ORIGINAL

S E R V E D
September 20, 2010
FEDERAL MARITIME COMMISSION

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WASHINGTON, D.C.

DOCKET NO. 08-06

WESTERN HOLDING GROUP, INC.;
MARINE EXPRESS, INC.; and
CORPORACIÓN FERRIES DEL CARIBE, INC.

v.

HOLLAND GROUP PORT INVESTMENT (MAYAGÜEZ), INC.

INITIAL DECISION GRANTING MOTION TO DISMISS[1]

I.

On September 7, 2010, complainants Western Holding Group, Inc., Marine Express, Inc., and Corporación Ferries del Caribe, Inc. ("Complainants") and respondent Holland Group Port Investment (Mayagüez), Inc. ("Holland Group") filed a Joint Motion to Dismiss ("Motion"). In the Motion, the parties request approval of their agreement to settle the matter by withdrawal of the complaint and counter-complaint. For the reasons set forth below, the Motion is **GRANTED** and the complaint against Holland Group and counter-complaint against Western Holding, Marine Express, and Corporación Ferries are dismissed without prejudice.

II.

Complainants Western Holding Group, Inc., Marine Express, Inc., and Corporación Ferries del Caribe, Inc. are for-profit corporations organized and existing under the laws of the Commonwealth of Puerto Rico. Second Amended Verified Complaint ("Second Complaint"), ¶¶ 1-3.

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[1] The dismissal will become the decision of the Commission in the absence of review by the Commission. Rule 227, Rules of Practice and Procedure, 46 C.F.R. § 502.227.

Respondent Holland Group is a for-profit corporation organized and existing under the laws of the Commonwealth of Puerto Rico. The purpose of its incorporation was to enter into a long-term agreement with the Mayagüez Port Commission to lease and develop the port of Mayagüez. Second Complaint, ¶ 5; Holland Group's Answer to the Second Complaint, ¶ 5.

Complainants filed this action alleging violations of the Shipping Act of 1984 including unjust, unreasonable, and unlawful practices in violation of 46 U.S.C. § 41102(c) and unreasonable refusals to negotiate, unreasonable discrimination, and undue or unreasonable prejudice or disadvantages in violation of 46 U.S.C. § 41106(1)-(3). Second Complaint, pp. 26-28. Holland Group filed a counter-complaint against Complainants, alleging tariff violations and unreasonable practices, in violation of 46 U.S.C. §§ 40501(a)(1), 41102(c), 41104(1) and (2)(A) of the Shipping Act and 46 C.F.R. § 520.3(a) of the Commission's regulations. Holland Group's Counter-Complaint against Complainants, pp. 9-11.

After extensive negotiation and discovery, the parties indicate that they "desire to dismiss this proceeding voluntarily on the terms and conditions contained herein." Motion at 2. They state that the:

> voluntary dismissal is without prejudice to the rights of the Parties to file again, at the Federal Maritime Commission or any United States federal, state or other forum, including arbitration or mediation, all the allegations and causes of action contained and set forth in the Pleadings. If such filing occurs within one year from the date the Commission renders approval of this motion final, the Parties will not assert as a defense the expiration of any statute or period of limitation applicable in any such forum.

Motion at 2. In addition, "[e]ach of the Parties will bear all its own attorney's fees and costs associated with this proceeding, up to and including the date the Commission renders approval of this motion final." Motion at 2.

The parties "urge the Presiding Judge to grant this motion in the interests of judicial economy and efficiency, and in view of the decision and agreement of the Parties not to prosecute the complaints and counter-complaint at this time." Motion at 2. A substantially identical motion was filed by Western Holding Group in a pending bankruptcy case and approved by the United States Bankruptcy Court for the District of Puerto Rico. Motion, Attachments A and B.

III.

Using language borrowed in part from the Administrative Procedure Act,[2] Rule 91 of the Commission's Rules of Practice and Procedure gives interested parties an opportunity, *inter alia*,

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[2] "The agency shall give all interested parties opportunity for – (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit." 5 U.S.C. § 554(c).

to submit offers of settlement "where time, the nature of the proceeding, and the public interest permit." 46 C.F.R. § 502.91(b).

The Commission has a strong and consistent policy of "encourag[ing] settlements and engag[ing] in every presumption which favors a finding that they are fair, correct, and valid." *Inlet Fish Producers, Inc. v. Sea-Land Serv., Inc.*, 29 S.R.R. 975, 978 (ALJ 2002), *quoting Old Ben Coal Co. v. Sea-Land Serv., Inc.*, 18 S.R.R. 1085, 1091 (ALJ 1978) (*Old Ben Coal*). *See also Ellenville Handle Works, Inc. v. Far Eastern Shipping Co.*, 20 S.R.R. 761, 762 (ALJ 1981).

> The law favors the resolution of controversies and uncertainties through compromise and settlement rather than through litigation, and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy.... The courts have considered it their duty to encourage rather than to discourage parties in resorting to compromise as a mode of adjusting conflicting claims.... The desire to uphold compromises and settlements is based upon various advantages which they have over litigation. The resolution of controversies by means of compromise and settlement is generally faster and less expensive than litigation; it results in a saving of time for the parties, the lawyers, and the courts, and it is thus advantageous to judicial administration, and, in turn, to government as a whole. Moreover, the use of compromise and settlement is conducive to amicable and peaceful relations between the parties to a controversy.

Old Ben Coal, 18 S.R.R. at 1092, *quoting* 15A American Jurisprudence, 2d Edition, pp. 777-778 (1976).

"While following these general principles, the Commission does not merely rubber stamp any proffered settlement, no matter how anxious the parties may be to terminate their litigation." *Id.* However, if "a proffered settlement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake or other defects which might make it unapprovable despite the strong policy of the law encouraging approval of settlements, the settlement will probably pass muster and receive approval." *Old Ben Coal*, 18 S.R.R. at 1093. "[I]f it is the considered judgment of the parties that whatever benefits might result from vindication of their positions would be outweighed by the costs of continued litigation and if the settlement otherwise complies with law the Commission authorizes the settlement." *Delhi Petroleum Pty. Ltd. v. U.S. Atlantic & Gulf/Australia – New Zealand Conf. and Columbus Line, Inc.*, 24 S.R.R. 1129, 1134 (ALJ 1988) (citations omitted).

"Reaching a settlement allows the parties to settle their differences, without an admission of a violation of law by the respondent, when both the complainant and respondent have decided that it would be much cheaper to settle on such terms than to seek to prevail after expensive litigation." *APM Terminals North America, Inc. v. Port Authority of New York and New Jersey*, 31 S.R.R. 623, 626 (2009) (citing *Puerto Rico Freight Sys. Inc. v. PR Logistics Corp.*, 30 S.R.R. 310, 311 (ALJ 2004)).

This case has been pending for almost two years, during which the parties have engaged in extensive settlement negotiations and exchange of discovery. Previous orders in this matter have noted "the time consuming task of translating into English an unexpectedly very large volume of documents," the number of documents requested in discovery, and the complexity of the issues involved in the proceeding. *Western Holding Group, Inc. v. Mayagüez Port Comm'n*, FMC No. 08-06 (ALJ Sept. 10, 2009) (Order Revising Discovery Schedule), *Western Holding Group, Inc. v. Mayagüez Port Comm'n*, FMC No. 08-06 (ALJ Dec. 3, 2009) (Second Order Revising Discovery Schedule), *Western Holding Group, Inc. v. Holland Group Port Investment*, FMC No. 08-06 (ALJ May 24, 2010) (Third Order Revising Schedule).

The non-monetary settlement agreement essentially returns the parties to the position they were in prior to initiating the litigation and does not impact the rights of others. It is reasonable, therefore, for the parties to decide that the costs of litigation outweigh the value of their potential recovery and that the settlement is in their best interest. Both parties are represented by counsel and there is no evidence of fraud, duress, undue influence, or mistake nor harm to the public.

Based on the representations in the joint motion and other documents filed in this matter, the settling parties have established that the settlement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake, or other defects which might make it unapprovable. Accordingly, the settlement agreement is approved.

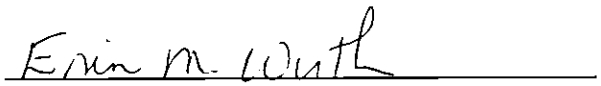
IV.

Upon consideration of the joint Motion and the record, and good cause having been stated, it is hereby:

ORDERED that the Motion settling the matter between complainants Western Holding Group, Inc., Marine Express, Inc., and Corporación Ferries del Caribe, Inc. and respondent Holland Group Port Investment (Mayagüez), Inc. be **APPROVED**; it is

FURTHER ORDERED that any pending motions be **DISMISSED** as moot; and it is

FURTHER ORDERED that this proceeding be **DISMISSED** without prejudice.



Erin M. Wirth
Administrative Law Judge