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March 26, 2013					
FEDERAL	MARITIME	COMMISSION			

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 12-06**

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**SHIPCO TRANSPORT INC.**

**v.**

**JEM LOGISTICS, INC., and  
ANDI GEORGESCU, an individual and d/b/a JEM LOGISTICS, INC.**

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**INITIAL DECISION ON DEFAULT<sup>1</sup>**

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On April 18, 2012, complainant Shipco Transport Inc. (Shipco) commenced this proceeding by filing a Verified Complaint with the Secretary pursuant to section 11 of the Shipping Act of 1984, 46 U.S.C. § 41301(a), alleging that respondents Jem Logistics, Inc. (Jem Logistics) and Andi Georgescu violated the Act. As explained more fully below, Jem Logistics and Georgescu have not answered the Complaint or responded to an order to show cause why an initial decision on default should not be entered against them. Accordingly, Jem Logistics and Georgescu are (1) found to be in default; (2) are found to have violated the Act; (3) are found to have caused actual injury to Shipco by their violations; (4) are ordered to pay a reparation award to Shipco; and (5) are ordered to cease and desist operating as an ocean transportation intermediary in violation of the Act.

This decision is divided into five parts. Part I sets forth the background. Part II sets forth the controlling authority. Part III sets forth the reasons Jem Logistics and Georgescu are found to be in default. Part IV sets forth the findings of fact on which the decision is based. Part V sets forth the conclusions of law.

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<sup>1</sup> The initial decision will become the decision of the Commission in the absence of review by the Commission. Any party may file exceptions to this decision within twenty-two days of the date of service. 46 C.F.R. § 502.227.

## **I. INTRODUCTION AND BACKGROUND.**

### **A. Shipco's Complaint.**

Shipco filed its Complaint on April 18, 2012. Shipco is a non-vessel-operating common carrier (NVOCC) licensed by the Commission. Shipco alleges that in January 2010, respondents Jem Logistics and Georgescu misrepresented the identity of Jem Logistics as Aromark Shipping LLC (Aromark), an NVOCC licensed by the Commission, when Jem Logistics and Georgescu retained Shipco to transport a car to Australia. Based on the misrepresentations of Jem Logistics and Georgescu, Shipco identified Aromark as the shipper on the bill of lading for the car. Jem Logistics and Georgescu, neither of which is an NVOCC, have no connection to Aromark. When the consignee did not pick up the shipment, Shipco was required to pay demurrage and fees to the vessel-operating common carrier. Shipco invoiced Aromark at the address of Jem Logistics and Georgescu, then learned that Aromark had not been involved in the shipment. Shipco's demands that Jem Logistics and Georgescu pay the demurrage have been unsuccessful.

Shipco alleges that Jem Logistics and Georgescu violated section 8 of the Shipping Act (46 U.S.C. § 40501(a)) by operating as an NVOCC without a tariff; section 19(a) (46 U.S.C. § 40901(a)) by operating as an ocean transportation intermediary (OTI) without a license issued by the Commission; section 19(b) (46 U.S.C. § 40902(a)) by operating as an OTI without a bond; and section 10(a)(1) (46 U.S.C. §§ 41102(a)) by knowingly and willfully obtaining ocean transportation at less than the rates and charges that would otherwise be applicable.<sup>2</sup> Shipco seeks a reparation award for actual injury suffered as a result of violations of the Act committed by Jem Logistics and Georgescu.

I take official notice, 46 C.F.R. § 502.226, of Commission records showing that the Secretary sent the Complaint to Jem Logistics and Georgescu by United Parcel Service (UPS) to the address in the Complaint, 717 E. Gardena Blvd., Gardena, CA 90248, but that the packages were returned. Shipco's counsel provided the Secretary with a second address for service, but again the packages were returned.

### **B. Shipco's First Motion for Default.**

Jem Logistics and Georgescu did not answer or otherwise respond to the Complaint. On June 29, 2012, Shipco filed a Motion for Default Judgment against Jem Logistics and Georgescu.

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<sup>2</sup> 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., United Logistics (Lax) Inc. – Possible Violations of Sections 10(a)(1) and 10(b)(2) of the Shipping Act of 1984*, FMC No. 13-01 (Jan. 25, 2013) (Order of Investigation and Hearing). I follow that practice in this Initial Decision.

The certificate of service accompanying the motion indicated that Shipco purportedly served the motion on Jem Logistics and Georgescu at a third address, not the original address stated in the Complaint or the second address provided to the Secretary. Respondents did not file a reply to the motion for default judgment.

Since three different addresses had been used for Jem Logistics and Georgescu and the motion for default had been served to an address not yet used in the proceeding, I denied the motion without prejudice.

Given the service problems described above, I find that the certificate of service submitted with the motion for default judgment purporting to show service by Shipco on Respondents at a third address heretofore not found in the record in this proceeding does not indicate proper service of the motion. Therefore, the motion for default judgment is denied without prejudice.

