OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
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Appeal No. 24Q02689 **DCWP v. FedEx** **April 28, 2026**

Appeal Decision

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Summons	Law Charged	Hearing Decision	Appeal Decision	Penalty
24Q02689	6 RCNY § 5-37	Sustained	Affirmed – In Violation	$150
	Code § 20-840(b)	Sustained	Affirmed – In Violation	$750

Date Mailed:

Atty: SL/1390

Introduction

The appeal of Respondent, a service provider and retail store, is **granted in part**.

Respondent appeals from a recommended hearing decision by Judicial Hearing Officer (JHO) A. Baranoff**,** dated March 7, 2025, sustaining a violation of § 5-37 of Title 6 of the Rules of the City of New York (RCNY), for failing to conspicuously post a refund policy, and § 20-840(b) of the Administrative Code of the City of New York (Code), for refusing to accept cash payment for retail goods or services. Having fully reviewed the record, the Tribunal finds that the JHO's decision is supported by the law and a preponderance of the evidence only as to Respondent's merchandise sales.

Background

In the summons, the issuing officer (IO) affirmed observing on October 15, 2024, at 5895 Maurice Avenue, Queens, "the refund policy was not posted at the point of sale or entrance" and "the business had signs stating that they refuse to accept payments in cash from consumers."

At a telephone hearing, held on February 24, 2025, the representative of Petitioner, Department of Consumer and Worker Protection (DCWP), submitted its evidence packet, consisting of:

> (1) November 12, 2024, email re summons 24N01801 (801) from Petitioner's counsel responding to Respondent's counsel's request and stating that Petitioner's "Enforcement Team will be withdrawing this violation" with Respondent's counsel's email requesting withdrawal to discuss preclusion by federal law and attaching "proposed settlement" (801 withdrawal thread; neither party submitted the cited "proposed settlement"), along with Petitioner's notice to this Tribunal of withdrawal of 801, and the Tribunal's hearing decision granting Petitioner's motion to withdraw prosecution;
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> (2) the IO's photos of Respondent's store at the cited address showing (a) Respondent's sign including statement "Accepted forms of payment include FedEx account or credit card"; (b) Respondent's wall sign stating, "Notice/No Cash/Accepted"; (c) "Dangerous Goods Guide/Are you shipping any of these items" sign; (d) receipt for drop off of package at cited store stating, "Subject to terms and conditions, including terms that limit FedEx's liability" and "Shipment-related terms and conditions and details on how shipping charges are calculated are available upon request or at

fedex.com/serviceguide" and further stating, separately on receipt, "All merchandise sales are final"; and

(3) screenshot of pages from Respondent's website for the cited store, stating, above the description of Respondent's shipping services, pickup options, and delivery options, "Get package supplies and tips plus all other shipping support you need" at cited location and that Respondent's "Ship Centers offer a variety of FedEx shipping options including shipping supplies."

Respondent's attorney submitted a motion to dismiss because the charges under 6 RCNY § 5-37 and Code § 20-840(b) are preempted by federal law, arguing the preemption clause of the Airline Deregulation Act, 49 U.S.C. § 41713(b)(1) (ADA preemption clause), bars the charges because they are "related to a price, route, or service of an air carrier." Respondent attached as exhibits to its motion to dismiss:

(1) Air Carrier Certificate issued by federal Department of Transportation and Federal Aviation Administration (collectively, USDOT), as amended on October 18, 2010, saying Respondent met the requirements of the Federal Aviation Act of 1958, as amended, and the "rules, regulations, and standards thereunder" and "is hereby authorized to operate as an air carrier and conduct common carriage operations in accordance with" the stated provisions and the terms and conditions and limitations contained in the approved operations specifications, and attaching (a) Respondent's "Air Operator Certificate" certifying Respondent "is authorized to perform commercial air operations as defined in the attached air operations specification in accordance with the Operations Manual" and specified provisions of the Code of Federal Regulations," and (b) Operations Specifications signed by representatives of USDOT and Respondent on November 17, 2014; and

(2) Petitioner's February 13, 2025, email response to Respondent's request to withdraw the instant summons, stating Petitioner "does not intend to withdraw this summons at this time"; the email with Respondent's request included the 801 withdrawal thread.

