

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 12 - 01**

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**OC INTERNATIONAL FREIGHT, INC.,  
OMJ INTERNATIONAL FREIGHT, INC.  
AND OMAR COLLADO**

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**BUREAU OF ENFORCEMENT'S  
REPLY TO  
RESPONDENTS' EXCEPTIONS**

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**May 16, 2013**

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Pursuant to Rule 227(b) of the Federal Maritime Commission's Rule of Practice and Procedure, 46 C.F.R. § 502.227(b), the Bureau of Enforcement (BOE) files this Reply to Exceptions filed by Respondents OC International Freight Inc., OMJ International Freight Inc. and Mr. Omar Collado. Respondents' exceptions to the Initial Decision (Initial Decision or I.D.) in Docket No. 12-01 were filed on April 24, 2013, following grant of a seven day extension by the Office of the Secretary.

In their 7-page brief, Respondents except to three aspects of the Initial Decision, namely:

- 1) The ALJ erred in upholding BCL's denial of OC's license application (pages 3-5);
- 2) The ALJ erred in issuing cease and desist orders against Respondents (pages 5-6);  
and,
- 3) The ALJ erred in ordering a civil penalty in the amount of \$60,000 against Respondents (pages 6-7).

While Respondents may disagree as to the preferred outcome of this docketed proceeding,

Respondents demonstrate no legal error in the ALJ's reasoning. Certainly, Respondents demonstrate no set of facts in the record contrary to the ALJ's determination, as Respondents offered no evidence at hearing and proffered no findings of fact in their trial brief. Neither does Respondents' brief on exceptions now set forth any facts from the record below which controvert the ALJ's findings.

Instead, Respondents offer only vague assertions that Respondents' actions "taken as a whole" constitute the character required by the licensing regulations, Exceptions at 4; or that Respondents' failure to disclose tax liens and judgments in their licensing application should not be considered a "materially false" statement, Exceptions at 4; and that Respondents "cooperated fully and forthright" throughout this investigation, Exceptions at 6.<sup>1</sup> Neither the record nor the ALJ's findings of fact support Respondents' arguments.

#### **I. The ALJ Correctly Upheld BCL's Licensing Determination**

Respondents first argue that the ALJ erred in upholding BCL's determination to deny an OTI license to Respondents OC International Freight and Omar Collado.

Respondents do not contest the ALJ's findings that Respondents violated 46 U.S.C. §§ 40901 and 40902 in numerous instances. I.D. at 26. Rather, Respondents assert only that they have not been held to be involved in any illegal scheme involving "moral turpitude," Exceptions at 3. Respondents make no showing, however, that findings of moral turpitude are the sole determinant for denial of an OTI license, and Respondents' citation to G.R. Minon – Freight Forwarder License, 12 F.M.C. 75 (FMC 1968) does not state otherwise. In denying a license to Mr. Minon, the Commission concluded that evidence that applicant be found directly involved in fraudulent acts was not required:

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<sup>1</sup> BOE previously addressed Mr. Collado's self-serving claim in BOE's Exceptions filed April 17, 2013, at 25-26.

The record establishes that Sarfati fraudulently diverted the drug shipments scheduled to go to the Philippines for sale in the domestic market. This was accomplished through the use of bogus bills of lading and with the cooperation of applicant. The record does not conclusively establish that applicant prepared the bogus bills of lading or even that he knew of their existence.

G.R. Minon, 12 F.M.C. at 80. The Commission continued:

While these facts do not reflect favorably on applicant's character, taken alone, they might not constitute sufficient evidence of lack of personal responsibility to warrant denial of applicant's license. However, the hearing produced other evidence regarding activities of applicant which reflect further on applicant's personal responsibility and which prompts us to find applicant unqualified to operate as a freight forwarder.

