

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 12-02

MAHER TERMINALS, LLC

COMPLAINANT

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT

ANSWER

Respondent the Port Authority of New York and New Jersey (the "Port Authority"), by and through its undersigned counsel, respectfully submits this Answer in response to the Complaint filed by Maher Terminals, LLC ("Maher" or "Complainant").

On December 17, 2015, the Federal Maritime Commission issued its decision affirming in part and reversing in part the dismissal of Maher's Complaint. Six days later, the Presiding Officer issued an order requiring, *inter alia*, the parties to submit a joint scheduling order by January 19, 2016. Pursuant to this Order, the Port Authority reached out to the Complainant to schedule a meet and confer and, during that meeting, the Port Authority advised Maher of its intention to include a request to extend the time to file its Answer, pursuant to FMC Rule § 502.62(b), as part of the proposed scheduling order. Maher stated no objection to this during the meet and confer. Then, without

warning, Maher claimed in its portion of the parties' January 19, 2016 joint submission that the Port Authority was in default. Although the Port Authority proposed filing its Answer by February 1, 2016, and set forth good cause for extending the standard statutory period as part of its section of the January 19 joint submission, in light of Maher's sudden assertion that the Port Authority is in default, and out of an abundance of caution, the Port Authority hereby files its Answer now. Maher has not been prejudiced by the timing of this filing, nor could it nor could it plausibly so assert.

To the extent not specifically admitted herein, all allegations of the Complaint are denied. Furthermore, the section headings contained herein simply mirror those employed by Maher in its Complaint and are included only for purposes of clarity and organization. The Port Authority does not admit, but rather hereby specifically denies, any factual or legal allegations in the headings used in the Complaint.

I. Complainant

A. To the extent the allegations contained in Paragraph A of this subheading of the Complaint constitute legal conclusions, no response is required. To the extent that a response is required, the Port Authority lacks information sufficient to form a belief as to Complainant's commercial operations and therefore denies the allegations in Paragraph A of this subheading of the Complaint.

B. The Port Authority lacks information sufficient to form a belief as to Complainant's commercial operations and therefore denies the allegations in Paragraph B of this subheading of the Complaint.

II. Respondent

A. The Port Authority admits that it is a body corporate and politic created by Compact between the states of New York and New Jersey and with the consent of the Congress. The Port Authority further admits that it had offices at 225 Park Avenue South, New York, New York at the time the Complaint was filed, but have since moved that office to Four World Trade Center, 150 Greenwich Street, New York, NY 10007.

B. The Port Authority admits that it owns marine terminal facilities in the New York/New Jersey Area, including in Elizabeth, New Jersey.

III. Jurisdiction

A. To the extent the allegations contained in Paragraph A of this subheading of the Complaint constitute legal conclusions, no response is required. To the extent that a response is required, the Port Authority admits the allegations in Paragraph A of this subheading of the Complaint.

B. The Port Authority admits the allegations in Paragraph B of this subheading of the Complaint.

C. To the extent the allegations contained in Paragraph C of this subheading of the Complaint constitute legal conclusions, no response is required. To the extent that a response is required, the Port Authority denies the allegations in Paragraph C of this subheading of the Complaint.

D. To the extent the allegations contained in Paragraph D of this subheading of the Complaint constitute legal conclusions, no response is required. To the extent that a response is required, the Port Authority denies the allegations in Paragraph D of this subheading of the Complaint.

IV. Statement of Facts and Matters Complained of

PANYNJ's Unlawful Transfer/Change of Control Practices

A. The Port Authority admits that at times it has required certain economic consideration from marine terminal operators in exchange for its consent to transfer or change of ownership or control, but otherwise denies the allegations in Paragraph A of this subheading of the Complaint.

B. The Port Authority admits that it has published a document that includes the language excerpted in quotation marks in Paragraph B of this subheading of the Complaint, but otherwise denies the allegations in Paragraph B of this subheading of the Complaint.

C. The Port Authority admits that at times it has required certain economic consideration from marine terminal operators in exchange for its consent to transfer or change of ownership or control, but otherwise denies the allegations in Paragraph C of this subheading of the Complaint.

D. The Port Authority denies that it has not required economic consideration from marine terminal operators in exchange for its consent to a transfer or change of ownership or control, except where expressly prohibited by contract.

E. The Port Authority denies the allegations in Paragraph E of this subheading of the Complaint.

F. The Port Authority denies the allegations in Paragraph F of this subheading of the Complaint.

G. The Port Authority denies the allegations in Paragraph G of this subheading of the Complaint.

H. The Port Authority denies the allegations in Paragraph H of this subheading of the Complaint.

Unreasonable and Discriminatory Actions and Practices with Respect to Ocean Carriers and Ocean Carrier-Affiliated Marine Terminals

I. The allegations contained in Paragraph I of this subheading of the Complaint relate to claims that have been dismissed pursuant to the Federal Maritime Commission's ("FMC") Memorandum Opinion and Order dated December 17, 2015.

