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SERVICE DATE – DECEMBER 8, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34813

NEW YORK NEW JERSEY RAIL LLC AND NEW YORK CROSS HARBOR RAILROAD
TERMINAL CORP.–CORPORATE FAMILY TRANSACTION EXEMPTION

Decided: December 6, 2006

This decision denies a petition filed by Robert Crawford, Arline Crawford, and the Citrus Springs Trust (the Crawford Group or petitioners)¹ to revoke the exemption in this proceeding.

BACKGROUND

By verified notice of exemption filed on December 22, 2005, New York New Jersey Rail LLC (NYNJR)² and NYCH³ (collectively, applicants) invoked the Board's class exemption procedures under 49 CFR 1180.2(d)(3) for a transaction within a corporate family. Under the proposed transaction, NYCH intended to transfer its operating rights and common carrier obligations to NYNJR, which would assume all of NYCH's rights and obligations to provide rail service as a common carrier.

At the request of applicants, the Board, by a decision served on January 10, 2006, held the proceeding in abeyance until further notice to allow Consolidated Rail Corporation (Conrail) to discuss its concerns with NYNJR and NYCH regarding the effect of the proposed transaction on NYCH's contractual obligations to Conrail. After reaching an agreement with Conrail, applicants filed an amended notice of exemption on February 24, 2006. Subsequently, the New York City Economic Development Corp. (NYCEDC), acting in its capacity as contractor to the City of New York (the City), filed a motion requesting the Board to hold the proceeding in abeyance until the City had confirmation from applicants that the City's rights, pursuant to a permit dated September 1, 1984, would not be compromised, altered or otherwise modified by

¹ The Crawford Group is the founder of New York Cross Harbor Railroad Terminal Corp.'s (NYCH) parent company, New York Regional Rail Corporation (NYRR).

² NYNJR is a newly formed limited liability company established and owned by Mid Atlantic New England Rail, LLC (MANER), an entity owned and controlled by Gordon Reger, a noncarrier individual. MANER established NYNJR to facilitate the acquisition of or investment in short line and regional railroad companies.

³ NYCH, a Class III short line railroad, owns, leases, and operates railroad tracks and facilities at Greenville, NJ, Jersey City, NJ, and Brooklyn, NY, and operates between these points by means of a car float across New York Harbor.

the proposed transaction. On July 11, 2006, NYCEDC withdrew its request to hold the proceeding in abeyance. Applicants, on July 12, 2006, notified the Board that their exemption request was unopposed and requested that the Board proceed with notice of the proposed transaction. On July 27, 2006, a notice of the exemption in this proceeding was served and published in the Federal Register (71 FR 42718-19). Under the terms of the class exemption procedures, the exemption became effective on March 3, 2006 (7 days after the amended notice of exemption was filed).

On September 14, 2006, the Crawford Group filed a petition to revoke the exemption pursuant to 49 U.S.C. 10502(d), arguing that the transaction contained false or misleading information. They contend that, because of the nature and status of the purported ownership and control of NYCH, applicants have misrepresented the proposed transaction as a simple corporate intra-family transaction. Petitioners argue that applicants failed to disclose in their notice of exemption that the ownership of NYCH is an issue in several pending lawsuits. As a result, petitioners submit that the exemption should be revoked, and the proceeding held in abeyance until NYCH's ownership has been resolved in court, or rendered void ab initio.

On October 4, 2006, NYNJR filed a reply in opposition to the Crawford Group's petition, arguing that the sole basis for petitioners' revocation request is their claim that applicants failed to disclose that NYCH was the subject of several related lawsuits. NYNJR points out that petitioners do not allege misuse of Board procedures or identify any specific transportation concerns. It contends that the proposed transaction is not controversial from a transportation perspective. Thus, NYNJR asserts that petitioners have failed to sustain their burden of proof under 49 U.S.C. 10502(d) and that petitioners' request should be denied.

DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 10502(d), we may revoke an exemption, in whole or in part, if we find that regulation is necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. 10101. Under this statute, we evaluate the revocation petition to see if regulation is needed. The party seeking revocation has the burden of proof, and petitions to revoke must be based on reasonable, specific concerns demonstrating that reconsideration of the exemption is warranted and regulation of the transaction is necessary. See Minnesota Comm. Ry., Inc.—Trackage Exempt.—BN RR. Co., 8 I.C.C.2d 31, 135 (1991). Moreover, a notice of exemption is void ab initio if the notice contains false or misleading information.

When revocation is sought, our inquiry is similar to the one we use to determine if an exemption is appropriate; it focuses on the RTP sections related to the underlying statutory sections from which the exemption was sought. See I&M Rail Link LLC—Acquisition and Operation Exemption—Certain Lines of Soo Line Railroad Company d/b/a Canadian Pacific Railway, STB Finance Docket No. 33326, et al., slip op. at 7 (STB served Apr. 2, 1997). Our general policy is that an entity seeking to revoke an exemption such as this must present specific, particularized, and reasonable cause for concern in order for us to revoke an individual use of a

class exemption. Here, petitioners have not articulated any basis for the Board to revoke the notice of exemption as contrary to the RTP. They have not identified any violation of the Board's governing statute, implementing regulations, or Board policy. Nor have they shown any demonstrated need for regulation. As support for their request, they provided random pages from a transcript of a January 10, 2006 court hearing in litigation and allege the proposed transaction requires court review. In support of its position, NYNJR provides documents showing that it has apprised the court of the proposed transaction, including the Board's notice served and published on July 27, 2006.

The Crawford Group's allegation that applicants had falsely represented the nature and status of their ownership and control of NYCH in their notice is without merit. Our regulations contain no requirements that applicants submit information regarding conflicting ownership claims. See Trimax Holdings, Inc.—Corporate Family Transaction Exemption—Allegheny Valley Railroad Company and Southwest Pennsylvania Railroad Company, STB Finance Docket No. 33413, slip op. at 3 (STB served Sept. 15, 2000). Under 49 CFR 1180.6(a)(1)(i), the notice of exemption need only include “[a] brief summary of the proposed transaction” In a notice of exemption, the Board's role is limited to granting regulatory approval; its authorization merely permits, but does not require, the transaction to proceed. Thus, here, the notice complied fully with the governing rules and provided all the information required in seeking an exemption under 49 CFR 1180.2(d)(3). Ultimately, the issue regarding the conflicting ownership and control claims is for the court to decide, and we have no intention of interfering with the court's role. Our grant of regulatory approval for the proposed transaction is without prejudice to the legal rights of any parties to the transaction as determined by the court.

We conclude that the Crawford Group has not met the statutory standards in section 10502(d) for revoking the exemption. They have not presented any reasons under the RTP for regulating the corporate family transaction. Nor have they shown that the notice of exemption contains false or misleading information. Accordingly, the petition to revoke will be denied.

It is ordered:

1. The Crawford Group's petition to revoke the exemption in this proceeding is denied.
2. This decision is effective on its date of service.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams
Secretary