District Court, Boulder County, State of Colorado 1777 Sixth Street, Boulder, Colorado 80302 (303) 441-1866	DATE FILED: May 28, 2019 CASE NUMBER: 2019CV30244
Plaintiff: **MILE-HI SKYDIVING CENTER, INC.** v. **Defendant:** **CITY OF LONGMONT**	**▲ COURT USE ONLY ▲**
	Case Number: **2019CV30244** Division: **5** Courtroom:
ORDER RE: CITY OF LONGMONT'S MOTION TO DISMISS AMENDED VERIFIED COMPLAINT	

Defendant City of Longmont has filed a motion to dismiss for lack of jurisdiction in this Court, claiming that the FAA has jurisdiction over the Plaintiff's claims and any relief sought pursuant to those claims. Upon consideration of Defendant City of Longmont's Motion to Dismiss Amended Verified Complaint and for good cause shown, it is hereby ordered that the motion is GRANTED and that the Amended Verified Complaint is dismissed.

DISCUSSION

I. THIS COURT LACKS JURISDICTION OVER MILE-HI'S CLAIMS.

The Airport and Airway Improvement Act of 1982 ("AAIA") sets out a complete administrative scheme which grants jurisdiction of claims relating to Grant Assurances to the FAA, and thus this Court does not have jurisdiction or even equitable jurisdiction to consider the claims until Mile-Hi has completely exhausted its administrative remedies.

The procedures set forth in 14 C.F.R. Part 16 "govern all Federal Aviation Administration (FAA) proceedings involving Federally-assisted airports," which includes complaints issued under the "assurances and other Federal obligations contained in grant-in-aid agreements issued under the Airport and Airway Improvement Act of 1982 (AAIA)" 14 C.F.R. § 16.1(a)(5) (2013). Thus, the FAA is charged with ensuring that airports receiving AAIA grant funds adhere to their grant assurance obligations. *Ricks v. City of Winona*, 858 F. Supp. 2d 682, 687 (2012). As such a person "doing business with an airport and paying fees or rentals to the airport" is considered to be "directly and substantially affected by an alleged noncompliance" of grant assurances and may file a complaint with the FAA. *Id.* § 16.1, 16.23(a). The FAA will investigate the complaint and then return a decision regarding the alleged complaint and whether an airport is in violation of its grant assurances. *Id.* § 16.29-31. After an order is issued, anyone with a "substantial interest" in the decision may "apply for review of the order by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business." 49 U.S.C. §46110(a) (2018).

A. THIS COURT DOES NOT HAVE JURISDICTION OVER CLAIMS ARISING UNDER THE AAIA.

A very specific framework has been put in place to review claims under the AAIA and extending jurisdiction to be concurrent could lead to inconsistencies. *City of Rochester v. Bond*, 603 F.2d 927, 936 (1979). In *City of Rochester*, the court dismissed the appellant's complaint that sought to set aside a construction permit and an FAA determination of a 600-foot radio antenna not being hazardous to air travel. The court recognized that when there exists a special statutory review procedure, it is assumed that "Congress intended that procedure to be the

exclusive means of obtaining judicial review in those cases to which it applies." *Id.* at 931. As such, when judicial review is invoked, review is "exclusive, absent extraordinary circumstances, preempting the original jurisdiction of state courts as well as federal district courts." *Id.* at 934. In *City of Rochester*, the court stated that "Actions which are not (or not yet) orders but which are nonetheless reviewable may be raised in the district court, whose jurisdiction is thus residual insofar as it exists only to review matters for which statutory review is, for one reason or another, inadequate." *Id.* at 935-936.

