

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

Boca Raton Jet Center, Inc.
v.
Boca Raton Airport Authority

Docket No. 16-97-06

FINAL DIRECTOR'S DETERMINATION

This matter came before the Federal Aviation Administration (FAA) based on the formal complaint filed in accordance with our Rules of Practice for Federally-Assisted Airport Proceedings (FAA Rules of Practice), 14 C.F.R. Part 16.

Boca Raton Jet Center (Boca Jet) filed a formal complaint pursuant to the FAA Rules of Practice against the Boca Raton Airport Authority, owner and operator of the Boca Raton Airport, alleging that the Authority, in denying Boca Jet the opportunity to lease and develop land on the Boca Raton Airport, has engaged in activity contrary to its Federal obligations.

Under the specific circumstances at the Boca Raton Airport, and based on the evidence of record presented, the FAA found that the Boca Raton Airport Authority, (BRAA) by denying a lease to Boca Jet, and leasing the last remaining parcel of aviation land to Boca Airport, Inc. d/b/a Boca Aviation (Boca Aviation), was in noncompliance with the provisions regarding exclusive rights as set forth in 49 U.S.C. Section 47107(a)(4) and the Authority's Federal grant agreements.

With respect to Boca Jet, the FAA stated that from review of the administrative record, it appears that all of the information (financial data) requested from Boca Jet was not provided in a timely nor complete fashion. Thus, the Authority was under no obligation to continue to negotiate with Boca Jet.

On December 22, 1997, the FAA issued an initial Director's Determination under 14 CFR Section 16.31 with respect to the above referenced complaint, and directed the City of Boca Raton to present a plan within 20 days to the FAA Orlando Airports District Office indicating how it intended to correct the apparent violation.

On January 20, 1998, the Boca Raton Airport Authority submitted a corrective action plan and a conditional request for a hearing under 14 CFR 16, subpart F. The request for a hearing was held in abeyance pending review of the corrective action plan.

On February 2, 1998, the FAA issued a Notice in which Susan Kurland, the Associate Administrator for Airports, denied Boca Jet's motion to strike "Boca Raton Airport Authority's Corrective Action Plan and Conditional Request for Hearing." The Notice also held in abeyance Boca Aviation's Motion for Reconsideration and/or Notice of Appeal of the denial of its motion to intervene by the initial Director's Determination of December 22, 1997. Also held in abeyance was Boca Aviation's motion for a hearing and intervention under Subpart F of 14 CFR Part 16.

On March 20, 1998, the FAA met with the Boca Raton Airport Authority to further explain its dissatisfaction with the corrective action plan submitted by the Authority on January 20.

On April 17, 1998, the Boca Raton Airport Authority submitted a Revised Corrective Action Plan but requested that FAA delay commenting until negotiations with Boca Aviation were complete.

On July 24, 1998, the Boca Raton Airport Authority submitted an amendment to their lease with Boca Aviation (18th amendment) dated July 17, 1998, that did not satisfy the Correction Action Plan Order. The 18th amendment was unacceptable in two ways. First the amendment did not meet the requirement to eliminate the exclusive right as offered to Boca Aviation as determined in the Director's Determination, because it gave Boca Aviation the right to approve any aeronautical use not described in that amendment. Secondly, the approval rights granted to Boca Aviation in the 18th amendment violated provisions of the grant assurance requiring BRAA to preserve the right and powers of the airport sponsor, by giving Boca Aviation the power to approve new aeronautical activities at the airport.

FAA met again with the Boca Raton Airport Authority on September 1, 1998, to provide further guidance on an acceptable plan that would eliminate the exclusive right offered to Boca Aviation. At the meeting, FAA provided conceptual approval to changes to the Airport Layout Plan (ALP) relative to the lands previously utilized for the golf driving range (Additional Premises). These proposed changes would provide for the construction, development and operation by the Authority of at least seventy thousand (70,000) square feet of hangar space containing T-hangar units and corporate hangars, approximately twenty-four thousand (24,000) square feet of hangar space to be used as community or corporate hangar space or aircraft maintenance space, (including such additional aeronautical services as deemed desirable to support viable commercial operations, as long as such additional services are offered in accordance with the Minimum Standards), a wash rack, operations/administration building, and an Airport Authority- operated training building with appurtenant parking. All of these facilities would be operated by the Airport Authority under its proprietary authority to offer commercial airport services to the public.

