

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FRIENDS OF THE EAST HAMPTON AIRPORT, INC.,
ANALAR CORPORATION, ASSOCIATED AIRCRAFT
GROUP, INC., ELEVENTH STREET AVIATION LLC,
HELICOPTER ASSOCIATION INTERNATIONAL, INC.,
HELIFLITE SHARES LLC, LIBERTY HELICOPTERS,
INC., SOUND AIRCRAFT SERVICES, INC., and
NATIONAL BUSINESS AVIATION ASSOCIATION, INC.,

No. 15 Civ. 2246 (SJF) (ARL)

Plaintiffs,

-against-

THE TOWN OF EAST HAMPTON,

Defendant.

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DECLARATION OF CYNTHIA L. HERBST

I, Cynthia L. Herbst, make the following declaration pursuant to 28 U.S.C. § 1746:

1. I am a Principal of Sound Aircraft Services, Inc. (“Sound”), one of the Plaintiffs in this action.

2. I make this declaration, based on personal knowledge, in support of the Plaintiffs’ application for a temporary restraining order enjoining the enforcement of Town of East Hampton’s recently-enacted restrictions on the use of the East Hampton Airport (“the Airport” or “HTO”).

Sound’s Operations at HTO

3. Founded in 1990, Sound is a New York business corporation based at HTO in Wainscott, New York. My partner and I are life-long local residents, East Hampton Town taxpayers and have built Sound from the ground up. Sound’s 25th anniversary in business is this year.

4. Sound is a fixed-base operator (“FBO”). An FBO is an airport service center that provides various on-site services to aircraft, passengers, and crewmembers at an airport. Sound is one of two FBOs at the Airport. Sound provides many services at the Airport, including aircraft fueling, aircraft booking, parking, hangar rentals, catering services, car rentals, and pilot lounges. Sound leases the premises at HTO from the Town of East Hampton pursuant to a long term lease.

5. Sound has 10 employees, and during the summer months, Sound typically adds six to seven additional employees. Of Sound’s 10 employees, more than 50 percent of the employees have been employed for more than 10 years. All of Sound’s year-round employees have been employed for at least 2 years.

6. Sound offers its services on a 24-hour basis. Services provided outside of Sound’s regular business hours are charged to the customer at a higher rate, and are referred to as “after-hour” services.

7. Sound’s primary business at the Airport—and primary source of revenue—is the provision of fuel services. Sound fuels all types of aircraft that use and land at the Airport. Fuel sales account for approximately 85% of Sound’s total revenue.

8. Sound sells the majority of its fuel, by volume, to jet aircraft. Fuel sales to helicopters account for approximately 27% of Sound’s revenue. A small percentage of Sound’s fuel sales is to turboprop planes.

9. Furthermore, the majority of Sound’s fuel services are provided during the summer months—between May and September each year—which is the peak season at HTO, and when Sound earns the majority of its annual revenue. In 2014, Sound sold a total of 750,938.3 gallons of fuel, 79% of which was sold between May and September. With regard to

Sound's fuel sales to helicopters, in 2014, 85% of such sales occurred between May and September.

10. Sound's largest clients are several private jet and charter companies that have entered into contractual agreements with Sound, designating Sound as their "preferred FBO." This means that the clients use Sound for their substantial fueling needs, and in return, those clients receive certain other services from Sound, such as parking, without charge.

11. Charter helicopters making repeat trips to and from East Hampton are also important clients of Sound. Summertime is the peak season for charter helicopters, and Sound fuels them. In my experience, most charter helicopters purchase fuel each time they land at HTO. In addition, because the nearby Montauk airport and Southampton heliport do not provide fuel services, helicopters often land at HTO to fuel before picking up passengers elsewhere.

12. In my experience, most jet and helicopter operators who fly into East Hampton fly in and drop their passengers off and return later in the week to pick up the passengers. This equates to more than one trip per week.

East Hampton's Recently-Enacted Restrictions

13. I understand that on April 16, 2015, the Town Board adopted three new local laws restricting access to HTO (the "Restrictions"). I am familiar with the Restrictions.

