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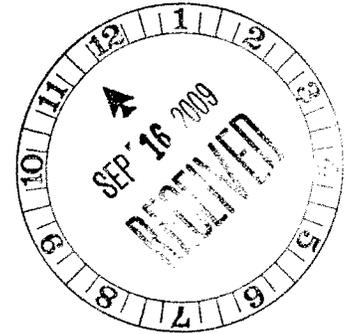
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September 16, 2009

FEE RECEIVED

SEP 16 2009

**SURFACE
TRANSPORTATION BOARD**



Hon. Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: MC-F-21036, Mr. Zev Marmurstein – Control – RW Express, LLC

Dear Secretary Quinlan:

Please find enclosed an original and ten copies of an application for control of a motor passenger carrier filed pursuant to 49 U.S.C. § 14303 and the rules of the Board at 49 CFR Part 1182. A draft Federal Register caption summary is also attached, together with a CD containing copies of these documents. A check in payment of the \$2,000 filing fee is also enclosed.

Please direct any questions about this application to the undersigned.

Respectfully,

David H. Coburn
Attorney for Applicants

ENTERED
Office of Proceedings

SEP 16 2009

Part of
Public Record

FILED

SEP 16 2009

**SURFACE
TRANSPORTATION BOARD**

cc: All parties of record

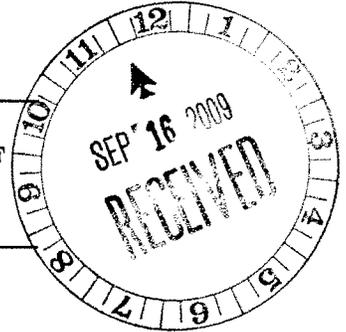
BEFORE THE
SURFACE TRANSPORTATION BOARD

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STB DOCKET NO. MC-F-21036

MR. ZEV MARMURSTEIN
-- CONTROL -- RW EXPRESS, LLC

VERIFIED APPLICATION FOR CONTROL OF
MOTOR PASSENGER CARRIER



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Attorney for Mr. Zev Marmurstein

September 16, 2009

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. MC-F-21036

**MR. ZEV MARMURSTEIN
-- CONTROL – RW EXPRESS, LLC**

**VERIFIED APPLICATION FOR CONTROL OF
MOTOR PASSENGER CARRIER**

Pursuant to 49 U.S.C. § 14303 and the Board’s rules at 49 CFR Part 1182, Mr. Zev Marmurstein, an individual, seeks authority to control RW Express, LLC. A verification statement executed by Mr. Marmurstein attesting to the facts set forth in Application is attached.

I. INTRODUCTION AND DESCRIPTION OF TRANSACTION

Mr. Marmurstein currently controls R.W. Express, LLC (“RW Express”), a motor passenger carrier holding federally-issued interstate operating authority. As a result of his control of RW Express and his control, through an intermediate entity known as City Sights Twin, LLC, of another motor passenger carrier that is the currently the subject of a proceeding pending before the Board, Twin America, LLC, Mr. Marmurstein is currently in control of two motor passenger carriers.¹ Accordingly, he is filing this application to attain Board approval of the control of R.W. Express. *See* 49 U.S.C. § 14303(a)(5), requiring Board approval of the acquisition of control of a carrier by a person that is not a motor passenger carrier but that

¹ Control of Twin America is the subject of the pending proceeding in MC-F-21035, *Stagecoach Group plc and Coach USA, Inc. et al. -- Acquisition of Control – Twin America, LLC*.

controls any number of such carriers. Until recently, Mr. Marmurstein was not aware that he requires Board approval for control of more than one carrier under 49 U.S.C. 14303.

Approval of this Application is consistent with the public interest standard set forth in 49 U.S.C. § 14303. As a result of the common control that would result were this Application granted, RW Express will continue to take full advantage of the resources of the Applicant, who is an experienced transportation manager. Further, approval of the control authority here would not reduce competitive options, or adversely impact either fixed charges or the interests of the employees of RW Express.

