

FEDERAL MARITIME COMMISSION

REVOCATION OF OCEAN
TRANSPORTATION
INTERMEDIARY LICENSE NO.
021899 – TRANS WORLD
LOGISTICS CORPORATION

Docket No. 12-04

Served: July 20, 2012

BY THE COMMISSION: Richard A. Lidinsky, Jr.,
Chairman; Joseph E. Brennan, Rebecca F. Dye, Michael A.
Khouri and Mario Cordero, *Commissioners*.

ORDER TO CEASE AND DESIST

By Order to Show Cause, served April 11, 2012, and published in the *Federal Register* on April 16, 2012 (77 Fed. Reg. 22576), the Commission directed Trans World Logistics Corporation (Trans World Logistics or Respondent) to show cause why the Commission should not revoke its ocean transportation intermediary (OTI) license for failure to report the resignation of its qualifying individual (QI) and to seek approval of a replacement QI, as required by 46 C.F.R. § 515.18; and for failure to reply to lawful inquiries by the Commission with respect to its OTI business, as required by 46 C.F.R. § 515.31(g). Respondent was directed to file affidavits of fact and memoranda of law by May 11, 2012. The

Commission's Bureau of Enforcement (BOE) was designated a party to the proceeding, and directed to file reply affidavits and memoranda of law by May 29, 2012.

Background

In the Order to Show Cause, the Commission stated that Trans World Logistics was licensed as an OTI based on the qualification of Ms. Malene Sorensen, an officer of the company and its approved QI. Based on information obtained in the course of a routine OTI compliance audit conducted in 2011 by BOE, the Commission stated that it appeared that Ms. Sorensen resigned her position as an officer on November 3, 2010, but the licensee did not notify the Commission of the resignation or seek approval of a replacement QI. The Commission stated that pursuant to its OTI regulations, when a corporation has been licensed based on the qualifications of an officer of the company and that individual no longer serves in a full-time and active capacity, the licensee is required to report such a change to the Commission within 30 days, and within that time period, seek Commission approval of any other active officer who may qualify as QI. 46 C.F.R. §515.18(c). The Commission stated that it appeared that Trans World Logistics had violated and continued to violate this requirement.

In addition, the Commission stated that as part of the OTI compliance audit of Trans World Logistics, BOE sent repeated requests to the company between June and November, 2011, seeking current information about its OTI business. The requests were sent to addresses contained in the Commission's Bureau of Certification & Licensing's (BCL's) records, as well as to additional addresses for the firm's principals located through staff research. Despite these

repeated requests for information about Trans World Logistics' OTI business, the company failed to respond, in violation of 46 C.F.R. § 515.31(g).

Respondent received adequate notice of the allegations against it in the Order to Show Cause, but failed to submit any evidence, memoranda of law or affidavits to contest the allegations. BOE timely submitted its Memorandum of Law and supporting affidavits of Vern Hill, Director BCL, and Doretha Scott, BOE Investigative Analyst.

**Bureau of Enforcement Memorandum of Law and
Affidavits**

According to evidence set out in BOE's Memorandum of Law and accompanying affidavits, Trans World Logistics' OTI License No. 021899 was issued April 10, 2009, based on the qualifications of Malene Sorensen, an officer of the company and its approved QI. Trans World Logistics maintained freight forwarder and non-vessel-operating common carrier bonds with Great American Alliance Insurance Company.

On June 30, 2011, BOE began a routine OTI compliance audit of Trans World Logistics, by sending an audit letter and questionnaire via UPS to the address reflected in the Commission's BCL records. The UPS tracking system confirmed delivery to the addressee on July 1, 2011. BOE received no response to this letter, or to several subsequent letters sent via UPS.

On November 3, 2011, BOE located an additional address for Malene Sorensen and sent an OTI audit package to this address via UPS overnight delivery. BOE subsequently

received a phone call from Ms. Sorensen in which she stated that she had left Trans World Logistics in January 2009, and was no longer employed by the company. She provided BOE with a copy of her letter of resignation, dated November 3, 2010, addressed to Micky Kahlon, owner of Trans World Logistics, demanding that her name be removed as Vice President and Secretary of the company and that the Indiana Secretary of State be notified of these changes.

On April 11, 2012, the Commission issued the Order to Show Cause why it should not revoke Trans World Logistics' OTI license for failure to report the resignation of its QI and seek approval of a replacement (46 C.F.R. § 515.18), and for failure to reply to lawful inquiries by the Commission (46 C.F.R. § 515.31(g)). On April 18, 2012, BCL received notice from the Great American Alliance Company that it intended to terminate the freight forwarder and non-vessel-operating common carrier bonds (Bonds Number 950823 and 950824) held by Trans World Logistics, effective May 19, 2012. BCL sent written notification to Trans World Logistics on April 20, 2012, informing it that effective May 19, 2012, evidence of its financial responsibility would be terminated and its OTI license revoked as of that date for failure to maintain financial responsibility, in accordance with Commission regulations at 46 C.F.R. § 515.26.