*Shipco Transport Inc. v. Jem Logistics, Inc.*, FMC No. 12-06 (ALJ Aug. 1, 2012) (Order Denying Without Prejudice Motion for Default Judgment; Order to Supplement Record). I also ordered Shipco to supplement the record with proof of ownership of the car that Jem Logistics and Georgescu shipped. *Id.*

### **C. Shipco's Amended Complaint.**

On August 24, 2012, Shipco filed a motion for leave to file an Amended Complaint. The Amended Complaint alleges that Jem Logistics and Georgescu are located at the address to which Shipco mailed its first motion for default; that is, 263 E. Redondo Beach Blvd., Gardena, California 90248-2342. The Amended Complaint states that in addition to the sections of the Act stated in the Complaint, Shipco alleges “[t]his Verified Amended Complaint is also based in part on 19 U.S.C. 1646c, and 19 C.F.R. 192.2(b) pertaining to exportation of vehicles.” (Amended Complaint at 2.) The Amended Complaint also added a new factual allegation.

The shipped vehicle, a Ford Blazer, is further described as a sport utility vehicle, rather than an automobile, the export of which is subject to requirements of 19 U.S.C. § 1646c. However, Complainant hereby states for the record that the owner of the vehicle on the date of shipment was Robert W. Donovan and the vehicle identification number was U15HLDD7266 in the State of California. A copy of the certificate of title for this vehicle stating this information is attached hereto as Exhibit “E.”

(Amended Complaint ¶ 11.) The remainder of the Amended Complaint is substantially the same as the original Complaint and alleges violations of the same sections of the Act as the original Complaint. On August 30, 2012, I granted the motion for leave to file the Amended Complaint and asked the Secretary to docket and serve the Amended Complaint. *Shipco Transport Inc. v. Jem Logistics, Inc.*, FMC No. 12-06 (ALJ Aug. 30, 2012) (Order Granting Motion for Leave to File Amended Complaint).

I take official notice, 46 C.F.R. § 502.226, of Commission records establishing the following facts. Using the address in the Amended Complaint, on September 4, 2012, the Secretary served the Amended Complaint on Jem Logistics and Georgescu by UPS. On September 7, 2012, UPS returned the package for the following reason: "Receiver did not want, refused delivery." Using the address in the Amended Complaint, on September 10, 2012, the Secretary served the Amended Complaint on Jem Logistics and Georgescu by United States Postal Service, first class mail. The first class mail has not been returned. Jem Logistics and Georgescu have not answered or otherwise responded to the Amended Complaint.

**D. Shipco's Second Motion for Default.**

On January 14, 2013, Shipco filed a motion for default on the Amended Complaint. Jem Logistics and Georgescu did not respond to the motion. On February 12, 2013, I issued an order for Jem Logistics and Georgescu to respond to the Amended Complaint and to show cause why an initial decision on default should not be entered against them. *Shipco Transport Inc. v. Jem Logistics, Inc.*, FMC No. 12-06 (ALJ Feb. 12, 2013) (Notice of Default and Order to Show Cause). I also issued an order requiring Shipco to supplement the record to establish its payment of demurrage to the vessel-operating common carrier. *Shipco Transport Inc. v. Jem Logistics, Inc.*, FMC No. 12-06 (ALJ Feb. 12, 2013) (Second Order to Supplement the Record). On February 13, 2013, I issued an order requiring Shipco to supplement the record to provided evidence that Jem Logistics and Georgescu are located at 263 E. Redondo Beach Blvd., Gardena, California 90248-2342, the address to which the Secretary served the Amended Complaint and the Office of Administrative Law Judges served subsequent orders. *Shipco Transport Inc. v. Jem Logistics, Inc.*, FMC No. 12-06 (ALJ Feb. 13, 2013) (Third Order to Supplement the Record). The Office of Administrative Law Judges sent these three orders to Jem Logistics and Georgescu by first class mail addressed to 263 E. Redondo Beach Blvd., Gardena, California 90248-2342. The first class mail has not been returned.

On February 22, 2013, as required by the Second Order to Supplement the Record, Shipco filed declarations of two Shipco employees setting forth their foundation for knowing that Jem Logistics and Georgescu were located at 263 E. Redondo Beach Blvd., Gardena, California 90248-2342 in August 2012 and were still located their on February 18, 2013.

On March 14, 2013, Shipco filed several documents required by the Second Order to Supplement regarding its payment of demurrage to the vessel-operating common carrier. Since these documents indicated that Shipco paid demurrage to the vessel-operating common carrier in an amount less than that alleged in the Amended Complaint, Shipco was ordered to clarify its claim. Shipco was also ordered to provide additional information about the ownership of the car. *Shipco Transport Inc. v. Jem Logistics, Inc.*, FMC No. 12-06 (ALJ Feb. 13, 2013) (Fourth Order to Supplement the Record). Shipco has responded to this Order with additional filings. All filings submitted by Shipco are admitted as evidence.

