

( S E R V E D )  
( August 1, 2002 )  
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 02- 10

All Flags Forwarding Inc. -- Possible Violations of  
Sections IO(a)( 1) and 19(d) of the Shipping Act of 1984, as well as Section 19(e)  
of the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998

**ORDER OF INVESTIGATION AND HEARING**

All Flags Forwarding Inc. (“All Flags”) is a previously licensed ocean freight forwarder (FMC License No. 2770) located at 147-35 1 83<sup>rd</sup> Street in Jamaica, New York. Until May 12, 2002, All Flags maintained an ocean freight forwarder bond, No. 50552, in the amount of \$60,000 with Aegis Security Insurance Company located in Schaumburg, Illinois. All Flags also operates as a tariffed and bonded non-vessel-operating common carrier (“NVOCC”). Prior to the enactment of the Ocean Shipping Reform Act of 1998 (“OSRA”), All Flags held itself out as an NVOCC pursuant to its tariff, FMC No. 005633-100, which was filed on August 8, 1997 in the Federal Maritime Commission’s (“Commission”) Automated Tariff Filing and Information System (“ATFI”). All Flags continues to hold itself out as an NVOCC pursuant to a tariff published by Glenserve

Company. Until May 12, 2002, All Flags maintained an NVOCC bond, No. 50553, in the amount of \$85,000 with Aegis Security Insurance Company located in Schaumburg, Illinois.’

All Flags was incorporated in the State of New York on January 26, 1981. Mr. Joseph Catania occupies the position of President and owns 90% of the capital stock. The other 10% of the stock is owned by Mr. Catania’s son, Joseph S. Catania, who occupies the position of Vice President. All Flags has a branch office located in Houston, Texas. According to its OTI application, All Flags lists this branch office as not being separately incorporated.

Based on evidence available to the Commission, it appears that, with respect to thousands of shipments, from April 2, 1997 through August 17, 1999, All Flags and its principals knowingly and willfully collected freight forwarder compensation from at least three ocean common carriers without performing any services required for the receipt of such compensation. This activity appears to have resulted from another NVOCC consistently listing All Flags and the name “Joe Catania” in the freight forwarder box on ocean bills of lading for shipments which were being processed entirely by that NVOCC’s employees at its office in Brooklyn, New York. Furthermore, it appears that on at least twenty-one (21) occasions between April 18, 1997 and December 15, 1998, All Flags and its principals knowingly and willfully shared a portion of the compensation with the NVOCC by issuing payments pursuant to apparently unsubstantiated invoices generated by the NVOCC for various alleged services and products. This sharing of compensation effectively reduced the rates that would otherwise be applicable to the ocean transportation of the NVOCC’s shipments.

Section 10(a)(1) of the Shipping Act of 1984 (“1984 Act”), 46 U.S.C. app. 1709(a)(1),

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<sup>1</sup> Subsequent to the termination of All Flags’ financial responsibility on May 12, 2002, the ocean transportation intermediary (“OTI”) license of All Flags was automatically revoked on the same date pursuant to the Commission’s regulations at 46 C.F.R. § 515.26.

prohibits any person from knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means, obtaining or attempting to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. For shipments prior to May 1, 1999, section 19(d), 46 U.S.C. app. 1718(d), provides that a common carrier may compensate an ocean freight forwarder only when such forwarder has certified that it possesses a valid license and that specific services including securing the shipment and preparing the documentation have been performed by the forwarder.\* The Commission's regulations at 46 CFR pt. 5 10<sup>3</sup> affirm the statutory requirement that a forwarder may receive compensation only where it has certified that it has performed the services entitling it to receive payment. See 46 CFR 5 10.23." Furthermore, a freight forwarder is prohibited from "prepar[ing] or fil[ing] or assist[ing] in the preparation or filing of any claim, affidavit, letter of indemnity, or other paper or document concerning a forwarding transaction which it has reason to believe is false or fraudulent, nor shall any licensee knowingly impart to a principal, common carrier or other person, false information relative to any forwarding transaction." 46 CFR 5 10.21(f).<sup>5</sup> Finally, a freight forwarder may not "share, directly or indirectly, any compensation or freight forwarding fee with a shipper, consignee, seller, or

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<sup>2</sup> Effective May 1, 1999, section 19(d) was replaced by section 19(e), 46 U.S.C. app. 1718(e) (1999) pursuant to the enactment of OSRA. However, this amendment has not altered either the substance or the prohibitions of the provision.

