45646 SERVICE DATE – APRIL 27, 2017
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SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 36078

JAMES RIFFIN—PETITION FOR DECLARATORY ORDER

Digest:[1] The Board strikes a petition for a declaratory order filed by James Riffin and terminates the proceeding. The Board finds that the petition was filed for the improper purpose of harassing parties and causing delay in another Board proceeding.

Decided: April 25, 2017

On November 16, 2016, James Riffin (Riffin) filed a petition seeking a declaratory order determining whether (1) the former Hudson Street Industrial Track (HSIT) in Hudson County, N.J. is a line of railroad subject to Board abandonment authority, (2) the HSIT connects to the former 1.36-mile line of railroad known as the Harsimus Branch that is the subject of the Harsimus Abandonment Proceeding[2] now before the Board, and (3) certain property in Jersey City known as Metro Plaza consists of railroad lines (including the Harsimus Branch and possibly the HSIT) that require Board abandonment authority.

On December 1, 2016, CNJ Rail Corporation filed a notice of intent to participate. On December 2, 2016, a group of commonly owned companies involved in the Harsimus Abandonment Proceeding (collectively, the LLCs)[3] filed a notice and request indicating that,

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[1] The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

[2] The Harsimus Branch is the subject of three consolidated proceedings (collectively, the Harsimus Abandonment Proceeding). See Consol. Rail Corp.—Aban. Exemption—in Hudson Cty., N.J., AB 167 (Sub-No. 1189X); CSX Transp., Inc.—Discontinuance of Serv. Exemption—in Hudson Cty., N.J., AB 55 (Sub-No. 686X); Norfolk S. Ry.—Discontinuance of Serv. Exemption—in Hudson Cty., N.J., AB 290 (Sub-No. 306X).

[3] The LLCs are 212 Marin Boulevard, LLC, 247 Manila Avenue, LLC, 280 Erie Street, LLC, 317 Jersey Avenue, LLC, 354 Cole Street, LLC, 389 Monmouth Street, LLC, 415 Brunswick Street, LLC, 446 Newark Avenue, LLC, and NZ Funding, LLC. These companies, which are

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should the Board proceed under modified procedures at 49 C.F.R. pt. 1112, they will seek to intervene and offer arguments in opposition to the petition. On December 5, 2016, Consolidated Rail Corporation (Conrail) replied to the petition. On December 6, 2016, Forest City Ratner Companies (Forest City) and G&S Investors (G&S)[4] filed a joint reply, and a separate group of entities involved in the Harsimus Abandonment Proceeding (collectively, the City Parties)[5] also filed a joint reply.

Riffin made eight filings in this Docket in December after submitting his mid-November petition. He filed supplements to his petition on December 1, December 2, December 5, December 9, and December 14, 2016. On December 9, he also filed a document containing his "position on when replies are due." On December 12, Riffin filed what he describes as a "rebuttal" to Conrail's reply and, on December 14, he filed what he describes as an "additional sentence for fifth supplement to petition for declaratory order."

On December 12, 2016, the City Parties filed an objection to Riffin's multiple supplements. Forest City and G&S filed a similar objection the same day. On December 14, 2016, Conrail filed a letter stating that, absent a Board request, it does not intend to respond individually to each of Riffin's supplements.

BACKGROUND

The proceedings relevant to this petition are briefly summarized below.

The Harsimus Abandonment Proceeding. The property involved in the Harsimus Abandonment Proceeding has not been used for rail service for decades. Conrail is currently seeking authority to abandon the Harsimus Branch, pursuant to a verified notice of exemption it filed on January 6, 2009.[6] Although not originally a party to that long-running proceeding, Riffin filed a notice of intent to participate and to file an offer of financial assistance (OFA) in that proceeding on June 8, 2015. On October 26, 2016, in discovery proceedings that had been referred to an administrative law judge (ALJ), the ALJ dismissed Riffin from the Harsimus Abandonment

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owned by Victoria Hyman, were previously owned and managed by Steve Hyman (Hyman). (Oral Arg. Tr. 82, Oct. 24, 2016, Harsimus Abandonment Proceeding, AB 167 (Sub-No. 1189X) et al.)

[4] Forest City and G&S are working to redevelop Metro Plaza.

