.S. Department
of Transportation

Office of Airport Compliance
and Management Analysis

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Washington, DC 20591

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PART 16 DOCKETS

December 10, 2020

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Re: Director's Determination for FAA Docket No. 16-17-03

Dear Ms. Wallen and Messrs. Boileau, Kirsch, Clabbers, DiMascio, and Goldstein:

Enclosed is a copy of the Final Agency Decision and Order of the Federal Aviation Administration (FAA) with respect to the above-referenced matter, affirming the Director's Determination, FAA Docket No. 16-17-03.

The Associate Administrator for Airports concludes the Director's analysis and conclusions are supported by a preponderance of reliable, probative, and substantial evidence, and is consistent with applicable law, precedent, and the FAA policy. The Complainants' Appeal does not have persuasive arguments sufficient to reverse any portion of the Director's Determination.

The reasons for upholding the Director's Determination are set forth in the enclosed Final Agency Decision and Order.

Sincerely,

**LORRAINE M
HERSON-JONES**

Digitally signed by LORRAINE M
HERSON-JONES
Date: 2020.12.10 16:50:53 -05'00'

Lorraine M. Herson-Jones
Manager, Office of Airport Compliance
and Management Analysis

Enclosure

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 10, 2020, I sent via electronic mail and via FedEx a true copy of the foregoing document addressed to:

FOR COMPLAINANT

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Copy to:
FAA Part 16 Airport Proceedings Docket (AGC-600)
FAA Office of Airport Management and Management Analysis (ACO-100)
FAA Southern Region Airports Division (ASO-600)



Viola Cijntje
Office of Airport Compliance
and Management Analysis

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

**Atlantic Beechcraft Services, Inc.,
Appellant/Complainant,**

v.

FAA Docket No. 16-17-03

**City of Fort Lauderdale, Florida,
Appellee/Respondent.**

FINAL AGENCY DECISION

I. INTRODUCTION

This matter is before the Federal Aviation Administration (FAA) Associate Administrator for Airports on appeal filed by Atlantic Beechcraft Services, Inc., (Atlantic, Appellant, or Complainant), from a Director's Determination of March 7, 2018, issued by the Director of the FAA Office of Airport Compliance and Management Analysis, pursuant to the Federal Aviation Administration *Rules of Practice for Federally Assisted Airport Enforcement Proceedings* in Title 14 Code of Federal Regulations (C.F.R.) Part 16. The Director dismissed the Complainant's allegations against the City of Fort Lauderdale, Florida, (City, Respondent, Appellee, or Sponsor), regarding the City's Federal obligations associated with Fort Lauderdale Executive Airport (FXE or Airport).

Atlantic's appeal states that the Director's findings and conclusions should be set aside and "his decision is not in accordance with law and FAA's precedent and policy" (FAA Exhibit 1, Item 4, p. 2). Atlantic argues that the prohibition of exclusive rights extends to agreements between airport users. (FAA Exhibit 1, Item 4, p. 7).

The City counters that the Director correctly concluded that the City is not in violation of its Federal obligations and the Director's Determination should be affirmed. (FAA Exhibit 1, Item 7, p. 3).

Upon appeal of a Part 16 Director's Determination, the Associate Administrator must determine whether (a) the findings of fact made by the Director are supported by a preponderance of reliable, probative, and substantial evidence contained in the record, (b) each conclusion is based on applicable law, precedent, and public policy, (c) the questions on appeal are substantial, and (d) any prejudicial errors occurred. (14 C.F.R. § 16.33(e)).

In arriving at a final decision on this Appeal, the FAA has reexamined the record in this Decision, including the Director's Determination, the Administrative Record supporting the

Director's Determination, the Complainant's Appeal, and the Respondent's Reply in light of the applicable four-part standard of review as set forth above.

