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FEDERAL MARITIME COMM

BEFORE THE
FEDERAL MARITIME COMMISSION

Docket No. 10-06

YAKOV KOBEL AND VICTOR BERKOVICH,

COMPLAINANTS

v.

HAPAG-LLOYD AG, LIMCO LOGISTICS, INC. AND INTERNATIONAL TLC, INC.,

RESPONDENTS

ANSWER OF RESPONDENTS HAPAG-LLOYD AG AND HAPAG-LLOYD AMERICA, INC. TO AMENDED COMPLAINT

Respondents Hapag-Lloyd Aktiengesellchaft ("HLAG") and Hapag-Lloyd (America), Inc. ("HLAI")(HLAG and HLAI are hereinafter sometimes referred to jointly as "HL Respondents") hereby answer the Amendment Complaint as follows. Unless otherwise specified, each answer is submitted on behalf of both of the HL Respondents.

I. PARTIES

1. Lack sufficient information or knowledge to admit or deny.

2. HLAG admits it is a foreign entity and that it is an ocean common carrier, but denies the remainder of this paragraph.

3. HLAI admits the allegations contained in the first sentence and admits that it is an agent for HLAG, but denies the remainder of this paragraph.

4 and 5. HL Respondents lacks sufficient information or knowledge to admit or deny allegations with respect to Limco and Int'l TLC, but deny that either of these entities does "binding business" for either of HL Respondents.

II. JURISDICTION

6. Admit allegations of the first sentence. Deny remainder of paragraph.

III. FACTUAL ALLEGATIONS

7 and 8. Deny.

9. Lack sufficient information or knowledge to admit or deny allegations regarding complainants sophistication and reliance. Deny that they made any representations to complainants.

10 and 11. Lack sufficient information or knowledge to admit or deny.

12. Deny.

13, 14 and 15. Lack sufficient information or knowledge to admit or deny.

16. Deny.

17 and 18. Lack sufficient information or knowledge to admit or deny.

19. Admit that they provided no information to complainants, but lack sufficient information or knowledge to admit or deny remainder of allegations in this paragraph.

20. Admit that they provided no photos of the damage container to complainants, but lack sufficient information or knowledge to admit or deny remainder of allegations in this paragraph.

21. Deny.

22 and 23. Lack sufficient information or knowledge to admit or deny.

24. Lack sufficient information to admit or deny.

25. Deny first sentence. Lacks sufficient information or knowledge to admit or deny second sentence, except admit that container was trucked to Gydnia, Poland. Deny third sentence.

26. Lack sufficient information or knowledge to admit or deny.

27. Deny.

28. Lack sufficient information or knowledge to admit or deny.

29. Lack sufficient information or knowledge to admit or deny first three sentences. Admit sentence 4 describes the contents of Container MOGU 2051660 as said description was provided to HL Respondents. Deny allegations of fifth sentence.

30, 31 and 32. Lack sufficient information or knowledge to admit or deny.

33. Deny allegations in first two sentences. Lack sufficient information or knowledge to admit or deny allegations in third and fourth sentences.

34 through 38. Lack sufficient information or knowledge to admit or deny. '

39 through 41. Admit.

IV. INJURY TO COMPLAINANTS

42. Deny.

V. VIOLATIONS OF THE SHIPPING ACT

43. Deny.

44 through 46. Lack sufficient information or knowledge to admit or deny.

47 through 49. Deny.

50. Lack sufficient information or knowledge to admit or deny.

VI. AFFIRMATIVE DEFENSES

1. The Commission lacks subject matter jurisdiction in that this is a claim for cargo loss or damage governed by the Carriage of Goods by Sea Act.

2. The Commission lacks personal jurisdiction over Hapag-Lloyd (America) Inc.

3. Complainants lack standing, in that they have not demonstrated that they are owners of the cargo in question.

4. Failure to state a claim upon which relief can be granted.

5. Contributory negligence on part of complainants in the purchase and use of sub-standard containers, in the improper stowage of cargo in the containers, in the loading of container MOGU 2002520 beyond its weight capacity, and in the failure of complainants to arrange for proper inland transportation of the containers upon arrival in Poland.

6. Lack of privity between HL Respondents and complainants.

7. Complainants failed to mitigate damages by promptly moving containers that arrived in Poland.

8. Complainants have failed to fulfill statutory criteria that would entitle them to recovery of double damages.

9. Any loss suffered by complainants is due to act(s) and/or omissions of respondents International TLC, Inc. and/or Limco Logistics, Inc.

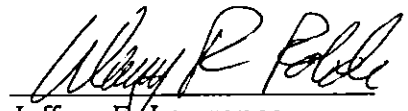
VII. PLACE OF HEARING

HL Respondents respectfully requests that any hearing be held in Washington, D.C.

VIII. PRAYER FOR RELIEF

WHEREFORE, HL Respondents respectfully request that the Federal Maritime Commission deny the relief sought by Complainants.

Respectfully submitted,



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November 2, 2010