On September 22, 1998, the Boca Raton Airport Authority submitted the 19th amendment to the November 28, 1984, Lease and Operating Agreement Between the Boca Raton Airport Authority, Lessor, and Boca Airport, Inc., d/b/a Boca Aviation, Lessee. The changes as adopted by the Boca Raton Airport Authority served to meet the conditions of the Correction Action Plan as directed in the initial Director's Determination.

The 19th amendment was acceptable in that it served to require that Boca Aviation relinquish any and all rights in and to the Additional Premises, as defined in the Fifteenth Amendment (the 15 acre parcel at issue), and that Boca Aviation release the Authority from any and all obligations to be performed under the Fifteenth Amendment.

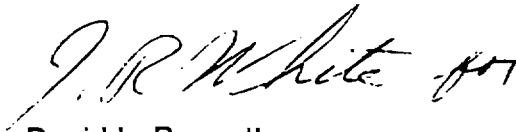
Based on the foregoing, the FAA has determined that the Airport Authority's implementation of the provisions of the 19th amendment will resolve the issue of the exclusive right as previously granted to Boca Aviation. In order to ensure that the measures proposed by the Authority and found acceptable to the FAA are implemented as discussed above, we request that the Authority advise the Orlando Airports District Office (ADO) of the completion and operation of each of the facilities planned for the Additional Premises. Additionally, we request that the Authority seek guidance from the ADO on any future change in the use or operation of these facilities, including any intent to lease the facilities to a commercial aeronautical service provider.

Accordingly, the complaint in FAA Docket No. 16-98-06 is hereby DISMISSED. This Final Director's Determination and the initial Director's Determination of December 22, 1997, (a copy of which is attached) constitute the initial determination of the FAA in this matter pursuant to 14 CFR §16.31¹.

¹ Boca Aviation's two motions held in abeyance by the FAA notice of February 2, 1998, (motion for Reconsideration and/or Notice of Appeal of the denial of its motion to intervene by the initial Director's Determination of 12/22/1997, and motion for a hearing and intervention under Subpart F of 14 CFR Part 16), were based on the general proposition that Boca Aviation should be allowed to participate in the Part 16 proceedings because it had substantial property rights and financial interests in the Boca Raton Airport lease that was the subject of the original complaint. It appears from the record that Boca Aviation subsequently was a party to the corrective action by the Airport Authority, since it negotiated with the Airport Authority and executed changes to its lease for the property at issue in this case. Thus Boca Aviation was able to participate to protect its property rights and financial interests. The two motions by Boca Aviation are moot. Alternatively, Part 16 does not provide for intervention by a non-party in the proceedings before the Director's Determination is issued, pursuant to 14 C.F.R. Section 16.31. That is essentially the investigatory phase. See 14 CFR Part 16, Subpart C. Non-parties may only seek to intervene in the hearing phase of a Part 16 proceeding under 14 CFR Part 16 Subpart F. See initial Director's Determination of 12/22/97 at 12. In this case there is no final finding that the airport violated the grant assurances, so there is no right to a Subpart F hearing by respondent airport authority. See 14 CFR §16.109(a); see also 49 USC § 47106(d) and 47111(d). For these reasons Boca Aviation's motion for Reconsideration and/or Notice of Appeal of the denial of its motion to intervene, and motion for a hearing and intervention under Subpart F, are denied.

RIGHT OF APPEAL

This Determination, together with the December 22, 1998, Determination, are the final "Director's Determination" within the meaning of 14 C.F.R. Section 16.31. As such, it is an initial agency determination and does not constitute a final agency decision and order subject to judicial review. 14 CFR 16.247(b)(2). A party adversely affected by this Director's Determination may appeal it to the FAA Associate Administrator for Airports pursuant to 14 CFR 16.33(b) within thirty (30) days after the date of service.



David L. Bennett
Director of Airport Safety and
Standards

Issued this AUG 20 1999 day of