When enacting the AAIA, Congress set forth a specific procedure for obtaining judicial review. Since Mile-Hi's claims relate to violations of Grant Assurances, Mile-Hi must follow the procedures set out in 14 C.F.R. Part 16 by taking their claims to the FAA for review and then appealing to an appellate court, if necessary. Mile-Hi argues that 49 U.S.C. § 46110(a) confers only appellate jurisdiction and that nothing in § 46110(a) speaks to original jurisdiction over AAIA claims. Original jurisdiction comes from the comprehensive scheme that Congress has enacted under the AAIA and the Part 16 process. Thus, original jurisdiction lies with the FAA and it is their responsibility to adjudicate AAIA claims. As found in *City of Rochester*, Congress set out a specific procedure for obtaining judicial review under the AAIA and as such, that procedure is intended to be the exclusive means of obtaining judicial review. Additionally, there is no claim before this Court that the procedure to obtain judicial review is inadequate. Rather, Mile-Hi is asking for the injunction because the administrative process of the FAA may take a year or two to complete. This is not a showing of an inadequate process, and as such jurisdiction should be exclusive to the FAA pursuant to the process set out by Congress.

B. THIS COURT SHOULD NOT EXERCISE EQUITABLE JURISDICTION.

In some circumstances, when not prohibited by statute, district courts have inherent equitable powers. *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946). In *Porter,* the court reasoned that there are situations where a statute has provided a special and exclusive remedy that may not be readily available when the public interest needs it most. *Id.* at 402. In that case, rent was being collected in excess and the district court used its equitable powers to enjoin the collection of excess rent, because the remedy provided was not sufficient. *Id.* at 397. The remedy required the Administrator of the Office of Price Administration to go to court and enjoin those engaged in practices in violation of the Emergency Price Control Act of 1942. *Id.* Despite issuing an injunction, the court in *Porter* still recognized that equitable jurisdiction can be denied if there is a clear and valid legislative command to the contrary. *Id.* at 398. Similarly, in *Westchester Lodge 2186 v. Railway Express Agency, Inc*, the court was willing to issue an injunction to maintain the status quo pending adjudication of labor disputes before the National Railroad Adjustment Board. 329 F.2d 748, 754 (2d Cir. 1964). In *Westchester*, the Railway Labor Act provided different ways to adjudicate disputes depending on whether the dispute was considered major or minor, and as such a district court could exercise equitable jurisdiction even if the dispute was minor and required a determination by the Adjustment Board. *Id.* at 752.

Despite these equitable jurisdiction cases, in *Friends of the E. Hampton Airport, Inc., v. Town of E. Hampton*, the court ruled that "Congress intended to foreclose equitable enforcement of the AAIA's Grant Assurances," because the AAIA has a comprehensive administrative enforcement scheme in which enforcement of Grant Assurances lies exclusively with the Secretary of Transportation. 152 F. Supp. 3d 90, 104 (E.D.N.Y. 2015) ("*Friends I*"). In *Friends I*, the court refused to issue an equitable injunction against the town's laws that set out curfews

and other limits on airplane use, because the court recognized that the appropriate recourse was to give the FAA an opportunity to be heard first. *Id.* at 105. As such *Friends I* specifically foreclosed the AAIA's equitable jurisdiction, and this holding was not disturbed when *Friends I* was appealed, because the Second Circuit recognized only that the Airport Noise and Capacity Act of 1990 ("ANCA") fell squarely within federal equity jurisdiction. *Friends of the E. Hampton Airport, Inc., v. Town of E. Hampton*, 841 F.3d 133, 145 (2016) ("*Friends II*"). Even though the court in *Friends II* stated that an injunction may be issued upon finding state regulatory action preempted, the court only chose to apply that ruling to ANCA, and not to the AAIA. *Id.* at 144.

In *Arapahoe Cty. Pub. Airport Auth. v. Centennial Express Airlines, Inc.*, the Colorado Supreme Court did exercise equitable jurisdiction by issuing an injunction against an airline that had scheduled passenger service. 956 P.2d 587, 590 (1998). Passenger service was prohibited at that airport, so the airline was engaged in unlawful activity. *Id.* The court issued the injunction, because the FAA had yet to rule on the violation of the Grant Assurances even though those claims had been filed three years prior. *Id.* at 592. Additionally, the court reasoned that if the injunction was not granted to stop the prohibited flights, then the court would be allowing an airport user to continue operations that were in violation of airport rules. *Id.* at 593.