Id. Indeed, the Commission therein expressly overturned the Examiner's recommendation to license Mr. Minon, stating as follows:

We cannot agree with the Examiner's recommendation that applicant should merely be scolded for his past indiscretions and warned about the consequences of any similar future activities. Considering that applicant had previously been informed of the impropriety of permitting someone to use his name or license, and considering that applicant knowingly cooperated in the diversion of the drug shipments, we conclude that it would be unduly stretching any concept of fairness to afford applicant still another chance.

12 F.M.C. at 82. Likewise, in the instant case, Mr. Collado was "warned repeatedly" that it was unlawful to operate as a freight forwarder without a license, but the ALJ found that Respondents continued providing forwarding services even while this case proceeded. I.D. at 25, citing Margolis Affidavit at 1, and BCL's Notice of Intent to Deny, dated November 11, 2011 (BOE 101). See also BOE Requests for Admissions (RFA) Nos. 126, 175 (BOE 176,182). The ALJ thus concluded:

The decision to deny respondents an OTI license was predicated on violations of the Shipping Act. Respondents' violations of sections 40901 and 40902 are relevant to respondents' fitness to obtain an OTI license. Moreover, the respondents' continued violations suggest that the respondents do not appreciate the severity of the violation nor their obligations to the shipping public.

I.D. at 35. See also I.D. at 28 as to effect of Mr. Collado's "admitted violations of the Shipping

act and continued operation after losing its license and bond.” The ALJ thus found that Respondents’ violations of sections 19 (a) and (b) of the Shipping Act were sufficient basis to sustain denial of an OTI license. It is telling, and fatal to Respondents’ exception here, that Respondents have not contested their violations of section 19.

In next arguing that the ALJ erred in her determination as to licensing, Respondents assert that their failure to disclose numerous tax liens, judgments and bankruptcy proceedings was not “material” to OC’s license application under 46 C.F.R. § 515.15. The ALJ understandably found to the contrary:

Discovery in this matter uncovered a disturbing lack of candor on the OTI license application, which specifically asks about bankruptcy proceedings, tax liens or legal judgments rendered for a debt. BOE 114. Respondents failed to candidly answer these questions. Financial problems are relevant to whether or not to provide an OTI license because failure to maintain a bond puts the shipping public at risk. Significant financial problems only reinforce the need for a bond to protect innocent shippers. The record demonstrates numerous legal proceedings that should have been disclosed.

I.D. at 35. As the ALJ noted, “Failure to disclose this information is a violation of 46 C.F.R. § 515.15 (c), and grounds for rejection. Even tax liens issued after Mr. Collado submitted the license application should have been disclosed as a change of fact pursuant to 46 C.F.R. § 515.12(d).” I.D. at 28.

Even now, Mr. Collado evidences a continued lack of candor in dismissing any omitted financial information as only “relatively minor debts,” which should not be deemed to constitute a “material non-disclosure,” Exceptions at 4-5. At deposition, however, Mr. Collado acknowledged no fewer than five judgments against him, including one judgment in the amount of \$220,587, arising under a line of credit on his business, I.D. at 28, and BOE 771-772. These misstatements and omissions on his application were material within the meaning of 46 C.F.R. § 515.15 as they had the “potential to affect the administration” by BCL of its program to review

and approve license applicants. See, United States v. Inner Beauty Int'l (USA) Ltd., 2011 WL 6009239 \*2 (CIT 2011) (holding false statement of country of origin to be material); Ocean Equity Group Inc. v Wooten, 423 B.R. 108 (Bankr. E.D. Va. 2010) (materially false statement defined as one that “paints a substantially untruthful picture of a financial condition by misrepresenting information of the type which would normally affect a decision to grant credit.”) Herein, the ALJ was well grounded in concluding that “material misrepresentations on the OTI license application constitute independent grounds to affirm the denial of the OTI license,” I.D. at 28.

## **II. The ALJ Correctly Issued Cease and Desist Orders**

Respondents argue that the ALJ improperly issued cease and desist orders since their actions reflected “no intent to deceive or defraud,” Exceptions at 5-6. While this latter issue featured prominently in the ALJ’s analysis of Respondents’ alleged violations of section 10(a), no such finding or requirement attaches to issuance of a cease and desist order arising from violations of section 19 (a) and (b). The ALJ thus correctly cites the general rule that cease and desist “orders are appropriate when there is reasonable likelihood that respondents will resume their unlawful activities,” I.D. at 34, citing Portman Square Ltd. – Possible Violations, 28 S.R.R. 80, 86 (ALJ 1998).

