

September 9, 2021

Facts #2

Mina Makarious Anderson & Kreiger LLP.

David Mackey Anderson & Kreiger LLP.

Jonathan Elder Anderson & Kreiger LLP.

Karis North Murphy Hesse Toomey Lehané

Michael Lehané Murphy Hesse Toomey Lehané

Brandon Moss Murphy Hesse Toomey Lehané

David Deluca Murphy Hesse Toomey Lehané

John Bateman Murphy Hesse Toomey Lehané

John Davis Pierce Davis Perritano

Adam Simms Pierce Davis Perritano

Norwood Board of Selectmen

Thomas F. Maloney, Chairman

William J. Plasko, Vice Chairman

Helen Abdallah Donohue

David E. Hajjar

Matthew E. Lane

Norwood Town Manager

Tony Mazzucco

RE: Intentional violations of the July 30, 2019 settlement.

Dear Norwood Town Attorneys,

The Norwood Airport Commission has been found in violation of federal law on two occasions. They have been embroiled in lawsuits and controversy over the past 15 years, including paying BEH \$750,000.00 to settle retaliation claims, substantiated by the FAA.

NAC attorney Makarious believes reporting criminal conduct to Law Enforcement

Attorneys in Massachusetts are bound by Supreme Judicial Court Rule 3:07 Rules of Professional Conduct which in part state:

1. It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Substantive law may require a lawyer to disclose certain information to avoid being deemed as having assisted the client's crime or fraud.

2. In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person or fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client.

3. A lawyer is required to be truthful when dealing with others on a client's behalf. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements.

4. A lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent.

5. A lawyer may reveal confidential information to prevent a criminal or fraudulent act.

6. A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

7. Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal.

8. Offering evidence requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes.

9. A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the Bar Counsel's office of the Board of Bar Overseers.

Norwood has had numerous attorneys representing the Town, individuals, and the Norwood Airport Commission (NAC). Town employees have been dishonest, deceitful, committed perjury, fraud and made misrepresentations. They have also violated Federal and State Law. In many cases they have been assisted by attorneys. Based on recent events I will cite some examples of this illegal conduct.

SOME FACTS REGARDING THE COMMUNICATIONS PROVISION OF THE SETTLEMENT

Recently we were provided with a letter from FLN attorney Neil Hartzell to NAC attorney Jonathan Elder. This letter should have been provided under the settlement agreement. NAC attorneys have selectively concealed communication between NAC/Town attorneys and FLN/attorneys. Material communication that would expose the fraud, perjury, lies and deceit. (Note, there were many other selectively concealed communications due under the July 30, 2019, settlement not included in this brief synopsis)

- a. The August 20, 2020, letter demanded a copy of the proposed lease to BEH.

- b. Hartzell claims the proposed leases to BEH were discussed in "Executive Session". How would he know about Executive Session discussion?
- c. Hartzell said he has told the Town FLN needs an area on Lot H, (part of the West apron BEH would be leasing) to allow fuel trucks to provision the FLN fuel farm. This is a lie. Norwood Engineering had produced plans that showed FLN could access their fuel farm without going on the West Apron. Hartzell said earlier, also concealed from BEH, that Ryan and Maguire agreed to conceal these public records from BEH.
- d. There is a video online, with Ryan, Maguire and Cooper, in which Ryan states "several times that the NAC is NOT providing an easement to FlightLevel"
- e. Should the Town lease space to BEH that FLN needs, how would FLN get to their fuel farm. Of course, he knew all this was a lie, there were concealed plans which already showed this.

Hartzell demands that he be provided within 5 days, "a copy of the proposed lease including the engineering drawing depicting the proposed BEH footprint, and also please inform us of the Town intentions as to how it will ensure that FlightLevel will continue to have access to its fuel farm in the absence of the easement approved by the NAC on February 15, 2017"

Not only is this material information and should have been provided to BEH under the settlement, and Public Records Requests, it indicates ongoing communication regarding BEH and the settlement. All intentionally concealed from BEH by Town attorneys, Town employees and the defendants, including **Tony Mazzucco, who was meeting with me while concealing material facts. Lying, monthly.**

1. Makarious testified via affidavit that he has provided ALL communication required under the settlement agreement. He confirmed that Town Counsel (North) and Maguire had no additional correspondence due under the agreement. 11062020. This is a lie. His firm had this and other communication they concealed.
2. Makarious, Mackey and Elder, told the federal court they had provided all correspondence due under the settlement agreement, including confirming with Town Counsel (North), they had provided communication between FLN counsel and NAC counsel. "BEH has not specified what other correspondence it believes exists, and why it believes it is entitled to it" 11062020. This is a lie.
3. Mackey, Makarious, and Elder, told the appeals Court they have provided a weekly package of all correspondence since the settlement agreement was executed. 05272021. This is a lie.

