



In the Matter of:

MICHAEL YUSIM,

ARB CASE NO. 14-007

COMPLAINANT,

ALJ CASE NO. 2010-STA-066

v.

DATE: September 18, 2014

MIDNIGHT SUN TOURS,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

Michael Yusim, *pro se*, Delray Beach, Florida

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*; and Lisa Wilson Edwards, *Administrative Appeals Judge*.

FINAL DECISION AND ORDER

Complainant Michael Yusim, a motor coach operator, file a complaint against Respondent Midnight Sun Tours (Respondent or Company), a tour bus company, alleging violations arising under the Surface Transportation Assistance Act (STAA or Act) of 1982, as amended, 42 U.S.C.A. § 31105 (Thomson/West Supp. 2013), and its implementing regulations, 29 C.F.R. Part 1978 (2013). On October 30, 2013, an Administrative Law Judge (ALJ) entered an order dismissing the complaint due to bankruptcy. Yusim petitioned the Administrative Review Board for review. We affirm.

DISCUSSION

On January 11, 2012, while the administrative complaint was pending with the ALJ, Respondent filed a Suggestion of Bankruptcy, notifying the ALJ that Coach Am Group Holdings, Corporation filed voluntary petitions for relief under Chapter 11 of the U.S. Bankruptcy Code. The Suggestion for Bankruptcy listed among the debtors of Coach Am Group Holdings, Midnight Sun Tours Inc. (2791). See Respondent's Suggestion at 1, n.1; see also Voluntary Petition (dated Jan. 3, 2012) at Exh. B, *In re Midnight Sun Tours, Inc.*, Chap. 11, Case No. 12-10035 (KG) (Bkptcy Ct., Del). On August 9, 2012, the ALJ entered an order staying the case. The Order stated:

On January 3, 2012, the parent corporation of the Respondent employer filed for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. et seq. Under 11 U.S.C. 362(a)(1), the filing of the bankruptcy petition "operates as a stay, applicable to all entities, of the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor" The statutory stay under Section 362 is a bar to further proceedings in cases such as this for as long as it is in effect.

ALJ Acknowledgement of Bankruptcy Stay at 1 (issued Aug. 9, 2012).

On August 2, 2013, Respondent filed a Notice Regarding Bankruptcy. The Notice informed the ALJ, among other things, the following:

3. On March 7, 2012, Complainant filed a proof of claim with the Bankruptcy Court.
4. On May 31, 2013, the Bankruptcy Court entered the *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* [Docket No. 1568] (the Dismissal Order).
5. Pursuant to the Dismissal Order, the chapter 11 case of each of the Debtors was dismissed, other than the chapter 11 case of [Coach AM Group Holdings, Corp.], which will remain open for a limited period of time solely for the purposes set forth in paragraph 16 of the Dismissal Order. Accordingly, as of May 31, 2013, the automatic stay under 362(a) of the Bankruptcy Code is no longer in effect with respect to Defendant American Coach Lines of Orlando, Inc.
6. The Dismissal Order approves the establishment of two trusts: (i) a trust for the benefit of the Debtor's general unsecured creditors (the

“GUC Trust”) and (ii) a liquidating trust established for the benefit of the Debtors’ pre-petition first lien lenders (the “Lender Trust”).

7. *The proof of claim filed by Complainant will be adjudicated by the Bankruptcy Court and, if allowed, may be paid pursuant to the GUC Trust Agreement.*

Respondent’s Notice Regarding Bankruptcy at 2-3 & attachment *In re Coach AM Group Holdings, et al.*, (Chapter 11) Case No. 12-10010 (KG), Docket No. 1482 (issued May 31, 2013) (emphasis added). On August 8, 2013, Yusim responded to the notice, and opposed a lifting of the stay and hearing the case in Bankruptcy Court. See Letter from Yusim to ALJ Krantz, at 1 (dated Aug. 8, 2013).