J. The allegations contained in Paragraph J of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

K. The allegations contained in Paragraph K of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

L. The allegations contained in Paragraph L of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

M. The allegations contained in Paragraph M of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

N. The allegations contained in Paragraph N of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

O. The allegations contained in Paragraph O of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

P. The allegations contained in Paragraph P of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Q. The allegations contained in Paragraph Q of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

R. The allegations contained in Paragraph R of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

S. The allegations contained in Paragraph S of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

T. The allegations contained in Paragraph T of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Unreasonable Leasing Practices

U. The allegations contained in Paragraph U of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

V. The Port Authority denies the allegations in Paragraph V of this subheading of the Complaint.

W. The Port Authority denies the allegations in Paragraph W of this subheading of the Complaint.

Unreasonable and Discriminatory Actions Regarding Capital Expenditure Obligations

X. The allegations contained in Paragraph X of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Y. The allegations contained in Paragraph Y of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Unreasonable Refusal to Deal or Negotiate

Z. The Port Authority admits that on June 23, 2010, it entered into a lease agreement with Global Terminal & Container Services, LLC, Lease No. LPJ-001, for the operation of a marine terminal facility.

AA. The Port Authority denies the allegations in Paragraph AA of this subheading of the Complaint.

BB. The allegations contained in Paragraph BB of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

CC. The allegations contained in Paragraph CC of this subheading of the Complaint relate to claims that have been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

V. Violations of the Shipping Act

A. The Port Authority incorporates Sections I-IV of the Answer by reference. Furthermore, the Port Authority denies the allegations in Paragraph A of this subheading of the Complaint.

Count I

B. The Port Authority denies the allegations in Paragraph B of this subheading of the Complaint.

Count II

C. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Count III

D. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Count IV

E. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Count V

F. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Count VI

G. The Port Authority denies the allegations in Paragraph G of this subheading of the Complaint.

Count VII

H. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Count VIII

I. The Port Authority denies the allegations in Paragraph I of this subheading of the Complaint.

Count IX

J. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Count X

K. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Count XI

L. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Count XII

M. The Port Authority denies the allegations in Paragraph M of this subheading of the Complaint.

Count XIII

N. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

Count XIV

O. This claim has been dismissed pursuant to the FMC's Memorandum Opinion and Order dated December 17, 2015.

The Lack of Valid Transportation Purposes

P. The Port Authority incorporates Sections I-IV of the Answer by reference. Furthermore, the Port Authority denies the allegations in Paragraph P of this subheading of the Complaint.

Q. The Port Authority incorporates Sections I-IV of the Answer by reference. Furthermore, the Port Authority denies the allegations in Paragraph Q of this subheading of the Complaint.

VI. Injury to Maher

A. The Port Authority incorporates Sections I-V of the Answer by reference. Furthermore, the Port Authority denies the allegations in Paragraph A of this subheading of the Complaint.

VII. Prayer for Relief

A. The Port Authority lacks information sufficient to form a belief as to whether or not Maher has consulted with the FMC's dispute resolution specialist in connection with its Complaint in this action. The Port Authority denies the allegation that Maher has repeatedly attempted alternative dispute resolution in other disputes with the Port Authority, other than to admit that the parties have engaged in settlement discussions over other claims with no success.

B. The Port Authority denies the allegations in Paragraph B of this subheading of the Complaint. The Port Authority denies that it is liable to the

Complainant in any way or that the Complainant suffered any injury or incurred any damages by any act or omission of the Port Authority as challenged in the Complaint, and further denies that Complainant is entitled to any form of relief under any theory by means of the allegations set forth in each of the subheadings, paragraphs, and their subparts in the Complaint.

DEFENSES

FURTHER, the Port Authority asserts the following defenses and affirmative defenses to the Complaint. The Port Authority does not concede that it has the burden of proof as to any of the defenses listed below:

FIRST DEFENSE

The claims for relief asserted by Complainant, in whole or in part, fail to state facts sufficient to constitute a claim for relief against the Port Authority.

SECOND DEFENSE

The claims for relief asserted by Complainant are barred, in whole or in part, because the Port Authority's actions were justified since it acted in accordance with the Shipping Act.

THIRD DEFENSE

The claims for relief asserted by Complainant are barred, in whole or in part, by the applicable statute of limitations.

FOURTH DEFENSE

The claims for relief asserted by Complainant are barred, in whole or in part, by collateral estoppel.

FIFTH DEFENSE

The claims for relief asserted by Complainant are barred, in whole or in part, based on Complainant's lack of standing.

SIXTH DEFENSE

The claims for relief asserted by Complainant are barred, in whole or in part, for lack of ripeness.

WHEREFORE Respondent prays that the Complaint in this proceeding be dismissed.

Dated: January 20, 2016

Respectfully submitted,

 *Richard Rothman A.M.*

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the persons listed below in the matter indicated.

<p><u>Via U.S. Mail and E-mail:</u> Lawrence I Kiern Bryant E. Gardner Gerald A. Morrissey III Rand K. Brothers Winston & Strawn LLP 1700 K Street, N.W. Washington DC 20006-3817</p>	<p>Dated at New York, NY this 20th day of January, 2016</p>
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Kami Lizarraga