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October 31, 2011					
FEDERAL	MARITIME	COMMISSION			

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 10-11

SMART GARMENTS

v.

WORLDLINK LOGIX SERVICES INC.

INITIAL DECISION

This Initial Decision¹ is a default judgment against respondent Worldlink Logix Services Inc. (“Worldlink Logix”) which is being issued for the reasons explained below.

By complaint served November 30, 2010, complainant Smart Garments, a manufacturer and exporter of garments, alleges that respondent Worldlink Logix, an ocean transportation intermediary, violated sections 10(d)(1), 10(d)(4), and 10(b)(13) of the Shipping Act of 1984² (“Shipping Act”), 46 U.S.C. §§ 41102(c), 41106(2), and 41103(a), by releasing goods without the original bills of lading, showing unreasonable preference to the buyer, and disclosing information about the shipment without the consent of the shipper. Smart Garments alleges that the goods were released

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

² On October 14, 2006, the President signed a bill reenacting the Shipping Act as positive law. The bill’s purpose was to “reorganiz[e] and restat[e] the laws currently in the appendix to title 46. It codifies existing law rather than creating new law.” H.R. Rep. 109-170, at 2 (2005). The Commission often refers to provisions of the Act by their section numbers in the Act’s original enactment, references that are well-known in the industry. *See, e.g., Indigo Logistics, LLC; Liliya Ivanenko; and Leonid Ivanenko – Possible Violations of Section 19 of the Shipping Act of 1984 and the Commission’s Regulations at 46 C.F.R. Part 515*, FMC No. 11-06 (FMC Apr. 7, 2011) (Order of Investigation and Hearing).

to the buyer without Smart Garments receiving payment from the buyer and without the consent of Smart Garments. Smart Garments seeks reparations of \$84,504.00 plus interest from February 2010 and damages for loss of goodwill, business opportunities, and mental agony.

The Commission's rules require that Worldlink Logix file its answer or otherwise respond to the complaint within twenty days after the date of service, or by December 20, 2010. *See* 46 C.F.R. § 502.64(a). No answer has been filed to date.

The parties were served an Initial Order on December 1, 2010, and an Order Requiring Report of Status on January 19, 2011. Worldlink Logix has not responded to either of these orders.

On June 13, 2011, a notice of default and order to show cause was issued, granting additional time to respond to the complaint and ordering Worldlink Logix to show cause why judgment should not be entered against it. Worldlink Logix was instructed that if it failed to respond to the order to show cause by July 5, 2011, a default judgment would be entered against it, in the amount of \$84,504.00 plus interest, attorney's fees, and other damages as appropriate. Worldlink Logix failed to respond to the order to show cause.

Discussion

Respondent Wordlink Logix has repeatedly failed to respond in this proceeding by failing to file its answer to the complaint and failing to respond to three orders: the initial order, the order requiring report of status, and the notice of default and order to show cause. Under such circumstances, it is customary for the Commission as well as courts to find that a defaulting respondent has admitted the well-pled allegations both as to the specific violations of law alleged and as to the specific money damages alleged. *Bermuda Container Line Ltd. v. SHG Int'l Sales, Inc., FX Coughlin Co., and Clark Building Systems, Inc.*, 1998 WL 309055 (ALJ Mar. 24, 1998); *Hugh Symington v. Euro Car Transport, Inc.*, 26 S.R.R. 871, 872 (ALJ 1993); *see also City of N.Y. v. Michalis Pawn Shop, LLC*, 645 F.3d 114 (2d Cir. 2011). Because Wordlink Logix failed to participate, the decision does not have the benefit of a full development of facts and additional briefing.

In its complaint, Smart Garments alleges that it exported two shipments of a total of 24,144 knitted ladies jersey pants, valued at \$84,504.00, from Chennai, India to New York, New York. Complaint at 2. The goods were transported under respondent Wordlink Logix bills of lading WLS/NYK/0909002 and WLS/NYK/0909003. Complaint at 2. Pursuant to the bills of lading, the goods were to be delivered to the buyer only after surrender of the original bills of lading. Complaint at 3. Wordlink Logix delivered the goods to the buyer without obtaining the original bills of lading. Complaint at 3-4. Despite efforts to resolve the issue, Smart Garments has yet to be paid for the goods. Complaint at 4.

The Worldlink Logix bills of lading WLS/NYK/0909002 and WLS/NYK/0909003 are attached to the complaint. Complaint, Ex. C, D. Letters of credit requiring original documents are also attached. Complaint, Ex. E. The attached commercial invoices state that the value of the

shipments are \$78,960.00 and \$5,544.00 for a total of \$84,504.00. Complaint, Ex. F, G. A contemporaneous letter³ from Smart Garments to Worldlink Logix is consistent with the allegations in the complaint, including the claim for \$84,504.00 value of the goods. Complaint, Ex. H. The letter also asserts that Smart Garments contacted Worldlink Logix “and they were told that [Worldlink Logix] would take care of payment and they admitted that the goods were delivered to the buyer without receiving the original Bill of Lading.” Complaint, Ex. H. The letter continues, stating that the bank “confirmed that the Original Bill of Lading was returned unpaid.” Complaint, Ex. H. A February 27, 2010, email from Worldlink Logix indicates that they are aware of the issue and working to resolve it. Complaint, Ex. I. The complaint seeks interest for nine months, presumably from the February 27, 2010, letter and email. Complaint at 10.

