

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: July 12, 2017]

KEVIN M. BLAIS

v.

RHODE ISLAND AIRPORT CORPORATION :
and KELLY J. FREDERICKS, as :
President/Director and CEO of the Rhode Island :
Airport Corporation :

C.A. No. PC-2015-4893

DECISION

TAFT-CARTER, J., Before the Court is an appeal from a decision by the Rhode Island Airport Corporation (RIAC), prohibiting aircraft pilot Plaintiff Kevin M. Blais (Plaintiff) from entering the premises of North Central State Airport (North Central) in Smithfield, Rhode Island. In addition to his appeal, Plaintiff seeks declaratory and injunctive relief. Jurisdiction is pursuant to G.L. 1956 § 42-35-15 of the Administrative Procedures Act (APA) and chapter 30 of title 9, entitled the Uniform Declaratory Judgments Act (UDJA).

I

Facts and Travel

In early 2010, Plaintiff purchased an aircraft and obtained a gate key from the airport manager at North Central. (Admin. R., Ex.7, Tr. 13, June 26, 2015 (Tr.)) Plaintiff needed the key so that he could have access to the airfield. See id. at 16. Over the course of the next few years, various incidents occurred which involved Plaintiff and which will be discussed later in this Decision.

On February 14, 2014, a law firm representing RIAC advised Plaintiff in a certified letter that he was prohibited from entering the North Central premises. See Admin. R., Ex. 3 (Trespass Letter). A carbon copy of the Trespass Letter was sent, via e-mail, to Plaintiff's counsel. Id. The Trespass Letter stated in its entirety:

“This firm represents the Rhode Island Airport Corporation (the ‘RIAC’).

“Please be advised that you are not allowed to enter the premises of North Central State Airport. If you ignore this directive, you will be deemed a trespasser pursuant to Rhode Island General Laws Section 11-44-26 and RIAC will take appropriate action.”
Id.

The Trespass Letter was signed by an attorney from the firm and did not include or append any other information. See id.

It is undisputed that several days after the Trespass Letter was mailed to Plaintiff, he went to North Central to attend a safety seminar conducted by the Federal Aviation Administration (FAA).¹ Police officers escorted Plaintiff from the seminar, and he subsequently was charged as a criminal trespasser in violation of § 11-44-26. During the ensuing criminal proceedings, a justice of this Court granted a motion in limine to exclude the Trespass Letter from being introduced as evidence at trial. Thereafter, the state dropped the criminal trespass charges against Plaintiff.

In May 2015, RIAC issued a Notice of Hearing entitled, “In the Matter of Lifting of No Trespass Notice Issued to Kevin Blais.” (Admin. R., Ex.1 at 1.) The Notice stated that the

¹ These undisputed facts are gleaned from RIAC's submissions to this Court. See Appelles' Br. in Opp'n to Pl./Appellant's Admin. Appeal 4.

hearing would take place at North Central on June 26, 2015. See id. The Notice then explained that a Hearing Officer²

“has been engaged to investigate the facts concerning the potential lifting of the No Trespass issued to Kevin Blais in connection with the North Central Airport. In connection with that investigation, [the Hearing Officer] will hold the within-referenced public hearing and take evidence and testimony from anyone who wishes to be heard. The hearing will be held solely for investigatory purposes and will not proceed in the manner of a formal adversarial adjudication. Following the hearing, [the Hearing Officer] will make a recommendation to the Executive Director regarding whether the No Trespass should be lifted and, if so, under what, if any, restrictions. [The Hearing Officer’s] report and recommendation will not constitute a final determination of the matter. The Executive Director shall make such final determination following a review of the report and recommendation.” Id.

In addition, the Notice stated that “Respondent has the right to be represented by legal counsel, by himself, or by a person of his choice . . . [.]” and that “Respondent and other persons attending the hearing should bring all evidence bearing on the case, including any records or other documents.” Id. at 2.

The Plaintiff did not attend the scheduled hearing, but he was represented by counsel who entered an appearance on his behalf. See Tr. 4-5. At the hearing, Plaintiff’s counsel questioned RIAC’s authority to conduct a “nonadversarial hearing[,]” particularly in light of the fact that the Hearing Officer had offered him an opportunity to cross examine witnesses. See id. at 5-6. Counsel for RIAC rejected an offer to respond to the objection. See id. at 6. The Hearing Officer later proposed reconvening the hearing to allow Plaintiff the opportunity to attend; however, Plaintiff’s counsel declined the offer. See id. at 26.

² RIAC engaged Chief Justice (Retired) Frank J. Williams (hereinafter Hearing Officer) to conduct the hearing. (Admin. R., Ex.1 at 1.)

Nine witnesses testified and were cross examined at the hearing: Frank Sherman, Paul Harry Smith, Edouard Norbert DeCelles, Paul Carroll, David LaChapelle, John Guerin, John Sulyma, Kevin Peter DiLorenzo, Lance Eskelund, and Raymond A. Venticinque. The witnesses described their encounters with Plaintiff.