On August 22, 2013, the ALJ entered a Notice of Lifting of Bankruptcy Stay. The ALJ ruled that the Order of the Bankruptcy Court (issued May 31, 2013) “resolved the bankruptcy case, with the effect of lifting the statutory stay of the proceedings.” Notice at 1. The ALJ notified the parties to “contact my office to advise the status of the case.” *Id.*

On September 6, 2013, Respondent filed with the ALJ a Notice of Filing Proof of Claim. The filing attached the Proof of Claim that Yusim filed with the Bankruptcy Court against Midnight Sun Tours, seeking a claim valued at \$300,176.00. On September 9, 2013, Respondent’s counsel filed a Motion To Withdraw As Counsel for Respondent Midnight Sun Tours. The motion was filed at the direction of Chief Restructuring Officer of Coach Am Group Holdings Corp. Brian Cejka. Chief Restructuring Officer Cejka stated that “[o]n May 25, 2012, the Bankruptcy Court entered five separate orders approving the sales of substantially all of the Debtor’s operating assets.” Motion, Exh. A (Cejka Declaration) at 1 & n.1 (“Due to their voluminous nature, these orders are not attached to this Declaration. The orders may be obtained from Debtor’s chapter 11 website, www.bmcgroup.com/CoachAmerica, at Docket Nos. 758-762.). Chief Restructuring Officer Cejka stated: “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.” Motion, Exh. A at 2 (Cejka Declaration).

On September 12, 2013, Yusim responded, and argued against the ALJ “relinquish[ing] control of these cases to bankruptcy court.” Letter from Yusim to ALJ Krantz (dated Sept. 12, 2013). By letter dated September 26, 2013, Yusim notified the ALJ that he had “instructed the COACH AM GUC Trust to withdraw my claim.” Letter from Yusim to ALJ Krantz (dated Sept. 26, 2013). Yusim argued, “I do not believe that I should be denied the protection of 49 U.S.C. 31105(a)(1)(C) because of a bankruptcy; nor do I believe that I should be treated as just another creditor.” *Id.* at 1.

On October 30, 2013, the ALJ entered an order dismissing Yusim’s complaint due to bankruptcy. *Yusim v. Midnight Sun Tours*, No. 2010-STA-066 (ALJ Order). The ALJ observed that on May 31, 2013, the Bankruptcy Court entered an order approving two trust agreements, transferred Respondent’s remaining assets to the Lender Trust, and dismissed the Chapter 11 claims of creditors. ALJ Order at 1. The Bankruptcy Court retained jurisdiction over any

“matters, claims, rights or disputes arising from” the Chapter 11 cases. *Id.* “As a result of the sales and the Bankruptcy Court’s dismissal order, the Respondent has no remaining assets.” *Id.* at 2.

The ALJ determined that, contrary to Yusim’s argument, the ALJ lacked authority to divest the bankruptcy court of jurisdiction over his case under 28 U.S.C. 157(d). *Id.* The ALJ determined:

There has been no evidence of the District Court having withdrawn this matter from the Bankruptcy Court, either to try the claim itself or to refer it to the Department of Labor. The only evidence on this issue is the unambiguous assertion of jurisdiction by the Bankruptcy Court quoted above. In addition, the Respondent has not emerged from bankruptcy as a going concern capable of being proceeded against in a hearing.

ALJ Order at 2.

“An automatic stay [ordered in accordance with 11 U.S.C. 362(a)(1),] continues until the bankruptcy case is closed, dismissed, or discharge is granted or denied, or until the bankruptcy court grants some relief from the stay.” *In re Haubold v. KTL Trucking Co.*, ARB No 08-025, ALJ No. 2000-STA-035 (ARB Feb. 27, 2009). The court documents pertaining to the bankruptcy proceeding that were filed in proceedings before the ALJ make clear that assets for Midnight Sun Tours, an affiliate company to Coach Am Group Holdings Corp. and debtor in the bankruptcy proceeding, have been transferred pursuant to the Bankruptcy Order (dated May 31, 2013), and the Debtor’s Chapter 11 cases have been dismissed. Yusim has not disputed the Bankruptcy Orders set out in the record, the veracity of statements set out in Chief Restructuring Officer Cejka’s Declaration, or the description of the Bankruptcy Order terms contained in Respondent’s Motion to Withdraw As Counsel (filed Sept. 10, 2013), Notice Regarding Bankruptcy (filed Aug 1, 2013), or Suggestion of Bankruptcy (filed Jan 12, 2012). Under the circumstances presented in this case, dismissal of the complaint is warranted. *See Joyner v. Coach AM Group Holdings Corp. d/b/a Midnight Sun Tours*, ARB No. 13-032, ALJ No. 2011-STA-042 (ARB Dec. 13, 2013) (Final Decision and Order Denying Petition and Closing Case against Midnight Sun Tours due to bankruptcy proceeding).

CONCLUSION

For the foregoing reasons, the ALJ's Order Dismissing the Complaint Due to the Bankruptcy of the Respondent is **AFFIRMED**.

SO ORDERED.

LISA WILSON EDWARDS
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge