

ORIGINAL

FEDERAL MARITIME COMMISSION

REVOCATION OF LICENSES
AND ORDER TO
DISCONTINUE OPERATIONS
IN U.S.-FOREIGN TRADES
FOR FAILURE TO COMPLY
WITH THE REQUIREMENTS
OF THE OCEAN SHIPPING
REFORM ACT OF 1998,
ORDER TO SHOW CAUSE

Docket No. 03-14

Served: March 26, 2004

ORDER

This proceeding was initiated by an Order issued to **14** companies, directing them to show cause why the Commission should not revoke their ocean transportation intermediary (“OTI”) licenses for failure to comply with section 19 of the Shipping Act of 1984, 46 U.S.C. app. §1718 (“Shipping Act”), as amended by the Ocean Shipping Reform Act of 1998, Pub. L. 105-258, 112 Stat. 1902 (“OSRA”), as well as the Commission’s regulations at 46 C.F.R. Part 515. The Order also required the companies to show cause why the Commission should not order them to cease and desist from operating as OTIs in the foreign trade of the United

States for failure to comply with sections 8 and/or 19 of the Shipping Act, pursuant to section 11 of the Shipping Act.

On November 17, 2003, the Commission issued the instant Order to Show Cause to 14 NVOCCs who had not filed their Form FMC-1 with the Commission, indicating the location of their electronically published tariffs.’ The Order proposed to revoke the licenses of the 14 NVOCCs and to direct them to cease and desist from operating in the U.S. foreign trade. The Order also named the 14 NVOCCs as Respondents and directed them, along with any intervenors in support of Respondents, to file affidavits of fact and memoranda of law with the Commission. The Commission’s Bureau of Enforcement (“BOE”) was named a party to the proceeding and directed, along with any intervenors in opposition to Respondents, to file a reply affidavit and memorandum of law.

Since issuance of the instant Order to Show Cause, five Respondents have now filed their Form FMC-1 and two have surrendered their licenses to operate as NVOCCs while retaining their freight forwarder licenses. Mail sent to three Respondents was returned as “Unclaimed.”* Only one of the named Respondents, Fedex Supply Chain Services Inc. (“FSCS”), filed a response to the Order to Show Cause. BOE filed a Memorandum of Law (“Memo”) and Proposed Finding of Facts (“PFF”).

*These NVOCCs are based in the U.S. and licensed by the Commission.

²A list of the 5 NVOCCs that have now complied with the OSRA requirements (Schedule A), the two that have surrendered their NVOCC licenses (Schedule B), the three whose mail was returned as “Unclaimed” (Schedule C), and the remaining four NVOCCs from whom no response was received and are not yet in compliance (Schedule D), is attached.

The Shipping Act and the Commission's regulations impose specific requirements on NVOCCs in return for the benefit of receiving a license to operate as an NVOCC in the U.S. foreign trade. Section S(a)(1) of the Shipping Act mandates, in pertinent part, that:

Each common carrier and conference shall keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established.

46 U.S.C. app. § 1707(a)(1). In addition, the Commission's regulations state, inter alia, that:

Each common carrier and conference shall notify [the Commission's Bureau of Trade Analysis] prior to the commencement of common carrier service pursuant to a published tariff, of its organization name, organization number, home office address, name and telephone number of firm's representative, the location of its tariffs, and the publisher, if any, used to maintain its tariffs, by electronically submitting Form FMC-1 via the Commission's website at www.fmc.gov.

46 C.F.R. § 520.3(d).

The Order to Show Cause was mailed to Respondents' addresses and published in the Federal Register. Seven of the fourteen Respondents have now complied with the requirements of the Shipping Act. FSCS established that it has now published a tariff and filed its Form FMC-1 with the Commission. It thus

contends that there is no longer any basis upon which the Commission should revoke its license or order it to cease and desist operating as an OTI. The remaining seven Respondents are still in default and have failed to show cause why their licenses should not be revoked and why they should not be ordered to cease and desist from operating as NVOCCs in the U.S. foreign trade.

The evidence submitted by BOE indicates that the Respondents still in default have had more than sufficient time and opportunity to comply with their obligations. In addition, the attempts of the Commission's Bureau of Consumer Complaints and Licensing ("BCCL") to help them achieve compliance are well documented in the record. For instance, the evidence shows that prior to the initiation of this proceeding, BCCL wrote to the Respondents on two separate occasions in 2003, informing them of the specific NVOCC regulatory requirements of which they were in default and the repercussions for noncompliance with these requirements. After the initiation of this proceeding, BCCL continued to accept documentation from any of the Respondents that sought to bring themselves into compliance with their NVOCC obligations.

Section 19(c) of the Shipping Act provides that, after notice and hearing, the Commission shall revoke an OTI license if it finds that the licensee willfully failed to comply with a Commission order or regulation. 46 U.S.C. app. § 1718(c). In this proceeding, the seven Respondents still in default have failed to comply with the Commission's Order to Show Cause. In addition, they have failed to respond to repeated attempts by the Commission's staff to bring them into compliance. In light of these facts, we have determined to revoke the OTI licenses of the seven Respondents listed in Schedules C and D.

Similarly, because the seven Respondents listed at Schedules C and D have shown an unwillingness to comply with the relevant laws and regulations governing OTI operations in the United States, we believe it is also appropriate to order them to cease and desist from operating as NVOCCs in the U.S. foreign trade to avoid potential financial harm to members of the shipping public who may have dealings with them. Failure to prevent Respondents from holding themselves out as NVOCCs would allow them to continue to operate their businesses in direct contravention of the Shipping Act and may defeat the Commission's goal of ensuring that there is ready public access to carriers' tariff information.

THEREFORE, IT IS ORDERED, That the licenses of Respondents, Glad Freight Int'l, Inc.; Kallista USA, LLC; Logis Services of America, Inc.; Full Circle Maritime Corp.; Navilca Int'l, Inc.; Oceanic Shipping Company; and Stuart Logistics, Inc. are revoked;

IT IS ALSO ORDERED, That the Respondents listed above cease and desist from operating as NVOCCs in the U.S. foreign trade until such a time as they apply for a new license and comply with all applicable Shipping Act requirements;

FURTHER, IT IS ORDERED, That because Respondents Fedex Supply Chain Services, Inc., Distribution Support Systems, Inc.; Elemar International Forwarding, Inc.; Grizzard Customs Brokers, Inc.; International Transport Solutions, Inc.; Orion Logistics, Inc.; and V.S. Import Services, Inc., have now complied with the Shipping Act, this proceeding is dismissed as it relates to them; and

FINALLY, IT IS ORDERED, That this proceeding is discontinued.

By the Commission.



Bryant L. VanBrakle
Secretary

SCHEDULE A (OTIs In Compliance) Elemar International Forwarding, Inc.

Fedex Supply Chain Services, Inc.

Grizzard Customs Brokers, Inc.

Orion Logistics, Inc.

VS. Import Services, Inc.

SCHEDULE B (OTIs That Surrendered Their NVOCC Licenses.)

Distribution Support Systems, Inc.

International Transport Solutions, Inc.

SCHEDULE C (OTIs Whose Mail was Returned as “Unclaimed”)

Glad Freight Int'l, Inc.

Kallista USA, LLC

Logis Services of America, Inc.

SCHEDULE D (OTIs Not in Compliance)

Full Circle Maritime Corp.

Navilca Int'l, Inc.

Oceanic Shipping Company

Stuart Logistics, Inc.