



IN THE MATTER OF:

ZACHARY JOYNER,

ARB CASE NO. 13-093

COMPLAINANT,

ALJ CASE NO. 2011-STA-042

v.

DATE: December 13, 2013

COACH AM GROUP HOLDINGS
CORPORATION, d/b/a/ MIDNIGHT
SUN TOURS,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Zachary Joyner, Esq.; *pro se*, West Palm Beach, Florida

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*; and Luis A. Corchado, *Administrative Appeals Judge*.

FINAL DECISION AND ORDER DENYING PETITION AND CLOSING CASE

On September 1, 2013, Complainant Zachary Joyner filed a petition asking the Administrative Review Board to review a Department of Labor Administrative Law Judge's Decision and Order – Dismissal of Claim in this case arising under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA), as amended.¹ In this Order, the Administrative Law Judge (ALJ) found that Respondent

¹ 49 U.S.C.A. § 31105(a) (Thomson/West 2013). Regulations implementing the STAA are found at 29 C.F.R. Part 1978 (2013). The Secretary of Labor has delegated to the Administrative Review Board the authority to issue final agency decisions under the STAA and its implementing regulations at 29 C.F.R. Part 1978. Secretary's Order No. 2-2012, Delegation of Authority and Assignment of Responsibility to the Administrative Review Board, 77 Fed. Reg. 69378 (Nov. 16, 2012); 29 C.F.R. § 1978.110(a).

proved by clear and convincing evidence that it would have terminated Joyner's employment as a bus driver in the absence of his protected activity.²

On September 10, 2013, the Board received a Motion to Withdraw as Counsel for Respondent Midnight Sun Tours. In this Motion counsel for Respondent averred:

1. On January 3, 2012, Coach AM Group Holdings Corp. and certain of its affiliates and subsidiaries, including Midnight Sun Tours (collectively, the "**Debtors**") filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code . . . with the United States Bankruptcy Court of the District of Delaware. The Debtors' Chapter 11 cases were jointly administered and docketed as *In re Coach Am Group Holdings Corp. et al.*, Case No. 12-100010 (KG)

2. On January 11, 2012, Respondent filed its Suggestion of Bankruptcy, a copy of which is attached hereto as Exhibit A. Thereafter, this lawsuit was stayed pending the resolution of the Bankruptcy action.

3. On August 1, 2013, Respondent filed its Notice Regarding Bankruptcy, notifying the Court that the Bankruptcy action had been dismissed, and that Complainant's Proof of Claim would be adjudicated by the Bankruptcy Court. . . .

6. As reflected in the Declaration of Brian E. Cejka, Chief Restructuring Officer of Coach Am. Group Holdings Corp, attached hereto as Exhibit D, Respondent has directed Movants to withdraw as counsel for Respondent.

In Respondent's Notice Regarding Bankruptcy, filed with the United States Department of Labor's Office of Administrative Law Judges, Respondent additionally states that Joyner filed a proof of claim with the Bankruptcy Court on March 7, 2012. It states that on May 31, 2013, the Bankruptcy Court entered an *Order Pursuant to 11 U.S.C. §§ 105(a), 349, and 305(a) and Bankruptcy Rule 1017(a) (A) Approving Trust Agreement, (B) Authorizing the Transfer of Remaining Assets to the Lender Trustee, (C) Dismissing the Debtors' Chapter 11 Cases and (D) Granting Related Relief* (the Dismissal Order). Respondent further avers in its Notice that "the proof of claim filed by Complainant will be adjudicated by the Bankruptcy Court and, if allowed, may be paid

² *Joyner v. Coach AM Group Holdings Corp., d/b/a/ Midnight Sun Tours*, ALJ No. 2011-STA-042, slip op. at 30 (Aug. 21, 2013).

pursuant to the GUC Trust Agreement.”³ Finally, in support of the motion to allow counsel to withdraw, Brian E. Cejka, the Chief Restructuring Officer of Coach AM Group Holdings, Corp. declares under penalty of perjury that, “As a result of the Sales and the Dismissal Order, and the fact the Debtors have no remaining assets, I have directed Duane Morris, LLP and its attorneys to immediately withdraw as counsel in all litigation matters for which Duane Morris, LLP and its attorneys represent any of the Debtor-Defendants.”

Finding that Respondent’s Counsel demonstrated good cause for his motion to withdraw, the ARB granted the motion in an order issued September 26, 2013. In addition, given Respondent’s assertions that Joyner’s proof of claim will be adjudicated by the Bankruptcy Court, the Board noted its concern that it does not have authority to proceed in this matter. Accordingly, we ordered Joyner to show cause on or before October 28, 2013, why the Board should not refuse to accept this case for review on the ground that further adjudication must proceed in the Bankruptcy Court pursuant to the Dismissal Order and therefore the Board lacks authority to adjudicate this case.

Joyner replied to the Show Cause Order; Respondent did not. But Joyner’s filing was not responsive to the Board’s Order in that it did not demonstrate that the Board has authority to proceed in this case. Instead it urged the “Secretary of Labor to request the Bankruptcy Court to forward [Complainant’s] case to the district court for withdrawal consideration by the district court in accordance with 28 USC 157(d).” Accordingly, given that Joyner has failed to establish that the Board has authority to proceed in this case, we do not accept this case for review pursuant to 29 C.F.R. § 1982.110(b), and we **CLOSE** the case. We note that pursuant to 29 C.F.R. § 1982.110(b), “If . . . the ARB denies review, the decision of the ALJ will become the final order of the Secretary.” Further, 29 C.F.R. § 1978.112 provides, “Within 60 days after the issuance of a final order under §§ 1978.109 and 1978.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the person resided on the date of the violation.”

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

LUIS A. CORCHADO
Administrative Appeals Judge

³ Respondent states that “The Dismissal Order approves the establishment of two trusts: (i) a trust for the benefit of the Debtors’ general unsecured creditors (the **GUC Trust**) and (ii) a liquidating trust established for the benefit of the Debtors’ prepetition first lien lenders (the **Lender Trust**”).