A

Frank Sherman

Flight Instructor Frank Sherman testified that late one afternoon, he and a female student landed at North Central under “terrible” visibility conditions. Id. at 7. As they were in the process of landing, he heard Plaintiff “make a radio call that he was like on a four-mile base for Runway 23.” Id. Knowing how poor visibility was at the time, Mr. Sherman “suggested[,]” over the open radio airwave, “that that wasn’t a good way to come into the traffic pattern.” Id. at 8.

Mr. Sherman then testified that after Plaintiff landed his airplane, he “came over to me in the most belligerent, violent way that you could imagine. I was somewhat frightened. The woman that I was flying with was frightened.” Id. at 8. During the encounter, Plaintiff accused Mr. Sherman of being an “unfit person” because he was “trying to teach people to fly on the radio, and that [Mr. Sherman] was using the common traffic advisory frequency in a way that should not be used” Mr. Sherman testified that, in fact, he had been using the radio “in the way it was supposed to be used.” Id. at 9. He also testified that

“Ultimately I just told him [Plaintiff] . . . to dig a big hole and jump in it? This is what I really felt. He just didn’t belong. This is the event I had with him. It just makes me feel he’s not a person that I want around this airport.” Id. at 8.

Later, he stated, “You know, if [Plaintiff] could behave like a normal human being, he would be welcomed. I’m afraid that he is unable to do that.” Id. at 10.

During cross examination, the following colloquy took place:

“Q. The reason you don’t want [Plaintiff] around is you think he’s rude, correct?”

“A. I think it’s worse than that, sir.

“Q. It’s worse than rude?”

“A. Yes.

“Q. It’s what, really rude?”

“A. Really dangerous.

“Q. Dangerously rude?”

“A. Yes.” Id. at 12.

B

Paul Harry Smith

Airport Manager Paul Harry Smith testified that in early 2010, Plaintiff told Mr. Smith that he had purchased an aircraft and needed a gate key to North Central. Id. at 13-14. Gate keys are available to individuals who “have an operational need to be on the field, [so that they] can have access.” Id. at 16. Mr. Smith arranged for Plaintiff to receive a key. Id. at 14.

On January 11, 2014, Plaintiff entered Mr. Smith’s office and demanded to know who had turned off his gate key. Id. at 16; see also Admin. R., Ex. 4 (Ex. 4) (“Why won’t my gate key work. I tried to get on the field and my key would not work.”). Apparently, Plaintiff’s “gate key fob was turned off when aircraft N3071D was removed from the airfield on September of 2013.” Id. Mr. Smith explained that Plaintiff did not need a key because he no longer kept an aircraft at North Central. See id. and Tr. 16. The confrontation escalated such that Plaintiff told Mr. Smith that “bad karma [was] coming [his] way[.]” and that he (Mr. Smith) “could not be that much of a fucking dick.” (Tr. 16); see also Ex. 4. Mr. Smith testified that it was at that point that he “felt really threatened” and called RIAC police. Id. According to Mr. Smith, when he told Plaintiff that he had called RIAC police, Plaintiff left the office. (Tr. 24; Ex. 4.) Mr. Smith

also testified that three of his five subordinates have reported feeling unsafe in Plaintiff's presence. (Tr. 19-20.)

On cross examination, Mr. Smith admitted that Plaintiff had never hit him, id. at 24, laid a hand on him, id., or touched him. Id. at 25. He also admitted that he had never seen Plaintiff ever touch, batter, or draw a weapon on any of the witnesses who were present at the hearing. Id.

C

Edouard Norbert DeCelles

Edouard Norbert DeCelles testified that he was a friend of Plaintiff who had been helping Plaintiff to obtain his pilot's license. Id. at 29. According to Mr. DeCelles, various members of the "aviation community" previously had filed complaints against Plaintiff, and Plaintiff was frustrated when the incident involving Mr. Sherman occurred. Id. at 30. Specifically he testified:

"There is a group of people at this airport who don't like [Plaintiff]. They just keep attacking him. He has been attacked enough that he just retaliated. That's what happened. He yelled at him. I would have yelled . . . too." Id. at 30-31.

D

Paul Carroll

Next to testify was Paul Carroll—a pilot with almost forty years of experience who previously had been appointed by the FAA to a volunteer position to help promote airline safety. Id. at 31-32. He testified about how Plaintiff, when "he was a new student pilot with very little time[,]” had "bragged" about flying "into the clouds, which is an extremely dangerous position for a private pilot, let alone a student pilot" Id. at 32. Mr. Carroll testified that Plaintiff did not have an "instrument rating to fly into the clouds[,]” and that he was bragging about doing it

because “he just wanted to see what it was like” Id. at 33. When Mr. Carroll warned Plaintiff about the dangerousness of such behavior—both to himself and people on the ground—Plaintiff “seemed to fluff it off. It was almost like careless or callous.” Id.

Mr. Carroll later testified that he thought Plaintiff had a cavalier attitude towards the FAA rules, and that he had filed complaints against Plaintiff “for difficult and erratic behavior.” Id. at 34-35. One of the complaints involved an incident in which Plaintiff crossed an active runway directly in front of Mr. Carroll as he was about to land his aircraft. Id. at 35. According to Mr. Carroll, he did not confront Plaintiff about the incident because Plaintiff previously had threatened him. See id. at 35.

Mr. Carroll further testified that one morning, Plaintiff “told me directly that he has a permit to carry a gun, and he wears a bullet proof vest[,]” and that later that same morning, Plaintiff threatened to report Mr. Carroll to the FAA. Id. at 36 and 44; see also id. at 36 (stating that Plaintiff said “I’m going to call the FAA on you. You know, bad things can happen to you”). Thereafter, Mr. Carroll stated:

“I stand before you today, I am fearful that he is going to cause physical harm to me. I feel threatened; I feel accosted. I feel as though he is out to get me.
“I think he is likely going to sue me. I am threatened by that. Intimidation tactics.” Id.

E

David LaChapelle

David LaChapelle testified that he witnessed Plaintiff yelling and screaming at Mr. Sherman, and that the incident made Mr. Sherman’s student “very uncomfortable.” Id. at 48. He also testified that Plaintiff used some “cute words” to describe Mr. Sherman. Id.; see also id. at 49 (acknowledging that one of the words was “a four-letter word beginning with F”).

Mr. LaChapelle stated that he also was present when an individual named John Guerin delivered a letter to Plaintiff. See id. According to Mr. LaChapelle, Plaintiff threw the letter out the window of his aircraft and, as Mr. Guerin was picking it up, [Plaintiff] “revved his airplane up and started to proceed to leave the airport.” Id.

F

John Guerin

John Guerin testified that he worked as a line tech for North Central when he delivered a sealed letter from RIAC to Plaintiff through the window of Plaintiff’s aircraft. See id. at 50-52. At the time, Plaintiff was preparing to depart from the airport. See id. at 52. According to Mr. Guerin, when Plaintiff saw the letter, “[h]e started wiggling out, going nuts[,]” and that he then “threw the letter on the ground” Id. at 53. Mr. Guerin stated that although Plaintiff never has threatened him, he nevertheless is afraid to be around Plaintiff. See id. at 53-54.

When asked whether, as suggested by Plaintiff’s counsel, that there existed a “conspiracy” against Plaintiff, Mr. Guerin responded:

“It’s a crock. It’s wrong. It’s because of the way [Plaintiff] presents himself. He comes off and creates his own problems. Like when he threw the letter on the ground instead of accepting it and opening it to see what it was, you know, he just created a new problem, because I had to fill out an incident form.” Id. at 54-55.

Mr. Guerin also stated that “You always have your guard up around [Plaintiff], because you never knew what he’s going to do.” Id. at 55. During cross examination, Mr. Guerin agreed that he was not a process server, and that Plaintiff had not been under any legal obligation to accept the letter. Id. at 55-56.

G

John Sulyma

John Sulyma testified that he witnessed Mr. Smith's demeanor right after Plaintiff had confronted Mr. Smith in his office. See id. at 60. According to Mr. Sulyma, Mr. Smith "was noticeably upset and noticeably afraid[,]” and said that he “can't work under these conditions[,]” and that “[h]e felt threatened by [Plaintiff]. He felt his family was threatened.” Id. Mr. Sulyma also testified that he had witnessed Plaintiff's removal by RIAC police from a seminar at North Central. See id. at 61-62. According to Mr. Sulyma, Plaintiff “was very cooperative” and that “[h]e seemed like he was dumbfounded” Id. at 62.

H

Kevin Peter DiLorenzo

Plaintiff's flight instructor, Kevin Peter DiLorenzo, was next to testify. He stated that he was very concerned when he learned of the incident with Mr. Sherman; Plaintiff's flight into the clouds; and his landing a plane “on a closed runway with people and trucks in the near vicinity causing safety concerns.” See id. at 65, 66 (stating “it raised a red flag to me as his instructor”). Although he had no firsthand knowledge of these incidents, and although Plaintiff had never acted belligerently or disrespectfully in his presence, Mr. DiLorenzo believed the reports to be credible. Id. at 68, 70.

In addition, Mr. DiLorenzo recounted an incident in which Plaintiff called him and told him he was intending to fly without being signed off in his logbook, as required by the FAA. Id. at 66. While Mr. DiLorenzo believed that Plaintiff was competent to make the proposed flight, he also knew that without Mr. DiLorenzo's signature, the flight would not be legal. Id. at 67. Mr. DiLorenzo testified that as Plaintiff's instructor, it was his responsibility to ensure that

Plaintiff followed FAA regulations. Furthermore, in the event that Plaintiff violated said regulations, the infraction also would have been reflected on his own record and could have damaged his reputation as an instructor. Id. at 69. Consequently, Mr. DiLorenzo immediately went to the airport and intercepted Plaintiff “as he was walking towards his airplane. I stopped him. I signed his logbook.” Id. at 66.

