

ORIGINAL

(S E R V E D)  
( NOVEMBER 27, 2000 )  
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

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DOCKET NO. 99-16

CAROLINA MARINE HANDLING, INC.

v.

SOUTH CAROLINA STATE PORTS AUTHORITY, ET AL.

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ORDER HOLDING APPEAL IN ABEYANCE

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This proceeding is before us on Respondent Charleston Naval Complex Redevelopment Authority's ("RDA") appeal of the presiding officer's denial of RDA's Motion to Dismiss the complaint in this proceeding.<sup>1</sup> The presiding officer, Administrative Law Judge ("ALJ") Frederick M. Dolan, certified RDA's appeal to the Federal Maritime Commission ("FMC" or "Commission"), pursuant to Rule 153

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<sup>1</sup> This case was initiated on the complaint of Carolina Marine Handling ("CMH") that RDA, the South Carolina State Ports Authority ("SCSPA"), and Charleston International Projects, Inc. and Charleston International Ports, LLC, (collectively "CIP") violated numerous Shipping Act prohibitions in connection with the lease by RDA to SCSPA of property at the Charleston Naval Complex for use as a marine terminal and SCSPA's licensing of that same property to CIP for operation as a breakbulk marine terminal. CMH had also sought to obtain property at the Charleston Naval Complex for operation as a breakbulk marine terminal. Motions to dismiss the complaint were filed by all of the respondents on various grounds, to which CMH responded.

of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.153.<sup>2</sup>

RDA's Motion to Dismiss and its appeal are based on, *inter alia*, its contention that, as an arm of the State of South Carolina, it is immune from complaint proceedings instituted by individuals pursuant to the Eleventh, Amendment to the U.S. Constitution.<sup>3</sup> RDA made this argument in its Motion to Dismiss before the ALJ. Respondent SCSPA also claimed immunity from complaint proceedings under the Eleventh Amendment in its own Motion to Dismiss the proceeding before the ALJ. The ALJ denied both Motions to Dismiss in his Ruling on Respondents' Motions to Dismiss served on May 2, 2000 ("May 2 Ruling"), based on the Commission's earlier decision on the same issue in South Carolina Maritime Services, Inc. v. South Carolina State Ports Authority, 28 S.R.R. 1385 (2000) ("Docket No. 99-21"), reasoning that it rendered the issue of Eleventh Amendment immunity from Commission complaint

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<sup>2</sup> Rule 153 provides, in relevant part, that "[r]ulings of the presiding officer may not be appealed prior to or during the course of the hearing, or subsequent thereto, if the proceeding is still before him or her, except where the presiding officer shall find it necessary to allow an appeal to the Commission to prevent substantial delay, expense, or detriment to the public interest, or undue prejudice to a party."

<sup>3</sup> Although RDA filed exceptions to and briefed its appeal on other aspects of the ALJ's ruling on its Motion to Dismiss, and the ALJ's certification of RDA's appeal was general in its terms, counsel for RDA and CMH informed the Commission by letter of their agreement that the sole issue of this appeal is the applicability of the Eleventh Amendment. In addition, RDA originally requested oral argument on this appeal; which was opposed by CMH. RDA withdrew that request on October 5, 2000.

proceedings against a state port authority moot in this proceeding.' He further found that "[t]here is no meaningful difference between [SCSPA] and RDA insofar as this issue is concerned and the Commission conclusions in Docket No. 99-21 are applicable to RDA as well." May 2 Ruling at 5.

SCSPA did not seek leave to appeal the ALJ's May 2 Ruling, but filed a Motion to hold this proceeding in abeyance. RDA, on the other hand, filed exceptions to the May 2 Ruling, as well as a Motion for Leave to Appeal the Ruling of the Presiding Officer, pursuant to Rule 153. RDA also asked the ALJ to stay the proceeding pending decision of its appeal to the Commission. CMH opposed these Motions, arguing that it has raised factual issues as to whether either SCSPA or RDA may properly be considered an arm of the state and is therefore entitled to claim Eleventh Amendment immunity, if applicable, which issues were not raised by the complainant in Docket No. 99-21 and which may properly be decided in continued FMC proceedings pending the Fourth Circuit's determination of the appeal.