Even though courts may have equitable powers, these powers do not extend to all areas of the law. In *Porter*, the district court provided a remedy, because the statutory remedy was not readily available to the public since it required the Administrator to bring the claim to court. Here, there is a remedy available to the public. Mile-Hi already has a case filed with the FAA, because Mile-Hi knows that the AAIA specifically provides a remedy. The Part 16 process is a clear and valid legislative command that any entity, like Mile-Hi, must go through the FAA

administrative process before appealing to a U.S. Court of Appeals when they believe a federally-assisted airport is in violation of Grant Assurances.

Issuing an injunction to maintain the status quo is an equitable power that a district court may have, but there is a difference between maintaining the status quo and asking a city to revert its laws back to how they were prior to new enactments. The plaintiff in *Westchester* was asking the court to maintain the status quo to stop a railroad strike; here, Mile-Hi is asking this Court to stop Longmont from changing and enforcing its permit fees and use restrictions. Thus, issuing the injunction would not maintain the status quo, because Longmont would be required to revert to the permit fee rules and the PDZ restrictions as they existed previously in 2017. Additionally, unlike the Railway Labor Act in *Westchester* which provided for different ways to solve disputes depending on the kind of dispute, the AAIA explicitly provides for one way to solve disputes and that is through an FAA adjudication.

The AAIA was designed to foreclose equitable jurisdiction by a court until the FAA has ruled on the issue. This Court finds and concludes that the AAIA forecloses Mile-Hi's request for equitable relief, because the administrative scheme that Congress set in place gives the FAA the opportunity to be heard first on Mile-Hi's claims.

The FAA may not rule on Mile-Hi's claims right away, but that does not mean this Court should exceed its authority and usurp the FAA's jurisdiction regarding Mile-Hi's claims. Mile-Hi has not given the FAA the chance to adjudicate their claims yet. Mile-Hi may fear that they must wait several years for the FAA to rule on their claims, but they cannot presumptively act and assume that the FAA will take as long as the FAA did in *Arapahoe*. The FAA will rule on Mile-Hi's claims in due course. Additionally, the court in *Arapahoe* issued the injunction because an airline was clearly operating in violation of local laws, and in the present case, it will

not be clear if Longmont is in violation of its Grant Assurances until the FAA rules on it. While the defendant in *Arapahoe* was engaged in unlawful action, this Court cannot definitively grant an injunction unless it is willing to say that Longmont is in violation of the Grant Assurances, a ruling which this Court cannot make due to the administrative scheme set out by the AAIA.

C. MILE-HI MUST EXHAUST ITS ADMINSTRATIVE REMEDIES.

Courts should wait to review or grant relief in administrative proceedings until agencies have taken final action, because courts do not want judicial review to encroach on executive functions. *Envirotest Sys. v. Colo. Dep't of Revenue*, 109 P. 3d 142, 144 (Colo. 2005). In *Envirotest*, the court held that the district court lacked jurisdiction to issue injunctive relief while the administrative procedures were still ongoing. *Id.* at 145. The court in *Envirotest* recognized two exceptions to the exhaustion of remedies principle: (1) when the action proposed clearly exceeds the constitutional or statutory jurisdiction or authority of the agency, and (2) when the party seeking judicial review can show that they will suffer irreparable harm, then the court will intervene to rule on an issue or grant relief. *Id.* at 144.

In *Acosta v. Jansen*, the Colorado Court of Appeals stated that "unless the administrative remedies are exhausted, it can never be known but that a correction would ensue if the administrative authority were given the full opportunity to pass upon the matter" 499 P.2d 631, 633-34 (Colo. App. 1972).

Additionally, when a statute provides a plain, speedy, and adequate remedy, the aggrieved party cannot invoke the equitable powers of the courts without first exhausting administrative remedies. *People ex rel. Winbourn v. Dist. Court*, 287 P. 849, 851 (Colo. 1930). In *Winbourn*, the plaintiffs did not follow through on the administrative remedy, because they lacked confidence that the Tax Commission would reassess their property values. *Id.* at 852. The

court stated that "lack of confidence in a public official is not enough to divest him of his jurisdiction or statutory powers," and as such the court lacked jurisdiction when administrative remedies that were speedy and adequate had not been exhausted. *Id.* at 851.