Based on this reexamination, the FAA Associate Administrator for Airports affirms the Director's Determination. The Associate Administrator concludes that the Director's Determination is supported by a preponderance of reliable, probative, and substantial evidence and is consistent with applicable law, precedent, and FAA policy. The Complainant's Appeal does not have persuasive arguments sufficient to reverse any portion of the Director's Determination.

This decision constitutes the final decision of the Associate Administrator for Airports pursuant to 14 C.F.R. Part 16.

II. SUMMARY OF THE DIRECTOR'S DETERMINATION

The Director's Determination found that the City did not violate Grant Assurance 23, *Exclusive Rights*. (FAA Exhibit 1, Item 1).

In summary, the Director determined the overriding issue was a disagreement between Atlantic and Sheltair over the terms of their sublease. The Director found that "while Atlantic may be dissatisfied with the lease that it signed," the lease amendment contained certain restrictions, and Atlantic's dissatisfaction after-the-fact "does not equate to a violation of Grant Assurance 23." (FAA Exhibit 1, Item 1, p. 13). The Director also determined the City offered Atlantic other reasonable locations at FXE to lease but that Atlantic refused to accept these other locations. The Director also determined that other commercial aeronautical service providers conducted the same services that Atlantic offered on the Airport.

The Director found that Atlantic did not provide evidence that the City violated Grant Assurance 23, *Exclusive Rights*. The Director also noted Atlantic's concession that, "the City did not (apparently) participate in the scheme between Sheltair and Banyan to effectively give Banyan an exclusive right to perform maintenance on turbine engines...." (FAA Exhibit 1, Item 1, p. 11). Finally, the Director determined that "the Director was not persuaded that the City had permitted Sheltair to engage in a prohibited exclusive right in its sublease agreement with Atlantic." (FAA Exhibit 1, Item 1, p. 13).

III. PARTIES

A. Respondent/Appellee

Fort Lauderdale Executive Airport is a general aviation reliever airport owned and operated by the City of Fort Lauderdale, Florida. The airport serves a variety of general aviation needs including aircraft refueling and parking, corporate aviation, and other services. The FXE includes property conveyed under the Surplus Property Act of 1944, as amended, pursuant to War Assets Administration (WAA) Regulation 16. (FAA Exhibit 1, Item 8).

The development of the airport has been supported 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.* Since 1982, the City of Fort Lauderdale has accepted more than \$35,013,000 in AIP grant funds. The most recent grant in 2017 was \$2,250,000 million to rehabilitate a taxiway. (FAA Exhibit 1, Items 1, 8, and 9).

B. Complainant/Appellant¹

Atlantic is a certified aircraft maintenance facility located at FXE. Atlantic is owned and operated by William Ahern, an FAA Airplane and Powerplant mechanic. Atlantic subleases space for its business from Sheltair. (FAA Exhibit 1, Item 1, p. 2).

IV. PROCEDURAL HISTORY

On March 7, 2018, the Director's Determination was issued. (Item 1).

On March 22, 2018, Atlantic filed Notice of Appeal and Unopposed Motion for Enlargement of Time to File Appeal Brief. (Item 2).

On April 6, 2018, Order issued granting Motion for Atlantic to File Appeal Brief until May 7, 2018. (Item 3).

On May 2, 2018, Atlantic filed its Appeal Brief. (Item 4).

On May 7, 2018, City of Fort Lauderdale filed Unopposed Motion for Extension of Time to Reply to Atlantic's Appeal Brief. (Item 5).

On May 25, 2018, Order granted Extension of Time for City of Fort Lauderdale to file Appeal Brief to and including June 14, 2018. (Item 6).

On June 14, 2018, City of Fort Lauderdale filed Respondent's Reply to Appeal Brief. (Item 7).

V. APPLICABLE LAW AND POLICY

The following discussion pertains to (a) the FAA's enforcement responsibilities; (b) the FAA compliance program; (c) statutes, sponsor assurances, and relevant policies; (d) the complaint process; and (e) the appeal process.