The order to show cause required Jem Logistics and Georgescu to respond by February 22, 2013. As of the date of this Order, Jem Logistics and Georgescu have not answered or otherwise

responded to the Complaint, the Amended Complaint, the motion for default judgment on the Amended Complaint, or the order to show cause.

## **II. CONTROLLING AUTHORITY.**

### **A. Statutory Background.**

The Act defines and regulates a number of different types of entities that are involved in the international shipment of cargo by water, including two kinds of ocean transportation intermediaries. “The term ‘ocean transportation intermediary’ means an ocean freight forwarder or a non-vessel-operating common carrier.” 46 U.S.C. § 40102(19). “The term ‘non-vessel-operating common carrier’ means a common carrier that – (A) does not operate the vessels by which the ocean transportation is provided; and (B) is a shipper in its relationship with an ocean common carrier.” 46 U.S.C. § 40102(16).

The term “shipper” means – (A) a cargo owner; (B) the person for whose account the ocean transportation of cargo is provided; (C) the person to whom delivery is to be made; (D) a shippers’ association; or (E) a non-vessel-operating common carrier that accepts responsibility for payment of all charges applicable under the tariff or service contract.

46 U.S.C. § 40102(22). To be an NVOCC, the intermediary must meet the Act’s definition of “common carrier.”

The term “common carrier” – (A) means a person that – (i) holds itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation; (ii) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and (iii) uses, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

46 U.S.C. § 40102(6).

Shipco alleges that Jem Logistics and Georgescu operated as an NVOCC on the shipment of the Ford Blazer to Australia and in so doing, violated four sections of the Act.

[Section 8] Each common carrier and conference shall keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices between all points or ports on its own route and on any through transportation route that has been established. However, a common carrier is not required to state separately or otherwise reveal in tariffs the inland divisions of a through rate.

46 U.S.C. § 40501(a)(1).

[Section 19(a)] A person in the United States may not act as an ocean transportation intermediary unless the person holds an ocean transportation intermediary's license issued by the Federal Maritime Commission. The Commission shall issue a license to a person that the Commission determines to be qualified by experience and character to act as an ocean transportation intermediary.

46 U.S.C. § 40901(a).

[Section 19(b)] A person may not act as an ocean transportation intermediary unless the person furnishes a bond, proof of insurance, or other surety – (1) in a form and amount determined by the . . . Commission to insure financial responsibility; and (2) issued by a surety company found acceptable by the Secretary of the Treasury.

46 U.S.C. § 40902(a).

[Section 10(a)(1)] A person may not knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or any other unjust or unfair device or means, obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise apply.

46 U.S.C. § 41102(a).

Shipco filed its Complaint and Amended Complaint pursuant to section 11 of the Act.

[Section 11] A person may file with the . . . Commission a sworn complaint alleging a violation of this part, except section 41307(b)(1). If the complaint is filed within 3 years after the claim accrues, the complainant may seek reparations for an injury to the complainant caused by the violation.

46 U.S.C. § 41301(a).

Shipco seeks a reparation award for its injuries.

(a) *Definition.* – In this section, the term “actual injury” includes the loss of interest at commercial rates compounded from the date of injury.

(b) *Basic amount.* – If the complaint was filed within the period specified in section 41301(a) of this title, the . . . 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. Evidence and Burden of Persuasion.**

Under the Administrative Procedure Act, an administrative law judge may not issue an order “except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.” 5 U.S.C. § 556(d); *see also Steadman v. SEC*, 450 U.S. 91, 102 (1981). All documents provided in BOE’s appendix are hereby admitted as evidence. This initial decision is based on the pleadings, exhibits, testimony, briefs, proposed findings of fact and conclusions of law, and replies thereto filed by the parties.

This initial decision addresses only material issues of fact and law. Proposed findings of fact not included in this initial decision were rejected, either because they were not supported by the evidence or because they were not dispositive or material to the determination of the allegations of the complaint or the defenses thereto. Administrative adjudicators are “not required to make subordinate findings on every collateral contention advanced, but only upon those issues of fact, law, or discretion which are ‘material.’” *Minneapolis & St. Louis R.R. Co. v. United States*, 361 U.S. 173, 193-94 (1959); *In re Amrep Corp.*, 102 F.T.C. 1362, 1670 (1983). To the extent individual findings of fact may be deemed conclusions of law, they shall also be considered conclusions of law. Similarly, to the extent individual conclusions of law may be deemed findings of fact, they shall also be considered findings of fact.

