

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

232500

**IN THE MATTER OF
PROFESSIONAL TRANSPORTATION, INC.**

ENTERED
Office of Proceedings
June 26, 2012
Part of
Public Record

-- ASSET ACQUISITION --

CUSA ES, LLC AND CUSA CSS, LLC

STB DOCKET NO. MC-F-21046

**REPLY OF APPLICANTS TO PROTEST
OF MICHAEL YUSIM**

Applicants, CUSA ES, LLC (“CUSA ES”) and CUSA CSS, LLC (“CUSA CSS” and together with CUSA ES, the “Sellers”), and Professional Transportation, Inc. (“PTI,” and together with the Sellers, collectively, the “Applicants”), initiated the proceeding under this docket number on May 31, 2012, by filing their Application under 49 U.S.C. §14303(a) for Approval of the Acquisition of Assets (the “Application”). By way of the Application, the Applicants seek approval of this Board for the acquisition of substantially all of the assets of the Sellers, each a motor carrier of passengers, by PTI, also a motor carrier of passengers (the “Contemplated Transaction”).

On June 5, 2012, Michael Yusim (“Mr. Yusim”) filed his protest letter (the “Protest”) in this proceeding. In the Protest, Mr. Yusim asserts that he is a former employee/driver of Midnight Sun Tours, Inc. (“Midnight Sun”), a motor carrier of passengers currently controlled by Coach AM Group Holdings Corp. (“Coach AM Group”). Coach AM Group also controls the Sellers.

Between June 5, 2012, and June 13, 2012, Mr. Yumin filed a protest similar to the Protest in each of the proceedings before the Board under STB Docket Nos. MC-F-21045, MC-F-21045-TA, MC-F-21046, MC-F-21047 and MC-F-21047-TA. Each of those proceedings also involves an application for approval of the sale of passenger motor carrier assets of various subsidiaries of Coach AM Group.

On January 3, 2012, Coach AM Group, together with a number of its non-motor carrier and motor carrier subsidiaries, including Midnight Sun and the Sellers (each, a “Debtor”), filed voluntary chapter 11 petitions under title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The bankruptcy cases of each of the Debtors are jointly administered under *In re Coach Am Group Holdings Corp.*, Case No. 12-10010 (KG) (collectively, the “Bankruptcy Case”).

Mr. Yusim in the Protest asserts that he is a complainant in a proceeding before the U.S. Department of Labor (the “DOL”) concerning alleged discrimination by his former employer, Midnight Sun. That DOL proceeding (which arises from claims relating to the reporting of hours of service) apparently has been stayed as a result of the automatic stay provisions in the Bankruptcy Code resulting from the bankruptcy filings of the Bankruptcy Case. By the Protest, Mr. Yusim requests that the Board “stay the sale of the Coach America bus companies” until the Secretary of Labor is allowed to proceed to hear his case and a similar case. He also asks that the Board require purchasers of the Coach America bus companies and the Coach America bus companies themselves to produce certain documents relating to hours of service reporting under rules administered by the Federal Motor Carrier Safety Administration (“FMCSA”).

Midnight Sun is *not* a party to the Contemplated Transaction and the assets of Midnight Sun are *not* among those of the Contemplated Transaction. Thus, the Protest, which is directed

at the alleged actions of Midnight Sun, has no bearing whatsoever on the Application under consideration in this proceeding. For that reason alone, the Protest should be denied without delay to the approval of the Contemplated Transaction.

49 U.S.C. § 14303(b) sets for the standard for approval of transactions involving motor carriers of passengers subject to the jurisdiction of the Board:

Standard for Approval.— The Board shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest. The Board shall consider at least the following:

- (1) The effect of the proposed transaction on the adequacy of transportation to the public.
- (2) The total fixed charges that result from the proposed transaction.
- (3) The interest of carrier employees affected by the proposed transaction.,

Throughout the Protest, Mr. Yusim's complaint or issue is that the automatic stay resulting from the pending Bankruptcy Case has stayed the litigation of his discrimination case and the discrimination case of another alleged former employee of Midnight Sun, Zachary Joyner. As stated in the Application, (a) CUSA ES operates primarily as a provider of transportation services for railroad crews while also providing limited transit, paratransit and taxi services; (b) CUSA CSS operates primarily as a provider of transportation services for railroad crews; and (c) PTI operates primarily as a provider of transportation services for railroad crews. Midnight Sun, on the other hand, operates both charter and contract services in the state of Florida and nearby states (See Application, Section II, STB Docket No. MC-F-21047). Accordingly, the operations of and services provided by the Sellers, CUSA ES and CUSA CSS are unrelated to the operations of and services provided by Midnight Sun. Obviously, the operations and services provided by PTI are also unrelated to the operations of and services provided by Midnight Sun.