The ALJ granted both the SCSPA and RDA Motions to hold the proceeding in abeyance in a Ruling issued on July 12, 2000. Noting that his sole basis for denying RDA's Motion to Dismiss was the Commission's Order in Docket No. 99-21, the ALJ certified RDA's

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<sup>4</sup> SCSPA petitioned for review of that decision in the U.S. Court of Appeals for the Fourth Circuit. South Carolina State Ports Authority v. Federal Maritime Comm'n and United States, No. 00-1481 (4<sup>th</sup> Cir. filed April 21, 2000). The case has been briefed and oral argument is tentatively scheduled to be heard during January, 2001.

appeal to the Commission "so that these important questions can be the subject of a final decision, preparatory to court review, if the parties so desire." Order of July 12, 2000 at 23. The Order further stated that this conclusion was warranted because of a wealth of precedents holding that claims to state sovereign immunity are immediately appealable from interlocutory rulings, including Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, 506 U.S. 144 (1993). Id.

Although SCSPA cited Rule 153 for its conclusion that the Ruling was not appealable, as to which RDA reached the opposite conclusion, it is clear from SCSPA's Motion to hold this proceeding in abeyance that it considered this procedural avenue adequate to protect the State's alleged right to avoid the indignity of being subjected to litigation of complaints before the FMC in light of its pending appeal of Docket No. 99-21 on its Eleventh Amendment arguments. Neither RDA nor the ALJ (in certifying RDA's appeal) refers to the ALJ's conclusion (in the May 2 Ruling) that no difference exists with respect to this issue between SCSPA and RDA. Neither party before us addresses why the putative right to be free from privately-instituted litigation which allegedly arises from the immunity of the State of South Carolina is not sufficiently protected in this case by holding the case in abeyance as to RDA pending the decision of the Fourth Circuit.

Thus, at the present time, one Respondent claiming to be immune as an arm of the State of South Carolina has requested and been granted a stay of these proceedings pending a determination of

its claim on this very issue by the Fourth Circuit, while a second Respondent claiming immunity as an arm of the same state has requested, in essence, that the Commission either alter its ruling in the case on appeal or reiterate it so that this second Respondent may challenge it in court.<sup>5</sup> RDA, having been granted at its request a stay of this proceeding by the ALJ pending our determination of this appeal, is not presently being required to respond to the complaint. In light of the present state of the issue in this proceeding as well as the proceedings on review of our order in Docket No. 99-21, issuance of an additional Commission order on the merits of this issue would be a waste of administrative and judicial resources as well as those of the parties.

THEREFORE, IT IS ORDERED THAT the appeal of the Administrative Law Judge's May 2 Ruling is held in abeyance pending determination by the U.S. Court of Appeals for the Fourth Circuit of the Petition

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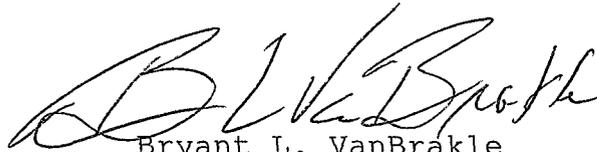
<sup>5</sup>RDA "does not necessarily expect that the Commission will reverse an opinion it issued" only months ago, but, if the Commission "is adamant" and adheres to its conclusion, RDA states that it is "entitled to an order stating that conclusion and supporting reasoning" so that RDA may assure itself of the opportunity to seek judicial review of this issue:

Regardless of whether the Commission revises its views on the applicability of the 11<sup>th</sup> Amendment to FMC proceedings brought by private complainants, grant of this motion [for leave to appeal] is essential to facilitate RDA's prompt access to having the matter heard by a Circuit Court of Appeals of appropriate venue.

Brief in Support of [RDA's] Exceptions to the Presiding Officer's Ruling at 6-7.

for Review in South Carolina State Ports Authority v. Federal  
Maritime Comm'n and United States, No. 00-1481 (4<sup>th</sup> Cir.)

By the Commission.



Bryant L. VanBrakle  
Secretary