

ORIGINAL

(S E R V E D)
(February 25, 2002)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 02-02

**CANAVERAL PORT AUTHORITY -
POSSIBLE VIOLATIONS OF SECTION 10(b)(10),
UNREASONABLE REFUSAL TO DEAL OR NEGOTIATE**

ORDER TO SHOW CAUSE

Respondent Canaveral Port Authority, a legal entity created by the State of Florida in 1953, operates as a marine terminal operator (“MTO”) as that term is defined by section 3(14) of the Shipping Act of 1984, 46 U.S.C. app. § 1702(14) (“1984 Act”). The Federal Maritime Commission (“Commission”) is charged with the responsibility of regulating the activities of MTOs under various sections of the 1984 Act. Section 10(b)(10) of that Act, 46 U.S.C. app. § 1709(b)(10), provides that no common carrier may, “unreasonably refuse to deal or negotiate.” That prohibition is made applicable to MTOs by section 10(d)(3) of the 1984 Act, 46 U.S.C. app. § 1709(d)(3).

Pursuant to Florida law, the Canaveral Port Authority is empowered to grant franchises to persons or corporations to perform various functions in the port. This authority has been interpreted by the port to apply to the franchising of tug assist and towing services, and to preclude anyone from providing tug services in Port Canaveral without such a franchise. Under this system, only one

company has been authorized to provide commercial tug services in Port Canaveral for more than forty years.’

In June 2000, Tugz International, LLC (“Tugz International”), a member of the Great Lakes Group, submitted a “Tugboat and Towing Franchise Application” to the Canaveral Port Authority.² In September 2001, Tugz International submitted an updated “Tugboat and Towing Franchise Application” to the port. The cover letter dated September 182001, which accompanied this updated application, contains the following introductory paragraph:

On June 13, 2000, Tugz International . . . filed [its original] application with the Canaveral Port Authority. On July 19, 2000, the Canaveral Port Authority voted to deny Tugz’ request to be included in the Hearing then being conducted on the application of Petchem Inc. for a non-exclusive tugboat franchise. On July 21, 2000, the Canaveral Port Authority voted to deny Petchem’s application. The Canaveral Port Authority, however, has never formally heard Tugz’ application or taken any action on it, and the application remains pending.

By letter dated September 25, 2001, Mr. Malcolm McLouth, Executive Director of the Canaveral Port Authority, responded to Tugz International’s September 18 letter and updated application. He addressed the status of Tugz International’s application as follows:

Currently, Tugz International . . . does not have an application pending with the Canaveral Port Authority for a non-exclusive tug and towing franchise. One year ago, the Canaveral Port Authority Board of Commissioners denied Tugz’ request to participate as a party in the July 21, 2000, hearing of convenience and necessity on Petchem, Inc.’s application for a tug and towing franchise in Port Canaveral. That hearing went forward as scheduled and the Port Authority did not accept an application from Tugz for a franchise.

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¹Seabulk Towing, Inc., formerly named Hvide Marine Towing, Inc., dba Port Canaveral Towing, has been the sole tug company in Port Canaveral since approximately 1958.

²In addition to Tugz International, the Great Lakes Group consists of Admiral Barge and Towing Company, The Great Lakes Towing Company, and Puerto Rico Towing & Barge Co.

In conclusion, the staff of the Canaveral Port Authority does not recommend that another tug and towing franchise be issued in Port Canaveral at this time. Our position is clear and I will not be placing Tugz' application on the Port Authority's meeting agenda.

It appears that no action has been taken to consider the application of Tugz International for a franchise to perform tug and towing services in Port Canaveral, and that the Canaveral Port Authority believes that it is under no obligation to consider that application.

Section 10(b)(10) of the 1984 Act was added to the statute effective May 1, 1999, as part of the Ocean Shipping Reform Act of 1998 ("OSRA"), Pub.L. No.105-258, 112 Stat. 1907. The legislative history of that section is brief, but the Senate Committee Report on S.414, which became OSRA, indicates that the section was intended to replace former sections 10(b)(12) and 10(b)(13) of the 1984 Act which addressed refusals to deal or negotiate, albeit in a more circumscribed manner.³ S. Rep. No. 105-61, 105th Cong. 1st Sess. 27 (1997).

When considered in connection with other changes made to the 1984 Act by OSRA, the the broad language of section 10(b)(10) would appear to be particularly applicable to a situation in which a refusal to deal or negotiate results in the stifling of competition. Both the title of the bill which became OSRA, and the Purpose of the Bill, as set forth in the Senate Report, *supra*, at 1, emphasize that OSRA is intended to encourage competition. In addition, OSRA added a new subsection to the 1984 Act's Declaration of Policy as follows:

'Sections 1 O(b)(12) and (13) of the 1984 Act, prior to OSRA, provided that no common carrier may:
 (12) subject any particular person, locality, or description of traffic to an unreasonable refusal to deal or any undue or unreasonable prejudice or disadvantage in any respect whatsoever;
 (13) refuse to negotiate with a shippers' association;

46 U.S.C. app. §§1709(b)(12) and (13). The prohibitions contained in section 10(b)(12) were made applicable to MTOs by the language of section 10(d)(3), 46 U.S.C. app. § 1709(d)(3).

(4) to promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.

46 U.S.C. app. § 1701(4).

It would appear that the Canaveral Port Authority's refusal to consider the application of Tugz International for a franchise to perform tug and towing services in Port Canaveral has the effect of preventing competition, and of maintaining a monopoly for the single tug company that has performed commercial tug services in the port for more than forty years.

NOW THEREFORE, IT IS ORDERED, That, pursuant to section 11 of the 1984 Act, 46 U.S.C. app. § 1710, the Canaveral Port Authority is hereby directed to show cause why it should not be found in violation of section 10(b)(10) of the 1984 Act, 46 U.S.C. app. § 1709(b)(10), for its refusal to consider the application for a tug and towing franchise in Port Canaveral filed by Tugz International in June 2000, and updated in September 2001.

IT IS FURTHER ORDERED, That this proceeding is limited to the submission of affidavits of facts and memoranda of law.

IT IS FURTHER ORDERED, That any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.72. Such petition shall be accompanied by the petitioner's memorandum of law and affidavits of fact, if any, and shall be filed no later than the day fixed below.

IT IS FURTHER ORDERED, That Canaveral Port Authority is named as Respondent in this proceeding. Affidavits of fact and memoranda of law shall be filed by Respondent and any intervenors in support of Respondent no later than March 27, 2002.

IT IS FURTHER ORDERED, That the Commission's Bureau of Enforcement is made a party to this proceeding.

IT IS FURTHER ORDERED, That reply affidavits and memoranda of law shall be filed by the Bureau of Enforcement and any intervenors in opposition to Respondent no later than April 26, 2002.

IT IS FURTHER ORDERED, That rebuttal affidavits and memoranda of law shall be filed by Respondent and intervenors in support no later than May 13, 2002.

IT IS FURTHER ORDERED, That,

(a) Should any party believe that a further evidentiary hearing is required subsequent to the submission of affidavits of facts and memoranda of law, that party must submit, no later than May 28, 2002, a request for such hearing together with a statement setting forth in detail the facts to be proved, the relevance of those facts to the issues in this proceeding, a description of the additional evidence which would be adduced, and why such evidence cannot be submitted by affidavit; and

(b) Should any party believe that an oral argument is required, that party must submit, no later than May 28, 2002, a request specifying the reasons therefor and why argument by memorandum is inadequate to present the party's case.

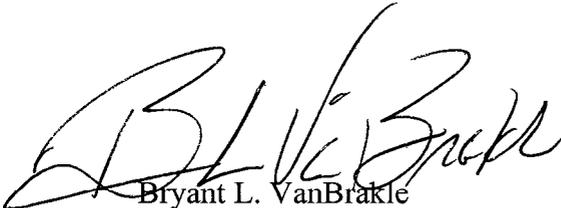
IT IS FURTHER ORDERED, That, pursuant to 46 C.F.R. § 502.10, Subpart L of the Commission's Rules of Practice and Procedure, 46 C.F.R. §§ 502.201 through 502.210, which provides for depositions, interrogatories and discovery, is hereby waived for purposes of this proceeding until and unless the Commission determines to grant a request for a further evidentiary hearing or to refer any matter arising out of this proceeding to an administrative law judge for assessment of civil penalties pursuant to section 13 of the 1984 Act, 46 U.S.C. app. § 1714.

IT IS FURTHER ORDERED, That notice of this Order be published in the Federal Register, and a copy be served on parties of record.

IT IS FURTHER ORDERED, That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.118, as well as being mailed directly to all parties of record.

FINALLY, IT IS ORDERED, That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.61, the final decision of the Commission in this proceeding shall be issued by November 22, 2002.

By the Commission.



Bryant L. VanBrakle
Secretary

FEDERAL MARITIME COMMISSION

[DOCKET NO. 02-02]

CANAVERAL PORT AUTHORITY -
POSSIBLE VIOLATIONS OF SECTION 10(b)(10),
UNREASONABLE REFUSAL TO DEAL OR NEGOTIATE

Notice of Show Cause Proceeding

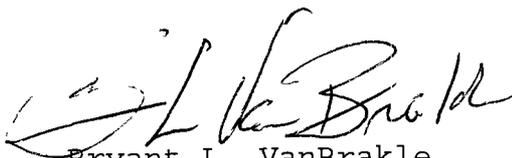
Notice is given that, on February 25, 2002, the Federal Maritime Commission ("Commission") served an Order to Show Cause ("Order") on the Canaveral Port Authority ("Port").

It appears that the Port has refused to consider the application of Tugz International LLC ("Tugz") for a franchise to perform tug and towing services. This refusal appears to have the effect of preventing competition and of maintaining a monopoly for the single tug company in the port.

The Order directs the Port to show cause why it should not be found in violation of section 10(b)(10) of the 1984 Act, 46 U.S.C. app. § 1709(b)(10), for its refusal to consider Tugz' application.

The Order's full text may be viewed on the Commission's homepage at <http://www.fmc.gov>, or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW, Washington, DC. Any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 C.F.R. §502.72 and the

procedural schedule set forth **in the** Commission's **February 25**
Order.

A handwritten signature in black ink, appearing to read "Bryant L. VanBrakle". The signature is fluid and cursive, with the first name being the most prominent.

Bryant L. VanBrakle
Secretary

02-02

2096, Vessel: ADVENTURE OF THE SEAS

Sea Cloud Cruises GmbH, Schiffahrts-Gesellschaft Hansa Columbus mbH & Co., KG, Hansa Shipmanagement GmbH & Co., Hansa Columbus Sailing Ltd., Valletta, and Hapag-Lloyd Kreuzfahrten GmbH, Ballindamm 17, 20095 Hamburg, Germany, Vessel: SEA CLOUD II
Star Clippers, Ltd., Star Clipper N.V., and Luxembourg Shipping Services S.A. (d/b/a Star Clippers), 4101 Salzedo Street, Coral Gables, FL 33146, Vessel: STAR CLIPPER

Dated: March 8, 2002.

Bryant L. VanBrakle,
Secretary

[FR Doc. 02-6081 Filed 3-12-02, 8:45 am]
BILLING CODE 6736-01-P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89-777 (46 U.S.C. 817 (e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

The Delta Queen Steamboat Co., and Great River Cruise Line, L.L.C., 1380 Port of New Orleans Place, New Orleans, LA 70130, Vessel: DELTA QUEEN

The Delta Queen Steamboat Co., and Great Ocean Cruise Line, L.L.C., 1380 Port of New Orleans Place, New Orleans, LA 70130, Vessel: MISSISSIPPI QUEEN

Holland America Line-Westours Inc. (d/b/a Holland America Line), HAL Cruises Limited, Holland America Line N.V., and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, WA 98119, Vessels: OOSTERDAM, PRINSENDAM and ZUIDERDAM

Holland America Line-Westours Inc. (d/b/a Windstar Cruises), Wind Spirit Limited, and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, WA 98119, Vessel: WIND SURF

Luxembourg Shipping Services S.A. (d/b/a Star Clippers), 4101 Salzedo Street, Coral Gables, FL 33146, Vessel: STAR CLIPPER

Norwegian Cruise Line Limited (d/b/a Norwegian Cruise Line), 7665

Corporate Center Drive, Miami, FL 33126, Vessel: NORWEGIAN DAWN

Sea Cloud Cruises GmbH, Schiffahrts-Gesellschaft Hansa Columbus mbH & Co., KG, and Hapag-Lloyd Kreuzfahrten GmbH Ballindamm 17, 20095 Hamburg, Germany, Vessel: SEA CLOUD II

Dated: March 8, 2002

Bryant L. VanBrakle,
Secretary.

[FR Doc 02-6082 Filed 3-12-02; 8:45 am]
BILLING CODE 6730-61-P

FEDERAL MARITIME COMMISSION

[Docket No. 02-03]

Exclusive Tug Arrangements in Port Canaveral, FL; Notice of investigation and Hearing

Notice is given that, on February 25, 2002, the Federal Maritime Commission ["Commission"] served an Order of Investigation and Hearing ("Order") on the Canaveral Port Authority ("Port").

The Port requires prospective suppliers of various services, including tug services, to obtain a franchise from the port. Tugz International, LLC ("Tugz") filed an application for a tug and towing franchise in June 2000. At its July 21, 2000 hearing, the Port determined not to consider Tugz/ application. Tugz' application was updated in September 2001, and is still pending. On April 1, 2001, the Port extended the right of Seabulk Towing, Inc., dba Port Canaveral Towing ("Seabulk") to perform towing services for another ten years.

This proceeding therefore seeks to determine whether the Port is in violation of sections 10(d)(1) and/or 10(d)(4) of the 1984 Act by its actions resulting in the continuation of Seabulk's monopoly. If so, this proceeding also shall determine whether civil penalties should be assessed and, if so, in what amount, and whether a cease and desist order should be issued.

Any person having an interest in participating in this proceeding may file a petition for leave to intervene in accordance with Rule 72 of the Commission's rules of practice and procedure, 46 CFR 502.72.

Bryant L. VanBrakle,
Secretary.

[FR Doc. 02-6077 Filed 3-12-02; 8:45 am]
BILLING CODE 6730-61-M

FEDERAL MARITIME COMMISSION

[Docket No. 02-02]

Canaveral Port Authority v-Possible Violations of Section 10(b)(10), Unreasonable Refusal to Deal or Negotiate; Notice of Show Cause Proceeding

Notice is given that, on February 25, 2002, the Federal Maritime Commission ("Commission") served an Order to Show Cause ("Order") on the Canaveral Port Authority ("Port").

It appears that the Port has refused to consider the application of Tugz International LLC ("Tugz") for a franchise to perform tug and towing services. This refusal appears to have the effect of preventing competition and of maintaining a monopoly for the single tug company in the port.

The Order directs the Port to show cause why it should not be found in violation of section 10(b)(10) of the 1984 Act, 46 U.S.C. app. sec. 1709(b)(10), for its refusal to consider Tugz' application.

The Order's full text may be viewed on the Commission's homepage at <http://www.fmc.gov> or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW., Washington, DC. Any person having an interest and desiring to intervene in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's rules of practice and procedure, 46 CFR 502.72 and the procedural schedule set forth in the Commission's February 25 Order.

Bryant L. VanBrakle,
Secretary

[FR Doc. 02-6078 Filed 3-12-02; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder-Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.