II. DESCRIPTION OF THE PARTIES TO THE TRANSACTION

The parties to this transaction are as follows:

A. Mr. Zev Marmurstein

Mr. Zev Marmurstein is an individual who, by virtue of a transaction consummated in 2003, controls RW Express through a 48% ownership share that he holds and through his actual managerial control of that carrier. RW Express became an interstate carrier in March 2004, with the issuance to it of federal operating certificate by the Federal Motor Carrier Safety Administration ("FMCSA").

Mr. Marmurstein is also the sole member of City Sights Twin, LLC, a non-carrier entity formed for the purpose of owning an interest in Twin America, LLC ("Twin America"), a motor carrier of passengers. The remaining interest in Twin America is held by International Bus Service, Inc., a Coach USA, Inc. subsidiary. Twin America, LLC conducts tourism transportation operations in New York City. Twin America also operates occasional interstate charter operations and is involved in various common arrangements with other interstate carriers to provide transportation to passengers traveling in interstate commerce. Twin America, LLC is also in the process of applying to FMCSA for operating authority to operate as an interstate

motor carrier of passengers. Stagecoach Group plc (the ultimate parent of Coach USA, Inc.), Coach USA, Inc., and certain subsidiaries, along with Mr. Marmurstein and City Sights Twin, LLC, filed an application with this Board on August 19, 2009 pursuant to 49 U.S.C. 14303 to control Twin America, LLC in STB MC-F-21035.

B. RW Express, LLC

RW Express is a limited liability company whose business address is 15 2nd Avenue, Brooklyn, NY 11215. RW Express is a regulated carrier that is authorized by FMCSA to operate as an interstate motor carrier of passengers (MC No. 474958) in charter and special services. Its DOT number is 1361156. Under arrangements with owner-operators, it operates a fleet of 65 vehicles and drivers. RW Express primarily provides charter service within New York and between New York and points in nearby states. Mr. Marmurstein attained control of RW Express in 2003, when he attained a 48% interest in the stock of that entity. The remainder of the stock is owned by his sister, who holds a 3% share, and a corporate entity unaffiliated with Mr. Marmurstein, Continental Air Transport Company I, which owns a 49% share. Mr. Marmurstein directs the day to day operations of RW Express and is engaged in major managerial decisions sufficient to constitute control. He currently serves as President of the company.

III. JURISDICTIONAL STATEMENT

RW Express earned operating revenues in excess of \$2 million during the twelve-month period preceding the date of this Application. Accordingly, the jurisdictional threshold is met with respect to the acquisition of control that is subject of this Application.

IV. OPERATING RIGHTS

A copy of the federal operating authority issued to RW Express, LLC by FMCSA is attached.

V. GRANTING THIS APPLICATION IS CONSISTENT WITH THE PUBLIC INTEREST

The Board is required to approve the proposed acquisition of control of RW Express if it finds that such control by Mr. Marmurstein is consistent with the public interest. 49 U.S.C. § 14303(b). In making its public interest determination, the Board is obligated to consider (1) the effect of the proposed control on the adequacy of service to the public, (2) the impact on total fixed charges and (3) the interests of carrier employees. Judged by each of these factors, granting this Application would be consistent with the public interest.

Mr. Marmurstein has filed this application upon learning about the regulatory requirements for STB approval of control pursuant to 49 U.S.C. 14303. The fact that he assumed control of more than one carrier prior to filing the application should not serve as a bar to STB approval at this time. *See, e.g., Firstgroup PLC – Acquisition – Cognisa Transportation, Inc.*, MC-F-21021 (July 13, 2007) (approving transaction in setting where carrier was acquired before requirements of section 14303 were known).

As a result of its control by Mr. Marmurstein, RW Express will continue to obtain the benefit of his many years of experience as a provider of motor passenger carrier services. These benefits include access to capital resources and to familiarity with the passenger transportation needs and environment in the New York area.

