

S E R V E D
March 13, 2008
FEDERAL MARITIME COMMISSION

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WASHINGTON, D.C.

DOCKET NO. 06-05

VERUCCI MOTORCYCLES, LLC

v.

SENATOR INTERNATIONAL OCEAN, LLC

**ORDER DISMISSING COMPLAINT FOR FAILURE TO COMPLY WITH THE
COMMISSION'S RULES OF PRACTICE AND PROCEDURE AND
ORDERS ENTERED IN THIS PROCEEDING¹**

On December 4, 2007, I entered a Procedural Order setting out a schedule for the parties to file Rule 95 statements and other documents. *Verucci Motorcycles, LLC v. Senator International Ocean, LLC*, FMC No. 06-05 (ALJ Dec. 4, 2007) (December 4, 2007, Procedural Order). *Inter alia*, the Procedural Order required *pro se* complainant Verucci Motorcycles, LLC, to file its Rule 95 Statement and other documents on or before January 31, 2008. *Id.* at 2-4. *See also* 46 C.F.R. § 502.95.

¹ Complainant has the right to file an appeal to the Commission within 22 days of date of service of this order. See 46 C.F.R. § 502.227(b)(1).

In a second order entered on December 4, 2007, I granted in part and denied in part the Motion to Compel Discovery filed by respondent Senator International Ocean, LLC. *Verucci Motorcycles, LLC v. Senator International Ocean, LLC*, FMC No. 06-05 (ALJ Dec. 4, 2007) (Memorandum and Order on Motion to Compel Discovery). That order required Verucci to serve supplemental responses under oath to specified items in Senator's discovery requests on or before December 21, 2007. *Id.* at 18. On December 18, 2007, I received Verucci's document entitled "Reply to Motion to Compel Discovery." On December 21, 2007, I issued a second order requiring Verucci to serve supplemental responses under oath to specified items in Senator's discovery requests and to file those responses with the Commission on or before January 7, 2008. *Verucci Motorcycles, LLC v. Senator International Ocean, LLC*, FMC No. 06-05, slip op. at 28-29 (ALJ Dec. 21, 2007) (Second Memorandum and Order on Motion to Compel Discovery). That order also specifically stated that the deadlines set out in the December 4, 2007, Procedural Order would remain in effect. *Id.* at 29.

As of February 21, 2008, Verucci had not filed with the Commission its Rule 95 statement and other documents required by the December 4, 2007, Procedural Order. Commission Rule 95 provides: "Failure to file a prehearing statement, unless waiver has been granted by the presiding officer, may result in dismissal of a party from the proceeding, dismissal of a complaint, judgment against respondents, or imposition of such other sanctions as may be appropriate under the circumstances." 46 C.F.R. § 502.95(c).

As of February 21, 2008, Verucci had not filed with the Commission its supplemental responses to Senator's discovery. Commission Rule 210 provides:

Sanctions for failure to comply with [discovery] order. If a party or an officer or duly authorized agent of a party refuses to obey an order requiring such party to answer designated questions or to produce any document or other thing for inspection, copying or photographing or to permit it to be done, the presiding officer may make such orders in regard to the refusal as are just, and among others, the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence or an order that with respect to matters regarding which the order was made or any other designated fact, inferences will be drawn adverse to the person or party refusing to obey such order;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any party thereto, or rendering a judgment by default against the disobedient party.

46 C.F.R. § 502.210(a).

On February 21, 2008, I issued a *sua sponte* order requiring Verucci to show cause on or before March 7, 2008, why its complaint should not be dismissed or other sanctions imposed for failure to comply with the Commission's Rules of Practice and Procedure or orders entered in this proceeding. As of this date, Verucci has not responded to the show cause order.

