

BEFORE THE
FEDERAL MARITIME COMMISSION

YAKOV KOBEL and VICTOR BERKOVICH

Complainants

v.

HAPAG-LLOYD A.G., HAPAG-LLOYD AMERICA, INC., LIMCO LOGISTICS, INC.,
INTERNATIONAL TLC, INC

Respondents

Docket No. 10-06

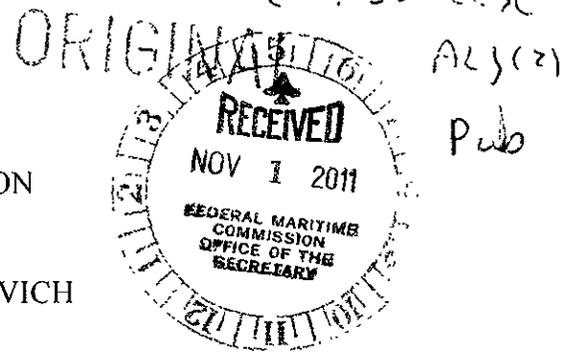
INTERNATIONAL TLC, INC'S PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW

Respondent International TLC, Inc ("Int'l TLC") submits its Proposed Findings of Fact and Conclusions of Law following the Court's hearing on August 8, 9, 10 and 11, 2011. For reasons stated below, Complainants failed to prove by primacy of the evidence that Int'l TLC violated Section 19(a) and 10(d)(1) of the Shipping Act.

PROPOSED FINDINGS OF FACT

A. Factual Background

1. Complainant Mr. Berkovich is Mr. Kobel's brother-in-law. (Kobel, TR 66).
2. Complainant Mr. Kobel has been unemployed since November, 17, 2009. (Kobel, TR 65)
(Complainants' Ex. 66).



3. Mr. Kobel never made international shipments prior to 2008. (Kobel, TR 66, Berkovich, TR 495, 496).
4. Prior to 2008, Complainants had never sold a single piece of plywood or a single barrel of oil in the Ukraine. (Kobel, TR 215, Berkovich, TR 503).
5. Complainants purchased the plywood and motor oil at full retail prices from Home Depot, Wal-Mart, and Estacada Oil. The cargo had English labeling and packaging, in violation of the import regulations for oil products to the Ukraine. (Kobel, TR 74, 75).
6. Mr. Kobel purchased his cargo via a credit line. (Complainants' Ex. 62).
7. Complainants did not know the regulations concerning the import of oil products to the Ukraine. (Kobel. TR 250. 251).
8. Mr. Kobel claims to have hired Mr. Berkovich as an inspector and to load his containers at Mission Trucking, but had no knowledge whether Mr. Berkovich ever loaded any containers before. (Kobel. TR 136).
9. Complainants shipped three containers in May 2008, and another two in July 2008 (Kobel. TR 76), meaning that they would have to pay storage charges for the first three containers until the latter two containers arrived in Poland. (Kobel. TR 171).
10. Complainants did not inform Int'l TLC that they wanted the containers to arrive in Poland before June 15, 2008. (Barvinenko. TR 360, 396, 397).
11. Complainants' first three containers left Portland on May 25, 2008, and would not have reached Poland by June 15, 2008 even without a delay. (Kobel. TR 162, TR 163, TR 164).
12. Mr. Kobel could not provide a date of the railroad appointments at his deposition. (Int'l TLC Ex. 67, p 77).