Despite revocation of Trans World Logistics' license for failure to maintain financial responsibility, in accordance with 46 C.F.R. § 515.26, BOE argues that this revocation proceeding is not moot. BOE seeks to have the Commission revoke the license based on violations of 46 C.F.R. §§ 515.18 and 515.31(g), as set out in the Order to Show Cause, on the grounds that revocation of a license for bond termination

operates without prejudice, and a company may reapply at any time and is ordinarily entitled to be licensed.

DISCUSSION

The Administrative Procedure Act (APA) provides that “[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof.” 5 U.S.C. § 556(d). The term “burden of proof” as used in the APA has been construed to mean burden of persuasion. *Director, Office of Workers’ Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). The Court in *Greenwich Collieries* stated that “when the party with the burden of persuasion establishes a prima facie case supported by ‘credible and credited evidence,’ it must either be rebutted or accepted as true.” *Id.* at 280.

As proponent of the Order to Show Cause, the Commission has the burden of persuasion. BOE’s Memorandum of Law and affidavits establish an unrebutted prima facie case, supported by credible evidence, that Respondent has violated the Commission’s regulations. Based on information obtained in the course of a routine OTI compliance audit conducted by BOE in 2011, it appears that Trans World Logistics’ QI resigned her position as an officer on November 3, 2010. Trans World Logistics was required to report the resignation to the Commission, but failed to do so in violation of 46 C.F.R. § 515.18(c). In addition, if Trans World Logistics wished to continue to operate as an OTI, it was also required to inform the Commission of the name and OTI experience of a successor QI, pursuant to 46 C.F.R. § 515.18(c). Trans World Logistics failed to inform the Commission of a successor QI. Finally, Trans World Logistics failed to respond to repeated requests by the Commission for

information concerning its OTI business activities, in violation of 46 C.F.R. § 515.31(g).

Based on the un rebutted facts set out in BOE's evidence, adequate grounds exist to conclude that Trans World Logistics has violated Commission regulations at 46 C.F.R. §§ 515.18(c) and 515.31(g). Because Trans World Logistics' OTI license was revoked as of May 19, 2012, it is not necessary to revoke it in this proceeding. However, in addition to revocation of its license, BOE has also sought to have a cease and desist order issued against Trans World Logistics, to ensure that it does not continue OTI operations.

The Commission has issued cease and desist orders based on demonstrated Shipping Act violations and revocation of OTI licenses. *Commonwealth Shipping Ltd. – Materially False Statements*, 29 S.R.R. 1408, 1414 (FMC 2003). In proceedings instituted by the Commission to show cause why it should not revoke an OTI license, it typically directs respondents to show cause why a cease and desist order should not be issued in the event of license revocation. *See, e.g., Revocation of OTI License No. 016019N – Central Agency of Florida, Inc.*, 31 S.R.R. 486 (FMC 2008); *Revocation of Licenses for Failure to Comply with the Shipping Act*, 30 S.R.R. 1058 (FMC 2006). Based on Trans World Logistics' failure to maintain financial responsibility, in violation of the Shipping Act and the Commission's regulations, the resulting revocation of its OTI license, and its violations of Commission regulations requiring it to maintain a QI and respond to Commission inquiries concerning its OTI business, there are grounds to order it to cease and desist all OTI activities.

Given the uncontested facts set out by BOE, the Commission finds that Trans World Logistics failed to meet its obligations to (1) maintain a QI or seek approval of a replacement as required in 46 C.F.R. § 515.18(c), and (2) respond to a lawful request of the Commission as required in 46 C.F.R. § 515.31(g). Trans World Logistics' OTI license was revoked effective May 19, 2012, for failure to maintain financial responsibility as required in Commission regulations at 46 C.F.R. § 515.26.

CONCLUSION

THEREFORE, IT IS ORDERED, That Respondent Trans World Logistics Corporation is found in violation of Commission regulations at 46 C.F.R. § 515.18(c) for failure to report the resignation of its QI and seek approval of a replacement QI, and 46 C.F.R. § 515.31(g) for failure to respond to lawful inquiries concerning its OTI business;

IT IS FURTHER ORDERED, That Respondent cease and desist from operating as an OTI.

By the Commission.

Karen V. Gregory
Secretary