[5] The City Parties are the City of Jersey City, Rails to Trails Conservancy, and Pennsylvania Railroad Harsimus Stem Embankment Preservation Coalition.

[6] For a detailed history of the Harsimus Branch and the Harsimus Abandonment Proceeding, see Harsimus Abandonment Proceeding, AB 167 (Sub-No. 1189X) et al., slip op. at 2-6 (STB served Aug. 11, 2014).

Proceeding, prohibited him from any further participation in the proceeding, and struck all his filings. The ALJ stated that Riffin's "deportment suggests evasiveness, deliberate obtuseness, faulty memory, and mental reservation." See Harsimus Abandonment Proceeding, AB 167 (Sub-No. 1189X) et al., slip op. at 2 (STB served Oct. 26, 2016). Riffin's appeal of the ALJ's dismissal order to the Board is pending.

The New Jersey U.S. District Court Proceedings Involving Metro Plaza. On June 20, 2016, Riffin filed suit in the U.S. District Court for the District of New Jersey, Newark Division, asking the court to determine that he has property rights in Metro Plaza[7] and, in the event the court finds he has property rights, to enjoin further development of Metro Plaza until the completion of the OFA process in the Harsimus Abandonment Proceeding. Riffin v. Forest City Ratner Cos., 2:16-cv-04433-ES-JAD (D.N.J. July 20, 2016). Riffin claimed that the Harsimus Branch runs through Metro Plaza and thus, he had property rights and standing by virtue of having filed the Notice of Intent to File an OFA in the Harsimus Abandonment Proceeding. Id. Specifically, he claimed that his notice gave him equitable title in the entirety of Metro Plaza and that once perfected through the Harsimus Abandonment Proceeding OFA process, he would have superior title to that of the defendants (which included Forest City and G&S). Id. On December 1, 2016, the court dismissed his complaint without prejudice to file a new complaint upon the conclusion of this declaratory order proceeding. Riffin v. Forest City Ratner Cos., 2:16-cv-04433-ES-JAD (D.N.J. Dec. 1, 2016).

This Proceeding. The HSIT, like many other pieces of rail property in the Northeast that had fallen into disuse during rail industry bankruptcies in the mid-twentieth century, was conveyed to Conrail in the 1970s as part of the Final System Plan (FSP). (See City of Jersey City Opening Statement, Mar. 10, 2006, App. XVI "Order of Conveyance to Trustees of the Railroads in Reorganization in the Region," Ex. A "Description of Real Property" (Deed and Description), City of Jersey City—Pet. for Declaratory Order, FD 34818.) Metro Plaza, property that was previously part of the Harsimus Cove Yard, has been a shopping center for decades. (Forest City & G&S Reply 2.) According to G&S and Forest City, their development project on the Metro Plaza property—Hudson Exchange West—will represent the first large-scale mixed income project in Jersey City in over 20 years and will incorporate new residential, retail, and green space. (Id. at 2-3.)

[7] According to Riffin, Conrail conveyed the portion of the Harsimus Cove Yard it had acquired under the FSP to National Bulk Carriers in 1985, and then National Bulk Carriers conveyed 23 acres of the Harsimus Cove Yard to G&S in 1994 and 1995. (Pet 4.) This is the property now referred to as Metro Plaza, where G&S developed a shopping center and where G&S along with Forest City has begun redeveloping the property into a mixed-use, mixed-income development. (Forest City & G&S Reply 2-3.)

Riffin argues that the HSIT is a line of railroad that, like the Harsimus Branch, requires abandonment authority from the Board. (Pet. 11.) Riffin further alleges that the HSIT connects to the Harsimus Branch and that, if the Harsimus Branch is abandoned pursuant to Board authority in the Harsimus Abandonment Proceeding, the HSIT will become a "stranded" rail segment. (Id. at 8.) Therefore, Riffin suggests that the Harsimus Abandonment Proceeding should not go forward until the Board addresses Riffin's claims regarding the HSIT. (Id.) Riffin also contends that either the Harsimus Branch or the HSIT (or both) once traversed portions of Metro Plaza as rail lines and, thus, abandonment authority for that trackage is required.[8] (Id. at 11.) Therefore, according to Riffin, construction at Metro Plaza must be halted until the Harsimus Abandonment Proceeding is complete. (Id. at 11-12.)