The motion to dismiss also referred to but did not attach "the FedEx Service Guide publicly available at its website," cited as https://www.fedex.com/en-us/service-guide.html and stated to provide the terms and conditions of "FedEx's refund for shipping services, called 'money-back guarantee,'" described as a "unique service that FedEx offers its customers."

Respondent's attorney cited the 801 withdrawal and Petitioner's refusal to withdraw the instant summons even though Petitioner had not "given any position." On the legal issue of federal preclusion, Petitioner's representative, an inspector, deferred to the decision of

Petitioner's attorneys not to withdraw the instant summons, as shown by its email. Citing preclusion as a dispositive legal issue, Respondent's attorney did not dispute the facts stated in the summons or Petitioner's documentary evidence.

In her decision sustaining the charges, the JHO first found that preclusion is an affirmative defense that Respondent must establish, citing *DCA v. Mr. C's Cycles*, No. 05390932 (February 8, 2017). She then found Respondent did not establish the defense, stating that "[r]ather than attempting to regulate aspects of the transport itself," the provisions charged "merely regulate the strictly local business aspects of" Respondent. She further noted that "the website information provided by respondent [sic] also indicates that the store sells shipping supplies. Presumably, one can buy these supplies independently of using the shipping service. As such, then local [DCWP] rules apply."

In its appeal Respondent argues, as in its motion to dismiss, that the ADA preemption clause bars the charges under the cited provisions because the provisions charged "are substantively similar to numerous other state consumer protection statutes that have consistently been held to be preempted" by the ADA.[1]

In its answer Petitioner argues that Respondent's appeal fails to establish preemption because the consumer protections provided by Code § 20-840(b) and 6 RCNY § 5-37 "have no effect (or, at best, too tenuous and remote an effect) on Respondent's prices, routes, or services."

Issues on Appeal

The issues on appeal are whether the ADA preemption clause bars enforcement of Code § 20-840(b) and 6 RCNY § 5-37 against Respondent for, respectively, (1) its means of notifying customers of its refund policy, and (2) the limits it puts on methods of payment, as each charge pertains to purchase of (a) shipping services (i.e., transportation of goods) and (b) merchandise

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[1] For the first time Respondent also cites two other provisions as supporting preemption here, 49 U.S.C. §§ 14501(c)(1) and 41713(b)(4). They are preemption clauses identical to the ADA preclusion clause except instead of "an air carrier that may provide transportation" they concern, respectively, "motor carriers of property" not affiliated with an air carrier and "an air carrier or carrier affiliated with a direct air carrier through common controlling ownership" when "transporting property by aircraft or motor vehicle." Although not in the record here, the Tribunal takes official notice that Respondent uses motor vehicles as well as aircraft to transport property. Therefore, the findings here on the ADA preemption clause and the two DCWP provisions charged apply equally to preemption under 49 U.S.C. §§ 14501(c)(1) and 41713(b)(4) to the extent either applies to business conducted at the cited store.

(i.e., "package supplies" and "supplies" as referred to on Respondent's website for the cited store).

Applicable Law

Code § 20-840(b) provides, in pertinent part, and with exceptions not relevant here, that "[i]t shall be unlawful for a food store or a retail establishment to refuse to accept payment in cash from consumers."

Code § 20-840(a) provides, in pertinent part, that "[t]he term 'retail establishment' means an establishment wherein consumer commodities are sold, displayed or offered for sale, or where services are provided to consumers at retail."

Section § 5-37 of Title 6 of the RCNY provides, in pertinent part, that "[s]ellers of consumer goods and services must comply with all provisions" of New York General Business Law (GBL) § 218-a.

GBL § 218-a provides, in pertinent part, the following:

1. Every retail mercantile establishment and online retailer shall conspicuously post, in the following manner, its refund policy as to all goods, wares or merchandise offered to the public for sale:

   (a) on a sign attached to the item itself; or

   (b) on a sign affixed to each cash register or point of sale; or

   (c) on a sign so situated as to be clearly visible to the buyer from the cash register; or

   (d) on a sign posted at each store entrance used by the public[.]

   . . . .

The ADA preemption clause provides, in pertinent part and with exceptions not relevant here, that "a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation . . . ."

Section 40102(a)(5) of Title 49 of the U.S.C., together with 49 U.S.C. §§ 40102(a)(23) and 40102(a)(25), defines the phrase "air transportation" as including the transportation of property by aircraft, for compensation, between two States of the United States or between inside the United States and outside the United States.

Analysis

For the following reasons, the Tribunal grants Respondent's appeal in part. The Tribunal affirms the JHO's decision to the extent it finds Code § 20-840(b) and 6 RCNY § 5-37 apply to the means of payment allowed, and notification to customers of refund policy, for Respondent's sale of merchandise. The Tribunal reverses the decision as to Respondent's sale of shipping services, to which it finds Code § 20-840(b) and 6 RCNY § 5-37 do not apply because of the ADA preemption clause.

Respondent did not dispute at the hearing, and does not dispute on appeal, that it was in violation as charged. Rather, Respondent merely claims that the ADA preemption clause bars enforcement of Code § 20-840(b) and 6 RCNY § 5-37 against it. It is undisputed that Respondent is an "air carrier" within the meaning of the ADA and that consequently, the ADA applies to it. Petitioner, however, disputes Respondent's preemption claim on the ground that neither Code § 20-840(b) nor 6 RCNY § 5-37 "relate[s] to a price, route, or service of" Respondent within the meaning of the ADA.

The Tribunal divides its consideration of the charges as they apply to what, in its motion to dismiss, Respondent calls its "shipping services" as distinct from what the receipt from Respondent's store distinguishes as "merchandise." The Tribunal understands "merchandise" here to be what Respondent calls, in the pages from the website for the cited store that Petitioner put into evidence, "shipping supplies" and "package supplies."

This distinction is found in how Respondent notifies customers of its refund policy. Respondent describes its "moneyback guarantee" for shipping services online, at the web address cited in its motion to dismiss. The same web address appears on the receipt from the cited location that Petitioner put into evidence. It tells customers to find "shipment-related terms and conditions" at that web address. The bottom of the same receipt tells customers that "All merchandise sales are final."

Respondent does not appear to have a separate policy for the kinds of payment it accepts for shipping services on the one hand and merchandise on the other. But in the photos of the cited store that Petitioner put into evidence, one of Respondent's signs tells shipping customers it will accept a FedEx account or credit. A sign shown mounted at the point of payment in another photo simply says "Notice/No Cash/Accepted."

<u>Preemption as to Shipping Services</u>

As to shipping services – that is the transportation of their goods for which customers engage Respondent – the Tribunal finds it is solidly a "service" that Respondent as a federally certified air carrier offers. The ADA preemption clause bars enforcement of the law of a state's political subdivision related to an air carrier's "services." The Tribunal finds that it bars enforcement of the two DWCP provisions as charged here with respect to Respondent's shipping services – Code § 20-840(b) as prescribing the methods of payment that Respondent must accept for its shipping services, and 6 RCNY § 5-37 as prescribing how Respondent must notify customers of the refund policy for those services. It finds the facts do not support either Petitioner's argument that such enforcement is not related to a "service" per the ADA preemption clause that Respondent provides or the JHO's finding that the effect of such enforcement is merely local.

The Tribunal notes the intent of Congress, in enacting the ADA, to prevent a patchwork of regulations by the states and their subdivisions because it "determine[ed] that maximum reliance on competitive market forces would best further efficiency, innovation, and low prices as well as variety and quality of air transportation services." *Morales v. TWA*, 504 U.S. 374, 378 (1992). Therefore, it sought the ADA preemption clause to have a "broad pre-emptive purpose." *Morales,* 504 at 383.

Here, Respondent, in offering to ship a customer's package from the cited store, should not be bound as to method of payment accepted or means of notification to customers of its refund policy while no such requirements limit it when transporting a package from a different city and state. Courts have found the ADA preemption clause bars such requirements. In *Miller v. Delta Air Lines, Inc.*, 2012 U.S. Dist. LEXIS 48294 (S.D. Fla. 2012), the court rejected claims that an airline was required to "post clearer and more prominent signs explaining a passenger's right" to reimbursement based on state consumer protection laws. The court found that the plaintiff's "claims clearly rest on allegations that relate to the heart of services that an airline provides." *Id*. at *7. In *Bajra v. Delta Air Lines, Inc.*, 785 F. Supp. 3d 1289, 1308-11 (N.D. Ga. 2025), the court similarly found that the ADA preempted claims based on the consumer protection laws of various states that "center[ed] around Delta's representations and/or advertisements regarding refunds of ticket prices" and its alleged refusal to offer refunds and reimbursements as promised. ADA preemption applied because "[a]n airline's advertisements and policies regarding reimbursements in the event of cancellations or delays . . . are related to the services that airlines provide." Here, the way Respondent informs customers about refunds with respect to its shipping services is similarly related to the services that Respondent as an air carrier provides. Consequently, Code § 20-840(b) is preempted from requiring Respondent to post a sign informing of its refund policies with regard to its shipping services.