A complainant alleging a violation of the Shipping Act “has the initial burden of proof to establish the[] violation[]. The applicable standard of proof is one of substantial evidence, an amount of information that would persuade a reasonable person that the necessary premise is more likely to be true than to be not true.” *AHL Shipping Company v. Kinder Morgan Liquids Terminals, LLC*, FMC No. 04-05, 2005 WL 1596715, at \*3 (ALJ June 13, 2005). *See* 5 U.S.C. § 556(d) (“Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.”); 46 C.F.R. § 502.155. “[A]s of 1946 the ordinary meaning of burden of proof [in section 556(d)] was burden of persuasion, and we understand the APA’s unadorned reference to ‘burden of proof’ to refer to the burden of persuasion.” *Director, Office of Workers’ Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). The party with the burden of persuasion must prove its case by a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. at 102. “[W]hen the evidence is evenly balanced, the [party with the burden of persuasion] must lose.” *Greenwich Collieries*, 512 U.S. at 281. It is appropriate to draw inferences from certain facts when direct evidence is not available, and circumstantial evidence alone may even be sufficient; however, such findings may not be drawn from mere speculation. *Waterman Steamship Corp. v. General Foundries, Inc.*, 26 S.R.R. 1173, 1180 (ALJ 1993), adopted in relevant part, 26 S.R.R. 1424 (1994).

### III. JEM LOGISTICS AND GEORGESCU ARE IN DEFAULT.

#### A. Jem Logistics and Georgescu Received Notice of this Proceeding.

The Amended Complaint alleges that the current address of Jem Logistics and Georgescu is 263 E. Redondo Beach Blvd., Gardena, California 90248-2342. Shipco has filed supporting declarations providing evidence that this is the current address of Jem Logistics and Georgescu and has been since at least August 2012. *See* FF 10.<sup>3</sup> I take official notice, 46 C.F.R. § 502.226, that in addition to sending the Amended Complaint to Jem Logistics and Georgescu at this address by UPS, on September 10, 2012, the Secretary sent the Amended Complaint to Jem Logistics and Georgescu at this address by regular mail, and that on February 12, 2013, the Office of Administrative Law Judges sent the Notice of Default and Order to Show Cause to Jem Logistics and Georgescu at this address by regular mail. The regular mail has not been returned. *See* FF 35, 36.

The Supreme Court has stated “that due process requires the government to provide ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” *Jones v. Flowers*, 547 U.S. 220, 226 (2006), quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950).

There is a presumption that, in the absence of evidence to the contrary, a notice provided by a government agency is deemed to have been placed in the mail on the date shown on the notice and received within a reasonable time thereafter. *See Me. Med. Ctr. v. United States*, 675 F.3d 110, 114 (1st Cir. 2012); *Sherlock v. Montefiore Med. Ctr.*, 84 F.3d 522, 526 (2d Cir. 1996).

*Loubriel v. Fondo del Seguro del Estado*, 694 F.3d 139, 143 (1st Cir. 2012).

Based on Shipco’s declarations, Commission records, and the presumption of delivery articulated in *Loubriel*, I find that Jem Logistics and Georgescu received notice – at a minimum the Amended Complaint and the order to show cause – that conveyed all of the salient information reasonably calculated, under all the circumstances, to apprise them of the pendency of this proceeding and afford them an opportunity to protect their interests. “The Constitution does not require that an effort to give notice succeed. *See, e.g., Dusenbery v. United States*, 534 U.S. 161, 122 S. Ct. 694, 151 L. Ed. 2d 597 (2002).” *Ho v. Donovan*, 569 F. 3d 677, 680 (7th Cir. 2009).

#### B. Jem Logistics and Georgescu Have Defaulted.

Despite having received the Amended Complaint and the order to show cause, Jem Logistics and Georgescu have failed to answer or otherwise respond to the Amended Complaint and failed to respond to the notice of default and order to show cause. Under such circumstances, it is customary

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<sup>3</sup> FF followed by a number refers to a finding of fact in Section III below.

for the Commission as well as courts to find that a defaulting respondent has admitted the well-pleaded 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). See also 46 C.F.R. § 502.62(b)(6)(ii) (effective date November 5, 2012) (“Well pleaded factual allegations in the complaint not answered or addressed will be deemed to be admitted.”). I find that Jem Logistics and Georgescu are in default.

#### **IV. FINDINGS OF FACT.**

The findings of fact are based on the well-pleaded allegations in the Complaint and the Amended Complaint supplemented by additional information filed by Shipco.

1. Complainant Shipco Transport Inc. (Shipco) is a non-vessel-operating common carrier (NVOCC) licensed by the Commission. (Amended Complaint ¶ 1.)
2. Respondent Andi Georgescu (Georgescu) is a resident of the State of California. (Amended Complaint ¶ 2.)
3. Respondent Jem Logistics, Inc. (Jem Logistics) is incorporated in the State of California. (Amended Complaint ¶ 2.)
4. Georgescu is the principal owner and president of Jem Logistics and does business under that name. (Amended Complaint ¶ 2.)
5. At all relevant times, Georgescu dominated the operations of Jem Logistics. (Amended Complaint ¶ 2.)
6. Neither Jem Logistics nor Georgescu is licensed by the Commission as an NVOCC. (Amended Complaint ¶ 3.)
7. Neither Jem Logistics nor Georgescu furnished the bond, proof of insurance, or other surety that the Shipping Act requires of an NVOCC. (Amended Complaint ¶ 3.)
8. Neither Jem Logistics nor Georgescu keeps the tariff open to public inspection that the Act requires of an NVOCC. (Amended Complaint ¶ 3.)
9. On May 14, 2010, Jem Logistics and Georgescu were located at 717 E. Gardena Blvd, Gardena, CA 90248. (Complaint (original) ¶ 2.)
10. From August 2012 through at least February 18, 2013, Jem Logistics and Georgescu have been located at 263 E. Redondo Beach Blvd., Gardena, California 90248-2342. (Declaration

