

2023 WL 8015267

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United States Court of Appeals, Ninth Circuit.

MARINA AVIATION, LLC; Phil Lewis, Petitioners,
v.
FEDERAL AVIATION ADMINISTRATION; City of
Marina, Respondents.

No. 22-70173

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Submitted November 15, 2023; San Jose, California

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Filed November 20, 2023

On Petition for Review of an Order of the Federal Aviation
Administration, FAA No. 16-21-12

Attorneys and Law Firms

Glynn P. Falcon Attorney, Aptos, CA, for Petitioners.

Agnes Rodriguez Supervisory Attorney, Federal Aviation
Administration, Office of the Chief Counsel, Washington,
DC, Laura Myron, DOJ - U.S. Department of Justice,
Washington, DC, for Respondent Federal Aviation
Administration.

Robert William Rathie Attorney, Wellington & Rathie,
Carmel, CA, Yana L. Ridge, Lori Ballance Attorney, Gatzke
Dillon & Ballance, LLP, Carlsbad, CA, for Respondent City
of Marina.

Before: MURGUIA, Chief Judge, and GRABER and
FRIEDLAND, Circuit Judges.

MEMORANDUM**

*1 Petitioners Marina Aviation, LLC, and Phil Lewis
(together “Marina Aviation”) seek review of the Federal
Aviation Administration’s (“FAA”) decision that the City of
Marina did not breach its federal obligations in declining to
extend Marina Aviation’s lease at the Marina Municipal

Airport. We have jurisdiction under 49 U.S.C. § 46110(a).
We deny the petition for review.

Substantial evidence supports the FAA’s conclusion that the
City declined to extend Petitioners’ lease because they failed
to make timely rent payments under the existing lease. Lewis
acknowledged that Marina Aviation “owe[d] the City some
amount for back rent and interest[.]” Jeffrey Crechriou, the
Airport Services Manager at the Marina Municipal Airport,
submitted a declaration describing Marina Aviation’s history
of “missed rental payments and resulting late fees and
interest[.]” which resulted in a “Repayment Agreement”
between Marina Aviation and the City. According to
Crechriou, the City Council held a closed session on July 21,
2020, at which the City decided against extending Marina
Aviation’s lease “due to Marina Aviation’s history of non-
compliance with the Ground Lease Terms and its continuing
defaults under the Ground Lease and the Repayment
Agreement.”

Marina Aviation argues that the FAA “should not have
considered the declaration of Mr. Crechriou” because it is
“riddled with hearsay” and not authenticated. However,
hearsay is allowed in agency proceedings provided that it is
“reliable [and] probative.” *See* 5 U.S.C. § 556(d);
Richardson v. Perales, 402 U.S. 389, 407–08 (1971). Marina
Aviation does not meaningfully dispute that the declaration is
reliable and probative. Thus, Marina Aviation’s argument that
the FAA should not have considered this evidence fails.

Marina Aviation also argues that the City’s July 2020 closed-
door meeting violated California’s Brown Act, Cal. Gov’t
Code § 54950 *et seq.* Because Marina Aviation raises this
argument for the first time on appeal, it fails for this reason
alone. *See Japanese Vill., LLC v. Fed. Transit Admin.*, 843
F.3d 445, 454–55 (9th Cir. 2016); *see also Marathon Oil Co.*
v. United States, 807 F.2d 759, 767–68 (9th Cir. 1986) (“As a
general rule, we will not consider issues not presented before
an administrative proceeding at the appropriate time.”). In
any event, the Brown Act has no bearing on whether the City
breached its *federal* obligations.

Petition DENIED.¹

All Citations

Not Reported in Fed. Rptr., 2023 WL 8015267

Footnotes

- * The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).
- ** This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.
- ¹ We deny the City's motion for judicial notice as MOOT.

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