The charge of violating 6 RCNY § 5-37 for failing to accept cash as payment for its shipping services is also barred by the ADA preemption clause. An analogous claim, alleging a consumer protection law prescribed methods of payment an air carrier must accept, was found to be barred by the ADA preemption clause where the airline's cashless payment policy applied to the inflight amenities that it provided and was thus related to its services as an air carrier. *See Rosen v. Continental Airlines, Inc.*, 430 N.J. Super. 97 (N.J. Super. Ct., App. Div. 2013). Here, where 6 RCNY § 5-37 would apply to payment for Respondent's shipping services itself, Respondent's policy of not accepting cash is directly related to those services, and therefore the enforcement of 6 RCNY § 5-37 against that policy is preempted.

Preemption not applicable to Respondent's sale of merchandise

Local regulation of methods of payment accepted and notice of refund policy runs counter to the ADA preemption clause's purpose where the payments and refunds in question are for interstate air transportation itself. Where, however, such restrictions are applied to Respondent's sale of merchandise at its store (i.e., the package supplies and shipping supplies Respondent's website for the store describes as available there), they are not related to Respondent's services as air carrier and do not result in the interstate disparities that the preemption clause sought to prevent.[2]

The JHO noted that a customer who did not intend to ship a package with Respondent might nonetheless buy shipping supplies at Respondent's store. Moreover, the customer who *does* intend to ship a package with Respondent may nonetheless choose to purchase shipping supplies from a different kind of retail establishment, one primarily devoted to sale of such materials rather than, like Respondent's store, to shipping. Because such supplies are also available to the customer from another local source, applying the cited DCWP provisions to Respondent's sale of them is unlike other instances of preemption where the enforcement of a

[2] The Tribunal grounds its determination on the following. First, sale of merchandise is not "related to" Respondent's "service" as an air carrier, considered as a matter "appurtenant and necessarily included with the contract of carriage between the passenger or shipper and the airline, such as ticketing, boarding procedures, provision of food and drink, and baggage handling." *See Tobin v. Fed Exp. Corp.*, 775 F.3d 448, 453 (1st Cir. 2014); *cf. Air Transp. Ass'n of Am., Inc. v. Cuomo,* 520 F.3d 218, 222 (2d Cir. 2008) (alternatively considering "service" as "provision or anticipated provision of labor from the airline to its passengers").

Second, even if construed as related to Respondent's "service" as an air carrier, regulation of Respondent's sale of merchandise under 6 RCNY § 5-37 and Code § 20-840(b) does not pose a "significant impact" on Respondent's service, *see Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 371 (2008), *quoting Morales,* 508 U.S. at 390, gauged by its presumed minimal effect on Respondent's revenues, performance, or competitiveness as an air carrier. *Cf. id.* at 371-72, 375, 376 (determining significant impact on trucking industry of Maine act regulating delivery of tobacco products). In this connection, the Tribunal notes that deciding Respondent's motion to dismiss requires it to draw all reasonable inferences in favor of Petitioner. *Cf.* Federal Rules of Civil Procedure 12(b)(6).

consumer protection provision was found to be barred as it applied to a service uniquely available from the air carrier, such as in-flight amenities, *see Rosen,* 430 N.J. Super. 97 (private action claim that airline's refusal to accept cash on Newark-to-Los Angeles flight violated New Jersey Consumer Fraud Act), information to passengers about flight cancellations and ticket refunds, *see Bajra v. Delta Air Lines, Inc.*, 785 F. Supp. 3d 1289 (class action based on various states' consumer practices and deceptive trade practices laws), skycap baggage handling, *see DiFiore v. Am. Airlines, Inc.*, 646 F.3d 81 (1st Cir. 2011) (class action claim that airline's curbside check-in fee violated Massachusetts statute governing tips).[3]

All of the cases that Respondent cites in its appeal as finding federal preemption of consumer protections as applied to an air or motor carrier also solely involved services uniquely provided in its capacity as a carrier by the party invoking preclusion; none involved goods or services, like Respondent's merchandise offered for sale here, as readily available from another, non-carrier retailer.

