

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

In the Matter of:

**A RAY LAND PRODUCTIONS
COMPANY DBA FABULOUS
COACH LINES,
(U.S. DOT No. 1257616)**

Petitioner.

**Docket No. FMCSA-2013-0485¹
(Southern Service Center)**

ORDER TERMINATING PROCEEDING AND CLOSING DOCKET

1. Background

On July 22, 2013, the Florida Division Administrator, Federal Motor Carrier Safety Administration (FMCSA), issued a Notice of Claim (NOC) against A Ray Land Productions Company dba Fabulous Coach Lines (Petitioner), proposing a civil penalty of \$12,340.² The NOC, which was based on a compliance review completed on July 10, 2013, alleged: (1) one violation of 49 CFR 382.305(b)(1), failing to conduct random alcohol testing at the applicable annual rate, with a proposed civil penalty of \$2,130; (2) three violations of 49 CFR 382.305(b)(2), failing to conduct random controlled substances testing at the applicable annual rate, with a proposed civil penalty of \$2,130 per count; (3) one violation of 49 CFR 391.23(a), failing to investigate a driver's background, with a proposed civil penalty of \$660; and (4) four violations of 49 CFR 395.8(k)(1), failing to preserve a driver's record of duty status for 6 months, with a proposed civil penalty of \$790 per count.

¹ The prior case number was FL-2013-0212-US0830.

² See Exhibit FA-3 to Field Administrator's Answer to Petition for Reconsideration of Final Agency Order Pursuant to 49 CFR 386.64(c) (Claimant's Answer).

After Petitioner failed to respond to the NOC, the Field Administrator for FMCSA's Southern Service Center (Claimant) served a Notice of Default and Final Agency Order (NDFAO) on Petitioner on August 29, 2013.³ The NDFAO advised Petitioner that the NOC would become the Final Agency Order in this proceeding effective September 3, 2013, with the civil penalty immediately due and payable on that date.

On October 23, 2013, Claimant issued to Petitioner an Order to Show Cause that advised Petitioner that, because it had failed to pay the civil penalty as required by the NDFAO, it would be prohibited from operating in interstate commerce, and its registration suspended, on December 3, 2013, unless the Agency received full payment before that date or evidence that Petitioner had filed for bankruptcy.⁴ Sometime between November 8 and December 3, 2013, Petitioner submitted to U. S. DOT Dockets a letter stating that it was unable to pay the civil penalty due to financial hardship and attached copies of bank statements as evidence of its financial situation.⁵

On January 6, 2014, Claimant served his Answer to the Petition. Claimant sought leave to submit this document as a potentially late-tendered response to the petition because Petitioner's letter was not served on Claimant and Claimant apparently did not become aware of the document until it was posted by U.S. DOT Dockets on December 3, 2013. Claimant argued

³ See Exhibit FA-3 to Claimant's Answer to Petition.

⁴ See 49 CFR §§ 386.83(a)(1); 386.83(d)(1); 386.84(a)(1); and 386.84(d)(1).

⁵ Although the letter is dated November 8, 2013, there is no Certificate of Service attached and the Docket does not include a postmarked envelope. The letter was posted in the Docket on December 3, 2013.

that the petition was not timely filed and, even if it had been timely filed, presented no grounds for vacating the Final Agency Order.⁶

2. Decision

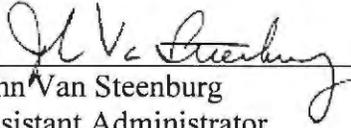
Under 49 CFR 386.64(a), any party may petition the Assistant Administrator for reconsideration of a Final Agency Order within 20 days following service of that order. Section 386.64(b) provides that an NDFAO issued by a Field Administrator may be vacated where a respondent can demonstrate excusable neglect, a meritorious defense, or due diligence in seeking relief. Under 49 CFR 386.64(c), either party may serve an answer to a petition for reconsideration within 30 days of the service date of the petition.

The deadline to petition for reconsideration of the August 29, 2013 Final Agency Order was September 23, 2013.⁷ Petitioner's November 8, 2013 letter, if treated as a petition for reconsideration of a Final Agency Order, was not timely served. Based on its timing, however, the letter appears to be a response to the October 23, 2013 Order to Show Cause, which is not a Final Agency Order subject to reconsideration under Part 386. In the letter, Petitioner does not allege that any of the Orders issued by Claimant were improper—it simply claims that it is unable to pay the penalty. Therefore, this matter is not properly before me and should not have been docketed in the first place. Consequently, this proceeding is terminated and the docket is closed.

⁶ Claimant's request to file his Answer is granted.

⁷ This date was calculated by adding 20 days to the August 29, 2013 service date of the NDFAO and adding 5 days because the NDFAO was served by mail. *See* 49 CFR 386.8(c).

It Is So Ordered.



John Van Steenburg
Assistant Administrator
Federal Motor Carrier Safety Administration

2/3/14

Date

CERTIFICATE OF SERVICE

This is to certify that on this 3rd day of February, 2014, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Raymond Joseph Land, III
A Ray Land Productions Company
dba Fabulous Coach Lines
P.O. Box 214
Branford, FL 32008

One Copy
U.S. Mail

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Trial Attorney
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