A. FAA Enforcement Responsibilities

The Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40101, *et seq.*, assigns the FAA Administrator broad responsibilities for the regulation of air commerce in the interests of safety, security, and development of civil aeronautics. The federal role in encouraging and developing civil aviation has been augmented by various legislative actions, which authorize programs for

¹ One Complainant, Southeast Turbine Corp., did not appeal the Director's Determination. Therefore, this Appeal does not address any of its arguments.

providing funds and other assistance to local communities for the development of airport facilities.

In each program, the airport sponsor assumes certain obligations, either by contract or by restrictive covenants in property deeds and conveyance instruments, to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions. Commitments assumed by airport 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 well as ensuring the public reasonable access to the airport. Under 49 U.S.C. § 47107, the FAA is mandated to receive assurances from airport owners that require them to operate and manage their airports in conformance with certain standards as set forth in the statute and grant agreement.

B. FAA Airport Compliance Program

The FAA designed the Airport Compliance Program to ensure the national system of public-use airports is safe, properly maintained, and that airport sponsors operate consistent with their federal obligations and the public's interest in civil aviation. The Airport Compliance Program monitors the administration of valuable rights, which airport sponsors pledge to the people of the United States that they will protect in exchange for monetary grants and donations of federal property.

FAA Order 5190.6B, *FAA Airport Compliance Manual*, September 30, 2009, sets forth the policies and procedures for the FAA Airport Compliance Program. The order establishes the policies and procedures for FAA personnel to follow in carrying out the FAA's responsibilities for airport compliance. It provides basic guidance for FAA personnel in interpreting and administering the continuing commitments airport owners make to the United States as a condition for the grant of Federal funds or the conveyance of federal property for airport purposes. Among other things, the order analyzes the airport sponsor's obligations and assurances, addresses the application of the assurances in the operation of public-use airports, and helps FAA personnel interpret the assurances and determine whether the sponsor has complied with them.

The FAA compliance program is designed to achieve voluntary compliance with Federal obligations accepted by owners and operators of public-use airports that have been developed with FAA assistance. Therefore, in addressing allegations of noncompliance, the FAA will determine whether an airport sponsor currently complies with the applicable Federal obligations. The FAA will also consider the successful action by the airport to cure an alleged or potential past violation of applicable Federal obligation as grounds for dismissal of the allegations.

C. Statutes, Sponsor Assurances, and Relevant Policies

The *Airport and Airway Improvement Act of 1982*, 49 U.S.C. § 47101, *et seq.*, sets forth assurances to which an airport sponsor receiving federal financial assistance must agree as a condition precedent to receiving the assistance. These sponsorship requirements are included in every AIP grant agreement. Upon acceptance of an AIP grant by an airport sponsor, the assurances become a binding obligation between the airport sponsor and the Federal Government.

Of particular concern in this matter is Grant Assurance 23 which governs exclusive rights. Grant Assurance 23 implements the provisions of title 49 U.S.C. §§ 40103(c) and 47107(a)(4), which provide that “a person providing, or intending to provide, aeronautical services to the public will not be given an exclusive right to use the airport” 49 U.S.C. § 47104(a)(4). The owner or sponsor also agrees under Grant Assurances 23(b) that it “will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities... and will terminate any exclusive right to conduct an aeronautical activity now existing at an airport before the grant of any assistance under Title 49, United States Code.”

D. The Complaint Process

Under 14 C.F.R. § 16.23, persons directly and substantially affected by any alleged noncompliance may file a complaint with the FAA. Complainants shall provide a concise but complete statement of the facts relied upon to substantiate each allegation and describe how they were directly and substantially affected by the things done or omitted by the respondents. (14 C.F.R. § 16.23(b)(3), (4)).

If these statements provide a reasonable basis for further investigation, the FAA will investigate the subject matter of the complaint. In rendering its initial determination, the FAA may rely entirely on the complaint and the responsive pleadings provided. Each party shall file documents it considers sufficient to present all relevant facts and arguments necessary for the FAA to determine whether the sponsor is in compliance. (14 C.F.R. § 16.29).