The Protest fails to identify any reason that the Contemplated Transaction, which does not involve Mr. Yusim, Midnight Sun, or any services related to Midnight Sun, is not consistent with the public interest.

By way of example, the Protest states:

It is not in the public interest for Coach America to sell its bus companies under an automatic stay and a bankruptcy Sale Order that prohibits the Secretary of Labor from hearing and deciding discrimination cases in regard to accurately reporting hours on duty, in accordance with 49 USC 31105(a)(3)(A). Protest, page 2.

It is not in the public interest to prohibit the Secretary of Labor from hearing and deciding whether Midnight Sun Tours discriminated against drivers who followed the FMCSA Guidance for logging off-duty during a tour of duty; and did not log off-duty during their tours of duty without the written instructions mandated by Provision 3 in Question 2 of the Guidance to FMCSR 395.2. Protest, page 3.

It is not in the public interest to prohibit the Secretary of Labor from hearing how Midnight Sun Tours discriminated against drivers who did not log off-duty during their tours of duty because the drivers were given written instructions that prohibited the drivers from leaving the premises where their buses were located. Protest, page 6.

Each of these statements are incorrect and must fail. Any prohibition of the Secretary of Labor from hearing the aforementioned discrimination cases is the result of U.S. bankruptcy law, and decisions and rulings of the Bankruptcy Court, and any such prohibition has no bearing on the public interest as it is to be evaluated by the Board with respect to the Contemplated Transaction. In that regard, Applicants request that the Protest be in all things denied.

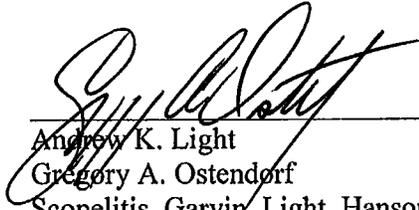
Further, to the extent that Mr. Yusim seeks a condition from the Board that would allow him to pursue his discrimination claim against Midnight Sun, the relief he seeks is more appropriately addressed to the Bankruptcy Court in the Bankruptcy Case, and not the Board. Mr. Yusim has previously filed multiple motions in the Bankruptcy Court seeking relief from the automatic stay and has also objected to the sale of Midnight Sun. In each instance, the Bankruptcy Court has denied Mr. Yusim's request and refused to permit his individual claim

against Midnight Sun to move forward. Because the Bankruptcy Court has refused to lift the automatic stay, Mr. Yusim's claim before the DOL cannot move forward. As it customarily does, we anticipate that the Bankruptcy Court will consider Mr. Yusim's claims in the due course of the Bankruptcy Case. If his claims are valid, he will receive distributions in accordance with the priority of allowed claims set forth in the Bankruptcy Code. Thus, approval of the Contemplated Transaction by this Board in no way limits or further delays Mr. Yusif's recovery of damages from Midnight Sun, if he is so entitled.

Finally, the Board should deny Mr. Yusim's request that "the Purchasers of the Coach America bus companies" and "the Coach America bus companies currently under protection of the Bankruptcy Court in District of Delaware" produce certain documents relative to hours of service recording. Such documents are plainly of no relevance to this acquisition of control proceeding, and concern matters relating to FMCSA rules over which this Board has no regulatory jurisdiction.

SIGNATURE PAGE FOLLOWS

Respectfully,



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Certificate of Service

I hereby certify that I have on this day served copies of the foregoing document upon all parties of record in this proceeding, by first class U.S. mail, postage prepaid, as well as the following parties by the same method of service:

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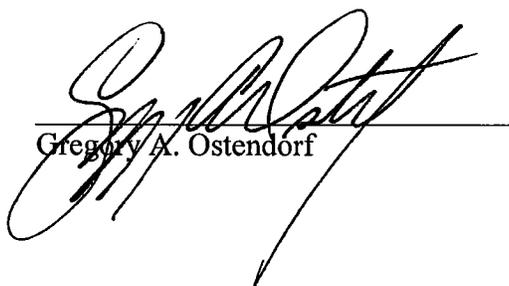
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