Respondents do not contest that they remain active in the ocean transportation industry, but assert that their continued operations are only as “freight consolidator and warehouse by and through Source Consulting, a licensed NVOCC,” Exceptions at 6. The substantial evidence in the record, including Respondents’ admissions, sworn testimony and specific findings of the ALJ uniformly establishes the contrary. Respondents plainly admitted that they “provided ocean

freight forwarding services . . . between March 11, 2011 and April 2, 2012.” RFA 175, BOE

182. At deposition, Mr. Collado testified that Respondents performed freight forwarding services, including bookings, preparing bills of lading, and preparation and submission of export documentation, including Shippers Export Declarations (SEDs) and Electronic Export Information (EEI). I.D. at 12-13, FF 63-67. Indeed, when asked if he understood that preparing export documentation was a freight forwarder function, Mr. Collado responded “absolutely,” I.D. at 13, citing BOE 784. The ALJ relied on this evidence to determine that Respondents had a history of providing OTI services in violation of the Shipping Act, “including a new scheme to operate without a license.” I.D. at 34.

As with much of their exceptions, Respondents offer only the self-serving assertion that their ongoing activities constitute freight consolidating and warehousing. Exceptions at 6. As the Seventh Circuit has found, however, “[a]ssertions in an appellate brief are no substitute for evidence.” Ho v. Donovan, 569 F.3d 677, 682 (7<sup>th</sup> Cir. 2009); United Auto. Insurance Co., et al. v. Veluchamy, 2010 WL 889980 \*2 (N.D. Ill.) (where there is a lack of evidence in the record, “unsupported statements in briefs do not count”).

The ALJ’s order to cease and desist is adequately supported by the record. As Respondents have offered no evidentiary case to the contrary, the ALJ’s issuance of a cease and desist should be sustained on exceptions.

### **III. Civil Penalty**

BOE also has excepted to the ALJ’s determination of the civil penalty. BOE’s Exceptions, filed April 17, 2013, fully address the Bureau’s position with regard to the inadequacy of the civil penalty assessed by the ALJ.

#### **IV. Conclusion**

In light of the foregoing, BOE respectfully requests that the Commission deny Respondents' Exceptions to the ALJ's Initial Decision in Docket No. 12-01 and affirm the ALJ's finding with respect to denial of the OTI application of OC International Freight Inc. and related entry of cease and desist orders addressing the future conduct of these Respondents.

Further, and pursuant to its own exceptions, BOE submits that the ALJ erred in: (1) failing to find that Respondents Collado, OC and OMJ acted willfully and knowingly in violation of section 10 (a)(1) of the Shipping Act in assisting Island Cargo in unlawfully accessing the rates and terms of Seaboard Service Contract No. 2008-00682 in 19 instances; (2) failing to enter a specific finding that Respondents Collado, OC and OMJ acted knowingly and willfully in violation of section 19 (a) and (b) of the Shipping Act in performing unlicensed and unbonded OTI operations in 14 instances; and (3) failing to assess an appropriate civil penalty against Respondents Collado, OC and OMJ. Accordingly, it is respectfully requested that after consideration of these Exceptions and the record in this proceeding, the Commission remand this

matter to the Administrative Law Judge for further proceedings with respect to the section 10(a)(1) issue and to assess a civil penalty fully commensurate with the knowing and willful character of Respondents' violations of sections 10(a)(1) and 19 of the Shipping Act.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter J. King".

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 16<sup>th</sup> day of May 2013, the foregoing Bureau of Enforcement's Reply to Respondents' Exceptions has been served upon the Respondents by electronic mail.

Signed in Washington D.C. on May 16, 2013.

  
Cory R. Cinque