

ORIGINAL

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(June 17, 2003)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 03-06

Monarch Shipping Lines, Inc., American Lines LLC, Mozart Forwarding, Inc.,
and Peter Karouta Kennedy – Possible Violations of Sections 8(a),
10(b)(2)(A), and 19 of the Shipping Act of 1984, as well as the
Commission’s Regulations at 46 CFR pts. 5 15 and 520

ORDER OF INVESTIGATION AND HEARING

Monarch Shipping Lines, Inc. (“Monarch”) was incorporated in the State of New York on July 24, 2000, and is presently located at 535 Seaview Avenue in Bridgeport, CT 06607. Mr. Peter Karouta Kennedy is Monarch’s owner and President. Monarch holds itself out as a vessel-operating common carrier (“VOCC”) pursuant to a tariff, No. 016969-001, maintained by Sumner Tariff Service, Inc. and published electronically at www.sumnertariff.com. According to information available to the Commission, Monarch regularly transports cargo in the trade from the United States to the Dominican Republic.

American Lines LLC (“American Lines”) is a Connecticut corporation and is located at 535 Seaview Avenue in Bridgeport, CT 06607. Mr. Peter Karouta Kennedy owns and operates American Lines, which holds itself out as a VOCC pursuant to a tariff, No. 0 17967-00 1, maintained by Sumner Tariff Service, Inc. and published electronically at www.sumnertariff.com.

Mozart Forwarding, Inc. (“Mozart”) is a New York corporation and is likewise owned and operated by Mr. Peter Karouta Kennedy. Mozart is a licensed ocean freight forwarder (FMC License No. 3486-R) located at 535 Seaview Avenue in Bridgeport, CT 06607. Mozart maintains an ocean freight forwarder bond, No. 91102, in the amount of \$60,000 with Aegis Security Insurance Company located in Harrisburg, Pennsylvania.¹

Based on evidence available to the Commission, it appears that, from at least May 4, 2000, through August 15, 2000, Monarch knowingly and willfully operated as a common carrier without publishing a tariff showing all of its active rates and charges. Moreover, despite the publication of its tariff, it appears that Monarch has knowingly and willfully provided transportation services as a non-vessel-operating common carrier (“NVOCC”) with respect to thousands of shipments from May 4, 2000, through April 11, 2002, without obtaining an ocean transportation intermediary (“OTI”) license from the Commission and without providing proof of financial responsibility in the form of a surety bond. American Lines, likewise, appears to have knowingly and willfully operated as a common carrier without publishing a tariff from January 1, 2002, through June 13, 2002. Subsequent to the publication of its tariff, it appears that American Lines knowingly and willfully provided transportation services as an NVOCC without obtaining an OTI license from the Commission and without providing proof of financial responsibility in the form of a surety bond.

¹ Mozart represents that it has a branch office located in Philadelphia, Pennsylvania.

As an additional matter, it appears that, from November 23, 2000, through December 23, 2000, Monarch processed at least 105 shipments for one of its customers. It further appears that the rates assessed and collected by Monarch from this customer bear no relation to the rates set forth in Monarch's published tariff. Furthermore, it appears that American Lines also failed to follow the rates and charges in its published tariff.

Furthermore, it appears that Mozart and Peter Karouta Kennedy knowingly and willfully misled the Commission by failing to disclose required information on Mozart's pending FMC-18 application for an NVOCC license.

Section 19 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1718, prohibits any person from providing OTI² services prior to being issued a license from the Commission and obtaining a valid surety bond in a form and amount determined by the Commission to ensure financial responsibility. The Commission's regulations at 46 CFR 515.21 support this obligation by requiring any person operating as an OTI/NVOCC in the United States to provide evidence of financial responsibility in the amount of \$75,000. Furthermore, section 8(a) of the 1984 Act, 46 U.S.C. app. 1707(a), requires NVOCCs to maintain open to public inspection in an automated tariff system, tariffs showing all their active rates, charges, classifications, and practices. The Commission's regulations at 46 CFR 520.3 affirm this statutory requirement by directing each NVOCC to notify the Commission, prior to providing transportation services, as to the location of its tariffs, as well as the publisher used to maintain those tariffs by filing Form FMC-1.

² According to section 3(17) of the 1984 Act, 46 U.S.C. app. 1702(17), an ocean transportation intermediary is defined as either a freight forwarder or a non-vessel-operating common carrier.