"BEH cannot identify a single document that the Town has failed to produce under the settlement". Without knowing what correspondence had taken place

we could not identify documents we have no knowledge of. On 07162021 FLN produced a trove of communications, due to BEH under the settlement, which was withheld by the Town.

4. Makarious, Mackey and Elder, told the federal court “Norwood raised multiple times in negotiations that the West Apron lease would need to be executed subject to an easement over a corner of that lot for FlightLevel to access fueling facilities” 11062020

Makarious, Mackey and Elder knew Ryan had said there would be no easement, yet they deceived the court and concealed the evidence they had showing this. 11062020

Mackey and Elder told the State Court FLN does not have “yet-to-be negotiated or recorded easement over certain portions of Airport parcels that plaintiff FlightLevel Norwood, LLC. (FlightLevel) uses to perform its business as a fixed-base operator there” 06012020

Christopher Donovan

PRIOR FACTS

REGARDING ILLEGAL ACTIONS, FRAUD, DECEIT, PERJURY AND LIES

- According to Hartzell, Ryan and Maguire agreed to conceal plans and information from BEH with the assistance of attorney(s). In reviewing engineering plans submitted by FLN:

“FlightLevel wanted as little of its engineering work product as possible to be subject to Public Records requests by its litigation adversary. This too was discussed with Mark Ryan and Russ Maguire at the time, who agreed”

FlightLevel had an engineered “fueling Plan”, “which has been repeatedly shown to and reviewed by Russ Maguire and Mark Ryan, and which has been withheld from the public record, with the understanding of airport administration, due to the pendency of the litigation commenced by BEH against FlightLevel.

“Drawings memorializing a number of truck fueling routes were shown at the time to Russ Maguire and Mark Ryan in person, but were withheld from the public record” “FlightLevel wanted as little of its engineering work product as possible to be the subject of Public Records Requests by its litigation adversary” (BEH).

REGARDING ENCUMBRANCES, LICENSE OR EASEMENTS

5. MHTL attorney Lehane, representing the NAC, certified to the FAA on 06222006, the application for federal and state funding was correct, and there were no encumbrances on the West Apron AIP project 3-25-0037-27-2006. This was not true as the License of January 24, 1996, encumbered the federally funded ramp.
6. Makarious, Elder and Mackey told the federal court there was discussion regarding the West ramp easement, therefore BEH was aware of the easement for FLN to access their fuel facility. This is not true. 11062020.
 - a. Hartzell told North, in light of the “representations made to Judge Sterns” at the 07302019-court hearing, FLN would not be granted an access easement.
 - b. Simms told the federal court the BOS voted, there was no easement on the West Apron being leased to BEH. 07302019
 - c. North and Ryan were asked for details regarding any encumbrances on the West or DC-3 ramps. Ryan and North provided plans which did not show any encumbrances. They knew this was not true. 08162019
 - d. After Donovan signed the leases Ryan then claimed there was a license on the West Apron. Ryan testified he knew nothing about the License on the West Apron on 07182018. Ryan did not show any License on the plan he completed for BEH on 08162019.
 - e. Ryan told Donovan there was no easement for FLN on the West apron. Elder had received written notice of this fact from Hartzell on 08202020, which he concealed from BEH and the Court in violation of the 07302019 settlement. This contradicts the motion of 11062020.
 - f. FLN claimed in court filings that they met with the Town representatives on August 15, 2019, confirming the Town agreed there was no easement over Lot H. 08262019.
 - g. Mackey, Makarious and Elder told the federal court FLN claims regarding the License transfer are in dispute in Norfolk Superior Court. Not True. Ryan told Donovan on 12212020, After Donovan signed the leases, the License was agreed upon by the NAC. Ryan had testified on 07182018 he knew nothing about the License. This was not true. He had transferred the License to FLN, while not recording the transfer which he then concealed.
 - h. Mackey, Makarious and Elder told the federal court The License was given by the NAC to Boston Metropolitan Airport (BMA). This is not true. The License was between Eastern Air Center (The Licensee) the Town of Norwood by the

Norwood Airport Commission (Licensor) and BMA, the Licensors Agent.
01291996

- i. Mackey, Makarious and Elder told the appeals court the settlement was to resolve litigation between the Town and BEH regarding the right to lease space and operate as a "Fixed Base Operator". 05272021. This is not true. The litigation was regarding retaliation by the NAC against BEH for filing a complaint with the FAA. The FAA found there was retaliation toward BEH on 11022018, days before the trial was scheduled in the federal case.