- of Gary Osterbach (dated February 21, 2013); Declaration of Jacob Niemiec (dated February 22, 2013).)
11. Aromark Shipping LLC (Aromark), principal office at 187-189 Foundry Street, Newark, New Jersey 07105, is licensed by the Commission as an NVOCC. (Amended Complaint ¶ 4.)
  12. In the period January through May 2010, Jem Logistics and Georgescu asked Shipco to provide NVOCC shipping services for the shipment of a Ford Blazer car from Long Beach, California, to Sydney, Australia. (Amended Complaint ¶ 4.)
  13. On May 31, 1990, California issued a Certificate of Title indicating that Robert W. Donovan owned the Ford Blazer. On February 25, 2010, Donovan released his interest in the car. The back of the Certificate of Title states that the new registered owner is Adam Ziliani, Sydney, Australia, who purchased it on February 25, 2010. (Amended Complaint Exhibit E (front of Certificate); back of Certificate filed March 22, 2013.)
  14. The California Computerized Vehicle Registration indicates that on April 5, 2010, Adam Ziliani submitted the title for transfer to him as buyer. (California Computerized Vehicle Registration filed March 22, 2013.)
  15. Jem Logistics and Georgescu falsely told Shipco that Jem Logistics and Georgescu were Aromark. (Amended Complaint ¶ 5.)
  16. Jem Logistics and Georgescu presented Shipco with a copy of the Commission NVOCC license issued to Aromark. (Amended Complaint ¶ 7 and Exhibit B.)
  17. Shipco, its officers, and its employees relied on the misrepresentation of Jem Logistics and Georgescu that Jem Logistics and Georgescu were Aromark. (Amended Complaint ¶¶ 5 and 7; Declaration of Gary Osterbach (filed March 22, 2013).)
  18. On May 14, 2010, Shipco issued a bill of lading for the shipment of the Ford Blazer from Long Beach, California, to Sydney, Australia. (Amended Complaint ¶ 10 and Exhibit A; Declaration of Gary Osterbach (filed March 22, 2013).)
  19. The Shipco bill of lading for the Ford Blazer identifies the shipper as Aromark and states that Aromark's address is 717 E. Gardena Blvd., Gardena, CA 90248. (Amended Complaint Exhibit A.)
  20. Aromark was not located at 717 E. Gardena Blvd, Gardena, CA 90248, on May 14, 2010, or at any other time relevant to this proceeding. (Amended Complaint ¶ 6.)

21. Bill of Lading Instructions provided to Shipco by Jem Logistics and Georgescu for the Ford Blazer identified Aromark as the shipper and gave Aromark's address as 717 E. Gardena Blvd, Gardena, CA 90248. (Amended Complaint ¶ 7.)
22. Shipco employees relied to Shipco's detriment on the misrepresentations by Jem Logistics and Georgescu and provided NVOCC shipping services believing that Jem Logistics and Georgescu represented Aromark in this transaction. (Amended Complaint ¶ 7.)
23. The Ford Blazer was transported to Sydney, Australia, on board the vessel MSC JUDITH V 1020. (Amended Complaint, Exhibit A.)
24. When the Ford Blazer arrived in Sydney, it was not claimed by the consignee. (Amended Complaint ¶ 8; Declaration of Gary Osterbach (filed March 22, 2013).)
25. The shipment was treated as abandoned and Mediterranean Shipping Co. (MSC), the vessel-operating common carrier, charged Shipco \$15,797.90 for expenses for demurrage (abandoned cargo fee and administration fee). (Amended Complaint ¶ 8; Declaration of Gary Osterbach (filed March 22, 2013); MSC Invoice dated January 17, 2011 (filed March 22, 2013).)
26. Shipco charged Respondents an administrative fee of \$75.00 that was added to the balance Shipco owed to MSC, so that the total amount owed was \$15,872.90. (Amended Complaint ¶ 9.)
27. On January 28, 2011, Shipco issued an invoice to Aromark, 717 E. Gardena Blvd., Gardena, CA 90248, for \$15,872.90. (Amended Complaint ¶ 9 and Exhibit C; Declaration of Gary Osterbach (filed March 22, 2013).)
28. Shipco delivered the invoice to Jem Logistics and Georgescu on or about the date of the invoice. (Amended Complaint ¶ 9.)
29. MSC and Shipco agreed to settle the claim for a total of \$8050.00. (Declaration of Gary Osterbach (filed March 22, 2013); MSC Invoice dated March 30, 2011 (filed March 22, 2013).)
30. On May 4, 2011, Shipco paid MSC \$8050.00. (Declaration of Gary Osterbach (filed March 22, 2013); Shipco PNC Bank Check No. 589347 dated May 4, 2011, to MSC (filed March 22, 2013).)
31. Shipco's bill of lading contains Terms and Conditions. (Amended Complaint ¶ 12 and Exhibit D.)
32. The Terms and Conditions define "merchant" to include the shipper. (Amended Complaint ¶ 12 and Exhibit D ¶ 1.)