In their replies to Riffin's petition, the opposing parties state that there is no need for a declaratory order here. (See generally Conrail Reply; City Reply, Forest City & G&S Reply.) Moreover, the opposing parties argue that, by filing this petition, Riffin is acting in bad faith and abusing the Board's processes and procedures. (Conrail Reply 8-10; City Parties Reply 8-10; Forest City & G&S Reply 8-11.) These parties assert that Riffin's true motivation in filing this petition is not to obtain resolution of a genuine controversy, but rather to use the Board's processes to delay the Harsimus Abandonment Proceeding and the Metro Plaza development to "extort a settlement" beneficial to Riffin. (See Conrail Reply 2; City Parties Reply 10; Forest City & G&S Reply 9.) In support of this claim, Forest City and G&S and Conrail both attach a memorandum drafted and distributed by Riffin in which he outlines his plan with respect to such a settlement. (Riffin-Nagel Mem.)[9]

DISCUSSION AND CONCLUSIONS

The Board has broad discretionary authority under 5 U.S.C. § 554(e) and 49 U.S.C. § 1321 to issue a declaratory order to eliminate a controversy or remove uncertainty in a case that relates to the subject matter jurisdiction of the Board. See Intercity Transp. Co. v. United States, 737 F.2d 103 (D.C. Cir. 1984); Delegation of Auth.—Declaratory Order Proceedings, 5 I.C.C.2d 675 (1989).

The Board concludes, based on the record, that Riffin abused the Board's processes in filing this petition. Therefore, the Board declines to open a declaratory order proceeding and will

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[8] Riffin also appears to suggest that there are other rail lines crossing Metro Plaza that may impact the ownership interests in that property, but he has not included enough specificity for the Board to consider the merits of such a claim. (See, e.g., Pet. 8 ("one of seven track segments"); id. at 9 ("one or more track segments"); id. at 11 ("multiple track segments").)

[9] Both Conrail and Forest City and G&S attach the same memo to their replies. (Conrail Reply, Ex. A; Forest City & G&S Reply, Ex. 1.) For convenience, we will cite to it as the "Riffin-Nagel Mem."

strike Riffin's petition and pleadings in this proceeding, thus terminating this proceeding. The Board further concludes that, even if it were to consider the merits of this petition, there is no genuine controversy or uncertainty warranting Board intervention. Specifically, there is no evidence in the record supporting Riffin's claim that the HSIT ever connected to the Harsimus Branch, which is the basis for his claim that the Harsimus Abandonment Proceeding cannot proceed until the Board addresses Riffin's claims related to the HSIT.

The Board's Rules of Conduct. As a general matter, the Board's Rules of Practice direct "*all persons* appearing in proceedings before it to conform, as nearly as possible, to the standards of ethical conduct required of practice before the courts of the United States." 49 C.F.R. § 1103.11 (emphasis added). By presenting a pleading, written motion, or other paper to a federal court (and by extension, to the Board, see id.), "an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," the document "is not being presented for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." Fed. R. Civ. P. 11(b)(1). The Board has previously discussed this standard as it applies to Riffin and has admonished him "that abuse of the Board's processes will not be tolerated." Norfolk S. Ry.—Aban. Exemption—in Norfolk & Va. Beach, Va., AB 290 (293X), slip op at 8 (STB served Nov. 6, 2007), appeal dismissed sub nom. Riffin v. STB, 331 Fed. Appx. 751 (D.C. Cir. 2009).

Further, the Board may order that any redundant, irrelevant, immaterial, impertinent, or scandalous matter be stricken from any document. 49 C.F.R. § 1104.8. The Board has found that this sanction, too, has been warranted with respect to Riffin in past cases. See Norfolk S. Ry. Co.—Acquis. & Operation—Certain Rail Lines of the Del. & Hudson Ry. (Delaware & Hudson), FD 35873, slip op. at 5-6 (STB served Oct. 18, 2016) (striking two of Riffin's pleadings as irrelevant or immaterial); id., FD 35873, slip op. at 1-2 (STB served Mar. 24, 2016) (striking four of Riffin's pleadings as irrelevant, immaterial, and "wholly inconsistent" with professional standards, and directing him to "refrain from future submission of unprofessional material"); R.J. Corman R.R./Allentown Lines, Inc.—Aban. Exemption—in Lehigh Cty., Pa., AB 550 (Sub-No. 3X), (STB served Nov. 25, 2015) (striking Riffin's motion to supplement as irrelevant and immaterial); Norfolk S. Ry.—Aban. Exemption—in Norfolk & Va. Beach, Va., AB 290 (Sub.-No. 93X), slip op. at 3 (STB served Nov. 6, 2007) (noting a verified statement claiming that Riffin admitted that he sought to impede the proceeding and indicated that "he would consider a settlement to withdraw his participation and not cause delay . . .").