Mile-Hi needs to exhaust its administrative remedies by following through with the Part 16 claims it has already filed with the FAA, because not doing so would usurp agency autonomy and it is a waste of judicial resources for a court to become involved in a dispute in which the administrative process provides an adequate remedy. Like the plaintiff in *Envirotest* who did not exhaust their administrative remedies, Mile-Hi's proceedings with the FAA are still ongoing. Mile-Hi's claims do not fall under the exceptions to the exhaustion of remedies principle. Mile-Hi has not shown that they will be irreparably harmed if this Court does not intervene and issue an injunction. Additionally, the FAA has the statutory authority to adjudicate Mile-Hi's claims under the AAIA and Part 16 process.

For the FAA to effectively adjudicate the matter, equitable relief should be directed from the administrative agency in the first instance. Like the court in *Acosta* which refused to issue an injunction because it did not have the authority to review an administrative decision that had not been appealed, Mile-Hi cannot by-pass administrative remedies by filing a claim with the FAA and then coming to this Court for relief that the FAA proceeding can provide. The AAIA sets out an administrative framework which requires the FAA to adjudicate claims relating to Grant Assurances. Mile-Hi argues that they are not asking this Court to interfere with the FAA's proceedings; instead they claim that until the FAA reaches a determination, they seek to enjoin Longmont from enforcing rules and policies that violate federal law. However, asking for an injunction that stops Longmont from violating federal law requires this Court to make a determination that Longmont has violated federal law. Thus, asking for this injunction requires

making a determination on the AAIA claims, which would be interfering with the FAA's proceedings.

When the FAA's attention is called to perform its duty, a plaintiff must give the FAA the chance to do so before the plaintiff resorts to the courts. Mile-Hi must follow through with the administrative remedies, even if Mile-Hi lacks confidence in the FAA performing its duties. Mile-Hi fears that it will take a couple years before the FAA will rule on its claims, but that does not mean that the FAA will not perform the statutory duty assigned to it by Congress. Mile-Hi argues that the administrative remedies are not adequate or speedy, because Mile-Hi believes that the AAIA requires the Secretary of Transportation (or the Administrator of the FAA) to find a violation before it can issue an injunction. Contrary to what Mile-Hi argues, there is nothing in the AAIA that prevents the FAA from granting an injunction or other relief prior to finding a violation of Grant Assurances. The AAIA provides that if a violation is found, then it must be corrected, or else the FAA can withhold further funds until such time that the violation is corrected. 49 U.S.C. § 47111(e). Further, if a violation is found, then the FAA may apply to the district court for a writ of injunction or other order. 49 U.S.C. § 47111(f). Nothing in this language suggests that an injunction can *only* be issued upon finding a violation. When a proceeding is brought before the FAA, the FAA "may conduct proceedings in a way conducive to justice and the proper dispatch of business." 49 U.S.C. § 46102. Thus, the FAA can issue an injunction when justice requires such action. The administrative remedies provided are not incomplete, slow, or inadequate when an injunction can be granted during the course of proceedings and investigations.

The FAA is best suited to determine if Longmont is in violation of its Grant Assurances, and Mile-Hi cannot ask this court for relief until it has exhausted its administrative remedies,

which means allowing the FAA to issue a ruling on the Grant Assurances claims and then appealing that determination before a U.S. Court of Appeals.

CONCLUSION

Since the AAIA sets out a comprehensive administrative scheme which grants jurisdiction of claims relating to Grant Assurances to the FAA, and since Mile-Hi has not exhausted its administrative remedies, this Court hereby grants the City of Longmont's Motion to Dismiss Amended Verified Complaint and dismisses Mile-Hi's complaint for lack of jurisdiction.

SO ORDERED this 28th day of May, 2019.

BY THE COURT:

Thomas F. Mulvahill
District Court Judge