Thereafter, Mr. DiLorenzo refused to fly with Plaintiff, stayed away from the airport for three to four months until Plaintiff’s 90-day endorsement expired, thereby relieving Mr. DiLorenzo’s obligation to be Plaintiff’s instructor. Id. at 71, 76. Mr. DiLorenzo explained that he stayed away from the airport because he “did not want to be part of it[,]” meaning, “[t]he whole entire atmosphere involving [Plaintiff].” Id. at 70-71.

I

Lance Eskelund

Student pilot Lance Eskelund testified that on August 7, 2013, he and his wife witnessed Plaintiff confront Mr. Sherman as he and his student were tying down their aircraft, and that he filed a community complaint form about the incident. See id. at 84-86; see also Admin. R., Ex. 5 at 1 (Ex. 5). Mr. Eskelund then testified that Plaintiff turned towards Mr. Sherman “in a threatening manner and yelled, you almost killed me. You’re the one who is dangerous.” (Tr. 86); see also Ex. 5 at 2. According to Mr. Eskelund, Plaintiff was “threatening, belligerent[,]” and that “[h]e actually lunged at [Mr. Sherman]” such that Mr. Eskelund “felt that [Mr. Sherman] was probably going to get punched.” (Tr. 87.)³

Mr. Eskelund then testified:

³ The Court observes that Mr. Eskelund’s contemporaneous witness statement made no reference to Plaintiff lunging at Mr. Sherman. See Ex. 5.

“Later, when I realized or had been told that [Plaintiff] was a student pilot, and [Mr. Sherman], who is a master pilot with 60 years [sic] experience, had never had an incident, never had an accident, an honored aviator was being treated in such a disrespectful manner, not only in front of us but in front of his student, that was just, that was just enough for me to feel as though I needed to file a complaint.” Id. at 87-88.

He further testified:

“I do not like or dislike [Plaintiff]. My concern is that someone who has such a volatile temperament is not a safe person to be flying around this airport . . .

...

“If someone is volatile and they cannot pay attention to the rules, it provides a very serious safety situation at this airport.” Id. at 89-90.

J

Raymond A. Venticinque

The last witness to testify at the hearing was Raymond A. Venticinque. Mr. Venticinque, a pilot of about twelve years, testified that he stored his aircraft in a hangar at North Central. Id. at 96. He testified that his first encounter with Plaintiff was “nothing but negativity. There was no positiveness about, as far as I knew, nothing about camaraderie as far as around here with any of the other pilots.” Id. at 97. Mr. Venticinque also complained about Plaintiff’s “attitude.” Id.

When asked to explain what he meant by that, Mr. Venticinque testified:

“Okay. Just little things. Like there are certain things that people do for others around here, because they know if they can help a person and if it’s within their means to do it, they will just do it. That’s why this – the people here are just so friendly. It’s just really, it’s an excellent group.

“When you get a person that comes in and just goes against the grain and just raises things that really aren’t important, but they just make nothing but problems for the majority of the people, I mean, it’s like, Why would you do this?” Id. at 98-99.

Mr. Venticinque later stated that an airport is “for the safety of everybody else. Either you do things right or don’t do it.” Id. at 109. He then stated “You know, listen, there’s a right way to do things and there is a wrong way to do things. I don’t know why, but he likes to do things his way, which obviously isn’t the right way.” Id. at 109-10.

At the conclusion of the witness testimony, counsel for RIAC renewed its “invitation” to Plaintiff to appear and testify at a later date. Id. at 110. In response, Plaintiff’s counsel stated the following:

“Well, I would like to reiterate that I sent a request some time ago with a number of very straightforward, simple questions. The first one was, is this a contested case as defined by Rhode Island general law 42-35-1? If so, what are we contesting? Is my client being accused of violating a law or regulation, and if so, what one?

“Will an order issue following the hearing? Is this a public hearing; if so, under what law? Is [Plaintiff] a party as defined by Rhode Island general law Section 42-35-1? What is the statutory or regulatory basis for this procedure? Is [Plaintiff’s] participation in the hearing voluntary?

“What procedures apply to this hearing? Will a record be kept of the testimony of the hearing; if so, by what device, and will the recording be attested by a notary? Will the evidence be public? If not, why not? Will [Plaintiff] be afforded an opportunity to call witnesses? Will [Plaintiff] be afforded an opportunity to cross examine his accuser?

“What exactly is your role [Hearing Officer], investigator under what authority? Do you plan to render an advisory opinion or something else? Under what authority? Do I get to see your opinion? Are you volunteering your time, or are you being paid ... by whom and how much?

“If those questions are answered, I might consider having [Plaintiff] come in and give his side of the various incidents which have been described here today. Absent answers to those questions, I will not be recommending that [Plaintiff] attend this hearing which, frankly, I don’t see how it’s authorized by any Rhode Island law.” Id. 110-11.