33. The Terms and Conditions provide that the merchant is responsible for paying demurrage and detention during and after carriage and are required to hold the carrier harmless and indemnify the carrier from any liability for demurrage and/or detention. (Amended Complaint ¶ 12 and Exhibit D ¶¶ 9(5) and 9(6).)
34. Jem Logistics and Georgescu have not paid the demurrage. (Amended Complaint ¶ 14.)
35. On September 10, 2012, the Secretary sent the Amended Complaint to Jem Logistics and Georgescu at 263 E. Redondo Beach Blvd., Gardena, California 90248-2342, by regular mail. The regular mail has not been returned. (Official Notice of Commission Records.)
36. On February 12, 2013, the Office of Administrative Law Judges sent the Notice of Default and Order to Show Cause to Jem Logistics and Georgescu at 263 E. Redondo Beach Blvd., Gardena, California 90248-2342, by regular mail. The regular mail has not been returned. (Official Notice of Commission Records.)

## V. CONCLUSIONS OF LAW.

### A. **Jem Logistics and Georgescu Violated Sections 8, 19(a), and 19(b) of the Act by Operating as an NVOCC Without the Tariff and as an OTI Without the License and Bond Required by the Act.**

Shipco alleges that Robert W. Donovan owned the Ford Blazer on May 14, 2010, the date the car was shipped. (Amended Complaint ¶ 11.) The California Certificate of Title issued May 31, 1990, indicates that Robert W. Donovan owned the Ford Blazer. On February 25, 2010, Donovan released his interest in the car. The Application for Transfer by New Owner on the back of the Certificate states that the new registered owner is Adam Ziliani, Sydney, Australia. Ziliani submitted the Application for Transfer by New Owner to California. FF 13-14.

In their conversations with Shipco, Jem Logistics and Georgescu held themselves out as an NVOCC; that is, that they were operating as an ocean transportation intermediary between Ziliani, the owner of the car, and Shipco. FF 12, 15-17. By instructing Shipco to identify them as the shipper by the false identity Aromark, Jem Logistics nor Georgescu assumed responsibility for the transportation of the car to Australia. Jem Logistics and Georgescu used a vessel operating on the high seas for that transportation. FF 23. Therefore, I find that Jem Logistics and Georgescu operated as an NVOCC on the shipment.

Jem Logistics and Georgescu do not keep open to public inspection an automated tariff system, are not licensed by the Commission to operate as an OTI, and have not furnished a bond, proof of insurance, or other surety. FF 6-8. Therefore, Jem Logistics and Georgescu violated sections 8, 19(a), and 19(b) of the Act on the shipment of the car.

**B. Jem Logistics and Georgescu Knowingly and Willfully, by Means of an Unjust or Unfair Device or Means, Obtained Ocean Transportation for Property at less than the Rates or Charges That Would Otherwise Apply.**

Section 10(a)(1) is similar to section 16 of the Shipping Act, 1916, the predecessor to the 1984 Act. Section 16 stated:

That it shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable.

46 U.S.C. § 815 (1982). In *Capitol Transportation, Inc. v. United States*, the First Circuit reviewed the Commission's imposition of a reparation award based on a violation of section 16. *Capitol Transportation, Inc. v. United States*, 612 F.2d 1312 (1st Cir. 1979). An organization called MSC billed Capitol for demurrage charges under commercial bills of lading naming Capitol as consignee, but Capitol did not pay. MSC filed a complaint with the Commission seeking a reparation award. The Commission found that Capitol operated as an NVOCC and as consignee on the shipments and was liable for the demurrage charges. The Commission affirmed the administrative law judge's holding that "by knowingly and willfully refusing to pay demurrage owing under published tariffs, [Capitol] in effect obtained transportation by water at less than the applicable rates and thus violated section 16 of the Shipping Act," *id.*, 612 F.2d at 1317, and the reparation award requiring Capitol to pay the demurrage owed plus interest. *Id.*

Capitol filed a petition for review of the Commission's decision. The court denied Capitol's petition for review. Regarding section 16, the court stated that "a carrier's mere stubborn but good faith refusal to pay a disputed rate or charge" does not constitute an "unjust or unfair device or means" within the meaning of section 16. The court agreed with the Commission's finding that the "requisite element of fraud or concealment was established in this case by Capitol's 'unexplained and apparently unjustified avoidance of any payment of the amounts found due and owing.'" *Id.* at 1323.