Section 10(b)(2)(A) of the 1984 Act as amended by OSRA, 46 U.S.C. app. 1709(b)(2)(A) (1999), prohibits a common carrier from providing service other than in accordance with the rates contained in its published tariff. Pursuant to section 13 of the 1984 Act, 46 U.S.C. app. 1712, a party is subject to a civil penalty of not more than \$30,000 for each violation knowingly and willfully committed, and not more than \$6,000 for other violations.³ Section 13 further provides that a common carrier's tariff may be suspended for violations of sections 10(b)(1) and 10(b)(2) for a period not to exceed one year.

The Commission's regulations at 46 CFR pt. 5 15 establish the procedure and eligibility requirements for licensing ocean transportation intermediaries. Specifically, 46 CFR 5 15.13 authorizes the Commission to review an applicant's qualifications by investigating the accuracy of the information presented by the applicant, as well as the integrity and character of both the applicant and the qualifying individual. The regulations specifically allow the Commission to deny an application if, *inter alia*, the applicant "[h]as made any materially false or misleading statement to the Commission in connection with its application." See 46 CFR 5 15.15. The regulations further allow the Commission to revoke an OTI license if the licensee makes "a materially false or misleading statement to the Commission in connection with an application for a license or an amendment to an existing license." See 46 CFR 5 15.16(a).

NOW THEREFORE, IT IS ORDERED, That pursuant to sections 8, 10, 11, 13, and 19 of the 1984 Act, 46 U.S.C. app. 1707, 1709, 1710, 1712, and 1718 an investigation is instituted to determine:

³ This penalty amount reflects an adjustment for inflation pursuant to the Commission's regulations at 46 CFR pt. 506.

1) whether Monarch Shipping Lines, Inc. and American Lines LLC violated section 8(a) of the 1984 Act and the Commission's regulations at 46 CFR pt. 520 by operating, for a certain period of time, as common carriers without publishing tariffs showing all of their active rates and charges;

2) whether Monarch Shipping Lines, Inc., American Lines LLC, and Peter Karouta Kennedy violated section 10(b)(2)(A) of the 1984 Act by knowingly and willfully providing service in the liner trade at rates and charges other than those specified in Monarch's and American Lines' respective tariffs;

3) whether Monarch Shipping Lines, Inc., American Lines LLC, and Peter Karouta Kennedy violated section 19 of the 1984 Act and the Commission's regulations at 46 CFR pt. 5 15 by operating as non-vessel-operating common carriers in the U.S. trades without obtaining licenses from the Commission and without providing proof of financial responsibility in the form of surety bonds;

4) whether Mozart Forwarding, Inc. and Peter Karouta Kennedy violated the Commission's regulations at 46 CFR pt. 5 15 by knowingly and willfully misleading the Commission in their failure to disclose required information on the FMC-18 application filed by Mozart Forwarding, Inc. to obtain a license to operate as an NVOCC;

5) whether, in the event violations of sections 8(a), 10(b)(2)(A), and 19 of the 1984 Act and/or 46 CFR pts. 515 and 520 are found, civil penalties should be assessed against Monarch Shipping Lines, Inc., American Lines LLC, Mozart Forwarding Inc., and Peter Karouta Kennedy and, if so, the amount of the penalties to be assessed;

6) whether, in the event violations of section 10(b)(2)(A) of the 1984 Act are found, the tariff of Monarch Shipping Lines, Inc. and American Lines LLC should be suspended;

7) whether the ocean transportation intermediary license of Mozart Forwarding, Inc. should be suspended or revoked pursuant to section 19 of the 1984 Act; and

8) whether, in the event violations are found, an appropriate cease and desist order should be issued against Monarch Shipping Lines, Inc., American Lines LLC, Mozart Forwarding, Inc. and Peter Karouta Kennedy.

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 Monarch Shipping Lines, Inc., American Lines LLC, Mozart Forwarding, Inc. and Peter Karouta Kennedy are designated as Respondents 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 June 16, 2004 and the final decision of the Commission shall be issued by October 14, 2004.


Bryant L. VanBrakle
Secretary

Agreement, FMC Agreement No. 011705) and
COSCO Container Lines Company, Limited,
Kawasaki Kisen Kaisha, Ltd.,
YangMing (UK) Ltd.,
Hanjin Container Lines, Ltd. (Acting individually).

Synopsis. The agreement is amended to:
(1) Delete Hanjin Container Lines, Ltd. as a party; (2) change the name of Orient Overseas Container Line [UK] Limited to Dart-ML Limited; and (3) reduce the total space allocation to the charterers to reflect the withdrawal of Hanjin and the reduction of K-Line's allocation.

Agreement No. 011846-001.