<sup>3</sup> Effective May 1, 1999, 46 CFR pt. 5 10 was replaced by 46 CFR pt. 5 15 pursuant to the enactment of OSRA.

<sup>4</sup> 46 CFR 5 15.42.

<sup>5</sup> 46 CFR 515.31(e).

purchaser, or an agent, affiliate, or employee thereof; . . . .” 46 CFR 510.22(a).<sup>6</sup> Under section 13 of the 1984 Act, 46 U.S.C. app. 1712, a party is subject to a civil penalty of not more than \$27,500 for each violation knowingly and willfully committed.<sup>7</sup> Section 19(b) of the 1984 Act, 46 U.S.C. app. 1718(b) (1999), provides that, in the event violations of the 1984 Act are found, the license of All Flags may be suspended or revoked.

NOW THEREFORE, IT IS ORDERED, That pursuant to sections 10, 11, 13, and 19 of the 1984 Act, 46 U.S.C. app. 1709, 1710, 1712, and 1718, an investigation is instituted to determine:

1) whether All Flags Forwarding Inc. violated section 1 O(a)(1) of the 1984 Act and 46 CFR 510.22(a) by directly allowing another NVOCC to obtain ocean transportation at less than the rates and charges otherwise applicable by knowingly and willfully sharing a portion of its unwarranted freight forwarder compensation with that NVOCC;

2) whether All Flags Forwarding Inc. violated section 19(d) of the 1984 Act and 19(e) of the 1984 Act as amended, as well as 46 CFR pts. 510 and 46 CFR pt. 515 as amended, by knowingly and willfully obtaining freight forwarder compensation without performing the services required for the receipt of such compensation;

3) whether, in the event violations of sections 10(a)(1), 19(d), and 19(e) of the 1984 Act and/or 46 CFR pts. 510 and 515 are found, civil penalties should be assessed against All Flags Forwarding Inc. and, if so, the amount of the penalties to be assessed; and

4) whether, in the event violations are found, an appropriate cease and desist order should be issued.

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<sup>6</sup> 46 CFR 515.41(a).

<sup>7</sup> This penalty amount reflects an adjustment for inflation pursuant to the Commission’s regulations at 46 CFR pt. 506.

IT IS FURTHER ORDERED, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding Administrative Law Judge only after consideration has been given by the parties and the presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

IT IS FURTHER ORDERED, That All Flags Forwarding Inc. is designated as Respondent in this proceeding;

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

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

IT IS FURTHER ORDERED, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

IT IS FURTHER ORDERED, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

IT IS FURTHER ORDERED, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

IT IS FURTHER ORDERED, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by August 1, 2003 and the final decision of the Commission shall be issued by December 1, 2003.



Bryant L. VanBrakle  
Secretary

**ORIGINAL**

FEDERAL MARITIME COMMISSION

DOCKET NO. 02-10

ALL FLAGS FORWARDING INC. – POSSIBLE VIOLATIONS  
OF SECTIONS 10(a)(1) and 19(d) OF THE SHIPPING ACT OF 1984,  
AS WELL AS SECTION 19(c) OF THE SHIPPING ACT OF 1984  
AS AMENDED BY THE OCEAN SHIPPING REFORM ACT OF 1998

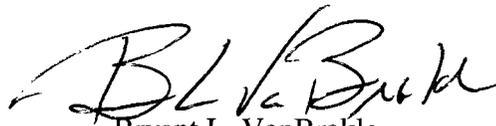
Order of Investigation and Hearing

Notice is given that on August 1, 2002, the Federal Maritime Commission served an Order of Investigation and Hearing on All Flags Forwarding, Inc. (“All Flags”). All Flags is a previously licensed ocean transportation intermediary (“OTI”) operating as a freight forwarder and a non-vessel-operating common carrier. Until May 12, 2002, All Flags maintained an ocean freight forwarder bond and an NVOCC bond. Subsequent to the termination of All Flags’ financial responsibility on May 12, 2002, its OTI license was automatically revoked on the same date pursuant to the Commission’s regulations at 46 CFR 515.26.