LIE. is to make an untrue statement with intent to deceive, to create a false or misleading impression, something that misleads or deceives.

Defamatory: (of remarks, writing, etc.) damaging the good reputation of someone; slanderous or libelous.

The most common defense to defamation is TRUTH. Perhaps the most distinct aspect of the defamation cause of action is that falsity is required. In other words, the statement publicized about the plaintiff must be false in order to prove defamation.

Libel: a published false statement that is damaging to a person's reputation; a written defamation. Truth is an absolute defense to libel claims, because one of the elements that must be proven in a defamation suit is falsity of the statement. If a statement is true, it cannot be false, and therefore, there is no prima facie case of defamation.

Slander: the action or crime of making a false spoken statement damaging to a person's reputation. The major defenses to defamation are truth

"Knowingly" "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

"Fraud" or "fraudulent" denotes conduct that is fraudulent under substantive or procedural law and has a purpose to deceive.

When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Deceive: of a person) cause (someone) to believe something that is not true, typically in order to gain some personal advantage.

Vitriol: cruel and bitter criticism

8-20-20



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Concealed by NAC
attorneys, NAC and
Town Manager Tony
Mazzucco.

A. Neil Hartzell

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August 20, 2020

Via First Class Mail
& E-Mail (felder@andersonkreiger.com)

Jonathan T. Elder
Anderson & Krieger LLP
50 Milk Street, 21st Floor
Boston, MA 02109

RE: Flight Level Norwood, LLC, et al v. Town of Norwood, et al
Norfolk Superior Court Civil Action No. 1982CV01099

Dear Jon:

Despite several requests and your agreement to send it, we have not received a copy of the proposed lease sent from The Norwood Airport Commission ("NAC") to Boston Executive Helicopters ("BEH"). Several times you have mentioned that the terms of this proposed lease were made available during one of the public NAC meetings. That is incorrect. The proposed lease terms were not made public and were in fact discussed in executive session.

During the hearing on FlightLevel's injunction motion, you stated to the Court that the Town of Norwood would continue to honor its obligations under existing lease rights and access rights enjoyed by FlightLevel, and that the Town did not intend to give a lease that would result in a breach of FlightLevel's rights.

As FlightLevel has repeatedly told the Town and NAC, it needs the area on Lot H that was the subject of the February 15, 2017 NAC vote and the area on Lot G west of the building on Lot G to allow the fuel trucks to provision its fuel farm.

Violation of 7-30-21
settlement.

Demands a Copy
of the proposed
BEH lease,
How does Hartzell
know about
Executive session
discussions?

EA | ET | FL | GARY | MA | NJ | NY | PA | RI

FL000074

Provided via Subpoena by FMC on 7-16-21

Mr. Donovan of BEH has posted a video on a website he maintains of a recent meeting between him, Mr. Mark Ryan of the NAC, Mr. Russ Maguire and the Assistant Town Manager, Mr. Bernie Cooper. The video may be viewed at www.norwoodairport.com.

During that meeting, Mr. Ryan of the NAC states several times that the NAC is **not** providing an easement to FlightLevel. The easement would enable FlightLevel and its third party contractors' fuel trucks to turn on to the area of Lot H that was the subject of the February 15, 2017 NAC vote to be able to access and provision FlightLevel's fuel farm.

If the Town intends to lease the space to BEH that FlightLevel needs in order to access its fuel farm, how is FlightLevel supposed to access its fuel farm?

Please let us know within 5 days of the date of this letter whether you will provide us with a copy of the proposed lease including the engineering drawing depicting the proposed BEH footprint, and also please inform us of the Town's intentions as to how it will ensure that FlightLevel will continue to have access to its fuel farm in the absence of the easement approved by the NAC on February 15, 2017.

