

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROY A. AVELLANEDA, JOHN KENNARD)
YESSENIA ALFARO, LUIS N. PERRONE,)
DEBRA CAVE, JACOPO MADARO,)
WILLIAM J. GALVIN, JR., YELENA)
SHULKINA and LEV ZALTSMAN) CIVIL ACTION
Plaintiffs,) NO. 08-10718-DPW
)
v.)
)
)
FEDERAL AVIATION ADMINISTRATION)
Defendant.)

MEMORANDUM AND ORDER
September 30, 2009

The complaint in this action, to which the defendant belatedly deigned to respond with a motion to dismiss, essentially seeks judicial review of what the plaintiffs contend are unlawful decisions of the Federal Aviation Administration ("FAA") regarding the use of runways at Boston's Logan Airport. The plaintiffs apparently filed the action in this court in the hope that some discovery not otherwise available for conventional judicial review of FAA orders could be had. They presumably sought to fortify their grounds for judicial review once the dispute reached judicial determination of the merits.

In light of the defendant's desultory approach to this case,¹ I have indulged the plaintiffs' discovery efforts in this

¹ The defendant has pursued a Fabian policy of studied avoidance of full engagement in this litigation. It sought extended continuances within which to respond with a motion to dismiss and then, when given a date certain to do so by the Court, submitted in support of their long promised motion to

court, despite the potential that jurisdiction for judicial review necessarily rests in the United States Court of Appeals. The discovery period has now ended and, while there are discovery issues outstanding, I turn to the jurisdictional issue and find that the dispute must be resolved in the Court of Appeals under 49 U.S.C. § 46110(a). In this connection, it is apparent that Congress has directed and the courts have recognized that, to the degree action of the FAA may be subject to judicial review, the Court of Appeals is the proper forum. See generally *Town of Winthrop v. FAA*, 5325 F.3d 1, 6 (1st Cir. 2008); *Safe Extensions, Inc. v. FDA*, 505 F.3d 593, 597-604 (D.C. Cir. 2007); *City of Oxford v. FAA*, 428 F.3d 1346, 1349 (11th Cir. 2005).

Recognizing the jurisdictional vulnerability of their case in this court, the plaintiffs moved as an alternative to dismissal that this matter be transferred to the Court of Appeals. Given the Defendant's passive aggressive response to this litigation - and in particular given Defendant's alternative argument that Plaintiffs' claims are not timely presented for

dismiss a super sized memorandum ranging far beyond the relevant bases for such a motion. When required to file a less larded and more tailored brief within authorized page limits, the defendant focused its contentions on the alternative propositions that a) review of orders of the FAA is within the jurisdiction of the Court of Appeals and not the District Court, b) that the matters as to which the defendant seeks judicial review are not orders of the FAA subject to such review, and (c) even if subject to judicial review, the matters were not timely raised. Meanwhile, the defendant also sought to evade mediation efforts I had directed as part of case management.

judicial review - I will allow the motion to transfer in the interest of justice under 28 U.S.C. § 1631. I do so in furtherance of the "policy favoring the resolution of cases on the merits." *Britell v. United States*, 318 F.3d 70, 73-74 (1st Cir. 2003) and in order to avoid complicating the timeliness issue by a dismissal in this court followed by a new filing in the Court of Appeals. I make this transfer, of course, without prejudice to the reassertion of the remaining grounds for dismissal asserted by the Defendant in this Court.

Accordingly, the Plaintiffs' motion to transfer (No. 36) is hereby granted and the remaining motions are denied as moot in light of such transfer.

/s/ Douglas P. Woodlock
DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE