



Issue Date: 20 February 2020

CASE NO.: 2017-AIR-00027

In the Matter of:

JAMES MAGUIRE,
Complainant,

vs.

VISION AIRLINES, INC.,
Respondent.

ORDER DISMISSING CASE
DUE TO LIQUIDATION OF RESPONDENT

This matter arises under section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121 (“AIR21”), and the implementing regulations set forth at 29 C.F.R. Part 1979, Subpart B. Complainant is represented by attorney Kristina Holman. Respondent is represented by attorney Matthew Zirzow. The matter is currently stayed pursuant to an automatic stay under the U.S. Bankruptcy Code due to Respondent’s involuntary bankruptcy.¹ 11 U.S.C. § 362(a). The automatic stay provisions of the Bankruptcy Code apply to AIR21 matters. *Davis v. United Airlines, Inc.*, ARB No. 02-105, OALJ No. 2001-AIR-00005 (ARB May 30, 2003).

On January 16, 2020, I issued an Order to Show Cause Why Case Should Not Be Dismissed based upon documents from the bankruptcy proceeding showing that the bankruptcy had concluded with the liquidation of Respondent, and that there was no longer any entity to pursue this action against, and that no assets that could provide Complainant with any recovery. The January 16 Order gave the parties until February 6, 2020, to respond or the matter would be dismissed. No responses were received.

Respondent went through chapter 7 bankruptcy. On April 23, 2019, the Trustee issued a Report of No Distribution stating that there were claims of \$88,821,505.57 against the bankruptcy estate, but that the estate had no assets to distribute and none of the claims had or would be paid. The bankruptcy court discharged the trustee and closed the case on May 10, 2019. On November 1, 2019, the bankruptcy court re-opened the case in order to address issues concerned with actions taken while the automatic stay was in place. The bankruptcy court denied all relief on November 26, 2019. The bankruptcy court administratively re-closed the matter on January 14, 2020. Neither party filed any update or contrary information.

¹ United States Bankruptcy Court for the District of Nevada, Case No. 18-12139.

Once the respondent company has passed through bankruptcy, the company is considered to be discharged and dismissed from the cause of action unless the complainant provides evidence showing otherwise. *See Powers v. Paper, Allied-Industrial Chemical & Energy Workers In't Union (PACE)*, ARB No. 04-111, ALJ No. 2004-AIR-00019 (ARB Aug. 31, 2007); *see also Davis v. United Airlines, Inc.*, ARB No. 02-105, ALJ No. 2001-AIR-5 (ARB Apr. 26, 2006) (dismissing appeal based upon reorganization following bankruptcy proceedings). Respondent here went through chapter 7 bankruptcy, not reorganization, and so as a business entity did not receive a discharge. *See* 11 U.S.C. § 727(a)(1); *see also N.L.R.B. v. Better Bldg. Supply Corp.*, 837 F.2d 377, 378-79. But chapter 7 bankruptcy results in a liquidation of the entity and there are no indications that there is any party that Complainant could maintain this action against or receive any recovery from. *Cf. Better Bldg.*, 837 F.2d at 379.

Based upon documents from the bankruptcy proceeding, the bankruptcy has concluded and there is no longer any entity to pursue this action against and no assets that could provide Complainant with any recovery. Therefore, based upon the dissolution of Respondent following bankruptcy, this matter is dismissed. All dates are vacated. The file is closed.

SO ORDERED.

RICHARD CLARK
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within ten (10) business days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210, for traditional paper filing. Alternatively, the Board offers an Electronic File and Service Request (EFSR) system. The EFSR for electronic filing (eFile) permits the submission of forms and documents to the Board through the Internet instead of using postal mail and fax. The EFSR portal allows parties to file new appeals electronically, receive electronic service of Board issuances, file briefs and motions electronically, and check the status of existing appeals via a web-based interface accessible 24 hours every day. No paper copies need be filed.

An e-Filer must register as a user, by filing an online registration form. To register, the e-Filer must have a valid e-mail address. The Board must validate the e-Filer before he or she may file any e-Filed document. After the Board has accepted an e-Filing, it is handled just as it would be had it been filed in a more traditional manner. e-Filers will also have access to electronic service (eService), which is simply a way to receive documents, issued by the Board, through the Internet instead of mailing paper notices/documents.

Information regarding registration for access to the EFSR system, as well as a step by step user guide and FAQs can be found at: <https://dol-appeals.entellitrak.com>. If you have any questions or comments, please contact: Boards-EFSR-Help@dol.gov

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. See 29 C.F.R. § 1979.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You waive any objections you do not raise specifically. See 29 C.F.R. § 1979.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210. See 29 C.F.R. § 1979.110(a).

If filing paper copies, you must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and you may file an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review. If you e-File your petition and opening brief, only one copy need be uploaded.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and may include an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies. If you e-File your responsive brief, only one copy need be uploaded.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board. If you e-File your reply brief, only one copy need be uploaded.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. § 1979.110. Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. See 29 C.F.R. §§ 1979.109(c) and 1979.110(a) and (b).