Riffin Has Acted in Bad Faith. The parties opposing this proceeding have submitted persuasive evidence that Riffin filed this petition in bad faith and for the improper purpose of causing harassment and creating delay, in violation of 49 C.F.R. § 1103.11. First, parties have submitted evidence that Riffin is seeking to leverage his role in the Harsimus Abandonment Proceeding to extract a settlement from Conrail. In a November 21, 2015 memorandum from Riffin to Bruce Nagel (Nagel), an attorney purportedly working with the LLCs (Riffin-Nagel

Mem.), Riffin states that his goal is to "[p]ersuade Conrail to negotiate a settlement with Steve Hyman [(Hyman)], Jersey City, Riffin and Wasser / Forest City."[10] (Id. at 1.) To reach this goal, Riffin outlines a plan whereby he proposes the following: "[e]njoin Wasser / Forest City from development of the Metro Plaza property. Wasser / FC sue Conrail for $800 million. I agree to lift injunction, providing Conrail negotiates an acceptable settlement." (Id.) The "acceptable settlement" includes a cash payment to the LLCs, as well as Conrail, Norfolk Southern Railway Company and CSX Transportation, Inc. all agreeing to grant Riffin a series of trackage rights, track segments, and rail-related property (most of which are unrelated to the Harsimus Branch, Metro Plaza, and the HSIT). (Id.)

Additionally, according to an affidavit from Wasser attached to G&S and Forest City's reply, Riffin has represented that he has an agreement with Hyman to obtain a portion of any monetary settlement the LLCs reach with Conrail. (Conrail Reply, Ex. B). Specifically, Wasser certified at his July 20, 2016 meeting with Hyman, that Riffin appeared and

> stated that he had told Mr. Hyman that he wanted 5% of whatever monetary recovery the LLCs might obtain through the resolution of their dispute with Jersey City and Conrail. Mr. Hyman then permitted Mr. Riffin to present to me an argument on why Conrail should pay the Hyman LLCs to settle this dispute. Consequently, I understood that Mr. Hyman had agreed to pay to Mr. Riffin 5% of whatever recovery the Hyman LLCs might receive.

(Id. at 2.)

Based on this evidence, it is clear that Riffin's "settlement plan" involved using his status as a participant in the OFA process in the Harsimus Abandonment Proceeding to assert a property right in Metro Plaza, enjoining Metro Plaza construction based on that asserted right, and using that injunction to induce Conrail into a settlement. Shortly after he was dismissed as a participant in the Harsimus Abandonment Proceeding, however, Riffin filed the instant petition, using the HSIT as a basis for questioning property rights in Metro Plaza and stopping its development.

Based on the record, the Board concludes that Riffin continues to ignore the warnings he has been given for his prior unprofessional conduct before the Board. See, e.g., Delaware & Hudson, FD 35873, slip op. at 2 (STB served Mar. 24, 2016) (warning Riffin that "[s]hould [he] repeat such conduct, he should expect summary redaction of his filings (pending Board action to strike those filings), further professional censure, and additional Board action."). The Board finds that Riffin's petition for a declaratory order here should be stricken because he is abusing the Board's processes by improperly seeking to obstruct the Metro Plaza construction project in order

[10] "Wasser" refers to Gregg Wasser, President of Jersey City Associates Inc., the General Partner of G&S.