Title: CCNI/Maruba Cooperative Working Agreement.

Parties:

Compañía Chilena de Navegación Interoceánica S.A., Maruba S.C.A.

Synopsis: The amendment deletes Article 5(e) from the agreement, which authorizes the parties to discuss and agree on rates and surcharges.

Agreement No.: 201145.

Title: Oakland/Evergreen Marine Terminal Agreement.

Parties:

City of Oakland Board of Port Commissioners, Evergreen Marine Corporation (Taiwan) Ltd.

Synopsis: The agreement is a non-exclusive preference assignment of improved land and water area and four cranes at the port of Oakland. The agreement runs through June 2, 2013.

By Order of the Federal Maritime Commission.

Dated: June 20, 2003.

Bryant L. VanBrakle,

Secretary.

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FEDERAL MARITIME COMMISSION

[Docket No. 03-06]

Monarch Shipping Lines, Inc., American Lines LLC, Mozart Forwarding, Inc., and Peter Karouta Kennedy-Possible Violations of Sections 8(a), 10(b)(2)(A), and 19 of the Shipping Act of 1984, as well as the Commission's Regulations as 48 CFR pts. 515 and 520; Order of Investigation and Hearing

June 20, 2003.

Notice is given that on June 17, 2003, the Federal Maritime Commission

served an Order of Investigation and Hearing on Monarch Shipping Lines, Inc., American Lines LLC, Mozart Forwarding, Inc., and Mr. Peter Karouta Kennedy. Monarch Shipping Lines, Inc. ("Monarch"), incorporated in the State of New York, holds itself out as a vessel-operating common carrier ("VOCC") and Mr. Peter Karouta Kennedy is its owner and President. American Lines LLC ("American Lines"), a Connecticut corporation, holds itself out as a VOCC and is owned and operated by Mr. Peter Karouta Kennedy. Mozart Forwarding, Inc. ("Mozart"), a New York corporation, is a licensed ocean freight forwarder (FMC License No. 3486-R) and is also owned and operated by Mr. Peter Karouta Kennedy.

It appears that, from at least May 4, 2000, through August 15, 2000, Monarch knowingly and willfully operated as a common carrier without publishing a tariff. It appears that Monarch provided transportation services as a non-vessel-operating common carrier ("NVOCC") with respect to shipments from May 4, 2000, through April 11, 2002, without obtaining an ocean transportation intermediary ("OTI") license and without providing proof of financial responsibility in the form of a surety bond. It also appears, that from November 23, 2000, through December 23, 2000, Monarch processed at least 105 shipments for **one** of its customers and assessed and collected rates that were not the same as those set forth in its published tariff. American Lines appears to have operated as a common carrier without publishing a tariff from January 1, 2002, through June 13, 2002. Subsequent to the publication of its tariff, it appears that American Lines provided transportation services as an NVOCC without obtaining an OTI license and without providing proof of financial responsibility in the form of a surety bond. It appears that American Lines also failed to follow the rates and charges in its published tariff.

Furthermore, it appears that Mozart and Peter Karouta Kennedy knowingly and willfully misled the Commission by failing to disclose required information on Mozart's pending FMC-18 application for an NVOCC license.

This proceeding therefore seeks to determine: (1) Whether Monarch and American Lines violated section 8(a) of the Shipping Act of 1984 ("1984 Act") and 46 CFR pt. 520 by operating, for a certain period of time, without a tariff; (2) whether Monarch, American Lines,

and Peter Karouta Kennedy violated section 10(b)(2) of the 1984 Act by providing service at rates and charges other than those specified in Monarch's and American Lines' tariffs; (3) whether Monarch, American Lines, and Peter Karouta Kennedy violated section 19 of the 1984 Act and the Commission's regulations at 46 CFR pt. 515 by operating as NVOCCs without obtaining licenses and without providing proof of financial responsibility in the form of surety bonds; (4) whether Mozart and Peter Karouta Kennedy violated the Commission's regulation at 46 CFR pt. 515 by their failure to disclose required information of the FMC-18 application; (5) whether, in the event violations of sections 8(a) 10(b)(2)(A), and 19 of the 1984 Act and/or 46 CFR pts. 515 and 520 are found, civil penalties should be and assessed and, if so, the amount; (6) whether, in the event violations of section 10(b)(2)(A) of the 1984 Act are found, the tariffs of Monarch and American Lines should be suspended; (7) whether the OTI license of Mozart should be suspended or revoked pursuant to section 19 of the 1984 Act, and (8) whether, in the event violations are found, and 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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FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.