As the proponent of a motion, request, or order, the Complainant has the burden of proof. This standard burden of proof is consistent with the Administrative Procedure Act and Federal case law. The Administrative Procedure Act states, “[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof.” (5 U.S.C. § 556(d)).

E. The Appeal Process

In cases where the complaint is dismissed after investigation, 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. (14 C.F.R. § 16.33(b), (c)).

On appeal from a Director's Determination, the Associate Administrator will consider any issues accepted in the Director's Determination using the following analysis:

- (1) Are the findings of fact each supported by a preponderance of reliable, probative, and substantial evidence contained in the record?
- (2) Are conclusions made in accordance with law, precedent, and policy?
- (3) Are the questions on appeal substantial?
- (4) Have any prejudicial errors occurred?

14 C.F.R. § 16.33(e).

Review by the Associate Administrator is limited to an examination of the Director's Determination and the administrative record upon which such determination was based. (14 C.F.R. § 16.33(e)). "Any new issues or evidence presented in an appeal or reply will not be considered unless accompanied by a petition and good cause as to why the new issue or evidence was not presented to the Director." (14 C.F.R. § 16.33(f)).

VI. ISSUES

The Associate Administrator reviewed Atlantic's specific arguments and identified the following issue for review on Appeal:

1. Whether the Director erred in determining the City did not violate Grant Assurance 23, *Exclusive Rights*, when it permits its tenant, Sheltair, to grant an exclusive right to its subtenant, Banyan?

VII. DISCUSSION AND ANALYSIS

Atlantic's Position on Appeal

Atlantic argues that the Director's Determination "is not supported by the enabling statute, FAA Order 5190.6B or the case law, and must be set aside." (FAA Exhibit 1, Item 4, p. 4). Atlantic claims the Director improperly framed the issue as "not whether Sheltair granted Banyan an [improper] exclusive right," but whether the parties agreed to the alleged exclusivity provision in their lease. (FAA Exhibit 1, Item 4, pp. 4-5, *citing* FAA Exhibit 1, Item 1, p. 12). Atlantic claims that by characterizing the issue as a lease dispute, the Director failed to recognize the imposition of an improper exclusive right in violation of Grant Assurance 23. (FAA Exhibit 1, Item 4, pp. 4-6).

Atlantic further argues that the Director misunderstood and misapplied the burden of proof. Atlantic objects to the Director's differentiation of the case at hand from the case of *Pompano Beach*. In analyzing that case the Director noted that unlike in *Pompano Beach* the City had not made it "impossible" for Atlantic or other aeronautical service providers to do business at the airport. (FAA Exhibit 1, Item 4, pp. 5-6). According to Atlantic, this statement demonstrates that the Director used an erroneous standard based on "impossibility."

Atlantic finally argues that:

[T]here can be no question that Sheltair's insistence that Atlantic not perform airframe maintenance on turbine powered aircraft while allowing only Banyan to do so on Banyan's leasehold, is a restraint of trade or commerce.

(FAA Exhibit 1, Item 4, pp. 6-7).

City's Position on Appeal

In its Reply to the Appeal, the City asserts that Atlantic executed and renewed a sublease with Sheltair. The City states that Atlantic agreed to the lease terms that restricted its operations to aircraft storage and aircraft interior completions. The City claims that Atlantic should have renegotiated the sublease with Sheltair or found other space on the Airport.

The City also states that the Director was correct to note that Atlantic refused the City's offers of other locations to service turbine-engine aircraft at FXE because of the rental rates. According to the City, because Atlantic passed on the other opportunities based on cost considerations, the Director's finding that the City has not "permitted Sheltair to engage in a prohibited exclusive right" was appropriate. (FAA Exhibit 1, Item 7, pp. 1-2). The City further asserts that Atlantic failed to demonstrate either that the Director's findings were not based upon substantial evidence or that the Determination was not in accordance with law. (FAA Exhibit 1, Item 7, p. 1).