The proposed control authority requested here will not materially reduce competitive transportation options available to the traveling public. Mr. Marmurstein does not intend to reduce and change the transportation services currently offered by RW Express. Further, that carrier will continue to face substantial competition from other charter bus companies, sightseeing operations, public and private transportation to and from airports, private vehicles

and other transportation modes. Thus, the traveling public will have numerous transportation options following any approval of control that the Board may grant.

Further, barriers to entry into the bus business are low. Permitting requirements are relatively modest and thus new businesses can and do emerge operated by persons who are able to acquire, by lease or other means, equipment and drivers. As the STB and the ICC before it have recognized, the bus industry is characterized by numerous competitors and low entry barriers which, combined with strong intermodal competition, eliminates any realistic opportunity for predation or monopoly pricing. *See GLI Acquisition Company – Purchase – Trailways Lines, Inc.*, 4 I.C.C.2d 591, 600-01 (1988) (describing the bus industry’s relatively small share of a competitive passenger transportation dominated by other modes, particularly the private automobile). As the Board has concluded at page 6 of a previous decision:

With the low entry barriers and the pervasive intramodal and intermodal competition that characterizes the bus industry, most opportunities for abuse of Zevet power are effectively foreclosed.²

See also Coach USA, Inc. -- Control Exemption -- American Sightseeing Tours, Inc.; California Charters, Inc.; Texas Bus Lines, Inc.; Gulf Coast Transportation, Inc.; and K-T Contract Services, Inc., STB Finance Docket No. 33073 (served Nov. 8, 1996) (*Coach/American*) at 5 (“By allowing the carriers to rationalize and make the most productive use of their resources, while eliminating duplicative functions, an exemption will encourage sound economic conditions in transportation, including sound economic conditions among carriers.”).

² *See, e.g., Notre Capital Ventures II, LLC and Coach USA, Inc. -- Control Exemption -- Arrow Stage Lines, Inc.; Cape Transit Corp.; Community Coach, Inc.; Community Transit Lines, Inc.; Grosvenor Bus Lines, Inc.; H.A.M.L. Corp.; Leisure Time Tours; Suburban Management Corp.; Suburban Trails, Inc.; and Suburban Transit Corp.*, STB Finance Docket No. 32876 (Sub No. 1) (served May 3, 1996) (*Coach/Arrow*).

More recently, in response to the complaint of a competitor concerning the acquisition of several formerly competing motor carrier operators by Peter Pan Bus Lines the Board stated as follows:

In addition to Entertainment's competing service, other factors limit Peter Pan's ability to raise fares. As the ICC stated in GLI Acquisition, "where the barriers to entry are virtually non-existent, potential entry, together with intermodal competition, exerts pressure on existing firms to price reasonably." In other words, the threat of entry by new competitors and competition from other modes of passenger transportation are sufficient to keep bus fares low. If Peter Pan were to charge customers excessively high rates, as Entertainment predicts, other motor passenger carriers would recognize an opportunity to profit by entering the Zevet and providing service to those customers at a lower rate (as Entertainment has done), or those customers might decide to travel by another mode of transportation, such as rail, air, or private automobile. Thus, it is in Peter Pan's own best interest to keep fares reasonable.

Peter Pan Bus Lines Trust – Purchase and Acquisition of Control – Arrow Line Acquisition, LLC, et al., STB Docket No. MC-F-20995 (Served May 12, 2003) at 5.

So here, RW Express already faces significant competition from numerous other transportation services, and the very likely prospect of new entrant competitors. Its continued control by Mr. Marmurstein will thus not adversely impact competition.

It is not anticipated that any carrier employees will suffer any substantial adverse impacts from the proposed control approval sought here. RW Express, and in turn its employees, will continue to benefit from its association with Mr. Marmurstein, who has successfully operated this carrier for several years.