It appears that between April 2, 1997 and August 17, 1999, All Flags and its principals knowingly and willfully collected freight forwarder compensation from at least three ocean common carriers on thousands of shipments without performing any of the required functions. This activity appears to have resulted from another NVOCC consistently listing All Flags and the name of its President in the freight forwarder box on oceans bills of lading for shipments processed entirely by that NVOCC’s employees. Furthermore, between April 18, 1997 and December 15, 1998, it appears that on at least twenty-one occasions All Flags and its principals knowingly and willfully shared a portion of the compensation with the NVOCC.

This proceeding therefore seeks to determine (1) whether All Flags violated section 10(a)(1) of the Shipping Act of 1984 (“1984 Act”) and 46 CFR 510.22(a) by directly allowing another NVOCC to obtain ocean transportation at less than the rates and charges otherwise applicable by knowingly and willfully sharing a portion of its unwarranted freight forwarder compensation with that NVOCC; (2) whether All Flags violated section 19(d) of the 1984 Act and 19(e) of the 1984 Act as amended, as well as 46 CFR pts. 510 and 515 as amended, by knowingly and willfully obtaining freight forwarder compensation without performing the services required for the receipt of such compensation; (3) whether, in the event violations of sections 10(a)(1), 19(d), and 19(e) of the 1984 Act and/or 46 CFR 510 and 515 are found, civil penalties should be assessed and, if so the amount, and (4) whether, in the event violations are found, an appropriate cease and desist order should be issued.

The full text of the Order may be viewed on the Commission’s home page at <http://www.fmc.gov/> or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW., Washington, DC. Any person may file a petition for leave to intervene in accordance with 46 CFR 502.72.

  
Bryant L. VanBrakle  
Secretary

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and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by August 11, 2003, and the final decision of the Commission shall be issued by December 12, 2003.

**Bryant L. VanBrakle,**  
*Secretary.*

[FR Doc. 02-20714 Filed 8-14-02; 8:45 am]

BILLING CODE 673041-P

## FEDERAL MARITIME COMMISSION

[Docket No. 02-1 0]

### All Flags Forwarding Inc.-Possible Violations of Sections 10(a)(1) and 19(d) of the Shipping Act of 1984, as Well as Section 19(c) of the Shipping Act of 1984 as Amended by the Ocean Shipping Reform Act of 1998; Order of Investigation and Hearing

Notice is given that on August 1, 2002, the Federal Maritime Commission served an Order of Investigation and Hearing on All Flags Forwarding, Inc. ("All Flags"). All Flags is a previously licensed ocean transportation intermediary ("OTI") operating as a freight forwarder and a non-vessel-operating common carrier. Until May 12, 2002, All Flags maintained an ocean freight forwarder bond and an NVOCC bond. Subsequent to the termination of All Flags' financial responsibility on May 12, 2002, its OTI license was automatically revoked on the same date pursuant to the Commission's regulations at 46 CFR 515.26.

It appears that between April 2, 1997 and August 17, 1999, All Flags and its principals knowingly and willfully collected freight forwarder compensation from at least three ocean common carriers on thousands of shipments without performing any of the required functions. This activity appears to have resulted from another NVOCC consistently listing All Flags and the name of its President in the freight forwarder box on oceans bills of lading for shipments processed entirely

by that NVOCC's employees.