The cases, with consumer law as identified by Respondent and the Tribunal's description of the claim at issue, are as follows:

- *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995) (Illinois Consumer Fraud and Deceptive Business Practices: retroactive modification of frequent flyer program);
- *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992) (fare-advertising guidelines of the National Association of Attorneys General: non-disclosure of fare surcharges);

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[3] The services in the cited cases are intrinsically and exclusively related to air transportation. As such they are different in kind from sale of merchandise at Respondent's store that is at the same time readily available to the same customer from a store not affiliated with an air carrier. Such sale's relationship to Respondent's services as an air carrier is "too tenuous, remote, or peripheral." *Morales*, 504 U.S. at 383.

Furthermore, the purchase of merchandise in Respondent's store is an entirely local transaction – consummated where "all merchandise sales are final" – to which Petitioner's requirements for method of payment and refund notice therefore properly apply. In contrast the shipping services provided by Respondent are not complete until Respondent delivers its cargo to its various destinations. Until then, the object of the shipper's cashless payment transaction remains pending, and the transaction itself is not final but subject to Respondent's moneyback guarantee, as well as its liability for loss or damages on route. *Cf.* 49 U.S. Code § 14706, Liability of carriers under receipts and bills of lading.

- *Sam L. Majors Jewelers v. ABX, Inc.*, 117 F.3d 922 (5th Cir. 1997) (Texas Deceptive Trade Practice-Consumer Protection Act: lost jewelry subject to hold harmless cause in airbill);
- *Louis M. Marson Jr., Inc. v. Alliance Shippers, Inc.*, 438 F. Supp. 3d 326 (E.D. Pa. 2020) (Pennsylvania Unfair Trade Practices and Consumer Protection Law: breach of contract claim for delay in shipment of mushrooms);
- *Phillips v. Keystone Moving Grp., LLC*, No. 20-80041-CIV, 2021 U.S. Dist. LEXIS 201540 (S.D. FL Oct. 19, 2021) (Florida Deceptive and Unfair Trade Practices Act: damage to household goods by moving company);
- *In re EVIC Class Action Litig.*, 02-Civ-2703, 2002 U.S. Dist. LEXIS 14049 (S.D.N.Y. Jul. 31, 2002) (state unfair competition and consumer protection statutes: arising from UPS sale of shipment insurance);
- *UPS Store, Inc. v. Hagan*, 14cv1210, 2015 U.S. Dist. LEXIS 168332 (S.D.N.Y. Nov. 18, 2015) (New York GBL: alleging UPS misrepresentations about the cost of its shipping services) (S.D.N.Y. Nov. 18, 2015);
- *Trujillo v. Am. Airlines, Inc.*, 938 F. Supp. 392, 394 (N.D. Tex. 1995) (Texas Deceptive Trade Practice-Consumer Protection Act: negligence claim for loss of commercial package containing jewelry);
- *Federal Express Corp. v. U.S. Postal Serv.*, 55 F. Supp. 2d 813 (W.D. Tenn. 1999) (Tennessee Consumer Protection Act: alleging plaintiff's unfair or deceptive comparative advertising about defendant's delivery services).

Respondent has not shown that the kind of merchandise for sale at the cited store is not also readily available from non-carriers. The Tribunal finds that enforcement of 6 RCNY § 5-37 and Code § 20-840(b) as applied to that merchandise is not barred by the ADA preclusion clause. Because Respondent has not disputed the facts alleged in the summons, the Tribunal finds Respondent in violation of the requirements of 6 RCNY § 5-37 and of Code § 20-840(b) as they pertain to payments in cash and posted signs of its refund policy for sale of its merchandise – the package supplies and shipping supplies that its website says are offered at the cited store.

Accordingly, the Tribunal affirms the JHO's decision sustaining violations of 6 RCNY § 5-37 and of Code § 20-840(b) as it applies to Respondent's merchandise sales and imposing penalties respectively of $150 and $750.

By: OATH Appeals Division