Verucci has been represented in this proceeding by its president, Pierre Hachar, who is not an attorney. As stated in an earlier order in this proceeding:

Pleadings of *pro se* litigants are held to "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Sparrow v. United Air Lines, Inc.*, 216 F.3d 1111, 1113 n.2 (D.C. Cir. 2000). The Supreme Court's instruction in *Haines* is construed to encompass all filings submitted by *pro se* litigants, not just their pleadings. See, e.g., *Richardson v. United States*, 193 F.3d 545, 548 (D.C. Cir. 1999) ("[c]ourts must construe *pro se* filings liberally"); *Voinche v. Federal Bureau of Investigation*, 412 F. Supp. 2d 60, 70 (D.D.C. 2006) (observing that "[t]his Court gives *pro se* parties the benefit of the doubt and may ignore some

technical shortcomings of their filings” and applying the *Haines* rule to a plaintiff’s summary judgment motion); *Calloway v. Brownlee*, 366 F. Supp. 2d 43, 55 (D.D.C. 2005) (the Court “must take pains to protect the rights of *pro se* parties against the consequences of technical errors”) (citing *Haines*, 404 U.S. at 520).

Verucci Motorcycles, LLC v. Senator International Ocean, LLC, FMC No. 06-05, slip op. at 6 (ALJ March 22, 2007) (Memorandum and Order on Respondent’s Motion to Dismiss for Lack of Jurisdiction over the Subject Matter and Failure to State a Cause of Action, or in the Alternative a Motion for Summary Judgment). Nevertheless, a *pro se* litigant must comply with procedural rules. *Saeid B. Maralan (aka Sam Bustani), Possible Violations*, 28 S.R.R. 931, 945 (ALJ 1999).

Verucci has failed to comply with the Commission’s Rules of Practice and Procedure and orders entered in this proceeding and has failed to respond to the show cause order. Therefore, it is hereby

ORDERED that the complaint herein filed by Verucci Motorcycles, LLC, be **DISMISSED** with prejudice for failure to comply with the Commission’s Rules of Practice and Procedure and orders entered in this proceeding.

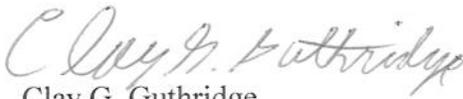
SENATOR’S REQUEST FOR ATTORNEY’S FEES

On March 10, 2008, respondent Senator International Ocean, LLC, filed a document entitled “Respondent’s Proposed Finding of Fact” accompanied by two documents from a related case in a Florida state court: *Senator International Ocean, LLC v. Wuxi Futong Motorcycles Co. Ltd. and Verucci Motorcycles, LLC*, No. 06-05160-CA-32 (11th Jud. Cir. Sept. 11, 2007) (Final Summary Judgment Order on Veruccic [sic] Counterclaims Related to Ten Containers Seized at Port Everglades) (dismissing Verucci’s counterclaims with prejudice); *Senator International Ocean, LLC*

v. Wuxi Futong Motorcycles Co. Ltd. and Verucci Motorcycles, LLC, No. 06-05160-CA-32 (11th Jud. Cir. Nov. 19, 2007) (Final Judgment for Plaintiff(s)) (entering judgment for Senator in the amount of \$125,674.73 (principal, pre-judgment interest, and costs)). Senator argues that “Verucci has failed to meet a single burden of proof of its baseless allegations.” (Respondent’s Proposed Finding of Fact ¶ 13.) “[G]iven that Verucci’s claims against Senator are entirely groundless, it is within this Court’s discretion to award attorney’s fees to Respondent.” *Id.* ¶ 14 (citing *AAEL America Africa Europe Line GMBH v. Virginia International Trade & Investment Group LLC*, 27 S.R.R. 825, 827 (1996) (“The award of attorneys fees is within the discretion of the Commission. Were AAEL’s complaint against Mr. Joyce a frivolous one, or one intended purely to harass him, without any basis or substance, then attorneys fees for Mr. Joyce might be appropriate.”)). Senator seeks an award of \$26,238.00 in attorney’s fees.

As the complaint in this proceeding is being dismissed for failure to comply with the Commission’s Rules of Practice and Procedure and orders entered in this proceeding, it is not necessary to enter findings of fact on the merits. The fact that the Florida court found against Verucci on its counterclaims does not establish that Verucci’s FMC claims were frivolous or intended purely to harass. Therefore, it is hereby

ORDERED that Senator’s request for attorney’s fees be **DENIED**.


Clay G. Guthridge
Administrative Law Judge