Analysis

The City has provided evidence that shows Atlantic and others had ample opportunity to service turbine-engine aircraft at the Airport, thereby refuting the proposition that this right was granted in an exclusive manner. The City's appellate brief notes that the Director was presented evidence showing that "at least three other fixed-base operators and ten specialized-service companies at the Airport service turbine-engine aircraft." (FAA Exhibit 1, Item 7, p. 3). Also, the City notes that the evidence presented to the Director shows that there were "at least twelve other hangars" outside Sheltair's leasehold that were available for lease during the course of this dispute and at which service on turbine engine aircraft could have been conducted. (FAA Exhibit 1, Item 7, p.11.) According to the City, "there is insufficient evidence in the present record that the City has made it impossible for Atlantic or other aeronautical service providers to start or do business at the airport." (FAA Exhibit 1, Item 7, p. 5).

The Director noted the City's position that "other locations on the Airport have been available for lease and that other FBOs provide turbine maintenance service" at FXE. The Director noted Atlantic's statement that "the cost of ... [these] other facilities ... [was] too high and it preferred to continue with its sublease." The Director was not persuaded, based on these facts, that an unlawful exclusive right had been granted. (FAA, Exhibit 1, Item 1, p. 13).

Atlantic provides exhibits on appeal which come from the City's pleadings. One exhibit is the FXE Minimum Standards, which require all airport tenants to abide by all Federal laws, rules and regulations, standards, and requirements, as well as FAA grant assurances. Atlantic also provides excerpts of the City's amended and restated lease with Sheltair, which includes the prohibition on certain activities within Sheltair's leaseholds except by Banyan. Atlantic argues that these documents require all tenants, including both Sheltair and Banyan, to comply with Grant Assurance 23. (FAA Exhibit 1, Item 4, pp. 8-9).

Atlantic argues that, based on the minimum standards and other authorities, the prohibition against exclusive rights applies not only to the airport sponsor but to airport tenants and users. FAA Order 5190.6B states that an exclusive right prohibits an airport sponsor from granting an

exclusive right for the use of the airport, including granting an exclusive right to any person or entity providing aeronautical services to the public. (FAA Order 5190.6B, p. 8-1).

As a general proposition it is true that many of the obligations contained in the assurances propagate from the airport sponsor to the tenant. For instance, sponsors include certain assurance obligations in tenant leases. Nevertheless, that fact that an assurance may be applicable does not answer the question as to whether there is a violation in the specific circumstances at the airport.

In this case the Director found no violation. Grant Assurance 23 provides that the sponsor will not permit an “exclusive right for the use *of the airport*.” (Grant Assurance 23 (emphasis provided)). The focus of Grant Assurance 23 is the airport as a whole and not a specific leasehold. As the Associate Administrator has held:

The exclusive rights prohibition does not guarantee an airport user the right to acquire a specific piece of private property, or access to a specific location on the airport. It does ensure that airport users have the right to access *the airport* to conduct commercial aeronautical activities.

Roadhouse Aviation, LLC v. City of Tulsa, No. 16-05-08, Final Decision and Order, p. 23 (2007) (emphasis added).

Here the record reflects that Atlantic had other opportunities to conduct the work it desired to do at other locations on the airport and other airport tenants were in fact doing so. Applying the exclusive rights to an individual tenancy without taking an airport-wide perspective makes no sense and violates the clear text of the assurance. To some extent every tenancy creates an exclusive right *on the particular leasehold premises*. The fact that Banyon had an exclusive right to perform certain activities on the *Sheltair leasehold*, does not create an exclusive right at *the airport*.

We agree with the City’s argument that nothing required Sheltair to sublease its space to other service providers at all. Sheltair could have itself provided all or any FBO services within its leasehold, including turbine-engine maintenance and repair.

