BEFORE THE
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

Application of

BOSTON-MAINE AIRWAYS CORP.

for issuance of an amended certificate of public convenience and necessity pursuant to 49 U.S.C. § 41102 (Interstate and Foreign Large Aircraft Operations)

Docket OST-00-7668
Docket OST-03-14985
Docket OST-04-19919

ANSWER OF AIR LINE PILOTS ASSOCIATION TO OBJECTIONS AND COMMENTS OF BOSTON-MAINE AIRWAYS CORP.
IN RESPONSE TO SHOW CAUSE ORDER 2008-2-3

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Dated: March 10, 2008
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The Air Line Pilots Association ("ALPA") supports DOT’s findings that
Boston-Maine Airways Corp ("BMAC" or "company") is not fit to hold a
certificate of public convenience and necessity and its proposal to revoke the
company’s certificate authority.

DISCUSSION

The Department has found that BMAC does not possess (1) the financial
wherewithal to continue to expand its operations without posing an undue risk to
consumers and their funds, (2) the managerial competence necessary to oversee its
current and proposed operations, and (3) a proper regard for laws and regulations. The findings with respect to all three fitness elements are amply supported by the record in this proceeding and by reports to the Department by the Federal Aviation Administration. Although ALPA contested BMAC’s financial submissions and fitness from the time the company first filed for authority to operate large aircraft, ALPA will focus here on BMAC’s “compliance disposition” because the truly extraordinary actions -- and inactions -- by the company’s officers and owners dictate certificate revocation.

DOT has found that BMAC’s authority was based on false financial information submitted to the Department and that the award of the company’s large aircraft certificate authority was based on this information. The Department has also found that the false information was submitted over such a long period of time -- two and a half years -- and was so central to BMAC’s various applications that, first, it “begs credulity” that the president of the company did not know that inaccurate information was being submitted to the Department by his immediate subordinate, and second, that in the unlikely event the president was not aware of the filings, that lack of awareness would mean he is not fit to manage an airline.

BMAC does not disagree with DOT’s findings that falsified information and financial fitness was submitted by the company on many occasions in this proceeding. Nor does BMAC disagree that the false information was relied on by
the Department in awarding large aircraft authority to BMAC and that the withdrawal of that authority is warranted.

BMAC’s argument is that the false filings were attributable solely to a rogue employee -- the company’s Senior Vice President and General Counsel. According to BMAC, no other officer, director, owner or other business colleague of this employee knew of the false filings. Rather, says BMAC, as soon as the company learned that this employee had falsified a performance bond in connection with a lawsuit it began an immediate investigation of his activities in this proceeding and it was this investigation that led to the discovery of the myriad false filings that had been made to the Department. Indeed, BMAC contends that had the employee alerted the company to the fact that he had forged the bond, the company would have begun an investigation of all the employee’s actions in connection with this proceeding even earlier. BMAC asserts that the employee had never given his employers any reason to doubt his honesty, loyalty and good judgment over the 17 years he had worked for them and that his actions in the case were “utterly and completely unexpected and unpredictable.” March 3, 2008 Objections and Comments of BMAC, at 25. Accordingly, BMAC argues, the Department’s findings that BMAC’s owners and current senior management are unfit because they either knew or should have know of the falsifications, are incorrect and unjustified.
First, it is worth noting what BMAC actually did when the general counsel’s bond forgery first came to light. The company did not immediately initiate an investigation of the employee’s actions in this proceeding as it says it would have. Rather, BMAC stonewalled.

ALPA brought the bond forgery to DOT’s attention on June 1, 2005. In its first three filings with DOT after that date, BMAC did not say that it was making an inquiry into whether there was any improper activity in this proceeding. Instead, the company attacked ALPA’s filing as “another in their series of personal attacks on BMAC’s management based on matters unrelated to BMAC . . . to distract the Department from the lack of any substantive basis upon which to grant ALPA’s motion [to revoke BMAC’s certificates].” June 3, 2005 Answer of BMAC to ALPA’s Supplement to Revoke Certification, at 1-2. BMAC charged ALPA with seeking “to ignore more than two years of unblemished fitness evidence presented in BMAC’s sworn filings” and asserted that ALPA has not shown “that a single matter filed by BMAC before the Department is false or untrue.” Id. at 2. BMAC urged the Department to promptly approve the company’s pending applications to operate more large aircraft.

In its second filing after the bond forgery was revealed, BMAC acknowledged that its general counsel had been involved in “irregularities” with respect to the performance bond and had resigned from a number of positions at
BMAC and other Pan Am holding company-related corporations.

Notwithstanding this revelation, the company continued to argue that ALPA’s arguments that BMAC is unfit “have been shown to be patently unfounded and specious” and that the company’s “owners and senior officers have consistently and diligently exercised their management responsibilities . . . to assure that BMAC . . . operations are conducted in scrupulous compliance with all requirements of the law.” June 9, 2005 Supplement to Answer of BMAC, at 4.

More remarkably, given the acknowledgment of wrong-doing by the individual who had been certifying the accuracy of BMAC’s DOT filings, BMAC requested the Department to issue an expedited order granting BMAC’s pending applications. Id. at 4-5.