Thereafter, the hearing adjourned.

On September 9, 2015, the Hearing Officer issued his written Report and Recommendation to the Defendant President and CEO of RIAC, Kelly J. Fredericks. In it, the Hearing Officer recounted the testimony of the witnesses, whom he found to be credible. (Admin R., Ex. A, Report and Recommendation 3-9 (Recommendation)). The Hearing Officer then found “[t]roubling” Plaintiff’s “unwillingness to follow FAA regulations[.]” Id. at 9. He further found Plaintiff to be contemptuous of the fact that privately licensed pilots “tend to be a close-knit group” that works together to ensure the safety of everyone involved. Id. at 9-10. The Hearing Officer also found that Plaintiff’s

“absenting himself from the meeting on June 26 does not assist him nor this Hearing Officer in fully evaluating the issue presented by RIAC. Even without drawing a negative inference from [Plaintiff’s] absence, it is clear that [Plaintiff] presents, and without any contradictory evidence, an ongoing risk to himself and fellow pilots. RIAC . . . and the FAA are entrusted to ensure safety at North Central and among the pilots who use the facility. [Plaintiff] on numerous occasions has endangered the safety of the facility using it.” Id. at 10.

The Hearing Officer then stated: “I cannot, therefore, recommend that the ‘ban’ against [Plaintiff] for using the North Central Airport be lifted at this time—assuming that the ‘ban’ . . . is and remains enforceable pursuant to the authority and jurisdiction of RIAC” Id. Accordingly, the Hearing Officer recommended that “the ban should remain in full force and effect.” Id.⁴

⁴ After receiving the Hearing Officer’s Recommendation, Defendant President and CEO of RIAC Kelly J. Fredericks requested the Hearing Officer to make a recommendation regarding the duration that the no trespass order should remain in place. See Admin. Appeal, Ex. A, Letter from Mr. Fredericks to Hearing Officer, Sept. 15, 2015. In response, the Hearing Officer stated:

“I was not able to offer a specific date in my . . . recommendation . . . primarily because [Plaintiff] failed to be present at the meeting . . . His absence, and/or acknowledgement of the necessity of following rules of appropriate decorum and civility as well as the rules and regulations of the [RIAC] and [FAA], make it impossible

Thereafter, Defendant Fredericks informed Plaintiff that he had adopted the Hearing Officer's Recommendation, stating

“you [Plaintiff] are directed to remain off the premises of North Central State Airport. This restriction applies only to the North Central State Airport. You may use any of the other Rhode Island Airport Corporation facilities, and may use North Central State Airport in the event of aviation emergency.” (Admin. Appeal, Ex. A, Letter from Mr. Fredericks, Oct. 8, 2015 (Director's Letter)).

...

“It is my intention to review this matter within six (6) months of today's date.” Id.

Attached to the letter was a Notice of Appeal Rights. Id.

Plaintiff timely appealed the decision to this Court. In addition, Plaintiff seeks declaratory relief.

II

Standard of Review

The Plaintiff brings his appeal from RIAC pursuant to the APA, which provides in pertinent part:

“(a) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

“(1) In violation of constitutional or statutory provisions;

“(2) In excess of the statutory authority of the agency;

“(3) Made upon unlawful procedure;

“(4) Affected by other error or law;

for me to recommend an expiration date for the ‘no trespass order.’” (Admin. Appeal, Ex. A, Letter from Hearing Officer to Mr. Fredericks, Sept. 28, 2015).

Instead, the Hearing Officer suggested that RIAC review the matter again in six months and that Plaintiff's “attendance at this review is essential.” Id.

“(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
“(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.” Sec. 42-35-15(g).

When considering an administrative appeal, the scope of this Court’s review merely is “an extension of the administrative process.” Reilly Elec. Contractors, Inc. v. State Dep’t of Labor & Training ex rel. Orefice, 46 A.3d 840, 844 (R.I. 2012). The Court reviews the record as a whole to determine whether the administrative decision is supported by “legally competent evidence[,]” which is defined as “such relevant evidence that a reasonable mind might accept as adequate to support a conclusion, and means an amount more than a scintilla but less than a preponderance.” Id. (quoting Foster-Glocester Reg’l Sch. Comm. v. Bd. of Review, 854 A.2d 1008, 1012 (R.I. 2004)). Furthermore, “[u]nder the APA[,] this Court reviews deferentially the factual determinations made by the factfinder in an administrative proceeding.” R.I. Temps, Inc. v. Dep’t of Labor & Training, Bd. of Review, 749 A.2d 1121, 1124 (R.I. 2000) (citing Poisson v. Comtec Info. Sys., Inc., 713 A.2d 230, 233 (R.I. 1998)).

