

**BEFORE THE  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

DEPARTMENT OF  
TRANSPORTATION  
SAFETY OPERATIONS

2012 DEC 11 P 12:38

**In the Matter of:**

**LEX EXPRESS, INC. dba  
LEX EXPRESS,  
U.S. DOT # 824116**

**Petitioner.**

**Docket No. FMCSA-2012-0459  
(Midwestern Service Center)**

**ORDER ON PETITIONER'S REQUEST FOR STAY**

**1. Background**

On October 31, 2012, Lex Express, Inc. dba Lex Express (Petitioner) filed a Petition for Administrative Review of a proposed Unsatisfactory safety rating. Petitioner's Unsatisfactory safety rating arose from an October 16, 2012 compliance review (CR) conducted by the Illinois State Police. On November 19, 2012, the Field Administrator for the Midwestern Service Center issued an Order to Cease All Transportation in Interstate and Intrastate Commerce and Revocation of Registration (Order to Cease), effective December 7, 2012 at 12:01 am.

Petitioner filed a Request for Immediate Stay of the Order to Cease on December 7, 2012, seeking a stay of the Order until the Agency has reached a determination on its petitions under 49 CFR 385.15 and 385.17. Petitioner contends that it "cannot sustain loss in revenues and customers"<sup>1</sup> until a decision is issued. On December 7, 2012, I issued a Second Interim Order directing the Field Administrator to respond to Petitioner's

---

<sup>1</sup> Petitioner's Request for Immediate Stay for Order to Cease All Transportation in Interstate Commerce and Revocation of Registration at 2.

stay request. The Field Administrator for FMCSA's Midwestern Service Center responded to the Order on December 10, 2012. The Field Administrator argues that Petitioner has failed to establish any of the elements for injunctive relief and that the request for a stay should be denied.

## **2. Decision**

Petitioner requests a stay of the Order to Cease<sup>2</sup> until its petition under 49 CFR 385.15 "has a conclusive determination."<sup>3</sup> A motion to stay the effectiveness of a safety rating is in the nature of a request for injunctive relief.<sup>4</sup> To qualify for injunctive relief, a moving party must establish that: (1) there is a substantial likelihood that the moving party ultimately will prevail on the merits; (2) the moving party will suffer irreparable injury absent the injunction; (3) the threatened injury outweighs whatever damage the injunction may cause the opposing party; and (4) the injunction will not harm the public interest.<sup>5</sup> Petitioner has not met this standard.

Petitioner has not established a substantial likelihood that it will prevail on the merits of its Petition. At best, it has raised certain factual issues concerning the findings of the CR. Petitioner has also not established that it will suffer irreparable injury if the Order to Cease is not stayed. Petitioner makes the general assertion that its company may lose revenue and customers, but provides no documentation or other specific information

---

<sup>2</sup> A stay of the Order to Cease would also stay the effective date of its proposed Unsatisfactory safety rating.

<sup>3</sup> See Petitioner's Request for Immediate Stay at 1.

<sup>4</sup> See *New Prime, Inc. dba Prime, Inc.*, FMCSA-2002-13664, Decision on Motion for Stay of Proposed Safety Rating (Oct. 29, 2002).

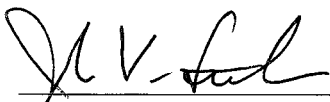
<sup>5</sup> See *Cate v. Oldham*, 707 F.2d 1176, 1185 (11<sup>th</sup> Cir. 1983).

regarding lost revenue or potential business opportunities. More critically, Petitioner has only presented argument that it may suffer monetary losses, which does not typically qualify as an irreparable injury.<sup>6</sup>

Any limited injury to Petitioner resulting from the effectiveness of the Order to Cease must still be weighed against any damage to FMCSA's safety programs resulting from a stay of the rating. A stay would interfere with the agency's ability to effectively monitor carrier compliance with safety requirements, and Petitioner has not established that any potential injury to it outweighs the injury to the agency.<sup>7</sup>

Finally, a stay would harm the public interest. Shippers and the public in general have a substantial interest in being apprised of the safety status of motor carriers with whom they do business and share the roadway. Absent a clear showing that Petitioner has a substantial likelihood of prevailing on the merits, a stay of the Order to Cease would misrepresent to the public the documented status of Petitioner's safety management programs. Therefore, Petitioner's request for a stay of the Order to Cease is hereby denied.

*It Is So Ordered.*



John Van Steenburg  
Assistant Administrator  
Federal Motor Carrier Safety Administration

12/10/12  
Date

<sup>6</sup> See *Sampson v. Murray*, 415 U.S. 61 (1974). "[T]he temporary loss of income, ultimately to be recovered, does not usually constitute irreparable injury... Mere injuries, however substantial, in terms of money, time and energy necessarily expended ... are not enough." *Id.* at 90. See also *In the Matter of WTW Enterprises*, FMCSA-2011-0159, Preliminary Order of Petition for Review of Safety Rating (Nov. 21, 2011) at 2.

<sup>7</sup> See *In the Matter of Vanguard Transp. Systems, Inc.*, FMCSA-2005-22463, Order Denying Petition for Stay of Safety Rating (Feb. 16, 2006).

**CERTIFICATE OF SERVICE**

This is to certify that on this 10<sup>th</sup> day of December, 2012, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

Robert L. Frazier  
Lex Express, Inc. dba Lex Express  
310 Tiffany Court  
Champaign, IL 61822

One Copy  
U.S. Mail

Peter Hines, Esq.  
Office of Chief Counsel (MC-CCE)  
Federal Motor Carrier Safety Administration  
Midwestern Service Center  
4749 Lincoln Mall Drive  
Suite 300A  
Matteson, IL 60443

One Copy  
U.S. Mail

U.S. Department of Transportation  
Docket Operations, M-30  
West Building Ground Floor  
Room W12-140  
1200 New Jersey Avenue, SE  
Washington, DC 20590

Original  
Personal Delivery

Potter Ritzel