

Court Dismisses Plaintiff's Claims that Airport Commission Conspired to Perpetuate a Competitor's Monopoly on Jet Fuel Sales

Boston Executive Helicopters, LLC v. Town of Norwood, et al.

The plaintiff, a private air carrier at Norwood Memorial Airport, sued the Norwood Airport Commission (NAC) and the Airport Manager alleging breach of contract, violation of procedural and substantive due process, threats, intimidation and coercion pursuant to the Massachusetts Civil Right Act (MCRA), and state and federal antitrust laws, among other claims.

U.S. District Judge Stearns dismissed eleven of the twelve counts brought against Pierce Davis & Perritano's clients, the NAC and the Airport Manager.

Boston Executive Helicopters (BEH) seeks to expand its business to sell jet fuel at Norwood Memorial Airport. To satisfy the NAC's requirement of a good-faith capital investment in the Airport, BEH leased a 30,000 square foot parcel and built a new hanger and underground fuel tanks. BEH alleged that the NAC's refusal to act on its fixed-base operator (FBO) application stemmed from collusion between the defendants and the current exclusive FBO.

In dismissing the majority of plaintiff's claims, the District Court ruled:

▶ That Massachusetts municipal airport commissions are immune from antitrust liability under the state action doctrine.

▶ BEH's unsupported assertion that it is a third-party beneficiary of the prime lease is empty rhetoric "not entitled to be assumed true."

▶ Noting that the burden on a plaintiff to establish a violation of procedural due process "in a commercial land-use context is high," the District Court denied this claim because BEH had an adequate post-deprivation remedy in the form of a certiorari appeal to the State courts.

▶ "In matters of municipal governance, the First Circuit has set an extremely high threshold for substantive due process claims, leaving 'the door slightly ajar for federal relief [only] in truly horrendous situations.' ... As a result, a claim will not lie for a 'run-of-the-mill dispute between a developer and a town official.' "

▶ No evidence of personal malice or "bad faith" retaliation on the part of any of the individual defendants was offered or imputed to the NAC by BEH in order to support its claim for a "class of one" equal protection. Hence, this claim fails even under a "relaxed" test.

▶ Regarding the MCRA claim, the plaintiff made no showing that the individual NAC Commissioners "have done anything more than refuse to act affirmatively on BEH's application for an FBO permit. 'Adverse administrative action, at least when not part of a scheme of harassment, does not amount to threats, intimidation or coercion.' "

The claim that the defendants retaliated against BEH in order to punish it for the exercise of its First Amendment rights



survived the Motion to Dismiss and remains ongoing.