Finally, Board approval of this Application will allow the acquisition of continued control of RW Express, LLC without the approval or interference of state regulatory authorities, thus relieving the parties from potentially burdensome requirements. *See* 49 U.S.C. 14303(f) (providing that parties to approved transactions may effectuate such transactions and exercise control without the approval of any state authorities and exempts the parties to the transaction

from the application of federal, state, and municipal law as necessary to allow them to carry out the transaction); *Coach/Arrow* at 7 (finding that issuance of an exemption "will insulate petitioners from burdensome State regulations applicable to intrastate operating authorities and leave them with greater resources to support existing and future transportation services"); *Coach/American* at 6 (same).³

VI. SAFETY FITNESS CERTIFICATION

RW Express does not have a safety rating issued by the FMCSA.

VII. INSURANCE COVERAGE CERTIFICATION

Mr. Marmurstein hereby certifies that RW Express maintains insurance at the present time to the extent required by FMCSA regulations and will continue to maintain such insurance.

VIII. CERTIFICATION OF DOMICILE

No party to this Application is domiciled in Mexico or owned or controlled by citizens of that country.

IX. THE PROPOSED ACQUISITION WILL NOT HAVE A SIGNIFICANT ENVIRONMENTAL IMPACT

This Application contemplates only a continuation in control of a motor carrier already operating under common control by an individual. Thus, there will be no significant operational changes or adverse environmental impacts as a result of the approval of control that is the subject of this Application. See 49 C.F.R. § 1182.2(a)(6). Accordingly, as the Board has found with

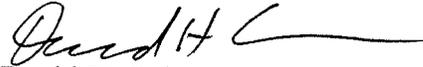
³ See *Colorado Mountain Express, Inc., and Airport Shuttle Colorado, Inc., d/b/a Aspen Limousine Service, Inc. -- Consolidation and Merger -- Colorado Mountain Express*, STB No. MC-F-20902 (served Feb. 28, 1997) (Board approval of bus merger under section 14303 preempts state laws concerning transfer of intrastate operating authority held by merged carrier). See also *Board of Trustees of Trucking Employees v. Centra*, 983 F.2d 495, 503 (3d Cir. 1992) ("federal law preempts any state law that might purport to require state approval before the transfer of stock or interstate operating authority may occur"); *Washington Trucking Inc. -- Purchase Exemption -- Maddox Transfer*, 7 I.C.C. 2d 372, 378-80 (1991), *aff'd*, *Oregon Pub. Util. Comm'n v. ICC*, 979 F.2d 778, 780-81 (9th Cir. 1992); *Herman Bros., Inc. -- Purchase Exemption -- Thompson Truck Line*, 7 I.C.C. 2d 382, 386-87 (1991), *aff'd*, *Minnesota Transp. Regulation Bd. v. ICC*, 966 F.2d 335, 338-39 (8th Cir. 1992) (both holding that the ICC's preemption authority under the predecessor to section 14303(f) extends to the transfer of intrastate operating rights).

respect to previous transactions of this nature, there will be no significant effect on the quality of the human environment or the use of energy resources, and environmental regulation pursuant to 49 C.F.R. § 1105.7 is unnecessary. Coach/Arrow Decision at 7; Coach/American Decision at 6.

CONCLUSION

The Board should grant this Application for all of the reasons described above.

Respectfully submitted,



David H. Coburn
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 429-3000

Attorney for Mr. Zev Marmurstein.

September 16, 2009



U.S. Department of Transportation
Federal Motor Carrier Safety Administration

400 7th Street SW
Washington, DC 20590

SERVICE DATE
March 04, 2004

CERTIFICATE
MC-474958-C
R.W. EXPRESS LLC
BROOKLYN, NY

This Certificate is evidence of the carrier's authority to engage in transportation as a **common carrier of passengers, in charter and special operations**, by motor vehicle in interstate or foreign commerce.

This authority will be effective as long as the carrier maintains compliance with the requirements pertaining to insurance coverage for the protection of the public (49 CFR 387); the designation of agents upon whom process may be served (49 CFR 366); and schedules (49 CFR 374.305). The carrier shall also render reasonably continuous and adequate service to the public. Failure to maintain compliance will constitute sufficient grounds for revocation of this authority.