The Commission could properly find on this record that Capitol's refusal to pay had never been based upon a good faith legal defense, but simply reflected a calculated judgment to fight MSC to the end, forcing it to pay in blood, sweat and treasure for every penny eventually collected. On the merits of the demurrage claim, Capitol failed to present a legal defense of any substance, and belatedly raised a variety of ever-changing contentions after the time for discovery or hearing was over. Those facts, coupled with earlier correspondence indicating an adamant and legally unexplained resistance to the notion of MSC's centralized demurrage billing procedure entitled the Commission to conclude that Capitol was not only knowing and wilfull in its refusal to pay, but that its policies, conducted as they were in bad

faith, were tantamount to an unjust or unfair means of obtaining transportation by water at lower than applicable rates. Although it would not be proper to extend this rationale to cases involving refusal to pay based on honest differences, we think the conduct reflected in the present record was sufficiently egregious to support the Commission's finding that the requisite element of fraud or concealment was here established. . . . A calculated effort in bad faith to avoid the payment of demurrage legitimately owing would, if successful, allow shippers and consignees to accomplish what Section 16 was intended to prevent the receipt of carrier service at less than applicable rates and at less than rates charged to competitors. Thus while this case undoubtedly nears the outer limits of Section 16, we uphold the Commission's finding of violation.

*Id.* at 1323-1324. As the Commission stated, “[t]he D.C. Circuit, in referring to section 16, initial paragraph, of the 1916 Act, the predecessor of section 10(a)(1), recognized that ‘Congress was concerned both with protection of carriers against unscrupulous shippers, and of honest shippers against unscrupulous competitors, acting independently, or in collusion with a carrier.’” *Rose Int’l, Inc. v. Overseas Moving Network Int’l Ltd.*, 29 S.R.R. 119, 164 (FMC 2001), quoting *Hohenberg Brothers Co. v. Federal Maritime Comm’n*, 316 F.2d 381, 384 (D.C. Cir. 1963). “[A] showing of fraud or concealment may be based on fraud either to the underlying common carrier or to competing shippers.” *Rose Int’l*, 29 S.R.R. at 173, citing *Hohenberg Brothers*, 316 F.2d at 384; *China Ocean Shipping Co. v. DMV Ridgeview, Inc.*, 26 S.R.R. 50, 53, 55 (ALJ 1991); *Pacific Far East Lines – Alleged Rebates to Foremost Dairies, Inc., Connell Brothers Co., Ltd., & Advance Mill Supply Corp.*, 10 S.R.R. 1, 6 (FMC 1968), *aff’d sub nom Pacific Far East Line, Inc. v. Federal Maritime Comm’n*, 410 F.2d 257 (D.C. Cir. 1969).

In 1992, the Commission published a proposed interpretive rule intended to clarify jurisdiction in proceedings under section 10(a)(1) of the 1984 Act (the successor to section 16 of the 1916 Act). See *Unpaid Freight Charges*, FMC No. 92-46, 58 Fed. Reg. 7190 (Feb. 5, 1993), 26 S.R.R. 735 (FMC 1993) (Final Interpretive Rule). The Commission promulgated a final rule based in part on the *Capitol Transportation* decision expressing its conclusion that use of an unjust or unfair device or means is an essential element of a section 10(a)(1) violation.

Section 10(a)(1) of the Shipping Act . . . states that it is unlawful for any person to obtain or attempt to obtain transportation for property at less than the properly applicable rates, by any “unjust or unfair device or means.” An essential element of the offense is use of an “unjust or unfair device or means.” In the absence of evidence of bad faith or deceit, the . . . Commission will not infer an “unjust or unfair device or means” from the failure of a shipper to pay ocean freight. An “unjust or unfair device or means” could be inferred where a shipper, in bad faith, induced the carrier to relinquish its possessory lien on the cargo and to transport the cargo without prepayment by the shipper of the applicable freight charges.

46 C.F.R. § 545.2.

The issue in this proceeding is whether there is evidence of bad faith or deceit that would support a finding that Jem Logistics and Georgescu used an unjust or unfair device or means to obtain transportation at less than the applicable rates. I find that evidence in the record establishes by a preponderance of the evidence that Jem Logistics and Georgescu engaged in bad faith or deceit within the meaning of section 10(a)(1). Jem Logistics and Georgescu knowingly and willfully misrepresented their identity as Aromark, an NVOCC licensed by the Commission with which they have no connection, and by so doing concealed the true identity of the shipper. Jem Logistics and Georgescu supported their misrepresentation by sending Shipco a photocopy of the Commission license issued to Aromark. *See* FF 15-16. I note that Commission regulations require Shipco, a common carrier, to verify an NVOCC's tariff and financial responsibility before transporting cargo for the NVOCC. 46 C.F.R. § 515.27(a) ("No common carrier may transport cargo for the account of a shipper known by the carrier to be an NVOCC unless the carrier has determined that the NVOCC has a tariff and financial responsibility as required by sections 8 . . . and 19 . . . of the Act."). Obtaining the photocopy of the license appears to have been part of this process. Despite receiving the invoice from Shipco and notice of this proceeding, Jem Logistics and Georgescu have "failed to present a legal defense of any substance." This case does not involve a "refusal to pay based on honest differences," but a shipment that Shipco agreed to carry based in part on the misrepresentation by Jem Logistics and Georgescu followed by a refusal to pay the demurrage or participate in this proceeding to resolve any dispute.