to obtain a settlement in exchange for ceasing his vexatious litigation. As discussed above, Riffin has explicitly stated his intent to use his involvement in the Harsimus Abandonment Proceeding and federal litigation to force a "settlement." (Riffin-Nagel Mem.) Moreover, the timing of this November petition clearly indicates that it was filed to maintain Riffin's claim of property rights in Metro Plaza following the ALJ's October 26, 2016 decision dismissing him from the Harsimus Abandonment Proceeding so that he could continue to attempt to obstruct the Metro Plaza development, delay the Harsimus Abandonment Proceeding, and pursue his "settlement plan." All of this evidence demonstrates that his petition was filed for the improper purpose of causing harassment and delay. Therefore, pursuant to 49 C.F.R. § 1104.8, it is appropriate to strike Riffin's petition and pleadings from the record.[11]

Riffin's Claims Are Without Merit. Even if the Board were to rule on the substantive issues presented in Riffin's petition, the Board would conclude that there is no current controversy or uncertainty warranting issuance of a declaratory order. Much of Riffin's claim here as to the existence of a controversy in need of resolution stems from his allegation that the HSIT is a railroad line that will become stranded if abandonment of the Harsimus Branch is authorized. This argument, however, is based on the assumption that the HSIT and the Harsimus Branch, neither of which have seen rail service in decades, connect at some point. This assumption is not supported by the record in this and related Board proceedings.

In 2008, Conrail filed its notice of intent to abandon in the Harsimus Abandonment Proceeding. Conrail Notice of Intent to Initiate Case, Mar. 12, 2008, Harsimus Abandonment Proceeding, AB 167 (Sub-No. 1189X) et al. This notice of intent indicated that Conrail planned to seek Board authority to abandon not just the Harsimus Branch, but the HSIT as well. See id. at 1 & Ex. A (Conrail Maps).[12] The maps Conrail attached to this notice of intent show that the HSIT begins on Montgomery Street between Greene and Hudson Streets, continues south on Hudson Street for approximately five blocks, runs west on Essex Street for approximately three blocks, and terminates south of the intersection of Essex and Warren Streets near present-day Dudley Street. Id. This depiction of the HSIT in Conrail's maps is consistent with the property description in the deed conveying the line to Conrail, which states that the HSIT "originates in the County near Montgomery and Hudson Streets in Jersey City, connecting to another line of railroad known as the Harsimus Cove Yard, passes through Hudson Street, Essex Street, and Warren Street and

[11] Moreover, many of Riffin's supplements to his petition violate the Board's prohibition against filing redundant, irrelevant, immaterial, impertinent, or scandalous matter. For instance, in his third and fourth supplements Riffin introduces no new facts or analysis and he reiterates arguments he made in his original petition in response to replies filed by the LLCs and the City Parties. (See Riffin 3d Suppl.; Riffin 4th Suppl.)

[12] The verified notice of exemption that Conrail later filed only sought abandonment of the Harsimus Branch. Conrail Notice of Exemption, Jan. 6, 2009, Harsimus Abandonment Proceeding, AB 167 (Sub-No. 1189X) et al.

terminates in the County 1 1/2 blocks west of the intersection of Warren and Essex Streets." Deed and Description, City of Jersey City—Pet. for Declaratory Order, FD 34818.

The deed description of the Harsimus Branch as conveyed to Conrail reads "[s]uch line originates in the County at Harsimus Cove, passes through Journal Square, and terminates in the County near the junction with the Penn Central New York-Philadelphia Main Line, west of the New Jersey Turnpike Overhead Bridge." Deed and Description, City of Jersey City—Pet. for Declaratory Order, FD 34818. These maps and deed descriptions establish that, at their closest point, the two lines are several city blocks apart from each other. Thus, neither the maps submitted by Conrail nor the deed descriptions conveying the two lines provide any support for a conclusion that the two lines connected or intersected, and Riffin provides no evidence on which the Board could rely to reach a contrary conclusion. Therefore, the record does not support Riffin's claim that the abandonment of the Harsimus Branch could make the unused HSIT a stranded segment or that there is a controversy or uncertainty in need of resolution by the Board regarding the HSIT.

For these reasons, the Board will strike Riffin's petition and pleadings from the record and terminate this proceeding.[13]

It is ordered:

1. Riffin's petition for declaratory order and pleadings in this proceeding are stricken from the record.

2. This proceeding is terminated.

3. This decision is effective on the date of service.

By the Board, Board Members Begeman, Elliott, and Miller.

[13] Because this decision strikes Riffin's petition and pleadings, we need not address other issues raised by the opposing parties, such as arguments that Riffin lacks standing.