In its third post bond forgery filing, BMAC clarified that its former general counsel was no longer employed by BMAC or any affiliated corporation. June 15, 2005 Answer of BMAC, at 2. BMAC asserted that the former employee’s error “in no way reflects adversely on the compliance disposition of BMAC’s owners or any other senior management personnel” and urged the Department “to grant BMAC’s long-pending applications for authority to operate B-727 aircraft without any further delay.” Id. at 3. “The time has come -- indeed the time is long past due --” BMAC argued, “for the Department to put an end to the unconscionably
long delays in the granting of BMAC’s clearly meritorious applications for authority.” Id. at 4.

There was no indication in any of these three filings of any investigation of the former general counsel’s activities in this proceeding.

Only after July 20, 2005 -- nearly seven weeks after the disclosure of the bond forgery -- when the Department essentially directed an investigation of the former general counsel’s conduct and a verification of a number of BMAC’s filings, did BMAC disclose the massive fraud that had been perpetrated on the Department.

But revisionist history aside, the Department’s common sense conclusion that BMAC’s senior management knew or should have known of the inaccurate admissions is unassailable.

BMAC’s general counsel and his superiors worked together in close quarters. BMAC’s two principal owners “closely monitored BMAC’s operations and financial affairs.” March 3, 2008 Objections and Comments of BMAC, at 19. These owners and senior officers were “not disinterested or uninvolved” in BMAC’s large aircraft proceeding -- rather, they were “riveted by it” and “closely followed every development in it on a regular basis and sometimes on a daily basis.” Id. at 24. This is natural, and to be expected, given that BMAC repeatedly
informed DOT how critical the large aircraft authority was to the well-being of the company.

In these circumstances, it is implausible that these owners and senior officers would not have read, or at least made detailed inquiries about, BMAC’s filings with DOT. This is particularly true with respect to the filings about BMAC’s finances given that the financial condition of the company was contested from the time the company filed for large aircraft authority. Certainly, any reports about the case would have included a description of the questions being asked by the Department and opposing parties. And certainly owners and senior officers would ask how BMAC was responding to those questions. The fact that it was taking years for the company to get its sought-after authority would have surely spurred a review of the filings. And when DOT issued orders granting some of the sought authority, those orders surely would have been read and the inaccurate financial information would have been readily apparent.

As DOT rightly concluded, either this collective review or oversight would have taken place, or BMAC’s management has demonstrated such a “glaring lack of competence” as to render the company unfit. Order 2008-2-3 at 16-17.

BMAC argues that DOT should look beyond the failings demonstrated in this proceeding to the “safe, successful, reliable, and lawfully-compliant” behavior with respect to operations of other companies where BMAC’s owners and senior
officers have demonstrated their “attitude of diligence devoted to compliance with
the requirements of law.” March 3, 2008 Objections and Comments of BMAC, at
26-27.

In ALPA’s view, BMAC’s senior owners and officers have demonstrated a
lack of compliance disposition at companies other than BMAC that they own and
manage as well sufficient to warrant certificate revocation. Indeed, ALPA’s
December 29, 2004 motion to revoke BMAC’s certificate is based solely on a
number of decisions of courts, arbitrators and administrative bodies that found
that such companies had violated a range of laws and contractual commitments.

Finally, BMAC argues that the Department’s fitness findings should apply
only to BMAC’s ability to operate large aircraft and notes that it hopes to sell its
certificate authority to operate small aircraft in the near future.

The Department is clearly correct in proposing to revoke all BMAC’s
authority. The repeated submission over a two and one-half year period of
patently false documents in this proceeding -- a sustained course of malfeasance
which may be without parallel in the Department’s history -- as well as the
numerous other demonstrations of a lack of compliance disposition contained in
ALPA’s petition to revoke bear directly on the fitness of BMAC’s owners and
senior managers to operate any airline.
As for the plan to sell BMAC’s certificate, maybe the sale will occur, maybe it will not. BMAC repeatedly has been wrong about its predictions of company action in this proceeding. See, e.g., October 11, 2005 letter from BMAC President David Fink to Secretary Mineta asserting that the company was on the “brink of shutting down” and was facing “imminent demise”; November 14, 2005 “Final Petition” of BMAC (at 2, 7), stating that the petition was a “last-gasp effort” because without expanded large aircraft authority the company would soon “be forced to go out of business.”

But even if BMAC’s certificates are sold to unrelated entities, the Department should make final its conclusions about the fitness of the company’s senior owners and officers to own or operate an air carrier. The approach of these individuals was not one of complying or explaining when confronted with credible questions about their fitness. Rather, it was one of resistance, denial, and stonewalling, even after the bond forgery came to light. These owners and officers could well attempt to own and/or manage another air carrier in the future. They still control the Pan American trademark and they, in fact, currently have an ownership and management role in Pan American World Airways Dominica. See, DOT Docket 2007-29368.
CONCLUSION

For the foregoing reasons, DOT should make final the findings in Order 2008-2-3 with respect to BMAC's fitness and, if the company remains under the current ownership and management, revoke all of its certificate authority.

Respectfully submitted,

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Dated: March 10, 2008
CERTIFICATE OF SERVICE

I, Janice A. Reed, hereby certify that on this 10th day of March, 2008 a true and correct copy of the Answer of Air Line Pilots Association to Objections and Comments of Boston-Maine Airways Corp. in Response to Show Cause Order 2008-2-3 was served as follows:

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