

INTERNATIONAL TLC, INC

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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

April 4, 2012

Karen V. Gregory
Office of the Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington DC, 20573-0001

RE: YAKOV KOBEL and VICTOR BERKOVICH v. HAPAG-LLOYD A.G., HAPAG-LLOYD AMERICA, INC., LIMCO LOGISTICS, INC., and INTERNATIONAL TLC, INC,

Docket No. 10-06.

Dear Ms. Gregory:

Enclosed please find an original and fifteen copies of Respondent International TLC, Inc's Reply to Complainants' Memorandum of Exceptions.

Please contact me at 253-987-5346 if you should have any questions.

Thank you,



Aleksandr Barvinenko

cc: Wayne Rohde, Esq.
Ronald Saffner Esq.
Donald P. Roach, Esq

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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

REPLY OF RESPONDENT INTERNATIONAL TLC, INC TO
COMPLAINANTS' MEMORANDUM OF EXCEPTIONS

I. INTRODUCTION

Respondent International TLC, Inc ("Int'l TLC") hereby file their reply to Complainants' Memorandum of Exceptions ("Exceptions") filed by Complainants Yakov Kobel and Victor Berkovich ("Complainants") to the initial decision of the Administrative Law Judge dated February 14, 2012.

**II. COMPLAINANTS' EXCEPTIONS TO THE CONCLUSIONS OF LAW ARE NOT
SUPPORTED BY CREDIBLE EVIDENCE**

Complainants allege that they have met their burden to demonstrate that Int'l TLC operated as an ocean transportation intermediary ("OTI"), and specifically as an ocean freight forwarder. Complainants presented no credible evidence to support their argument that Int'l TLC unlawfully operated as an OTI at the time of the Complainants' subject shipments were made. On the contrary, the evidence presented to the Court finds that Int'l TLC hired an NVOCC,

namely Limco Logistics (“Limco”), to perform all NVOCC-related functions during the transport of Complainants’ shipments. Section 3 (17) (B) of the Shipping Act states that a:

(17) "non-vessel-operating common carrier" means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

In accordance with this provision, Int’l TLC had not been a shipper in its relation with an ocean common carrier, nor did this company issue its own bills of lading before being licensed as an NVOCC. (Barvinenko, TR 361, 362, 412). Int’l TLC hired Limco to act as the NVOCC in this transaction. (Barvinenko, TR 405). Limco issued their own bills of lading and was a shipper in its relation with an ocean common carrier. (Complainants’ Ex. 1, Ex. 28). All NVOCC-related functions were performed by Limco at the time that the Complainants’ shipments were made. There is no evidence that Int’l TLC hid the name of the NVOCC from the Complainants. Consequently, since Int’l TLC did not operate or act as an OTI before being licensed as an NVOCC, it did not violate Section 19(a) of the Shipping Act. The Administrative Law Judge concluded on page 37 of the initial decision that:

“Again, the cause of the liquidation and loss was Complainants’ unreasonable delay in picking up the container and is not attributable to whether Int’l TLC was operating as an unlicensed freight forwarder. Even if Int’l TLC was operating as an unlicensed ocean transportation intermediary, Complainants have not established a causal relationship to the loss. Under the facts of this case, Complainants have not met their burden to demonstrate that Int’l TLC operated as an ocean transportation intermediary”.

The arguments made by Complainants’ attorney are not supported by valid evidence of a violation of the Shipping Act. Complainants presented no credible evidence to support their argument that Int’l TLC had violated Section 19 (a) of the Shipping Act and thus the Administrative Law Judge dismissed that allegation against Int’l TLC.

On page 18 of their Exceptions, Complainants allege that they proved that Int'l TLC failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, and delivering property by liquidating Complainants' three containers. This argument is unsupported by evidence. On the contrary, Complainants' negligence to make proper payments to Int'l TLC, their failure to pick up their cargo from Poland in a timely manner, the failure to act on the final notice of unpaid balance, and their failure to give a written response to Int'l TLC final notice resulted in the liquidation of the Complainants' three containers and does not constitute a Shipping Act violation by Int'l TLC. Complainants were unreasonably withholding the payment on the ocean freight of their containers and not picking up their containers at the destination port for over six months after their arrival. Complainants' containers continued to accrue numerous storage charges in Gdynia over these six months. Meanwhile, Int'l TLC received numerous notices from Limco to resolve the ocean freight payment and Baltic Sea Logistics about the need to resolve the storage charges for Complainants' containers. (Int'l TLC Ex. 38, pp. 9) (Complainants' Ex. 73, pp 2) (Lyamport, TR 692, 693, 734, 744).

Int'l TLC provided sufficient time and numerous opportunities for Complainants' payment for the ocean freight of their containers. Upon the arrival of container MOGU2051660 and MOGU2101987 in Poland, Complainants did not provide Int'l TLC with any instructions and did not move their containers from the port of Gdynia in spite of the fact that there was no delay in the delivery of these containers. Complainants irresponsibly left their containers in Gdynia for over six months without showing any interest in receiving these containers. Since the departure of containers MOGU2051660 and MOGU2101987 from the Port of Portland in July of 2008 and until January 9, 2011, for approximately seven months, Int'l TLC exercised just and

reasonable practices to provide numerous reminders to Complainants to remit their payment and pick up their containers from Poland. (Int'l TLC Ex. 32). For example, just between October 15, 2008 and November 18, 2008, Int'l TLC placed 30 phone calls to Mr. Kobel, whereas receiving only one phone call from Mr. Kobel during that entire 30+ day period. (Barvinenko, TR 413, 414) (Int'l TLC Ex. 32). Complainants disregarded these opportunities provided by Int'l TLC, and continued to promise to make their payments "soon" in their phone conversations with Mr. Barvinenko. Int'l TLC offered the Complainants over seven months to make the payment for their containers, which is far more time than in the interests of Int'l TLC. Additionally, after the damaged container MOGU2002520 arrived in Gdynia, it was not picked up by the Complainants for over two months. Again, Int'l TLC advised the Complainants about the urgent need to move this container, MOGU2002520, from Gdynia, Poland, and urged Complainants to take action to move this container. Altogether, Int'l TLC exercised every possibility to resolve the nonpayment issue with the Complainants. Int'l TLC sent a final notice to Complainants on January 9, 2009, however, Complainants ignored this final notice, alleging it was "an incorrect letter".

Complainants argue that their cargo was of very high value, however, they ignored Int'l TLC final notice warning them of the liquidation of their cargo. Complainants' unexplained irresponsibility would mean that either the Complainants lack good judgment as owners of this cargo or that the cargo was not as valuable as Complainants are claiming it to be. When Int'l TLC could not prolong the wait to collect the owed ocean freight, a decision needed to be made regarding the disposal of the cargo to collect all monies due to Int'l TLC, Limco, and Baltic Sea Logistics. Int'l TLC liquidated the Complainants' three containers in order to recover the costs associated with the Complainants' nonpayment of ocean freight and the failure to pick up their containers in Poland. There was no indication whether Complainants would ever pick up their

three containers or whether they abandoned these containers. Therefore, the liquidation sale of the three containers due to nonpayment for freight and storage charges is not a violation of any provision of the Shipping Act. The Administrative Law Judge concluded on page 39 of the initial decision that:

“Under these facts, where Int’l TLC completed its obligation to deliver the containers and the Complainants failed to complete their obligation to pick up and pay for the container, the Complainants have not demonstrated that it was unreasonable for Int’l TLC to liquidate the containers in an effort to control their financial exposure and stop the accrual of additional demurrage. Accordingly, Complainants have not demonstrated a failure to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property”.

The Complainants’ arguments that Int’l TLC “failed to establish, observe, and enforce just and reasonable regulations and practices” are unfounded and therefore the Administrative Law Judge dismissed that allegation against Int’l TLC.

III. CONCLUSION

Complainants in this case attempted to make an international shipment of five containers and the sale of goods in the Ukraine without any prior experience with shipping or selling plywood or oil in the Ukraine. Complainants purchased their cargo consisting of plywood, oil, and ATV’s in the United States at retail prices, paid for ocean containers, expected to pay for ocean freight, inland transportation, and storage charges for their containers, and anticipated to make a profit from the sale of this cargo. Even though Complainants allege that the cargo loaded in their containers was purchased at the value stated in the packing lists, it cannot be determined what the actual value of the cargo was.

Complainants failed to investigate the import regulations for importing oil products into the Ukraine. F. 134. Additionally, Complainants had no written contracts with the buyers of their

cargo in the Ukraine, nor were they able to sell any of the cargo that is now sitting on their father's property in the Ukraine since 2008. (Kobel, TR 219, Berkovich TR 478, 505).

The Federal Maritime Commission should also give great weight to the fact that despite Complainants' allegation that their cargo was of very high demand in the Ukraine, Complainants did not sell the cargo in the first two containers MOGU2003255 and MOGU2112451, because they "have a large family, Yakov and I. Well, everybody decide not to sell for right now." (Berkovich, TR 526, 527). Combined with the fact that Mr. Kobel filed for bankruptcy soon after purchasing the cargo for shipping, the record is clear that Mr. Kobel, without having sold any of Complainants' cargo, was in the possession of the cargo while he filed for bankruptcy three times (Int'l TLC Ex 54, Ex 55, Ex 56).

Although Complainants allege they were "defrauded" by Int'l TLC, Victor Berkovich continued to do business with Int'l TLC on multiple occasions after the liquidation sale of Complainants' containers. Complainants' conduct of continued use of Int'l TLC on unrelated shipments after the liquidation, despite the so called "fraud" is unexplainable except for the notion that these allegations are being exaggerated and are unjust (Int'l TLC Ex. 61, Ex. 62, Ex. 63, Ex. 64) (Kobel, TR 244, 245).

Furthermore, Complainants lack credibility and reliability as witnesses in this case. With the observation of the Complainants' demeanor during the week-long trial, The Administrative Law Judge had concluded on page 21 of the initial decision"

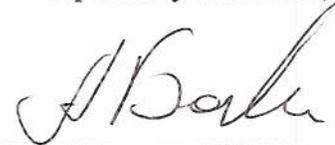
"However, Mr. Kobel's testimony was evasive, argumentative, and not credible".

Mr. Kobel is not a credible witness as manifested by a just a few out of many instances, described below, where his testimony lacked credibility. 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). At another time, Mr. Kobel testified that no cargo was purchased in the name of Mission Trucking (Int'l TLC Ex. 67, pp. 11); on the contrary, 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). In their claim to Hapag-Lloyd for the damaged container MOGU2002520, Complainants indicated that Victor Berkovich was a supervisor at Mission Trucking, however, Mr. Berkovich testified that he was never employed by Mission Trucking as a trucking supervisor or a load inspector (Berkovich, TR 491, 492) (Complainants' Ex 67, page 7 of 8). Confirming Complainants' lack of credibility is Mr. Berkovich's charge of forgery on an unrelated case. Complainants' lack of credibility as witnesses in this case is supported by the weight of the evidence in the record. Accordingly, the Federal Maritime Commission must give great weight to the Administrative Law Judge's evaluation of credibility.

As explained above, the Complainants' Exceptions are unfounded and the Complainants' testimony lacks credibility. The initial decision of the Administrative Law Judge is undisputable and strongly supported by the weight of the evidence in this case. For the reasons stated, Complainants' Memorandum of Exceptions should be denied and the initial decision sustained.

Respectfully submitted,



Aleksandr Barvinenko
President
International TLC, Inc
16402 29th ST E.
Lake Tapps, WA 98391

Dated: April 4, 2012

CERTIFICATE OF SERVICE

I, Aleksandr Barvinenko, hereby certify that on April 4, 2012, I served copies of REPLY OF RESPONDENT INTERNATIONAL TLC, INC TO COMPAINANTS' MEMORANDUM OF EXCEPTIONS on the below parties:

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