(FAA Exhibit 1, Item 1, Item 7, p. 13).

This is certainly true, as here, where Sheltair does not control all available parcels on the airport and other spaces were available. The plain language of the grant assurance itself prohibits an exclusive right “for the use *of the airport*” (Grant Assurance 23 (emphasis added)).

The Associate Administrator notes that, as stated in the Director’s Determination, the Record contains evidence that the City offered Atlantic opportunities at FXE to rent available space, which included the opportunity to perform turbine-engine aircraft services. The Director’s Determination noted Atlantic’s position that it had decided not to take any of these lease opportunities because the cost of other facilities was too high, and it preferred to continue to sublease. But, “[t]he grant assurances do not obligate ... [a sponsor] to provide such space at a price acceptable to the Complainant.” (*See Roadhouse Aviation*, at p. 21)

The FAA has made clear that no proposed tenant is entitled to a long-term lease at the location of its choosing and upon its preferred terms and conditions. Airport sponsors are not required to develop any and all parcels of land in a manner consistent with the wishes of any one party, but rather may exercise its proprietary rights and powers to develop and administer the Airport's land in a manner consistent with the public's interest. (*See Jim De Vries, et al., v. City of St. Clair, Missouri*, Docket No. 16-12-07 (May 20, 2014); *ALGA, The Cylinder Shop, et al., v. Miami-Dade County*, Florida, Docket No. 16-08-05 (August 31, 2010)). In this case the evidence presented to the Director showed that there were other parcels which would have allowed Atlantic to perform the very services that Atlantic claims it cannot provide at FXE.

The Associate Administrator is persuaded by the evidence that other aeronautical service providers are servicing turbine-engine aircraft at FXE. As noted above, evidence was presented that three other fixed-base operators and ten specialized-service companies provide service on turbine-engine aircraft at FXE. (FAA Exhibit 1, Item 7, pp. 8-9, and 11). Atlantic did not dispute that the City offered them opportunities to lease other FXE property or that there are other commercial aeronautical services offering turbine-engine maintenance services at FXE.

In general, Grant Assurance 23 would prohibit a master tenant that controlled all or a significant proportion of an airport's land from granting an exclusive right, in the same way that a sponsor is likewise prohibited. But, here the record clearly shows that Sheltair was not in possession of all the airport's land. A key fact is that the City was still leasing other parcels, and according to the City, other parcels were available during the course of this dispute. Consequently, the Director found there was insufficient evidence that the City has made it impossible for Atlantic or other aeronautical service providers to start or do business at the airport. The facts show that the City had, in fact, offered Atlantic the very opportunity it sought on FXE, although perhaps not at the exact location or for the price that Atlantic choose to accept. The Director's Determination noted that "leasing *all available land* ... to one enterprise is construed as evidence ... to [wrongfully] exclude others. ..." (FAA, Exhibit 1, Item 1, p. 8 (emphasis added)). Here, there were no such facts.

Applying the applicable FAA policy to this specific matter, the Associate Administrator agrees that Atlantic did not offer any evidence to support its allegation that the City was limiting its opportunity in such a way as to violate the grant assurances. (FAA Exhibit 1, Item 1, p. 14). (*See Roadhouse Aviation, LLC v. City of Tulsa*, FAA Docket No. 16-05-08, Final Decision and Order, (2007); *Wilson Air Ctr., LLC v. Memphis & Shelby Cty. Airport Auth.*, FAA Docket No. 16-99-10, Director's Determination, (2000)).