Nevertheless, while “this Court affords the factual findings of an administrative agency great deference, questions of law—including statutory interpretation—are reviewed de novo.” Iselin v. Ret. Bd. of Employees’ Ret. Sys. of Rhode Island, 943 A.2d 1045, 1049 (R.I. 2008) (quoting In re Advisory Opinion to the Governor, 732 A.2d 55, 60 (R.I. 1999)); see also R.I. Temps, Inc., 749 A.2d at 1125 (stating that “[d]espite [the Court’s] deference to the administrative process, however, [it] retain[s] the power to review all questions of law, and an administrative decision, inter alia, can be vacated for such errors of law.”) (Internal citations and quotations omitted).

With respect to Plaintiff's other claims, "[a] decision to grant or deny declaratory or injunctive relief is addressed to the sound discretion of the trial justice and will not be disturbed on appeal unless the record demonstrates a clear abuse of discretion or the trial justice committed an error of law." Foster Gloucester Reg'l Sch. Bldg. Comm. v. Sette, 996 A.2d 1120, 1124 (R.I. 2010) (quoting Hagenberg v. Avedisian, 879 A.2d 436, 441 (R.I. 2005)).

III

Analysis

A

Declaratory and Injunctive Relief

The Plaintiff asks the Court to declare that the Trespass Letter was not a valid order under chapter 4 of title 1, entitled the Uniform Aeronautical Regulatory Act (UARA), and that any actions taken by RIAC to ban Plaintiff from North Central pursuant to, or in furtherance of, said Trespass Letter were invalid. The Plaintiff further asks the Court enter an injunction against RIAC to prohibit it from enforcing the ban against Plaintiff from entering North Central for legitimate aviation related activities.

The UDJA "grants broad jurisdiction to the Superior Court to 'declare rights, status, and other legal relations whether or not further relief is or could be claimed.'" Tucker Estates Charlestown, LLC v. Town of Charlestown, 964 A.2d 1138, 1140 (R.I. 2009) (quoting § 9-30-1). Thus, even though "[i]t is well settled that a plaintiff aggrieved by a state agency's action first must exhaust administrative remedies before bringing a claim in court[.]" Arnold v. Lebel, 941 A.2d 813, 818 (R.I. 2007), it also is true "that a party is not precluded from proceeding under the UDJA, particularly when 'the complaint seeks a declaration that the challenged ordinance or rule is facially unconstitutional or in excess of statutory powers, or that the agency or board had no

jurisdiction.”” Tucker Estates Charlestown, LLC, 964 at 1140 (quoting Kingsley v. Miller, 120 R.I. 372, 374, 388 A.2d 357, 359 (1978)). Another “exception to the exhaustion requirement [exists] when ‘exhaustion of administrative remedies would be futile.’” Richardson v. R.I. Dep’t of Educ., 947 A.2d 253 (R.I. 2008) (quoting Arnold, 941 A.2d at 818).

In the instant matter, Plaintiff has not satisfied any of the aforementioned exceptions to the exhaustion requirement. Although he contends that the Trespass Letter was an invalid order under the UARA, he has not challenged any rule as facially unconstitutional or in excess of statutory powers, and he has not contended that RIAC had no jurisdiction to enter a valid order banning an individual from its airports. Considering that Plaintiff’s appeal from RIAC’s decision also is presently before the Court, he has failed to show that exhaustion of administrative remedies would be futile. Consequently, the Court denies Plaintiff’s request for declaratory relief.

With respect to Plaintiff’s request for injunctive relief, it is well settled that “[a] party seeking injunctive relief ‘must demonstrate that it stands to suffer some irreparable harm that is presently threatened or imminent and for which no adequate legal remedy exists to restore that plaintiff to its rightful position.’” Nye v. Brousseau, 992 A.2d 1002, 1010 (R.I. 2010) (quoting Nat’l Lumber & Bldg. Materials Co. v. Langevin, 798 A.2d 429, 434 (R.I. 2002)). As previously stated, Plaintiff presently has an adequate legal remedy to restore him to his rightful position; namely, his administrative appeal from RIAC’s decision. Consequently, the Court also denies his request for injunctive relief.

B

The Administrative Appeal

In his appeal, Plaintiff first contends that the Trespass Letter banning him from North Central was not a validly issued administrative order and that as a result, RIAC's subsequent decision not to lift that purported order also was invalid. Next, Plaintiff maintains that RIAC's actions were unconstitutional because they violated his procedural and substantive due process. Specifically, Plaintiff asserts that RIAC exceeded its statutory authority, and acted arbitrarily and capriciously, when it deprived him of his right to access a public place without affording meaningful due process protections. Finally, Plaintiff avers that RIAC violated his constitutional rights for exercising his First Amendment Right to Free Speech when it banned him from North Central.

In response, RIAC contends that the Director of RIAC had the authority to ban Plaintiff from entering North Central through the issuance of the Trespass Letter. RIAC further contends that even assuming the letter constituted an "order," as maintained by Plaintiff, he failed to assert his rights when the Trespass Letter first was issued or to later challenge its propriety during the hearing process. Finally, RIAC contends that pilots who engage in dangerous behaviors do not have a constitutional right to enter an airport.

