

FEDERAL MARITIME COMMISSION

PARKS INTERNATIONAL SHIPPING,
INC., CARGO EXPRESS
INTERNATIONAL SHIPPING INC.,
BRONX BARRELS & SHIPPING
SUPPLIES SHIPPING CENTER, INC.
AND AINSLEY LEWIS A.K.A. JIM
PARKS – POSSIBLE VIOLATIONS OF
SECTIONS 8(A) AND 19 OF THE
SHIPPING ACT OF 1984, AS WELL AS
46 C.F.R. PARTS 515 AND 520 OF
THE COMMISSION’S REGULATIONS.

Docket No. 06-09

Served: April 26, 2012

BY THE COMMISSION: Richard A. Lidinsky, Jr.,
Chairman; Joseph E. Brennan, Michael A. Khouri and Mario
Cordero, *Commissioners*. Rebecca F. Dye, *Commissioner*,
dissenting.

ORDER VACATING INITIAL DECISION AND REMANDING FOR FURTHER PROCEEDINGS

On September 19, 2006, the Commission issued an
order initiating an investigation to determine whether

respondents Parks International Shipping, Inc. (Parks), Cargo Express International, Inc. (Cargo Express), Bronx Barrels & Shipping Supplies Shipping Center, Inc. (Bronx Barrels), and/or Ainsley Lewis a.k.a. Jim Parks (Lewis) violated section 8(a) of the Shipping Act of 1984 (46 U.S.C. § 40501) by operating as non-vessel-operating common carriers (NVOCCs) without publishing tariffs showing rates and charges, and section 19 of the Act (46 U.S.C. §§ 40901-40902) by operating as NVOCCs without a license or proof of financial responsibility. 30 S.R.R. 1099, 1099-1101 (FMC 2006). Respondents were properly served with the order of investigation, but Respondents have not participated in this proceeding.

On November 28, 2006, the Commission's Bureau of Enforcement (BOE) filed a motion to compel discovery from Respondents. The Administrative Law Judge (ALJ) granted this motion on April 9, 2007, ordering Respondents to respond to BOE's discovery requests. Respondents did not comply with this order.

On August 1, 2007, the ALJ ordered the parties to file a joint status report and proposed procedural order. BOE filed its report on August 24, 2007, asserting that it made several attempts to contact respondents regarding preparation of the joint status report, but Respondents could not be reached by BOE. BOE stated in this report that BOE staff called telephone numbers previously belonging to Parks, Cargo Express, and Bronx Barrels, and BOE was informed by the individual answering the telephone that Gunter Shipping had taken over telephone numbers and store locations from Ainsley Lewis. BOE was also told that Gunter Shipping has no relationship with Lewis.

On October 26, 2007, BOE filed its Motion for Sanctions and Summary Judgment (BOE's MSJ). In its motion, BOE argued that sanctions were warranted pursuant to 46 C.F.R. § 502.210 (Rule 210) of the Commission's Rules of Practice and Procedure because respondents failed to respond to discovery requests despite having been ordered to do so. BOE asked for an order prohibiting respondents from contesting any of BOE's claims or evidence on issues relating to BOE's discovery requests. BOE also asked the ALJ to issue an Order to Show Cause giving respondents thirty days to explain why they failed to participate in the proceeding. BOE further requested that the Order to Show Cause notify respondents that failure to respond would result in a finding that they had violated the Shipping Act of 1984. BOE then set out arguments and evidence in support of its request for summary judgment.

On October 23, 2009, the ALJ granted BOE's Motion for Sanctions in part, drawing an inference that each respondent has the ability to pay a civil penalty. 31 S.R.R. 1060, 1062-63 (ALJ 2009). The ALJ deferred ruling on the remainder of BOE's request for sanctions. *Id.* at 1063.

The ALJ then turned to BOE's Motion for Summary Judgment, ruling that BOE had shown by a preponderance of the evidence that Parks, Cargo Express, and Bronx Barrels neither published tariffs, obtained an OTI license from the Commission, nor furnished proof of financial responsibility to the Commission; that Parks operated as an NVOCC on 38 shipments; that Cargo Express operated as an NVOCC on 14 shipments; and that Cargo Express operated as an ocean

freight forwarder (OFF) on 2 shipments. *Id.* at 1063-75. The ALJ further found that BOE did not prove by a preponderance of the evidence that Bronx Barrels or Lewis operated as an NVOCC or OFF on any shipment, and found that BOE failed to show that the corporate veils of Parks, Cargo Express, and Bronx Barrels should be pierced and Lewis held personally liable. *Id.* at 1075. The ALJ did not grant summary judgment as to civil penalties, finding imposition of penalties inappropriate at that stage in the proceeding. *Id.* at 1075-76.

On February 5, 2010, the ALJ issued an Initial Decision in this matter. 31 S.R.R. 1166. The ALJ first denied the remainder of BOE's Motion for Sanctions, noting that respondents never sought to present evidence in this proceeding, rendering moot BOE's request for an order preventing respondents from presenting evidence. *Id.* at 1180. The ALJ did not address BOE's request for an Order to Show Cause notifying respondents that judgment may be entered in BOE's favor. *Id.*

The ALJ then turned to claims against Parks and Cargo Express. *Id.* While the ALJ had previously found that Parks violated sections 8 and 19 of the Shipping Act of 1984 on 38 shipments, he imposed penalties for only 12 of these shipments, disregarding 26 shipments that occurred outside of the 5 year statute of limitations. *Id.* at 1180-81, 1192. The ALJ also ordered that Parks cease and desist from violating the Shipping Act. *Id.* at 1198, 1203.

With respect to Cargo Express, the ALJ assessed civil penalties for sixteen violations of the Act, and also issued a cease and desist order. *Id.* at 1198-1203. The ALJ did not

find that Bronx Barrels or Ainsley Lewis acted as NVOCCs in violation of the Shipping Act. *Id.* at 1203-05. Accordingly, these parties were dismissed from the proceeding. *Id.* at 1205.

No party filed exceptions to the ALJ's Initial Decision. On March 4, 2010, however, the Commission served notice that it would review the Initial Decision on its own motion.

In light of the Commission's recent decision in Docket No. 06-01, *Worldwide Relocations, LLC, et al.*, we now vacate the initial and supplemental decisions, and remand this matter to the ALJ for further proceedings consistent with the Commission's holding in *Worldwide Relocations*.

THEREFORE, IT IS ORDERED, That the Initial Decision is VACATED; and

It is FURTHER ORDERED, That this proceeding is REMANDED for further disposition consistent with this Order.

By the Commission.

Karen V. Gregory
Secretary

Commissioner Dye, Dissenting:

I would uphold the Initial Decision of the ALJ in this matter, for the reasons stated in my Concurrence and Dissent in Docket 06-01, *Worldwide Relocations, LLC, et al.* and my Dissent in Docket 06-06, *EuroUSA Shipping, Inc., Tober Group, Inc. – Possible Violations of the Shipping Act.*