FlightLevel reserves all of its rights and claims.

Very Truly Yours,

s/ A. Neil Hartzell

A. Neil Hartzell

NAC

11-6-20

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BOSTON EXECUTIVE HELICOPTERS,
LLC,

Plaintiff,

v.

FRANCIS T. MAGUIRE, et al.,

Defendants.

Civil Action No. 15:CV-13647-RGS

**NORWOOD'S OPPOSITION TO BEH'S MOTION TO ENFORCE SETTLEMENT
AGREEMENT, IMPOSE SANCTIONS, AND AWARD ATTORNEYS' FEES**

FRANCIS T. MAGUIRE, et al.,

By their attorneys,

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November 6, 2020

Lie regarding
easement

Norwood raised multiple times in negotiations that the West Apron lease would need to be executed subject to an easement over the corner of that lot for FlightLevel to access fueling facilities. *See, e.g.,* Affidavit of John J. Davis, Apr. 8, 2019 (“Davis Aff.”), ¶ 9 (detailing Dec. 6, 2018 meeting) (ECF #204). Consequently the word “non-exclusive” was included in the Settlement Agreement to reflect FlightLevel’s interests to access other parts of the Airport. Donovan Aff. ¶ 3 (stating BEH and the NAC “shall enter into standard form, non-exclusive lease agreements”). The term “non-exclusive” is unambiguous: “not limited to only one person or organization, or to one group of people or organizations.” Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/non-exclusive>; *JNM Hospitality Inc. v. McDaid*, 90 Mass. App. Ct. 352, 353 (2016) (“nonexclusive parking” in lease means “spaces not reserved for any particular person or entity”); *Oliver v. Town of Mattapoisett*, 17 Mass. App. Ct. 286, 288 (1983) (“non-exclusive” easement granted by town “is to be exercised in common with the town and others whom the town may permit to use the area”).²

BEH’s argument that the B&H License or its assignment was hidden is not just untrue, it is irrelevant. Although FlightLevel claims it was “assigned” rights under the B&H License, that fact is in dispute in front of the Norfolk Superior Court because the License, which was given by the NAC to Boston Metropolitan Airport, Inc. is by its terms “non-transferable”. *Id.*, ¶¶ 43-44; BEH Mem. at 8. But even if FlightLevel succeeds on its claims that it is the lawful assignee of the B&H License, FlightLevel does not claim to control the B&H Licensed Area, only a non-exclusive right to access it. ECF #234-3 ¶ 42 Assuming even further that FlightLevel’s “non-exclusive” license in the B&H Licensed Area somehow prevents BEH’s use of that area, the

not in
license

² Ramp and apron spaces at airports are routinely the subject of “non-exclusive” leases to ensure that aeronautical users have access to the facilities they need to conduct their operations. *See, e.g., Adventure Aviation v. City of Las Cruces*, 2003 WL 22696923, at *4 (FAA Final Decision, Sept. 9, 2003); *Roadhouse Aviation, LLC v. City of Tulsa*, 2007 WL 1966160, at *16 (FAA Final Decision, June 26, 2007).

How about the 8-20-2020 letter to Elder letter?

October 16, 2019, submitted plans and drawings supporting its petition. Norwood did not know the BEH had done so until October 31, 2019. Makarious Aff. ¶ 21, Ex. R. As BEH acknowledges, NAC then submitted its letter of support on November 20, 2019, within thirty days of learning of BEH's submittal of a completed request. BEH Mem. at 10. At that point, Norwood met its obligations under the Agreement.

C. Norwood Regularly Distributes Copies to Both BEH and FlightLevel of Correspondence Between Norwood and BEH or FlightLevel.

BEH alleges that Norwood has failed to comply with the Agreement by failing to distribute to BEH copies of "email and correspondence, by and between the NAC and BEH or [FlightLevel], contemporaneously with any such communications." BEH Mem. 12-13. To the contrary, since the execution of the Agreement the Airport Manager has provided BEH and FlightLevel a weekly package containing all such correspondence. Makarious Aff. ¶ 22. Despite that, Donovan continued to systematically allege that Norwood was withholding communications from him. As a result, Norwood counsel asked the Airport Manager, NAC Chair, and Town Counsel to confirm that they had no additional correspondence with FlightLevel that had not previously been shared with BEH. *Id.* As BEH acknowledges (BEH Mem. at 12-13), Norwood's counsel transmitted to BEH's counsel communications covered by the Agreement which had not been produced, which included communications from FlightLevel's counsel serving Norwood with the Norfolk County Superior Court Complaint, and correspondence regarding drafting of a lease between FlightLevel and the NAC for Lot ABC at the Airport, a lot which BEH had declined to bid on. *Id.*