1

The Trespass Letter

The Plaintiff contends that the Trespass Letter issued by RIAC's counsel failed to satisfy the requirements set forth in UARA. Consequently, he asserts that it did not constitute a valid order under the statute.

When reviewing a statute, the Court’s “ultimate goal is to give effect to the purpose of the act as intended by the Legislature.” Providence Journal Co. v. R.I. Dep’t of Pub. Safety ex rel. Kilmartin, 136 A.3d 1168, 1173 (R.I. 2016) (quoting Webster v. Perrotta, 774 A.2d 68, 75 (R.I. 2001)). In doing so, “[i]t is well settled that the plain statutory language is the best indicator of the General Assembly’s intent.” Twenty Eleven, LLC v. Botelho, 127 A.3d 897, 900 (R.I. 2015) (quoting Zambarano v. Ret. Bd. of the Emps.’ Ret. Sys. of R.I., 61 A.3d 432, 436 (R.I. 2013)) (internal quotations omitted). When a statute’s language “is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” Swain v. Estate of Tyre ex rel. Reilly, 57 A.3d 283, 288 (R.I. 2012).

The RIAC is “a public corporation organized as a wholly owned subsidiary of the Rhode Island Economic Development Corporation. . . .” R.I. Econ. Dev. Corp. v. The Parking Co., L.P., 892 A.2d 87, 92 (R.I. 2006) (citing chapter 2 of title 1 of the Rhode Island General Laws, and § 42-64-7.1(a)).⁵ As such, it is a “state agency” that is subject to the provisions of the APA. In re Advisory Opinion to Governor, 627 A.2d 1246, 1249 (R.I. 1993) (“Since RIAC holds the same rights and is subject to the same limitations as [the Rhode Island Economic Development Corporation], RIAC is also a ‘governmental agency.’”).⁶

The RIAC “has jurisdiction over the state airports and airport facilities, and the general assembly recognizes that the safe and efficient operation of the airports and airport facilities is of paramount importance to the citizens of the state of Rhode Island.” G.L. 1956 § 1-2-7.1(a).

⁵ The Rhode Island Economic Development Corporation is now known as the Rhode Island Commerce Corporation. See § 42-64-1.1.

⁶ The APA defines an agency to include: “all authorities as the term is defined [in § 42-35-1(2)].” Sec. 42-35-1(1). The APA specifically includes the Rhode Island Economic Development Corporation within its definition of the term authorities. Sec. 42-35-1(2).

Accordingly,

“The director [of RIAC] has supervision over the state airport at Warwick and any other airports constructed or operated by the state. The director shall enforce the provisions of this chapter. Furthermore, the director is authorized to promulgate rules and regulations for the safe and efficient operation of airports, airport facilities, and grounds.” Sec. 1-2-1(a).

It is undisputed that North Central is one of six airports operated by RIAC; thus, the Director of RIAC has the authority to oversee the safe and efficient operation of that facility pursuant to § 1-2-1(a).

Section 1-4-12 grants the Director “the power to conduct investigations, inquiries, and hearings concerning matters covered by the provisions of this chapter” Sec. 1-4-12. Pursuant to § 1-4-14, “[t]he director, deputy director, aeronautics inspectors, and selected [RIAC] employees . . . have . . . the same authority to make arrests for violation of the statutes . . . relating to . . . airport security matters, and to enforce those statutes . . . as regular constituted law enforcement officers in the state.” Sec. 1-4-14(b). Furthermore, in the event that the director “issues any order requiring or prohibiting certain things to be done, the director shall set forth his or her reasons for the order and state the requirements to be met before approval is given or the rule, regulation, or order shall be modified or changed.” Sec. 1-4-15. In light of these statutory mandates, the Court now must determine whether the February 14, 2014 Trespass Letter constituted an order for purposes of the UARA.

The Trespass Letter, signed by counsel for RIAC, stated in its entirety:

This firm represents the Rhode Island Airport Corporation (the “RIAC”).

“Please be advised that you are not allowed to enter the premises of North Central State Airport. If you ignore this directive, you will be deemed a trespasser pursuant to Rhode Island General

Laws Section 11-44-26 and RIAC will take appropriate action.”
(Trespass Letter.)

The UARA empowers the Director of RIAC to issue orders. See § 1-4-15. However, that section specifically requires the Director to “set forth his or her reasons for the order and state the requirements to be met before approval is given or the rule, regulation, or order shall be modified or changed.” Sec. 1-4-15.

Nonetheless, there is nothing in the Trespass Letter to suggest that these requirements were satisfied. Instead, the Trespass Letter simply is a directive from RIAC informing Plaintiff that for no given reason, he was banned from entering North Central, and that failure to adhere to this directive would result in a criminal trespass charge under § 11-44-26. The Trespass Letter also did not state the requirements that needed to be met for purposes of modifying or changing the purported ban thus, suggesting that the ban was permanent.