Furthermore, between April 18, 1997 and December 15, 1998, it appears that on at least twenty-one occasions All Flags and its principals knowingly and willfully shared a portion of the compensation with the NVOCC.

This proceeding therefore seeks to determine (1) whether All Flags violated section 10(a)(1) of the Shipping Act of 1984 ("1984 Act") and 46 CFR 510.22(a) by directly allowing another NVOCC to obtain ocean transportation at less than the rates and charges otherwise applicable by knowingly and willfully sharing a portion of its unwarranted freight forwarder compensation with that NVOCC; (2) whether All Flags violated section 19(d) of the 1984 Act and 19(e) of the 1984 Act as amended, as well as 46 CFR parts 510 and 515 as amended, by knowingly and willfully obtaining freight forwarder compensation without performing the services required for the receipt of such compensation; (3) whether, in the event violations of sections 10(a)(1), 19(d), and 19(e) of the 1984 Act and/or 46 CFR parts 510 and 515 are found, civil penalties should be assessed and, if so the amount, and (4) whether, in the event violations are found, an appropriate cease and desist order should be issued.

The full text of the Order may be viewed on the Commission's home page at <http://www.fmc.gov/> or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW., Washington, DC. Any person may file a petition for leave to intervene in accordance with 46 CFR 502.72.

**Bryant L. VanBrakle,**  
*Secretary.*

[FR Doc. 02-20672 Filed 8-14-02; 8:45 am]

BILLING CODE 673061-P

## FEDERAL MARITIME COMMISSION

[Docket No. 02-1 1]

### Empire United Lines Co., Inc.-Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984, and Section 10(b)(2)(A) of the Shipping Act of 1984 as Amended by the Ocean Shipping Reform Act of 1998, as Well as the Commission's Regulations at 48 CFR 515.31 (e) as Amended; Order of Investigation and Hearing

Notice is given that on August 1, 2002, the Federal Maritime Commission served an Order of Investigation and Hearing on Empire United Lines Co., Inc. ("Empire") an ocean transportation intermediary ("OTI") operating as a

non-vessel-operating common carrier. It appears that, with respect to thousands of shipments between April 2, 1997 and October 5, 1999, Empire knowingly and willfully provided false information by listing a freight forwarder on numerous bills of lading for Empire's shipments thereby allowing the freight forwarder to collect unwarranted compensation from several ocean common carriers. Also, between April 18, 1997 and December 15, 1998, it appears that on at least twenty-one occasions Empire collected a portion of the unwarranted compensation from the freight forwarder through invoices for various alleged services and products. It further appears that during the same approximate time period, Empire processed twenty shipments documented by invoices that indicate that the rates assessed and collected differ from those set forth in Empire's ATFI tariff.

This proceeding therefore seeks to determine (1) whether Empire violated section 10(a)(1) of the Shipping Act of 1984 ("1984 Act") by knowingly and willfully obtaining transportation at less than the rates and charges otherwise applicable by the receipt of an unlawful rebate resulting from Empire's collection of a portion of unwarranted freight forwarder compensation from another OTI; whether Empire violated section 10(b)(1) of the 1984 Act and 10(b)(2)(A) of the 1984 Act as amended, by charging different compensation for the transportation of property than the rates set forth in its published tariff; whether Empire violated the Commission's regulations at 46 CFR 515.31(e) as amended, by knowingly and willfully providing false information to several ocean common carriers on documents concerning Empire's shipments; whether, in the event violations of sections 10(a)(1), 10(b), and 10(b)(2)(A) of the 1984 Act and/or 46 CFR 515.31(e) are found, civil penalties should be assessed against Empire and, if so, the amount of the penalties to be assessed; whether, in the event violations of sections 10(a)(1) and 10(b)(1) of the 1984 Act are found, the tariff of Empire should be suspended; whether the OTI license of Empire should be suspended or revoked; and whether, in the event violations are found, an appropriate cease and desist order should be issued.

The full text of the Order may be viewed on the Commission's home page at <http://www.fmc.gov/> or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW., Washington, DC. Any person may file a petition for leave