

STATE OF CONNECTICUT  
DEPARTMENT OF TRANSPORTATION



2800 BERLIN TURNPIKE, P.O. BOX 317546  
NEWINGTON, CONNECTICUT 06131-7546

Phone:

DOCKET NO. 0908-SI-63-B

RE: PETITION OF ACADEMY EXPRESS, LLC TO RECEIVE A CERTIFICATE OF FINANCIAL RESPONSIBILITY TO MEET LEGAL LIABILITY FOR PERSONAL INJURY, DEATH OR PROPERTY DAMAGE RESULTING FROM, OR CAUSED BY, THE USE OF ITS MOTOR VEHICLES USED IN CHARTER BUS SERVICE.

Final Decision

March 15, 2010

## I. INTRODUCTION

### A. PETITIONER'S PROPOSAL

By petition filed on August 14, 2009 with the Department of Transportation (hereinafter "Department"), pursuant to Section 13b-94a of the Connecticut General Statutes, as amended, Academy Express, LLC. (hereinafter "petitioner"), seeks authorization for and issuance of a certificate of financial responsibility to meet legal liability for personal injury, death or property damage resulting from, or caused by, the use of its motor vehicles in charter bus service.

### B. HEARING HELD

Pursuant to Section 14-29 of the Connecticut General Statutes, this petition was assigned for a public hearing which was held at the administrative offices of the Department in Newington, Connecticut on March 1, 2010.

Notice of the application and of the hearing to be held thereon was given to the petitioner and to such other parties as deemed necessary by the Department as required by Connecticut General Statutes Section 14-29. Legal notice to the public was given by publication on the Department of Transportation's website.

### C. APPEARANCES

The petitioner retained two attorneys in this matter: Mr. Joseph J. Ferrara, Esq. appeared on behalf of the petitioner. His mailing address is 111 Paterson Avenue, Hoboken, New Jersey 07050. Also, representing the petitioner was Robert B. Yules, Esq. of Yules & Yules, LLC, 195 Church Street, 17<sup>th</sup> Floor, New Haven, Connecticut 06510.

Sheldon Lubin, appeared as a member of the Department's staff.

## II. FINDINGS OF FACT

1. The petitioner has applied to receive a Certificate of Financial Responsibility which would allow it to self insure claims up to \$250,000.
2. The petitioner has self insurance for its bus company with the Federal Motor Carrier Association, the State of New Jersey and the State of New York. As part of self insurance the petitioner must file documents periodically, as required.
3. The petitioner has a \$100,000,000 insurance policy to cover serious claims beyond the \$250,000 self insurance.
4. As of February 28, 2010, the current value of the petitioner's Wells Fargo collateral account was \$1,596,851.

5. As of September 30, 2009, internally prepared, unaudited, interim financial statements including the results of operations for the first nine months of 2009 showed: Cash of \$16,454,744, current assets of \$31,574,582, total assets of \$93,446,948, current liabilities of \$28,216,220, total liabilities of \$53,291,146, retained earnings of \$40,069,521, stockholder equity of \$40,155,802, total revenue of \$91,705,883, total operating expenses of \$81,896,090 and net income of \$9,129,706.
6. The petitioner estimates Connecticut revenue during the first six months at \$250,000 with operating expenses of \$221,500.
7. On February 5, 2010, the Regulatory & Compliance Unit issued to the petitioner bus Certificate Number 508, which requires the identification of a local address and a Certificate of Financial Responsibility prior to the certificate being in force.
8. The petitioner plans to operate three mini buses and three buses in intrastate livery service.
9. The document issued by the Federal Motor Carrier Safety Administration on August 1, 2003 allows for self insurance up to \$300,000.
10. The petitioner typically has \$3,000,000 in insurance claims annually.
11. The petitioner pays a total insurance premium of \$3,290,379 to Liberty Mutual.

### III. DEPARTMENT ANALYSIS

The Department has jurisdiction over motor bus operators in charter bus service pursuant to Connecticut General Statute's Section 13b-94a. Section 14-29 of the Connecticut General Statutes allows a livery company to insure itself by being approved for a Certificate of Financial Responsibility. Connecticut General Statutes Section 14-29(a) provides that a vehicle owner or lessee holding a certificate of public convenience and necessity from the Department of Transportation shall maintain insurance or indemnity against claims for personal injury or death of any person or property damage caused by the operation of said vehicle except for when the owner of the motor vehicle holds a certificate of public convenience and necessity and the Department has found that such owner or lessee has sufficient financial responsibility to meet the legal liability for personal injury, death or property damage resulting from or caused by the use or operation of such motor vehicle.

The insurance that must be retained as specified in Section 14-29(b)(1) of the Connecticut General Statutes depends on the passenger seating capacity. The petitioner intends to operate both mini busses and full size busses. The highest vehicle seating capacity, which allows 31 passengers or more, requires insurance or a bond of three hundred thousand dollars (\$300,000).

The petitioner has placed various financial documents into the record to show that it is financially responsible. The petitioner is already self insured under by the Federal Motor Carrier Association, State of New York and State of New Jersey.

As of September 30, 2009, internally prepared, unaudited, interim financial statements including the results of operations for the first nine months of 2009 were presented showing: Cash of \$16,454,744, current assets of \$31,574,582, total assets of \$93,446,948, current liabilities of \$28,216,220, total liabilities of \$53,291,146, retained earnings of \$40,069,521, stockholder equity of \$40,155,802, total revenue of \$91,705,883, total operating expenses of \$81,896,090 and net income of \$9,129,706. The petitioner estimated revenue during the first six months at \$250,000 with operating expenses of \$221,500.

Based on the evidence presented, there are more than enough financial resources to allow the petitioner to self insure the first \$250,000. Any claims above that amount are covered by the petitioner's insurance policy which extends to \$100,000,000.

#### IV. CONCLUSION AND ORDER

Based upon the above and pursuant to the authority granted under Connecticut General Statutes Section 14-29, as amended, the petitioner's application for a Certificate of Financial Responsibility is hereby approved with the following requirements. The petitioner must keep a copy of its Certificate of Financial Responsibility on file with the Department of Motor Vehicles.

#### **The following is required as a condition of the issuance of Financial Responsibility:**

**The petitioner was requested at the hearing to send a letter to the Department listing its Connecticut headquarters address. To date, the petitioner has failed to identify this address in writing. The petitioner's Certificate of Financial Responsibility is not in full force and effect until the Department receives this information in writing as a condition of the intrastate Bus Certificate 508 issued to it on February 5, 2010.**

#### 1. INSURANCE

a) The petitioner shall maintain personal injury and property damage coverage through a risk retention carrier or insurance company approved by the Connecticut Department of Insurance to cover claims over \$250,000.01 to the required limits of insurance for livery operators, pursuant to Connecticut General Statutes Section 14-29. The petitioner shall be self insured for claims of \$250,000 or less.

b) The petitioner shall within thirty days from the date of this final decision and every year thereafter by January 31<sup>st</sup>, file with the Department of Transportation written evidence of such insurance coverage during the life of the Certificate of Financial Responsibility.

c) The petitioner shall retain, for the life of the Certificate of Financial Responsibility, a certified appraiser and a claims adjuster/investigator approved by the Department to handle any and all claims that may arise. The petitioner shall file with the Department of Transportation within thirty days from the date of this final decision and every year thereafter, proof of a claims adjuster/investigation staff during the life of the Certificate of Financial Responsibility.

2. **CLAIMS SETTLEMENT FUND-SELF INSURANCE**

a) The petitioner shall maintain a bank account entitled the "Claims Settlement Fund", with a monthly balance to be maintained at the beginning of each month of \$300,000. The Claims Settlement Fund shall begin with an initial deposit of \$300,000. The petitioner shall pay insurance claims of \$250,000 and less from this account.

b) Any funds withdrawn from said account shall be made only for the payment of personal injury damage claims or property damage claims that the petitioner is obligated to pay. Payments shall be limited only to those amounts owed to a claimant, exclusive of other related settlement costs to the petitioner, such as adjuster fees or legal fees.

c) The petitioner shall maintain this Claims Settlement Fund with a minimum balance of no less than \$150,000.

d) Upon payment of any such claims from the Claims Settlement Fund, the fund shall be replenished to the minimum balance of \$300,000 by the last business day of each month, but at no time should the balance in the account be less than \$150,000.

e) Following the date of implementation, and each month thereafter, no later than the 15<sup>th</sup> day of the subsequent month, the petitioner shall submit a bank statement to the Department of Transportation, Regulatory & Compliance Unit, to show compliance with the Claims Settlement Fund as ordered.

3. **ADDITIONAL REQUIRMENTS**

a) The petitioner shall file with the Department of Transportation, on a quarterly basis and no later than fifteen (15) days from the last day of the quarter, a written report of all accidents in which the petitioner were involved, beginning the first full quarter from the date of this decision.

b) The petitioner shall file with the Department of Transportation, on a quarterly basis and no later than fifteen (15) days from the first day of the quarter, a written report of all claims settled, including the cost of each claim, for each month of the quarter, beginning the first full quarter from the date of this decision.

c) The petitioner shall file with the Department of Transportation quarterly financial reports no later than thirty (30) days from the last day of each fiscal quarter, beginning on the first full quarter from the date of this decision.

d) The petitioner shall file with the Department of Transportation, on an annual basis, a preliminary un-audited and internal accounting no later than ninety (90) days from the first of each year, beginning the first most recent year from the date of this decision.

e) The petitioner shall file with the Department of Transportation, on an annual basis, a review accounting completed by a certified accountant, no later than thirty (30) days after the filing of the petitioner's tax returns, beginning the first most recent year from the date of this final decision.

f) The Department of Transportation may initiate a hearing to take evidence on said filings. Where the Department determines that amendments may be required for the continuation of the public's safety and welfare relative to the self insurance, the Department may initiate a hearing to implement such amendments.

4. **DISCONTINUANCE OF SELF INSURANCE**

a) The petitioner shall promptly file with the Department of Transportation written intention to discontinue the Certificate of Financial Responsibility.

b) The petitioner shall not discontinue its self insurance prior to written approval by the Department.

c) The petitioner shall file written proof of insurance coverage, from dollar one coverage, prior to the discontinuation of the Certificate of Financial Responsibility.

5. **SANCTIONS**

Failure of the petitioner to meet any of the requirements shall be cause for any of the following sanctions:

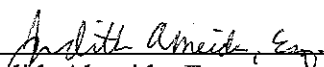
a) suspension or revocation of the petitioner's Certificate of Financial Responsibility.

b) suspension or revocation of the petitioner's bus certificate 508.

c) imposition of a civil penalty in accordance with section 13b-90 of the Connecticut General Statutes.

Dated at Newington, Connecticut on the 15th day of March 2010.

CONNECTICUT DEPARTMENT OF TRANSPORTATION

  
\_\_\_\_\_  
Judith Almeida, Esq.  
Staff Attorney III  
Administrative Law Unit  
Bureau of Finance and Administration