14. I understand that the Restrictions include (1) a mandatory curfew, prohibiting use of HTO between 11:00 p.m. and 7:00 a.m. (the "Mandatory Curfew"); (2) an extended curfew for so-called "Noisy Aircraft" banning use of the Airport from 8:00 p.m. to 9:00 a.m. ("the "Extended Curfew"); and (3) a one-trip limit during the summer, prohibiting "Noisy Aircraft" from flying more than one trip per week to HTO during the summer season (the "One-Trip Limit"). I further understand that the Restrictions define "Noisy Aircraft" as including any

aircraft that has a published Effective Perceived Noise in Decibels (EPNdB) approach (AP) level of 91.0 or greater.

The Restrictions' Impact on Sound

15. The Restrictions will immediately and severely impact Sound's business. The following are some specific examples of the significant impact the Restrictions will have on Sound's business:

a. Sound's biggest clients will be precluded from landing at HTO with the frequency and at the times that they did prior to the restrictions, and therefore significantly reduce Sound's fuel sales;

b. Sound's single largest client operates a Stage 4 jet aircraft—Stage 4 being the quietest aircraft designation given out by the Federal Aviation Administration—that is nevertheless deemed a “Noisy Aircraft” under the Town's definition. This Stage 4 jet is based with Sound at HTO. This Stage 4 jet makes several trips to and from HTO during the week, and sometimes several trips in a single day. The sale of jet fuel to this single jet operator sustains Sound's operations during the non-summer months. If the Restrictions go into effect, this operator likely will have to move its base of operations due primarily to the One-Trip Limit. The loss of this business alone would equate to a 16% loss of revenue annually. To the extent that the operator continued to base his aircraft at HTO, the One-Trip Limit during the summer would result in an immediate reduction of fuel sales to this client. Sound estimates that it will lose in excess of 19,000 gallons in fuel sales.

c. The One-Trip Limit will also prohibit or discourage helicopters and other aircraft from stopping at HTO to refuel during the summer months because such a stop

would count as the aircraft's one trip per week. Accordingly, Sound will additionally lose those sales.

d. The Mandatory and Extended Curfews will also have an immediate, adverse impact on Sound's business. Both Curfews will apply year-round. Thus, all of Sound's clients will be prohibited from landing at the Airport between 11:00 p.m. and 7:00 a.m.—an eight-hour period during which Sound will no longer be able to provide fuel or other services. Moreover, Sound's largest clients—the jets and helicopters now classified as “Noisy Aircraft”—will be prohibited from landing at the Airport between 8:00 p.m. and 9:00 a.m.—a 13-hour period during when Sound will no longer be able to provide fuel or other services. This will result in a total loss of “after hour” fees. I estimate that Sound will lose close to \$100,000 in additional revenue on account of these Curfews annually.

e. The Restrictions could additionally harm Sound's business by causing Sound a loss of rentable ramp space. (Ramp space is the outdoor space at the Airport, leased by Sound from the Town, in which Sound provides fueling, parking, and other services.) As the preferred FBO for a number of private jet companies, Sound has agreed—and is now contractually obligated—to allow those private jet clients to park on Sound's ramp for free. It may be the case that in order to comply with the One-Trip Limit, these clients will need to leave their jets parked on Sound's ramp for longer periods of time. This would either prevent Sound from renting the parking spaces to other aircraft, or require Sound to renegotiate its agreements. In addition, Sound's ramp space easily will become saturated with aircraft grounded by the One-Trip Limit, to the point that it would be difficult for Sound to provide its services to other aircraft.

f. The Restrictions will also cause Sound to lose market share, as aircraft operators seek out fueling, preferred FBO arrangements, parking and hangar arrangements at other airports without the same access restrictions.

16. It is impossible to estimate the full impact that these restrictions will have on Sound's business because the impact will be determined by how Sound's clients/customers redefine their businesses to accommodate the Restrictions. In particular, it is impossible to know whether Sound's clients/customers will (1) discontinue operations into HTO altogether; (2) limit operations to the off-season; (3) abide by the restrictions and demand parking on Sound's ramp pursuant to their contracts with Sound; and/or (4) reposition other aircraft to avoid violating the one-trip restriction.

17. While it is impossible to gauge the magnitude of the total loss that Sound will sustain due to the variables associated with how each of Sound's clients/customers will adjust their businesses and operations to accommodate the Restrictions, it is evident that there will be a significant loss of Sound's business.