13. Complainants do not have any evidence to show that they had reservations with the railroad company in Poland.
14. The final receiver of the first three containers, MOGU2003255, MOGU2002520, and MOGU2112451, Victor Berkovich, was in the United States at the time that these containers arrived in Poland, and Baltic Sea Logistics could not get in touch with Mr. Berkovich to receive the required packing list and commercial invoice from him. (Int'l TLC Ex. 28, Int'l TLC Ex. 31)
15. Mr. Berkovich didn't go to Poland to pick up the last two containers that were not delayed, MOGU2101987 and MOGU2051660, until April 2009, nearly eight months after the containers' arrival date. (Kobel, TR 109, Berkovich, TR 471).
16. Mr. Berkovich did not attend to the damaged container, MOGU2002520, since its arrival in Poland in December 2008 until April 2009. (Berkovich TR. 471).
17. Mr. Kobel gave Int'l TLC all shipping instructions for Complainants' shipment, including instructions to exclude his name from the bills of lading and to indicate Mr. Berkovich as the shipper and receiver of all cargo. (Barvinenko, TR 365) (Complainants' Ex. 68, Ex. 15).
18. Mr. Kobel was allegedly responsible for doing all the documents in the U.S.; however his name or his company name was not listed on any of the bills of lading or the US Customs declaration. (Kobel, TR 137) (Complainants' Ex. 25, Ex. 26, Ex. 27).
19. Int'l TLC chose five 40ft. containers for Complainants from Affordable Storage Containers, however Complainants declined these containers and chose seven different containers. (Barvinenko, TR 350, 351, 393, 394)

20. Complainants directed Affordable Storage Containers to bill Int'l TLC for their own seven containers, without the authorization from Int'l TLC. (Barvinenko, TR 405) (Complainants' Ex. 121 p 1 of 1).
21. Affordable Storage Containers invoiced Int'l TLC for Complainants' seven containers. (Bates Ex, 044) (Kobel, TR 141, 142) (Complainants' Ex. 121 p 1 of 1) (Barvinenko, TR 394).
22. Complainants purchased seven containers from Affordable Storage Containers on or about April 25, 2008, but partially paid Affordable Storage for these containers nearly eight months later, on December 30, 2008. (Bates Ex. 044) (Complainants' Ex. 123) (Kobel TR 142, 143).
23. Mr. Kobel's payment to Affordable Storage Containers was returned for non-sufficient funds and was never made good. (Barvinenko. TR 396) (Int'l TLC Ex. 65).
24. Complainants had no written contracts with anybody to purchase their cargo in the Ukraine. (Kobel. TR 218, 219). Complainants had negotiated a deal with the purchasers of their cargo in the Ukraine on a C.O.D basis. (Int'l TLC Ex. 67. pp 35. 57).
25. Int'l TLC made numerous phone calls to the Complainants regarding the status of their containers. the need to make a payment and to get the containers picked up from Poland. (Int'l TLC Ex. 32) (Barvinenko. TR 413. 414).
26. Limco Logistics also made several attempts to contact Complainants in regarding to their failure to move the containers from Poland. (Complainants' Ex. 73).
27. While Complainants did not attend to their containers and let them stay in Poland, Int'l TLC received a number of notices stating that unless Int'l TLC takes immediate action.

- Complainants' containers would be liquidated and all costs would be charges to Int'l TLC. (Complainants' Ex. 103, Ex. 73) (Int'l TLC Ex. 33, Ex. 34, Ex. 36) (Barvinenko, TR 400)
28. Complainants received the final notice sent by Int'l TLC on January 9, 2009, but did not respond in writing. (Kobel, TR 232, 233, 234) (Berkovich, TR 505).
 29. Complainants did not pay Int'l TLC the full amount owing for containers MOGU2101987 and MOGU2051660 until after these containers had been liquidated. (Complainants' Ex 111).
 30. Int'l TLC did not seek any payments from Complainants after liquidation sale; after Complainants learned that their cargo had been liquidated, Mr. Kobel made two deposits in March and April, 2009, from Portland, OR, without any notice, for the remaining amount to the account of Int'l TLC. (Complainants' Ex. 77, pp 98, 99).
 31. All deposits after the liquidation sale to Int'l TLC were made by direct deposit from Portland, OR without authorization from Int'l TLC. (Complainants' Ex. 111, Ex. 77, p 39) (Int'l TLC Ex. 49, Ex. 50)
 32. The amount of \$10,200.00, paid after the containers MOGU2101987 and MOGU2051660 were liquidated was returned to Mr. Kobel on May 13, 2009. (Complainants' Ex. 88).
 33. Complainants do not have any evidence to support their claim that Int'l TLC did not want to communicate with them after January 9, 2009.
 34. Mr. Kobel threatened Aleksandr Barvinenko and his family member over the phone before and after the liquidation sale of Complainants' containers. (Barvinenko, TR 409)
 35. Mr. Kobel visited the office of Int'l TLC in May 2009, where he demanded money from Mr. Barvinenko and threatened him, declaring that "There are many powerful people involved in

the shipment of these containers and they will never let this go". (Kobel, TR 181)

(Barvinenko, TR 409).

36. Complainants' first two containers MOGU2003255 and MOGU2112451, currently sit on Mr. Berkovich's father's property in the Ukraine since 2008. (Kobel, TR 219, Berkovich TR 478, 505).
37. Mr. Kobel claims that they have not sold any of the cargo in these first two containers MOGU2003255 and MOGU2112451, since its arrival in Poland on July 2, 2008 until today because he was busy. (Kobel, TR 219, 220, 262, 264, 294, 295).
38. Mr. Berkovich claims that the cargo in the first two containers MOGU2003255 and MOGU2112451, has not been sold since its arrival in Poland on July 2, 2008 until today, because their families decided not to sell the plywood right now. (Berkovich, TR 526, 527).
39. Mr. Kobel stopped making monthly mortgage payments towards his home loan on September 1, 2008, at the time that all five containers reached Europe and before any containers were liquidated. (Int'l TLC Ex. 24) (Kobel, TR 267, 268).
40. Complainants filed their complaint with the Federal Maritime Commission over a year after the liquidation sale.
41. Mr. Kobel and/or Mission Trucking paid for the plywood and the oil in the five containers (Int'l TLC Ex. 66, pp 19, 20) (Complainants' Ex 51), and there is no evidence that Victor Berkovich paid for or owned any of the cargo.
42. Mission Trucking was registered in Yakov Kobel's name in Oregon State on November 16, 2007, and was dissolved on November 17, 2009. (Complainants' Ex. 66).
43. None of the ten official checks remitted by company Mission Trucking and/or Yakov Kobel exceeded \$10,000.00 per check. (Complainants' Ex. 51) (Kobel, TR 275).

44. On April 18, 2008, Mr. Kobel paid Wal-Mart via six consecutive-numbered official checks in the sum of \$9,980.00 or \$9,955.00 per each check. (Complainants' Ex. 51).
 45. On April 21, 2008, Mr. Kobel paid Wal-Mart via two consecutive-numbered official checks in the sum of \$9,300.00 and \$9,980.00 per each check. (Complainants' Ex. 51).
 46. Aside from Complainants, Mr. Lyamport had no other customers attempting to export oil to the Ukraine since 1998. (Lyamport, TR 705).
 47. Mr. Berkovich continued doing business with Int'l TLC on multiple occasions before and after the liquidation sale. (Int'l TLC Ex. 61, Ex. 62, Ex. 63, Ex. 64) (Kobel, TR 244, 245).
 48. Mr. Berkovich visited Int'l TLC in October 2008 looking to export three vehicles. (Int'l TLC Ex. 61) (Berkovich. TR 486. 487).
 49. Victor Berkovich was the owner of 2000 Trailer that he shipped in January 2009 through Int'l TLC (Int'l TLC Ex. 63, page 2), although he testified that "it was not my goods" (Berkovich. TR 488. 489).
 50. Victor Berkovich purchased and exported a 2003 Dodge Ram using Int'l TLC in July 2009. (Berkovich. TR 508. 515. 516) (Int'l TLC. Ex 68. Ex 64).
 51. Mr. Berkovich was never employed by Mission Trucking as a trucking supervisor or a load inspector, however Complainants submitted a claim to Hapag-Lloyd for container MOGU2002520, fraudulently listing Victor Berkovich as a supervisor at Mission Trucking. (Berkovich. TR 491, 492) (Complainants' Ex 67, page 7 of 8).
- B. Complainants' Testimony Lacks Credibility and Encompasses Inconsistent Statements
52. Complainants originally claimed they needed three containers to go by rail at the same time (Int'l TLC Ex. 58, page 2) (Kobel. TR 258, 259), and later testified they needed five containers to go at one time. (Kobel. TR 89).

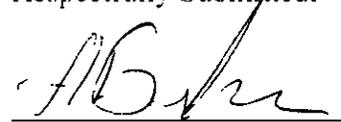
53. At his deposition, Mr. Kobel declared that he always weighs all of the cargo (Int'l TLC Ex. 67, pp 25), alternatively, Complainants testified to the Court that they did not weigh their cargo before loading it in a container. (Kobel, TR 145, Berkovich, TR 494).
54. At his deposition, Mr. Kobel claimed he forgot to ask about insurance for his cargo (Int'l TLC Ex. 67, pp.36), conversely, Mr. Kobel testified to the Court that he thought insurance was included. (Kobel, TR 153).
55. At his deposition, Mr. Kobel denied ever filing for bankruptcy (Int'l TLC Ex. 67, pp 45) (Kobel, TR 184, 185); in his testimony to the Court, Mr. Kobel declared that he had filed for bankruptcy three times. (Kobel, TR 132) (Int'l TLC Ex. 54, Ex. 55, Ex. 56).
56. Complainants testified that their first two containers MOGU2003255 and MOGU2112451 still have the cargo inside and are staying at one property (Berkovich, TR 496, 505, 506); later in time, Mr. Berkovich testified the cargo has been unloaded from these containers and the containers sit on different properties. (Berkovich, TR 520, 521, 522).
57. Mr. Kobel testified that he did not load any other containers except the subject five containers, and no other containers were liquidated except the subject three containers (Kobel, TR 253); evidence shows that Mr. Kobel purchased, loaded, and stored a container at Affordable Storage Containers for two years, until it was disposed of due to nonpayment. (Int'l TLC Ex. 40, p 2, Ex. 65). (Complainants' Ex. 121 p 1 of 1).
58. Mr. Kobel testified that no cargo was purchased in the name of Mission Trucking (Int'l TLC Ex. 67, pp. 11); however official checks made out to Wal-Mart for the purchase of oil, showing Mission Trucking as the remitter. (Kobel, TR 271, 272) (Complainants' Ex. 51).

CONCLUSIONS OF LAW

59. Complainants structured cash transactions, each for less than \$10,000.00, to evade the obligation to report cash transactions exceeding \$10,000.00 in violation of 31 U. S. C. § 5324.
60. Complainants concealed assets from specified trustees or creditors by collecting mortgage loans and credit card lines in excess of \$850,000.00, using these monetary assets to purchase and transfer cargo from the U.S. to the Ukraine on a C.O.D. basis and soon thereafter filing for bankruptcy, in violation of 18 U.S.C. § 152.
61. Victor Berkovich gave false testimony under oath in a Court proceeding in connection to his ownership of the exported 2003 Dodge Ram and 2000 Trailer. in violation of 18 U.S.C. § 1623.
62. Mr. Kobel gave false testimony at his deposition regarding his three bankruptcy filings. in violation of 18 U.S.C. § 1623.
63. Complainants gave two mutually inconsistent declarations. as described in section (B) of the Proposed Findings of Fact. paragraphs (53). (54). (55). (56). (58). (60). in violation of 18 U.S.C. § 1623(c).

Dated: October 25, 2011

Respectfully Submitted.



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CERTIFICATE OF SERVICE

I, Aleksandr Barvinenko, hereby certify that on October 25th, 2011, I served copies of INTERNATIONAL TLC INC.'S POST TRIAL BRIEFS, PROPOSED FINDINGS OF FACT, AND CONCLUSIONS OF LAW on the below parties:

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