

# FEDERAL MARITIME COMMISSION

YAKOV KOBEL AND VICTOR  
BERKOVICH

*Complainants,*

v.

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

*Respondents.*

Docket No. 10-06

Served: December 14, 2016

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**BY THE COMMISSION:** Mario CORDERO *Chairman*; Rebecca F. DYE, Michael A. KHOURI, William P. DOYLE, Daniel B. MAFFEI, *Commissioners*. Commissioner KHOURI filed a concurring opinion in which Commissioner DYE and Commissioner MAFFEI join.

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## **Order Denying Motion to Reopen Time to Appeal**

Before the Commission is Respondent Limco Logistics, Inc.'s (Limco) motion to reopen the time to appeal. On May 5, 2016, the Commission issued an order denying Limco's petition for reconsideration of a May 26, 2015, Order Affirming Remand Initial

Decision. *Kobel v. Hapag-Lloyd A.G.*, 34 S.R.R. 188 (FMC 2016).<sup>1</sup> On October 26, 2016, Limco moved to reopen the time to appeal under Federal Rule of Appellate Procedure 4(a)(6), arguing that the Commission did not serve the May 5, 2016, order on it. Complainants filed a response in opposition to Limco's motion, and Limco filed a reply thereto. Because Limco's reply was filed in violation of 46 C.F.R. § 502.71(c), we will not consider it.

Although it appears that Limco's email address was inadvertently omitted from the email serving the May 5, 2016, order,<sup>2</sup> we deny Limco's motion because Federal Rule of Appellate Procedure 4(a)(6), on which Limco relies, is inapplicable, and the Commission does not have the authority to reopen the 60-day appeal period set by 28 U.S.C. § 2344. Rule 4 governs appeals from a district court in civil cases, and Federal Rule of Appellate Procedure 20 makes clear that Rule 4 does not apply to appellate review of agency orders. Fed. R. App. P. 20 ("All provisions of these rules, *except Rules 3-14 and 22-23* apply to the review or enforcement of an agency order.") (emphasis added); *see, e.g., Nutt v. Drug Enforcement Admin.*, 916 F.2d 202, 204 (5th Cir. 1990). Moreover, Federal Rule of Appellate Procedure 15, the counterpart to Rule 4 applicable to review of agency orders, does not grant agencies the authority to reopen the time to file petitions for review. Limco's recourse is not the Commission, but rather a Court of Appeals, which alone has the authority to determine whether a Limco petition for review is rendered timely by the email error.

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<sup>1</sup> The May 5, 2016, order was posted on the Commission's website on June 29, 2016.

<sup>2</sup> The Commission served the May 5, 2016, order on Limco via email on October 24, 2016.

THEREFORE, IT IS ORDERED, that Limco's Motion to Reopen Time to Appeal is **DENIED**, and Limco's Reply to Complainants' Response to Limco's Motion to Reopen Time to Appeal is **STRICKEN**.

By the Commission.

Rachel E. Dickon  
Assistant Secretary

*Commissioner Khouri*, concurring, with whom *Commissioner Dye* and *Commissioner Maffei* join:

I concur, quite reluctantly, in the holding that the Commission does not have the authority to reopen the time period to file a petition for review. However; the Commission was on written notice that, during the time period in question, Limco was without counsel and that all official Commission notices, orders, decisions, and other such agency pronouncements should be directed to Limco directly. With niceties and euphemisms aside, we, the Commission, dropped the ball.

In the event that Limco decides to file a petition with a federal Circuit Court of Appeals, I would encourage the Court to look with favor on such petition in the interest of fairness and justice.