A handwritten signature in black ink, appearing to read "Angeli Sebastian".

Angeli Sebastian, Chief
Information Systems Division

NOTE: Applicant is a nonrecipient of governmental financial assistance.

NOTE: Willful and persistent noncompliance with applicable safety fitness regulations as evidenced by a DOT safety fitness rating of "Unsatisfactory" or by other indicators, could result in a proceeding requiring the holder of this certificate or permit to show cause why this authority should not be suspended or revoked.

CPN

VERIFICATION

My name is Zev Marmurstein. I am President of RW Express, L.L.C. I hereby verify under penalty of perjury, under the laws of the United States of America, that all information supplied in connection with this application, as it relates to the above-named entity, is true and correct. Further, I certify that I am qualified and authorized to file this application on behalf of that entity. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to five years and fines up to \$10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621, which provides for fines up to \$2,000 or imprisonment up to five years for each offense.



Dated: September 17, 2009

CERTIFICATE OF SERVICE

I certify that I have this 16th day of September 2009 served a copy of the foregoing

Verified Application for Control of Motor Passenger Carrier by hand delivery on:

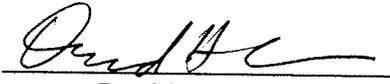
Director of Operations
Antitrust Division
U.S. Department of Justice
601 D Street, N.W., Room 1013
Washington, D.C 20530

Premerger Notification
Office
Bureau of Competition
Room 303
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, D.C. 20580

and by first class mail, postage prepaid on:

Chief, Lic. & Ins. Division
U.S. Department of Transportation
Federal Motor Carrier Safety Administration
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

New York Department of Transportation
Office of Safety and Security Services
50 Wolf Road
Albany, NY 12232-0879



David H. Coburn

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. MC-F- 21036

MR. ZEV MARMURSTEIN – CONTROL – RW EXPRESS, LLC

AGENCY: SURFACE TRANSPORTATION BOARD

ACTION: Notice Tentatively Approving Finance Application

SUMMARY: Mr. Zev Marmurstein filed an application in STB Docket No. MC-F-21036 under 49 U.S.C. 14303 for control of RW Express, LLC (“RW Express”). Persons wishing to oppose this application must follow the rules under 49 CFR part 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments are due by _____, 2009. Applicants may file a reply by _____, 2009. If no comments are filed by _____, 2009, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of comments referring to STB Docket No. MC-F-21036 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 395 E Street, S.W., Washington, D.C. 20423-0001. In addition, send one copy of comments to Applicant’s representative: David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: _____. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339]

SUPPLEMENTARY INFORMATION: Mr. Marmurstein currently controls RW Express. His application states that he was not aware, until recently, that he was obligated to seek Board approval for control of this carrier under 49 U.S.C. 14303 since together with Stagecoach plc, Coach USA, Inc. and certain Coach USA affiliates he also controls another carrier, Twin America, LLC, that is the subject of a separate pending Board control proceeding, MC-F-21035, *Stagecoach Group plc and Coach USA, Inc. et al. -- Acquisition of Control – Twin America, LLC*.

RW Express holds federally-issued interstate operating authority. Its operations consist primarily of charter bus service in New York City and the surrounding areas.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicant has submitted information, as required by 49 CFR 1182.2, to demonstrate that the proposed acquisition of control is consistent with the public interest under 49 U.S.C. 14303. Applicant states that the proposed transaction will not reduce competitive options, adversely impact fixed charges, or adversely impact the interests of employees. He asserts that granting the application will allow RW Express to continue to benefit from his management expertise. In addition, applicant has submitted all of the other statements and certifications required by 49 CFR 1182.2. Additional information, including a copy of the application, may be obtained from the applicants' representative.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. See 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

The decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.
2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.
3. This decision will be effective on _____, 2009, unless timely opposing comments are filed.
4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

Decided: _____, 2009

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

Anne K. Quinlan
Acting Secretary