Furthermore, even assuming that the Trespass Letter satisfied § 1-4-15, which it does not, it did not advise Plaintiff of his rights under the APA. See § 1-4-16 (“Any person against whom an order is entered may obtain a judicial review of that order under the provisions of chapter 35 of title 42.”); see also § 42-35-12 (“Included with the final order shall be a separate notice advising the parties of the availability of judicial review, the appeal period and the procedure for filing an appeal, and providing a reference to the statutory authority.”).

In view of the foregoing, the Court concludes that the Trespass Letter did not constitute a valid administrative order under the UARA. Furthermore, any assertion by Defendants that Plaintiff failed to assert his rights when the Trespass Letter first was issued has no merit. The Court next must determine whether the Director’s subsequent decision directing Plaintiff “to remain off the premises of North Central State Airport[,]” constituted a valid order under the UARA. (Director’s Letter.)

The Director's Letter

The Plaintiff maintains that because the original ban contained in the Trespass Letter was an invalid order, it necessarily follows that the Director's Letter extending said ban also was invalid. In addition, he contends that the Director's Letter statutorily was deficient in several ways. Specifically, he contends that the Director's Letter fails to set forth reasons for the order; fails to state requirements for modifying or changing the order; does not seek to enforce Aeronautics Regulations, Operations Directives, or any applicable Rhode Island Law; and was not posted in a public place or filed with the Secretary of State's office, as required by statute. The Plaintiff further contends that the Director's Letter was constitutionally invalid because RIAC failed to provide Plaintiff with meaningful notice of his alleged violations, and failed to provide him with a reasonably prompt and meaningful opportunity to be heard after the Trespass Letter was issued.

As previously stated, on October 8, 2015, the Director of RIAC told Plaintiff that he had "adopted the findings, conclusion and recommendations of [the Hearing Officer]." (Director's Letter.) Accordingly, he "directed" Plaintiff "to remain off the premises of North Central State Airport." Id. The Director further stated: "This restriction applies only to the North Central State Airport[.]" and that he intended to review the matter within six months of the date of the letter. Id.

However, the Hearing Officer's findings, conclusion, and recommendation presupposed that the Trespass Letter was valid in the first instance. See Recommendation at 10 ("I cannot, therefore, recommend that the 'ban' against [Plaintiff] . . . be lifted at this time—assuming the 'ban' . . . is and remains enforceable pursuant to the authority and jurisdiction of RIAC")

(emphasis added). Considering that this Court already has found that the ban contained in the Trespass Letter to be invalid and unenforceable, it necessarily follows that the Director’s Letter—which purported to extend such ban—also was an invalid order. Considering that the ban was not valid in the first instance, it was not necessary for Plaintiff to challenge its propriety during the hearing process.

As the Court has concluded that RIAC’s purported ban was invalid, it need not address the constitutional issues raised by Plaintiff. See In re Brown, 903 A.2d 147, 151 (R.I. 2006) (“Neither this Court nor the Superior Court should decide constitutional issues unless it is absolutely necessary to do so.”) (citing State v. Lead Indus. Ass’n, Inc., 898 A.2d 1234, 1238 (R.I. 2006)); see also Harmon v. Brucker, 355 U.S. 579, 581 (1958) (acknowledging a “duty to avoid deciding constitutional questions presented unless essential to proper disposition of a case”). Instead, the Court grants Plaintiff’s appeal.⁷

IV

Conclusion

This Court finds that the RIAC’s decision to ban Plaintiff from entering North Central State Airport was in violation of statutory and regulatory provisions, was in excess of the authority granted to the RIAC, and was arbitrary and capricious. The RIAC’s decision also was affected by error of law and was characterized by an abuse of discretion. Substantial rights of

⁷ The Court observes that had the Director satisfied the requirements set forth in the UARA, he certainly had the authority to ban Plaintiff from the Airport. Indeed, the Court is very troubled by Plaintiff’s dangerous and disruptive conduct and likely would have upheld the ban had it been implemented in accordance with the UARA and the APA. See § 1-4-10 (“The director . . . shall adopt and enforce, and may amend or repeal rules, regulations, and orders, to safeguard from accident and to protect the safety of persons operating or using aircraft and persons and property on the ground”) Nevertheless, considering that the Director had the authority to ban Plaintiff from all state airports for safety reasons, the Court is puzzled by the fact that he only attempted to ban Plaintiff from entering North Central State Airport.

the Plaintiff have been prejudiced. Accordingly, this Court reverses the RIAC's decision. The Court denies Plaintiff's requests for declaratory and injunctive relief.

Counsel shall submit an appropriate order consistent with this decision.



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Kevin M. Blais v. Rhode Island Airport Corporation, et al.

CASE NO: PC-2015-4893

COURT: Providence County Superior Court

DATE DECISION FILED: July 12, 2017

JUSTICE/MAGISTRATE: Taft-Carter, J.

ATTORNEYS:

For Plaintiff: Kevin C. Cain, Esq.

For Defendant: Matthew C. Reeber, Esq.