In short, once Norwood counsel learned of the existence of correspondence that had not been provided to BEH, he promptly forwarded that correspondence to BEH. That correspondence amounted primarily to documents showing that Norwood was engaged in arms-

length lease negotiations with FlightLevel, as well as that Norwood had become a target of the same litigation BEH had been sued in. BEH has not specified what other correspondence it believes exists, and why it believes that it is entitled to it.

D. BEH Was Invited to Help Develop the Corrective Action Plan.

BEH claims that Norwood failed to comply with the provision of the Agreement permitting BEH's participation in the crafting of a Correction Action Plan. BEH Mem. at 13. The record belies this claim too. The FAA Director's Determination directed Norwood to submit a "Corrective Action Plan" describing how Norwood would "1) provide BEH any remaining requirements for the FBO permit and promptly complete the permitting process; 2) discontinue leasing practices that provide exclusive rights to a single FBO; and 3) to contact the appropriate FAA Regional office and comply with their direction" regarding property that had been leased to Verizon. Makarious Aff, ¶ 9, Ex G, p. 35

Pursuant to Paragraph 8 of the Agreement, Norwood agreed:

that BEH shall be allowed to participate in any meetings, and be copied on all correspondence, regarding the negotiations with the FAA regarding negotiation of required remedial measures in connection with the Director's Determination on the Part 16 Complaint, with the intention and goal of crafting a "Joint Corrective Action Plan."

Donovan Aff. Ex. 1, ¶ 8. On October 3, 2019, Airport Manager Russ Maguire contacted Donovan to arrange a meeting to discuss a joint Corrective Action Plan. Makarious Aff, ¶ 10, Ex H, p. 1. On October 9, 2019, Maguire, Norwood's Town Counsel, Norwood's General Manager, and the NAC Chair met with Donovan in person, and airport counsel joined the group by telephone, to discuss the Corrective Action Plan. *Id.*, ¶ 11. During that call, Donovan repeatedly insisted on including issues other than the three narrow ones on which FAA required corrective action. Norwood properly resisted Donovan's proposals. *Id.* On October 16, 2019, Town

adequate vehicle for the complete and prompt resolution of the issues between the parties.”

Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1, 28 (1983), citing *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976). “Where the issues pending in this Court are identical to those pending in state court, piecemeal litigation is easily avoided by the District Court staying its hand.” *National Railroad Passenger Corp. v. Providence and Worcester Railroad Company*, 798 F.2d 8, 11 (1st Cir. 1986) Accordingly, before requiring joinder of FlightLevel as a required party, the Court should stay resolution of the matter pending resolution of the FlightLevel matter in state court.⁴

CONCLUSION

For the foregoing reasons, this Court should deny the Motion to Enforce, or stay the matter pending resolution of the FlightLevel matter in state court.

FRANCIS T. MAGUIRE, et al.,
By their attorneys,

/s/ Mina S. Makarious
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November 6, 2020

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants identified on the Notice of Electronic Filing.

/s/ Mina S. Makarious

⁴ Norwood has repeatedly offered to BEH that BEH, Norwood and Flight Level mediate the property issues at the Airport. BEH has consistently declined to mediate, asserting, among other things, that Norwood counsel is advocating mediation because it is colluding with FlightLevel and seeks to mediate to cover up its illegal actions.

That is True
They Covered
up

mediate

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

Case No. 21-1002

BOSTON EXECUTIVE HELICOPTERS, LLC
Plaintiff-Appellant

v.