The Director also determined that Atlantic signed subleases with Sheltair between 2012, 2013, 2014, 2015, 2016, and 2017, for a leasehold on FXE. Atlantic voluntarily and repeatedly entered into subleases that contained the very restrictions about which it now complains. According to Atlantic, the existence of the leases is irrelevant and that the Director erred by not considering whether the restrictions, voluntarily assumed or not, violated the grant assurances. While we disagree that the agreements are irrelevant, we do agree that as a general principle leases cannot be used to contract away Federal obligations. The exact contours of this principle need not be parsed by this order, however, because the Director did, in fact, note that a lease does "not nullify FAA's obligation to assure compliance with the Federal obligations." (FAA Exhibit 1,

Item 1, p. 13). The Director then proceeded to fully analyze the alleged violation, noting, among other points, that Atlantic had other options. The Director analyzed and distinguished this case from relevant FAA precedent. Therefore, Atlantic's argument on this point is not persuasive.

Additionally, Atlantic cites the definition of "complaint" in 14 C.F.R. § 16.3 which states that a complaint is a written document filed by

a person directly and substantially affected by anything allegedly done or omitted to be done by any person in contravention of any provision of any Act, as defined in this section, as to matters within the jurisdiction of the Administrator

(FAA Exhibit 1, Item 4, p. 5).

Atlantic cites this definition to support its contention that complaints under Part 16 can address both subleases and the actions of a sponsor's tenants. We do not disagree with this point. The FAA does investigate the sponsors' relationships with tenants when it is necessary to determine whether an airport sponsor is in compliance with its Federal obligations. In this matter, Atlantic submitted a Part 16 complaint, which it believed correctly presented allegations of noncompliance by the City through the actions of its tenants. The FAA followed the administrative process. However, Atlantic's specific allegation of exclusive rights fails for the reasons stated herein. Particularly, the City still had parcels available and offered Atlantic FXE property that was neither restricted nor controlled by Sheltair. In addition, as discussed above, other tenants were and are offering turbine-engine maintenance services at FXE.

Finally, we note Atlantic's argument that the Director applied the wrong standard when he noted that it was not "impossible" for Atlantic to have found another leasehold where it could conduct its desired operations. We find that this was not, in fact, the standard that the Director applied. When using the term "impossible" the Director was quoting the 11th Circuit's decision in *Pompano Beach* and distinguishing it from the case at hand. The Director properly found that Atlantic did not meet its burden to show that it was excluded from the airport and that Atlantic's concern appeared to be based more on costs and preferences, conditions that, without more, are not cognizable under the grant assurances. (FAA, Exhibit 1, Item 1, pp. 13-14).

Consequently, the Associate Administrator is persuaded on appeal that the Director not err in concluding that the City was not in violation of Grant Assurance 23.

VIII. CONCLUSION

The FAA's role in this Appeal is to determine whether the Director erred in findings of fact or conclusions of law in issuing the Director's Determination. The Associate Administrator finds no error by the Director in his Determination.

In arriving at a final decision in this Appeal, the FAA has reexamined the record, including the Director's Determination, the administrative record supporting the Director's Determination, the Appeal, the City's Reply, and applicable law and policy. Based on this reexamination, this decision concludes that the Director's Determination is supported by a preponderance of reliable, probative, and substantial evidence and is consistent with applicable law, precedent, and FAA

policy. The Appeal does not contain persuasive arguments sufficient to reverse any portion of the Director's Determination.

The Director's Determination is affirmed. This decision constitutes a final decision of the Associate Administrator pursuant to 14 C.F.R. § 16.33.

ORDER

ACCORDINGLY, it is hereby ORDERED that (1) the Director's Determination is affirmed and (2) the Appeal is dismissed pursuant to 14 C.F.R. § 16.33.

RIGHT OF APPEAL

A party to this decision disclosing a substantial interest in the Final Decision and Order of the Federal Aviation Administration may file a petition for review pursuant to 49 U.S.C. § 46110, in the United States Court of Appeals for the District of Columbia Circuit or in the Court of Appeals of the United States for the Circuit in which the person resides or has its principal place of business. The petition must be filed not later than 60 days after a Final Decision and Order has been served on the party. (14 C.F.R. § 16.247(a)).