18. The Town's own press release issued on April 7, 2015 advises that the "one trip limit in conjunction with the two curfews will affect . . . 75% of helicopter operations. . . ." I believe that a 75% reduction in helicopter traffic is an underestimate. Notwithstanding that, the ramifications of such a reduction are significant. If Sound experienced a 75% reduction in helicopter traffic during the summer months, it would equate to a 17% loss in Sound's annual fuel sales and the loss of approximately \$29,812.50 in ramp fees.

19. The Town's press release further advised that the Restrictions would impact 23% of all aircraft operations. Based upon the unknown variables set forth above, this also seems like a gross underestimate. As set forth above, the Restrictions jeopardize Sound's continued

business relationship with its largest client. If Sound were to lose that single customer as a result of the Restrictions, that alone would cause a 16% loss of Sound's annual revenue. Additionally, a 75% reduction in helicopter traffic equates to a 17% loss in Sound's revenue. Considering those two losses alone, Sound would sustain a 33% revenue loss. That 33% loss does not include the loss of after-hours charges, catering, pilots' services, ramp fees associated with charter jets and the loss of fuel sales associated with jet operations (other than the single Stage 4 client)—all of which are more difficult to predict. Thus, Sound's anticipated losses as a result of the Restrictions far exceeds 23%. Notwithstanding the fact that the figures are underestimated, if Sound sustained a 23% loss in its business, then it would not be able to sustain itself in its current form.

20. If Sound's business was to be reduced by 23% as estimated by the Town, it is possible that, after 25 years of successful operation at HTO, Sound would need to close.

21. At a minimum, the Restrictions will cause Sound serious economic harm, which may require Sound to: (1) lay off members of Sound's staff; (2) renegotiate or breach the terms of its' customer agreements; and/or (3) renegotiate or breach the terms of its lease with the Town.

22. If Sound is forced to lay off its trained, long-term employees, they will likely immediately seek employment elsewhere. Thus, if the Restrictions are eventually repealed and Sound was able to re-hire employees, it is unlikely that Sound would be able to re-hire its former employees. As a result, Sound would lose its trained, long-term employees and would need to hire new employees who would need to be trained. Even with significant training, it is unlikely that Sound would be able to restore its workforce to its current state.

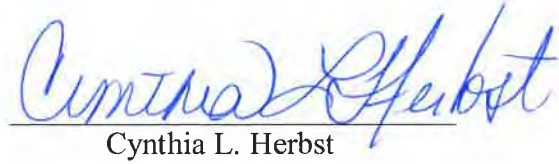
23. There is no guarantee that Sound will be able to renegotiate the terms of its customer agreements. In particular, many of Sound's customer agreements require that Sound provide services free of charge to clients in exchange for a client agreeing to fuel exclusively with Sound. The services that Sound is required to provide free of charge include parking. If Sound's clients/customers elect to accommodate the Restrictions by dropping passengers off at HTO and leaving the aircraft there until the passengers are ready to depart, Sound will be severely limited in its ability to service arriving aircraft. If Sound needs to start charging those clients/customers, it may result in breach of contract actions against Sound and/or a total loss of that client/customer's business.

24. As previously stated, Sound leases its premises from the Town of East Hampton. A reduction in business outlined herein may cause Sound to be unable to sustain itself. In such event, it is unlikely that the Town of East Hampton would offer Sound a reprieve from its rental payments and obligations pursuant to the long-term lease. Thus, if Sound is unable to continue its business, it will default on the lease and be exposed to inconvenience and costs associated with litigation and the damages associated with a default.

25. Ultimately, it is impossible to estimate the total magnitude of the loss that Sound will sustain as a result of the Restrictions because Sound cannot predict how each of its clients/customers are going to adjust their businesses to accommodate the Restrictions. Notwithstanding that, Sound requires sufficient ramp space, fuel sales, customers and manpower to be able to cover its overhead. The Restrictions will cause a reduction in each of those variables. Reducing just one of the aforesaid variables jeopardizes Sound's continued viability.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: April 28, 2015
Wainscott, NY


Cynthia L. Herbst