FRANCIS T. MAGUIRE, individually and in his capacity as manager of the Norwood Memorial Airport; MARK P. RYAN, individually and in his capacity as a clerk of the Norwood Airport Commission; MARTIN E. OSTRICHEL, individually and in his capacity as a member of the Norwood Airport Commission; KEVIN J. SHAUGHNESSY, individually and in his capacity as a clerk of the Norwood Airport Commission; MICHAEL SHEEHAN, individually and in his capacity as a member of the Norwood Airport Commission; LESLIE W. LEBLANC, in his capacity as a member of the Norwood Airport Commission; PAUL V. SHAUGHNESSY, in his capacity as a member of the Norwood Airport Commission; HYLIE HUTCHENS, in his capacity as a member of the Norwood Airport Commission; NORWOOD AIRPORT COMMISSION; THOMAS J. WYNNE, individually and in his capacity as former chairman of the Norwood Airport Commission; NORWOOD MEMORIAL AIRPORT; TOWN OF NORWOOD
Defendants-Appellees

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF MASSACHUSETTS

**BRIEF OF THE DEFENDANTS-APPELLEES
FRANCIS T. MAGUIRE ET AL.**

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between the parties hereto with respect to the matter covered herein. No other agreement, representation, warranties, proposals, oral or written, shall be deemed to bind the parties." RA 953. (Emphasis in original). Thus, the Proposed Form of Lease would specifically preclude BEH's reliance on the Lease Provision in the Settlement Agreement it is seeking to enforce.

Finally, the Proposed Form of Lease contained a fee-shifting provision, providing that if a party seeks "to enforce or to interpret any of the covenants, terms or conditions of this lease, ... the prevailing party shall be entitled to recover from the other party as part of the prevailing party's costs, [a] reasonable attorney's fee." RA 950.

The Town also sent the required "letter in support of BEH's petition" for removal of the TOFA/OFA markings on November 20, 2019. RA 494. BEH claims the letter was submitted late, BEH Brief at 30, but the delay was caused by BEH's failure to include the required plans and drawings in its own petition to FAA. RA 484-487. The Town learned that BEH had finally done so on October 31, 2019, RA 551, 877-878, and submitted its letter of support to FAA within thirty days thereafter.

The Town also complied with the Communications Provision of the Settlement Agreement. From the Settlement Agreement's execution through January 2021, the Town provided BEH and

How about the
8-20-2020 letter to Elder
they concealed

FlightLevel a weekly package of the correspondence between the Town and each of these entities. RA 551. To ensure full compliance with this provision, undersigned counsel asked its client to confirm that all required correspondence had been produced. RA 551. Undersigned counsel then produced additional documents to BEH in July, 2020. RA 551. BEH cannot identify a single document subject to the Communications Provision that has not already been produced. BEH Brief at 33-35.

a lie

Finally, the Town has fully complied with the CAP Provision. The Agreement required BEH's participation "in any meetings ... regarding the negotiation with the FAA regarding negotiation of" the Town's CAP. Settlement Agreement § 8, RA 121. This provision required BEH's attendance at meetings "regarding the negotiation with the FAA," but not at meetings with the FAA itself. The record does reflect BEH's invitation to and attendance at meetings with Town officials regarding the CAP, RA 549-550, 756-763, 888, 892, as well as the Town's subsequent, albeit unsuccessful, attempts to have BEH comment on a draft of that Plan. RA 549-550, 758-763.

BEH's Unsuccessful Motion to Enforce the Settlement Agreement. On October 9, 2020, dissatisfied with the Town's compliance with the Settlement Agreement, BEH filed its Plaintiff's Motion to Enforce Settlement Agreement, Impose Sanctions and Award Attorneys' Fees ("Motion to Enforce"). RA

FRANCIS T. MAGUIRE, ET AL.,

By their attorneys,

/s/David S. Mackey

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T: 617.621.6500

Dated: May 27, 2021

11-6-20

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BOSTON EXECUTIVE HELICOPTERS,
LLC,

Plaintiff,

V.

FRANCIS T. MAGUIRE, et al.,

Defendants.

Civil Action No. 15:CV-13647-RGS

AFFIDAVIT OF MINA S. MAKARIOUS

I, Mina S. Makarious, hereby depose and state under oath as follows:

1. I am an attorney in good standing licensed to practice law in the Commonwealth of Massachusetts. I am admitted to the United States District Court for the District of Massachusetts and the United States Court of Appeals for the First Circuit. I am a partner in the law firm of Anderson & Kreiger LLP, 50 Milk Street, 21st Floor, Boston, MA 02109. On October 14, 2020 I entered an appearance on behalf of the defendants in the above-captioned matter (collectively referred to as “Norwood”).

2. I have personal knowledge of the matters stated in this Affidavit and submit it in support of the Defendants' Opposition to Plaintiff's Motion to Enforce Settlement, Impose Sanctions, and Award Attorneys' Fees (the "Motion to Enforce").

3. Attached as Exhibit A is a true and accurate copy of an Order in *FlightLevel Norwood LLC, et al. v. Town of Norwood, et al.*, Norfolk Superior Court C.A. No. 1982CV01099 (July 1, 2020) (“*FlightLevel*”), which denies FlightLevel’s motion for a preliminary injunction and takes under advisement Norwood’s motion to dismiss FlightLevel’s complaint in that matter.

21. Attached as Exhibit R is a true and correct copy of an email that BEH sent to the NAC on October 31, 2019. This email was the first notice that the NAC or any Norwood party received that BEH had submitted a complete request to FAA to move Taxi-Lane Object Free Area ("TOFA") markings at Norwood Memorial Airport.

22. The Airport Manager provides BEH and FlightLevel a weekly summary of all correspondence required by the Agreement. At BEH's request, I have asked the Airport Manager, NAC Chair, and Town Counsel to confirm they had no additional correspondence with FlightLevel that had not been previously shared with BEH. I have provided BEH, through its counsel, with all correspondence identified to me by the foregoing that is required to be shared pursuant the Agreement.

Not True

23. The NAC and Norwood Board of Selectmen have asked me to attend every NAC meeting since November 2019 to help advise the NAC.

24. I communicate with the General Manager on at least a weekly basis, and have reported to the Select Board directly at times regarding NAC issues.

25. Between September 2019 and July 2020, either the Town's General Manager or Assistant General Manager attended monthly meetings with Donovan.

26. In August and September 2020, I attended monthly meetings to discuss Airport operations with BEH pursuant to paragraph 6 of the Agreement. I was asked to attend meetings because of Donovan's accusations of noncompliance and his abusive communication.

27. Following the filing of BEH's Motion to Enforce, I learned that Donovan asked Mazzucco for a time for a monthly meeting during the last week of October. On October 27, 2020, I asked Loeffler to attend that meeting given the pending Motion to Enforce. Following a brief follow up email from BEH counsel asking me to explain my rationale for this request,

Donovan sent Norwood counsel the letter attached as Exhibit P. BEH counsel has still not responded to Norwood counsel's request that both parties be represented by counsel at these meeting.

Signed under the pains and penalties of perjury this 6th day of November, 2020.

/s/ Mina S. Makarious

Mina S. Makarious
ANDERSON & KREIGER LLP
50 Milk, 21st Floor
Boston, MA 02109
617.621.6525

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants identified on the Notice of Electronic Filing, and to all other parties in accordance with the Federal Rules of Civil Procedure and Local Rules.

/s/ Mina S. Makarious

11-9-20

Christopher Donovan <christopherdonovan1@gmail.com>

Mon, Nov 9, 2020 at
1:19 PM

To: Russ Maguire <rmauire@norwoodma.gov>, Tony Mazzucco <tmazzucco@norwoodma.gov>, selectmen <selectmen@norwoodma.gov>

Cc: peter Eichleay <peter@flightlevelaviation.com>, jcorcoran <jcorcoran@norwoodma.gov>, Mark Ryan <mryan@norwoodma.gov>, msheehan <msheehan@norwoodma.gov>

Russ,

The agreement states:

"for a period of eighteen(18) months following execution of this agreement, and subject to any applicable exemptions under the Massachusetts Public Records Law, the Town and the NAC agree to copy, or distribute copies, to both BEH and FlightLevel Norwood, LLC (FL) including any of their attorneys or representatives, any and all email and correspondence, by and between the NAC, BEH or FL, contemporaneously with any such communications."

Have you included any required communication/documents, in accordance with this agreement?

You reference paragraph 7 on page 5 as you know, not page 6.

I have also been asking since August 2019 about the requirements in paragraph 8 of the agreement:

"The Town and the NAC agree that BEH **shall be allowed to participate in any meetings, and be copied on all correspondence**, regarding the negotiation with the FAA regarding negotiation of required remedial measures in connection with the Director's Determination on the Part 16 Complaint, with the intention and goal of crafting a 'Joint Corrective Action Plan'."

Has there been ANY meetings with the FAA regarding the CAP?

Has there been communication with the FAA regarding the CAP and has BEH been included in ALL communication with the FAA regarding the CAP?

Thank you

6-1-20

NAC

6-1-20

NAC

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
C.A. No. 1982CV01099

FLIGHTLEVEL NORWOOD, LLC,)
 EAC REALTY TRUST II,)
 EAC REALTY TRUST IV, and)
 PETER EICHLEAY, in his capacity as Trustee)
 of EAC Realty Trust II and EAC Realty Trust IV,)

Plaintiffs,)

v.)

TOWN OF NORWOOD,)
 BOARD OF SELECTMEN FOR)
 THE TOWN OF NORWOOD,)
 NORWOOD AIRPORT COMMISSION,)
 TONY MAZZUCCO, individually and in his)
 official capacity as Town Manager,)
 PAUL BISHOP, individually and in his official)
 capacity as Selectman,)
 BOSTON EXECUTIVE HELICOPTERS LLC,)
 and CHRISTOPHER DONOVAN,)

Defendants.)

Norwood

**OPPOSITION OF DEFENDANTS TOWN OF NORWOOD,
 BOARD OF SELECTMEN FOR THE TOWN OF NORWOOD,
 NORWOOD AIRPORT COMMISSION, TONY MAZZUCCO,
 and PAUL BISHOP TO PLAINTIFFS' MOTION FOR LEAVE
TO FILE SECOND AMENDED VERIFIED COMPLAINT**

Defendants the Town of Norwood, the Board of Selectmen for the Town of Norwood,
 and the Norwood Airport Commission (collectively, the "Norwood Defendants"); and
 defendants Tony Mazzucco, as Town Manager of the Town of Norwood, and Paul Bishop, as
 Chair of the Norwood Board of Selectmen (together, the "Individual Defendants") (the Norwood
 and Individual Defendants are referred to collectively as the "Town Defendants") oppose
 plaintiffs' Motion for Leave to File Second Amended Verified Complaint ("Motion for Leave to

“Injunctive Relief” (Count I) and “Breach of Contract” (Count II) against the Norwood Defendants, and “Tortious Interference with Contractual Relations” (Count III) and “Tortious Interference with Business Advantage” (Count IV) against the two Individual Defendants.

Plaintiffs’ Breach of Contract claim against the Norwood Defendants rests on plaintiffs’ interpretation of a recent settlement agreement that the Norwood Defendants and defendant BEH signed to resolve a separate lawsuit between them (“Settlement Agreement,” a copy of which is attached to Plaintiffs’ Eichleay Affidavit as Exhibit 19). The Settlement Agreement includes the Norwood Defendants’ agreement to enter into a lease or leases with BEH that would grant it certain rights to operate its fixed base operator business at the Airport.

The Settlement Agreement contains no language suggesting the Norwood Defendants intend to violate plaintiffs’ property rights at the Airport, and plaintiffs acknowledge, correctly, in both their Existing Complaint and Proposed Amended Complaint that the Norwood Defendants have not executed the anticipated leases. Plaintiffs nevertheless allege that the Norwood Defendants’ agreement to enter into these not-yet-executed leases with BEH violates plaintiffs’ existing property rights at the Airport because the Settlement Agreement does not contain explicit references to those rights or to plaintiffs’ yet-to-be negotiated or recorded easement over certain portions of Airport parcels that plaintiff FlightLevel Norwood, LLC (“FlightLevel”) uses to perform its business as a fixed-base operator there.³

No reference to FIX Property rights

FlightLevel’s “tortious interference” claims against the Individual Defendants posit that defendant Mazzucco, a Town official, and defendant Bishop, a Town Selectman, acted in both their official and individual capacities to “force” or “coerce” the Norwood Defendants to agree to enter into the future “offending” leases with BEH. As they are derived entirely from

³ Plaintiffs hereinafter are referred to collectively as “FlightLevel,” which is the primary party-in-interest.

TOWN OF NORWOOD,
BOARD OF SELECTMEN FOR THE
TOWN OF NORWOOD,
NORWOOD AIRPORT COMMISSION,
TONY MAZZUCCO, and
PAUL BISHOP

By their attorneys,



David S. Mackey, BBO #542277
dmackey@andersonkreiger.com
Jonathan T. Elder, BBO #654411
jelder@andersonkreiger.com
ANDERSON & KREIGER LLP
50 Milk Street, 21st Floor
Boston, MA 02109
617-621-6509

June 1, 2020

Certificate of Service

I hereby certify that I served a copy of this document on all counsel of record by first class mail and e-mail on June 1, 2020.



Jonathan Elder