

**FEDERAL MARITIME COMMISSION**

**WASHINGTON, D.C.**

**DOCKET NO. 10-09**

**SINICWAY INTERNATIONAL LOGISTICS LTD. – POSSIBLE VIOLATIONS OF  
SECTIONS 10(a)(1) AND 10(b)(2) OF THE SHIPPING ACT OF 1984**

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**INITIAL DECISION APPROVING PROPOSED SETTLEMENT AGREEMENT<sup>1</sup>**

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**I.**

On January 21, 2011, the Bureau of Enforcement (“BOE”) and respondent Sinicway International Logistics Ltd. (“Sinicway”) filed a Proposed Settlement Agreement (“Agreement”) and a Joint Memorandum in Support of Proposed Settlement (“Memorandum”) requesting approval of the Agreement. For the reasons set forth below, the request for approval of the Agreement is **GRANTED** and the proceeding against Sinicway is dismissed with prejudice.

**II.**

By Order of Investigation and Hearing dated August 20, 2010, the Commission commenced this proceeding to determine: 1) whether Sinicway violated section 10(a)(1)<sup>2</sup> of the Shipping Act by obtaining transportation at less than the rates and charges otherwise applicable by an unjust or unfair device or means; 2) whether Sinicway violated section 10(b)(2)<sup>3</sup> of the Shipping Act by providing service other than at the rates, charges, and classifications set forth in its published non-vessel operating common carrier (“NVOCC”) tariff or applicable NVOCC service arrangement; 3) whether, in the event violations of the Shipping Act are found, civil penalties should be assessed

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<sup>1</sup> This Initial Decision will become the decision of the Commission in the absence of review by the Commission. 46 C.F.R. § 502.227.

<sup>2</sup> 46 U.S.C. § 41102(a).

<sup>3</sup> 46 U.S.C. § 41104.

against Sinicway and, if so, the amount of penalties to be assessed; 4) whether, in the event violations of the Shipping Act are found, the tariff(s) of Sinicway should be suspended; and 5) whether, in the event violations are found, an appropriate cease and desist order should be issued. Order of Investigation and Hearing at 2-3.

BOE contends that at an evidentiary hearing it would submit a compelling case in support of its allegations that Sinicway violated the Shipping Act. Specifically, it asserts that it would show that Sinicway knowingly and willfully misdescribed cargo to obtain ocean transportation at less than the rates and charges otherwise applicable, and that Sinicway knowingly and willfully provided service other than at the rates, charges, and classifications set forth in its published NVOCC tariff. Memorandum at 2.

Sinicway contends that at an evidentiary hearing it would introduce evidence to prove that it did not knowingly and willfully violate any law or regulation as alleged in this proceeding, or that it would assert other facts and argument disputing or claiming mitigation with respect to the violations alleged. Memorandum at 2.

The parties indicate that significant procedural steps remain in this proceeding, including: the exchange of a large volume of final discovery materials, the submission of prehearing statements, and the briefing and submission of the parties' respective cases. Memorandum at 2. Therefore, the parties assert that the best interests of the parties and the shipping public is served by resolving this proceeding rather than engaging in further litigation. Memorandum at 2.

In the Agreement, Sinicway does not admit that it violated any provision of the Shipping Act. Agreement at 2. However, Sinicway has terminated the practices at issue and has instituted and commits to maintain measures designed to eliminate the practices which are the basis for the alleged violations. Agreement at 2.

The specific terms of the Agreement are:

- 1) On or before January 20, 2011 Respondent shall make monetary payment to an escrow account, in the total amount of \$115,000 (One Hundred Fifteen Thousand Dollars) for the benefit of the Federal Maritime Commission. No later than January 21, 2011, Respondent shall provide written verification to the Commission that the total monetary payment of \$115,000 was placed in such escrow account.
- 2) Upon the Commission's approval of a Joint Motion to Approve the Settlement, the \$115,000 shall be paid to the Commission within five business days.

- 3) BOE agrees that Respondent can continue to operate as an NVOCC provided that it complies with the tariff filing and bonding requirements of the Shipping Act and Federal Maritime Commission regulations.
- 4) Upon approval of the terms set forth in this Agreement by the Administrative Law Judge and the Commission, this instrument shall forever bar the commencement or institution by the Commission of any civil penalty assessment proceeding or other claim for recovery of civil penalties against Respondent and its affiliate Sunoble International Cargo Services Ltd. for alleged violations of the Shipping Act of 1984 and the Commission's regulations as set forth in FMC Docket No. 10-09, including the period from January 2009 through such date when this Agreement is executed by BOE and Sinicway.
- 5) Nothing in this Agreement is to be understood as an admission of wrongdoing or liability by Respondent, or a violation of the Shipping Act and/or the Commission regulations.
- 6) This [A]greement is subject to approval by the Commission in accordance with 46 C.F.R. § 502.603.

Agreement at 2-3.

In addition, the parties

note that there are no shipper complaints filed with the [Federal Maritime Commission] against Respondent. For that reason, such third-party complaints were not a basis for the allegations in the Order of Investigation and Hearing, and were not part of the settlement discussions between the parties. No third party has come forward to contest the approval of the proposed settlement. Accordingly, the parties submit that the shipping public will not now be harmed by the approval of this settlement agreement.

Memorandum at 6-7 n.2 (citation omitted).

### III.

Using language borrowed in part from the Administrative Procedure Act,<sup>4</sup> Rule 91 of the Commission's Rules of Practice and Procedure gives interested parties an opportunity, *inter alia*, 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 &*

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<sup>4</sup> "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).

*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)).

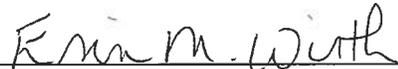
Based on the representations in the Memorandum, the Agreement, and other documents filed in this matter, the parties have established that the Agreement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake, or other defects which might make it unapprovable. The parties have engaged in discovery and have determined that the merits of the case and costs of proceeding weigh in favor of the settlement. Sinicway is paying a civil penalty and will continue to operate as an NVOCC provided that it complies with the tariff filing and bonding requirements. Both parties are represented by counsel and there is no evidence of fraud, duress, undue influence, or mistake nor harm to the public. Accordingly, the proposed settlement agreement is approved.

#### IV.

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

**ORDERED** that the proposed settlement agreement between BOE and Sinicway be **APPROVED**. It is

**FURTHER ORDERED** that this proceeding be **DISMISSED** with prejudice.

  
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Erin M. Wirth  
Administrative Law Judge