Smart Garments alleges that Wordlink Logix “wrongfully and/or intentionally breached its fiduciary duty to ensure payment is made to shipper before releasing goods by releasing the containers to buyer before complainant received payment and without complainants consent.” Complaint at 4. Specifically, Smart Garments alleges that Worldlink Logix violated section 10(d)(1) by failing to establish, observe, and enforce just and reasonable regulations and practices connected with delivering the property. Complaint at 5. Smart Garments alleges that Worldlink Logix violated section 10(d)(4) by showing unreasonable preference to the buyer. Complaint at 5. Smart Garments alleges that Worldlink Logix violated section 10(b)(13) by disclosing information about the shipments. Complaint at 5.

Pursuant to section 10(d)(1) a “common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.” 46 U.S.C. § 41102(c).

Pursuant to section 10(b)(13):

A common carrier, marine terminal operator, or ocean freight forwarder, either alone or in conjunction with any other person, directly or indirectly, may not knowingly disclose, offer, solicit, or receive any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered to a common carrier, without the consent of the shipper or consignee, if the information (1) may be used to the detriment or prejudice of the shipper, the consignee, or any common carrier[.]

46 U.S.C. § 41103(a)(1).

Accepting the allegations of the complaint as true, Wordlink Logix agreed to transport two separate shipments of goods from India to the United States and to release them only upon provision

³ The letter is dated “27-10-2010” on page one but “27-2-2010” on the last page. Given the timing of other events, the letter was likely sent on February 27, 2010.

of original bills of lading. Wordlink Logix accepted payment for the shipments. However, Wordlink Logix delivered the shipments without receiving original bills of lading, thereby depriving Smart Garments of any payment for the shipments. This conduct demonstrates a failure to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with delivering property in violation of section 10(d)(1). Moreover, the facts support a finding that Wordlink Logix disclosed information regarding the nature, kind, and quantity of Smart Garment's property without the consent of Smart Garment in violation of section 10(b)(13). Accordingly, the allegations demonstrate violations of the Shipping Act for both shipments.

Pursuant to section 10(d)(4) a "marine terminal operator" may not "give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person." 46 U.S.C. § 41106(2). Smart Garment alleges that Wordlink Logix is an ocean transportation intermediary. Complaint at 1. Because Wordlink Logix is not a marine terminal operator, section 10(d)(4) does not apply to it. Therefore, the evidence does not support a finding of a violation of section 10(d)(4).

Damages

Regarding damages, Smart Garments alleges that the value of the shipments is \$84,504.00. Complaint at 6. In addition, Smart Garments alleges loss of goodwill, business opportunities, and lost orders, although it does not provide a specific monetary amount of these damages. Complaint at 6. Smart Garments seeks compensation for the value of the shipment, interest, damages for loss of business, goodwill, and opportunities, and compensation for mental agony. Complaint at 6.

Pursuant to section 11(g) of the Shipping Act "the Federal Maritime Commission shall direct the payment of reparations to the complainant for actual injury caused by a violation of this part, plus reasonable attorney fees." 46 U.S.C. § 41305(b). Commission case law states that: "(a) damages must be the proximate result of violations of the statute in question; (b) there is no presumption of damage; and (c) the violation in and of itself without proof of pecuniary loss resulting from the unlawful act does not afford a basis for reparation." *Waterman v. Stockholms Rederiaktiebolag Svea*, 3 F.M.B. 248, 249 (1950); *James J. Flanagan Shipping Corp. v. Lake Charles Harbor and Terminal Dist.*, 2003 WL 22067203 (Aug. 26, 2003).

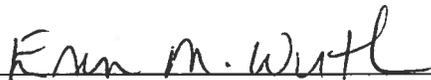
The evidence demonstrates that as a consequence of the violations by Wordlink Logix, Smart Garments has sustained \$84,504.00 in actual injury for loss of the goods, plus interest running from February 27, 2010, to be calculated by the Commission when this judgement and decision become administratively final. See 46 C.F.R. § 502.253. Complainant provides bills of lading and commercial invoices that clearly and consistently state the value of the goods. In addition, the complainant may be eligible for attorney's fees, upon petition, pursuant to Rule 254. 46 C.F.R. § 502.254.

The evidence does not support an award of additional damages. Claims of lost profits must take into account competition and other market factors. *Prudential Lines, Inc. v. Farrell Lines, Inc.*, 22 S.R.R. 1054, 1058 (1984); *Rose Int'l, Inc. v. Overseas Moving Network*, 2001 WL 865708, *76-

79 (FMC June 7, 2001). Similarly, loss of goodwill and business opportunities must be shown to be an actual injury incurred as a result of the respondent's illegal activities. *Rose*, at *80. Smart Garments does not provide the market analysis and evidence of causation necessary to award these damages. From the evidence presented the amount lost due to loss of goodwill, business opportunities, and lost orders is too speculative.

For the reasons stated above, it is hereby

ORDERED that default judgment be entered against respondent Wordlink Logix and that complainant Smart Garments be awarded \$84,504.00 plus interest from February 27, 2010, from respondent Worldlink Logix as reparations for violations of the Shipping Act.



Erin M. Wirth
Administrative Law Judge