

Before the Surface Transportation Board

242188

STB Docket No. AB-167 (Sub-No. 1189X)

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CONSOLIDATED RAIL CORPORATION—ABANDONMENT EXEMPTION—
IN HUDSON COUNTY, NJ

ENTERED

Office of Proceedings

December 5, 2016

STB Docket No. AB-55 (Sub-No. 686X)
CSX TRANSPORTATION, INC.—DISCONTINUANCE OF SERVICE
EXEMPTION—IN HUDSON COUNTY, NJ

Part of
Public Record

STB Docket No. AB-290 (Sub-No.306X)
NORFOLK SOUTHERN RAILWAY COMPANY—DISCONTINUANCE OF
SERVICE EXEMPTION—IN HUDSON COUNTY, NJ

Response of Intervenors 212 Marin Boulevard, LLC et als

to

Appeal of Initial ALJ Decision

by

James Riffin

(Filed Nov 14, 2016)

The record in these proceedings provides sufficient grounds to affirm the decision of Administrative Law Judge Dring, and the LLCs urge the Board to utilize the full scope of that record in deciding Mr. Riffin's appeal. The Board should not become entangled in procedural arguments when there is more than sufficient substance upon which to base its decision. The City et als have argued repeatedly that Mr. Riffin's appeal is procedurally barred by interpretation of STB rules or waiver by Mr. Riffin, in one form or another. Mr. Riffin has likewise provided extensive and intricate arguments in his defense. This matter is not so complex, nor

should the Board accept these invitations to make the mistake of inviting further delay by dwelling upon subsidiary issues, some of which, at the least, lack merit or are designed to provide a thicket of issues on appeal for purposes of continued delay.

The Board should consider and rule upon Mr. Riffin's appeal on the merits because that is exactly what Judge Dring told him was his only available next step at the conclusion of the October 24, 2016 hearing. The ALJ's decision is also fashioned as an initial decision, implying further substantive review by the Board. Deviating from that clear path laid out by Judge Dring would simply invite more delay.

At this point it should be manifest to all parties, and to the Board, that Mr. Riffin has no legitimate interest in the Harsimus Branch. It should also be clear that he is not doing the bidding of the LLCs. To the contrary, he provides a convenient foil for the City et als to argue conspiracies by allegedly making statements that he is an agent for the LLCs. Curiously, those are the only statements by Mr. Riffin that the City et als deem credible; all contrary facts, STB, pleadings and assertions notwithstanding.

By contrast with the endless arguments based upon unsupported opinions, the extremely tenuous nature of Mr. Riffin's claims, credibility and good faith can be seen throughout the record and numerous examples have been given. We do not need to repeat any of them here. But it is clear that Mr. Riffin fully intends to continue unless absolutely barred from doing so. Whatever his motivation, it is improper. In a filing that he distributed by email to counsel on Sunday, December 4,

2016 in STB Docket FD 36078¹ he has unambiguously declared exactly that intent. Recognizing that a position formally filed by the LLCs in that matter underscores his lack of any "cognizable, legitimate interest..."², and while at least acknowledging that the LLCs oppose his position; and, also acknowledging that his run with these proceedings should be coming to an end because the LLCs have correctly pointed out that the Board should rule against his appeal and dismiss him from all proceedings, he simply invents yet another reason to remain.³

The point is that the record in these proceedings is replete with improper and abusive assertions and filings. The City et als have repeatedly pointed to any number of abuses by Mr. Riffin in these and other proceedings. The fact is that Mr. Riffin, and others have engaged the Board and its staff with an extreme volume of pleadings and distractions, including litigation, regarding the Harsimus Branch, but they have no legitimate interest in offering the continuation of rail freight service in Jersey City. Their goal, like his, lies elsewhere. Mr. Riffin does not stand alone in his abuse in this case. If this proceeding is ever going to conclude, the Board should limit it to legitimate matters, and sanction the dismissal of those parties without legitimate interests. That should begin with Mr. Riffin.

¹ That filing is reflected on the STB website as of December 5, 2016.

² ID, paragraph 7

³ See ID, paragraphs 16 et seq. in which he claims to be about to acquire property along the Hudson Street Industrial Track, and to have potential customers who require shipment of aggregates and other bulk material. This is nothing more than the same kind of nonsense proffered by the City and CNJ Rail when they offered Pace Glass as a potential shipper. Riffin is hardly able to afford the purchase price of the property he claims to be acquiring, much less the ability to initiate industrial operations in this expensive high-end office and residential neighborhood.

Respectfully submitted,

S/ Daniel E. Horgan

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DATED: December 5, 2016

CERTIFICATION OF SERVICE

I, Daniel E. Horgan, hereby certify that I have caused a copy of the foregoing to be served by First Class Mail upon those on the attached Service List by having same deposited with the U.S. Postal Service on December 5, 2016.

S/ Daniel E. Horgan

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