

# FEDERAL MARITIME COMMISSION

PETRA PET, INC.,

*Complainant,*

v.

PANDA LOGISTICS LTD., PANDA  
LOGISTICS CO. LTD., and RDM  
SOLUTIONS, INC.,

*Respondents.*

Docket No. 11-14

Served: April 17, 2014

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**BY THE COMMISSION:** Mario CORDERO, *Chairman*; Richard A. LIDINSKY, Jr., William P. DOYLE, *Commissioners*. *Commissioner* Rebecca F. DYE dissenting. *Commissioner* Michael A. KHOURI dissenting.

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## **Order Granting Petition for Attorney's Fees**

### I. PROCEEDING

On August 26, 2011, Petra Pet Inc. (Petra Pet or Complainant) filed a Complaint alleging that Panda Logistics Ltd, Panda Logistics Co., Ltd. (Panda) and RDM Solutions, Inc. (RDM), violated section 10(d)(1) of the Act, 46 U.S.C. § 41102 (c). Petra Pet sought \$269,940.68 in reparations, plus interest, attorney's fees, and costs. Complaint at 9-11. On August 14, 2012, the

Administrative Law Judge (ALJ) issued an Initial Decision finding violations of the Shipping Act and ordering Panda to pay \$177,229.38 in reparations to Petra Pet.<sup>1</sup> *Petra Pet Inc. v. Panda Logistics Ltd.*, 32 S.R.R. 787, 805 (ALJ 2012). This matter came before the Commission on *sua sponte* review requested by a member of the Commission pursuant to C.F.R § 502.227(d). Panda timely filed exceptions on September 5, 2012, and Petra Pet timely filed an Opposition to Panda's Exceptions on October 2, 2012.

On October 31, 2013, the Commission issued a Memorandum Opinion and Order Adopting the Initial Decision and finding Panda liable for reparations in the amount of \$177,229.38 to Petra Pet. *See Petra Pet Inc. v. Panda Logistics Ltd.*, 33 S.R.R. 4 (FMC 2013). On January 29, 2014, Complainant filed a Verified Petition re Attorney's Fees (Petition), within the required 30 day deadline,<sup>2</sup> asking for \$112,507.22 in attorney's fees and expenses. No response has been filed by Panda.

For the reasons stated below, the Commission:

- (1) grants the Petition for Attorney's Fees; and
- (2) awards attorney's fees in the amount of \$105,906.50, based on 36.8 hours of attorney work time, at a rate of \$170.00 per hour; 255.1 hours, at a rate of \$362.04 per hour; 5.1 hours at a rate of \$659.11 per hour; and 17.3 hours, at a rate of \$227.31 per hour.

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<sup>1</sup> RDM did not file an answer or otherwise respond to the Complaint. On April 20, 2012, the ALJ issued a default decision, ordering RDM to pay \$207,977.18, plus interest to Petra Pet. *Petra Pet Inc. v. Panda Logistics Ltd.*, 32 S.R.R. 675, 677 (ALJ 2012). No exceptions were filed to the default decision.

<sup>2</sup> *See* 46 C.F.R. § 502.254 (c)(1) and (2).

## II. DISCUSSION

### A. *Authority*

Rule 254 of the Commission's regulations states that "[t]he Commission shall, upon petition, award the complainant reasonable attorney's fees directly related to obtaining a reparations award in any complaint proceeding under section 11 of the Shipping Act of 1984 (46 U.S.C. 41301–41302, 41305–41307(a))." 46 C.F.R. § 502.254 (2012). An updated Laffey Matrix<sup>3</sup> has been upheld as a valid method to determine reasonable attorney's fees in the District of Columbia. See *McDowell v. District of Columbia*, Civ. A. No. 00-594 (RCL), LEXSEE 2001 U.S. Dist. LEXIS 8114 (D.D.C. 2001). As counsel for Petra Pet is located in Washington D.C., and an updated Laffey Matrix, and the USAO Laffey matrix, have both been held reasonable to establish a determination of attorney's fees in Washington D.C., the Commission may rely on both matrices to determine an appropriate fee.<sup>4</sup> Furthermore, as no response has been received by Respondent, both will be relied upon to help determine reasonable attorney's fees.

### B. *Hours Expended*

In support of the request, Petitioner provided a Declaration

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<sup>3</sup> See *Laffey v. Northwest Airlines, Inc.*, 572 F.Supp. 354 (D.D.C. 1983), *aff'd in part, rev'd in part on other grounds*, 746 F.2d 4 (D.C. Cir. 1984), *cert. denied*, 472 U.S. 1021 (1985) (establishing a matrix to be used to determine an attorney's hourly rate based on his or her number of years of experience).

<sup>4</sup> "Plaintiffs may point to such evidence as an updated version of the Laffey matrix or the U.S. Attorney's Office matrix, or their own survey' to demonstrate the prevailing market rates in the community." *McDowell*, at 8-9 (*citing Covington v. District of Columbia*, 57 F.3d 1101, 1109 (D.C. Cir. 1995)).

of Sanford M. Saunders, Jr., lead counsel representing Petra Pet, as well as billing statements (Exhibit A); the United States Attorney's Office (USAO) Laffey Matrix (Exhibit B); "adjusted" Laffey Matrix (Exhibit C); and a Price Waterhouse Coopers Revenue Management Report showing rates and years of experience for attorneys at a firm identified as number 0985 (Exhibit D). Petitioner's Exhibit A shows the following attorney work times and associated fees: Mr. Robert Stang<sup>5</sup> spent a total of 255.1 hours of attorney work time, between July 14, 2011, and December 6, 2012, charging an average rate of \$362.04 per hour, with fees totaling \$92,356.50. See Petition, Exhibit A. Mr. Saunders spent a total of 5.1 hours of attorney work time, between November 2, 2011, and June 29, 2012, charging an average rate of \$659.11 per hour, with fees totaling \$3,361.50. *Id.* Mr. Jozef S. Przygodzki spent a total of 17.3 hours of attorney work time, between November 15, 2011, and May 21, 2012, charging an average rate of \$227.31 per hour, with fees totaling \$3,932.50. *Id.* Ms. Barbara E. McBrayer spent a total of 36.8 hours of paralegal time, between June 28, 2012, and September 19, 2012, charging an average rate of \$245 per hour, with fees totaling \$9,016.00. *Id.*

Petitioner billed for attorney work time performed from July 14, 2011, through December 6, 2012, totaling \$108,666.50. Petitioner did not, however, limit its request to this amount. The amount requested by Petitioner is \$112,507.22. Petitioner states that this amount includes \$4,575.72 in expenses, notwithstanding the fact that \$5,318.47 were submitted in costs and expenses. Costs and expenses, however, are not awardable under the Shipping Act for claims adjudicated by the Commission. *See Tienshan, Inc. v. Tianjin Hua Feng Transp. Agency Co., Ltd.*, 32 S.R.R. 52, 67 (ALJ 2011) (*Tienshan*); *Global Transporte Oceanico S.A. v. Coler Independent Lines Co.*, 28 S.R.R. 1162, 1163 n.5 (ALJ 1999) (the term "attorney's fees" does not include costs). As costs cannot be awarded, \$4,575.72 will be subtracted from \$112,507.22, and

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<sup>5</sup> Mr. Stang withdrew as counsel for Petra Pet in 2013.

\$107,931.50 is therefore the full amount being sought by petitioner in attorney's fees.

The affidavit submitted by Mr. Saunders, as well as the billing statements in Exhibit A, will be utilized to determine the appropriate rates to be charged and to calculate the attorney's fees award. *See Tienshan*, 32 S.R.R. at 57-58 (time records prepared contemporaneously and partners' affidavits have been accepted by the Commission to establish hours submitted); *see also Bernard & Weldcraft Welding Equip. v. Supertrans Int'l, Inc.*, 29 S.R.R. 1348, 1358 (ALJ 2003). After reviewing the attorney's fees submitted, the length of experience of each attorney and paralegal, and the Laffey Matrices, the fees appear reasonable for Mr. Stang, Mr. Saunders, and Mr. Przygodzki. The rate charged by the paralegal, Ms. McBrayer, exceeds what the submitted Laffey Matrices set as reasonable for the District of Columbia, during the applicable time period of June 1, 2012, through May 31, 2013. A reasonable rate under the "adjusted" Laffey Matrix for Ms. McBrayer is \$170 per hour. Therefore, the 36.8 hours Ms. McBrayer worked should result in \$6,256.00 in compensable fees, rather than the \$9,016.00 fee amount requested. In light of the hours worked, and the submitted Laffey Matrices, we grant the petition with regard to the attorney's fees sought in the amount of \$105,906.50. We deny the petition with regard to the \$4,575.72 sought for costs.

### **CONCLUSION**

THEREFORE, IT IS ORDERED, That the Verified Petition re Attorney's Fees is Granted;

IT IS FURTHER ORDERED, That Complainant is awarded \$105,906.50 in attorney's fees, based on 36.8 hours of paralegal work time, at a rate of \$170.00 per hour; 255.1 hours of attorney work time, at a rate of \$362.04 per hour; 5.1 hours of attorney work time, at a rate of \$659.11 per hour; and 17.3 hours of attorney work time, at a rate of \$227.31 per hour; and

IT IS FURTHER ORDERED, That this proceeding is discontinued.

By the Commission.

Karen V. Gregory  
Secretary

*Commissioner Khouri, dissenting:*

I previously voted in the case in chief that no Section 10(d)(1) violation was alleged, established or proven. Therefore, I disapprove the majority's award of attorney's fees to the Complainant.