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DEON K SHAFFER
Date: 2020.12.10
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D. Kirk Shaffer
Associate Administrator
for Airports

Date

FAA EXHIBIT 1
FINAL AGENCY DECISION INDEX OF ADMINISTRATIVE RECORD
FAA Docket 16-17-03

Item 1 - Director's Determination issued March 7, 2018.

Item 2 - Atlantic Aviation filed Notice of Appeal and Unopposed Motion for Enlargement of Time to File Its Appeal Brief on March 22, 2018.

Item 3 - On April 6, 2018, FAA granted Extension of Time for Atlantic Aviation to file Appeal Brief until May 7, 2018.

Item 4 - On May 2, 2018, Atlantic filed its Appeal Brief.

Exhibit A U.S. Opinion of Attorney General, dated June 4, 1941.

Exhibit B Affidavit of William Ahern, dated February 21, 2017.

Exhibit C FXE Minimum Standards p. 8.

Exhibit D FXE Minimum Standards p. 10.

Exhibit E FXE Minimum Standards p. 4.

Exhibit F 2004 Lease Between the City of Fort Lauderdale and Gerald M Holland Excerpts, pp. 29, 5, 18, and 19.

Exhibit G 2006 Lease Between the City of Fort Lauderdale and Sheltair Executive South, Inc., Excerpts, pp. 2-3, 7-8, and 21.

Item 5 – City of Fort Lauderdale filed Unopposed Motion for Extension of Time to Reply to Complainant's Appeal Brief on May 7, 2018.

Item 6 - On May 25, 2018, FAA granted Extension of Time for City of Fort Lauderdale to file Appeal Brief to and including June 14, 2018.

Item 7 – On June 14, 2018, City of Fort Lauderdale filed Respondent-Appellee City of Fort Lauderdale's Reply to Complainant-Appellant's Appeal Brief.

Item 8 - Fort Lauderdale Executive Airport FAA 5010 Airport Master Record dated April 18, 2018.

Item 9 - FAA Airport Improvement Program grant history record dated April 19, 2018.

Item 10 - On August 8, 2018, FAA issued extension of Time for issuing Final Agency Decision until October 21, 2018.

Item 11 - On November 20, 2018, FAA issues Extension of Time for issuing Final Agency Decision until December 28, 2018.

Item 12 - On December 28, 2018, FAA Order granted an extension to issue the Final Agency Decision until March 1, 2019.

Item 13 – On March 11, 2019, FAA issues Extension of Time for issuing Final Agency Decision until April 26, 2019.

Item 14 – On March 11, 2019, outside legal counsel for the City, Nicholas Clabbers, emailed an update on legal service contacts for the City to the FAA Public Docket.

Item 15 – On April 24, 2019, counsel for Atlantic Aviation, Stuart Goldstein, provided Notice of Change of Address to the FAA Public Docket.

Item 16 – On April 26, 2019, FAA issues Extension of Time for issuing Final Agency Decision until June 26, 2019.

Item 17 – On June 28, 2019, FAA issues Extension of Time for issuing Final Agency Decision until August 23, 2019.

Item 18 – On August 26, 2019, FAA issues Extension of Time for issuing Final Agency Decision until October 22, 2019.

Item 19 – On October 22, 2019, FAA issues Extension of Time for issuing Final Agency Decision until December 20, 2019.

Item 20 – On December 19, 2019, FAA issues Extension of Time for issuing Final Agency Decision until February 19, 2020.

Item 21 – On April 22, 2020, FAA issues Extension of Time for issuing Final Agency Decision until July 16, 2020.

Item 22 – On July 14, 2020, FAA issues Extension of Time for issuing Final Agency Decision until September 14, 2020.

Item 23 – On April 22, 2020, FAA issues Extension of Time for issuing Final Agency Decision until July 16, 2020.

Item 24 – On July 14, 2020, FAA issues Extension of Time for issuing Final Agency Decision until September 14, 2020.

Item 25 – On September 15, 2020, FAA issues Extension of Time for issuing Final Agency Decision until November 13, 2020.