



U.S. Department of Justice

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March 8, 2016

By ECF

The Honorable Joanna Seybert
United States District Judge
Eastern District of New York
100 Federal Plaza
Central Islip, NY 11722

Re: *Friends of the East Hampton Airport, Inc., et al. v. FAA*, 15 Civ. 441 (JS)(ARL)

Dear Judge Seybert:

This office represents the Federal Aviation Administration (the "FAA") in the above-referenced action (the "FAA Action"). On March 4, 2016, plaintiffs, the Friends of the East Hampton Airport, Inc., *et al.* ("Plaintiffs") filed a letter motion requesting, in sum and substance, that the Court stay the litigation of their Airport Noise and Capacity Act, 49 U.S.C. § 47521 ("ANCA") claim (the "ANCA Claim), and proceed with briefing on their two remaining claims related to the FAA's obligations/authority to enforce other federal regulations (the "Grant Assurances Claims").

In the March 4, 2016 letter, Plaintiffs informed the Court that the FAA intended to respond to Plaintiffs' proposal in accordance with the time set forth in Local Rule 37.3 (*i.e.* four business days). Notwithstanding, on March 7, 2016, without waiting to hear the FAA's position, the Court granted Plaintiffs' request by implementing the proposed briefing schedule on Plaintiffs' Grant Assurances Claims and staying the litigation of Plaintiffs' ANCA Claim.

The FAA respectfully requests that the Court reconsider its ruling.

Specifically, in order to avoid piecemeal litigation, the FAA respectfully requests that this Court deny Plaintiffs' request for the implementation of a partial briefing schedule and impose a *full* stay of this action so that the Second Circuit may rule on the issues pending appeal in *Friends of the East Hampton Airport, Inc. v. Town of East Hampton*, 2:15-cv-02246 (E.D.N.Y.); *Friends of the East Hampton Airport, Inc. v. Town of East Hampton*, Nos. 15-2334, 15-2465 (2d Cir.) (the "Town Action").

Indeed, resolution of the issues currently pending before the Second Circuit could potentially resolve all issues in this FAA Action without the Court having to reach the merits thereon. Specifically, in the Town Action appeal, Plaintiffs argue that this Court erred by concluding that, in implementing ANCA, Congress intended merely to “encourage, but not require” compliance with its provisions. Should the Second Circuit agree with Plaintiffs’ argument and hold that ANCA’s requirements are mandatory, this would potentially dispose of the entire controversy in the FAA Action, as the Town of East Hampton’s airport restrictions could then potentially be struck in accordance with the Second Circuit’s (or this Court’s) directive(s). Thus, under those circumstances, this Court would never need to reach the merits of Plaintiffs’ Grant Assurances Claims because, without compliant Town restrictions in effect, there would simply be no ripe controversy to adjudicate.

Moreover, the failure to enter a stay pending resolution of the Town Action appeal threatens irreparable injury to the FAA and public interest that it protects. The administration of programs by a federal regulatory agency requires the prioritization and allocation of resources. Here, the absence of a stay will require the FAA to allocate substantial resources to the litigation of this matter, rather than to additional matters related to the regulation of civil aviation and promotion of safety in the operation of national air traffic control. Indeed,

[r]esource allocation is not a task governed by “law”. It is governed by budgets and opportunities. Agencies “take Care that the Laws be faithfully executed” (Art. II, § 3) by doing the best they can with the resources Congress allows them. Judges could make allocative decisions only by taking over the job of planning the agency’s entire agenda, something neither authorized by statute nor part of their constitutional role.

Board of Trade v. SEC, 883 F.2d 525, 531 (7th Cir. 1989).

Put simply, this Court should implement a full stay of the FAA Action so that the Second Circuit may resolve the pending issues before it which, as outlined above, may dispose of the FAA Action in full without this Court having to reach the merits of Plaintiffs’ remaining claims and permitting the FAA to avoid allocating resources defending against claims that could be moot.

To the extent this Court decides to proceed with piecemeal briefing as suggested by Plaintiffs, the FAA requests the Court enter the following proposed schedule (which varies only slightly from the schedule proposed by Plaintiffs in requesting two extra weeks for the FAA’s initial filing):

- 1) Plaintiffs to file dispositive motion (with regard to first two claims for relief) by **April 1, 2016**;