I find that Shipco reasonably relied to Shipco's detriment on the misrepresentations by Jem Logistics and Georgescu and that without those misrepresentations, Shipco would not have agreed to transport the car to Australia. FF 17. Jem Logistics and Georgescu have not paid the demurrage that is included in the charges for that transportation, FF 34, and their refusal to participate in this proceeding is "tantamount to an unjust or unfair means of obtaining transportation by water at lower than applicable rates." Therefore, I find that Jem Logistics and Georgescu knowingly and willfully by means of an unjust or unfair means, obtained ocean transportation for property at less than the rates or charges that would otherwise apply in violation of 46 U.S.C. § 41102(a).

### **C. Shipco Is Entitled to a Reparation Award.**

Shipco seeks a reparation award that would include the demurrage and administration fee that it paid to MSC, Shipco's service fee, and interest. Shipco has the burden of proving entitlement to reparations.

As the Federal Maritime Board explained long ago: "(a) damages<sup>[4]</sup> 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."

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<sup>4</sup> Reparations under the Shipping Act and damages are synonymous. *See Federal Maritime Comm'n v. South Carolina State Ports Auth.*, 535 U.S. 743, 775 (2002) (Breyer, J., dissenting).

*James J. Flanagan Shipping Corp. v. Lake Charles Harbor and Terminal Dist.*, 30 S.R.R. 8, 13 (2003).

The statements of the Commission in [*California Shipping Line, Inc. v. Yangming Marine Transport Corp.*, 25 S.R.R. 1213 (Oct. 19, 1990)] and the other cited cases are in the mainstream of the law of damages as followed by the courts, for example, regarding the principles that the fact of injury must be shown with reasonable certainty, that the amount can be based on something less than precision but something based on a reasonable approximation supported by evidence and by reasonable inferences, the principle that the damages must be foreseeable or proximate or, in contract law, within the contemplation of the parties at the time they entered into the contract, the fact that speculative damages are not allowed, and that regarding claims for lost profits, there must be reasonable certainty so that the court can be satisfied that the wrongful act caused the loss of profits.

*Tractors and Farm Equipment Ltd. v. Cosmos Shipping Co., Inc.*, 26 S.R.R. 788, 798-799 (ALJ 1992).

Shipco has provided evidence that MSC charged Shipco a total of \$15,797.90 in demurrage charges. FF 24-26. Still believing that Jem Logistics and Georgescu were Aromark, on January 28, 2011, Shipco invoiced Aromark for \$15,797.90 plus a \$75.00 administration fee and delivered the invoice to Jem Logistics and Georgescu's address. FF 27-28. Shipco and MSC later agreed to settle the demurrage claim for a payment totaling \$8050.00, which Shipco paid. FF 29-30. Jem Logistics and Georgescu owe this amount as part of their shipping charges, but failed to pay it. FF 34.

By refusing to pay the demurrage, Jem Logistics and Georgescu knowingly and willfully, by means of an unjust or unfair means, obtained ocean transportation for property at less than the rates or charges that would otherwise apply in violation of section 10(a)(1). 46 U.S.C. § 41102(a). Shipco paid \$8050.00 to MSC to satisfy the claim for demurrage on May 4, 2011. Therefore, I find that Shipco was injured on May 4, 2011, and is entitled to a reparation award of \$8050.00 plus interest from May 4, 2011. 46 U.S.C. § 41305.

**D. Jem Logistics and Georgescu Are Ordered to Cease and Desist from Operating as an Ocean Transportation Intermediary.**

As concluded above, Jem Logistics and Georgescu operated as an NVOCC without publishing a tariff in violation of section 8, as an OTI without a Commission license in violation of section 19(a), and without a bond or surety in violation of section 19(b). “[T]he general rule is that [cease and desist] orders are appropriate when there is a reasonable likelihood that respondents will resume their unlawful activities.” *Portman Square Ltd. – Possible Violations of Section 10(a)(1) of the Shipping Act of 1984*, 28 S.R.R. 80, 86 (ALJ 1998), admin. final Mar. 16, 1998, citing *Alex Parsinia d/b/a Pacific Int’l Shipping and Cargo Express*, 27 S.R.R. 1335, 1342 (ALJ 1997), admin. final, December 4, 1997. “A cease and desist order must be tailored to the needs and facts of the

particular case.” *Marcella Shipping Co. Ltd.*, 23 S.R.R. 857, 871-872 (ALJ 1986), admin. final, Mar. 26, 1986.

Jem Logistics and Georgescu have operated illegally as an NVOCC, including misrepresenting that they were an unrelated NVOCC licensed by the Commission. I find that there is a reasonable likelihood that they will continue to do so if not ordered to cease and desist. Therefore, entry of a cease and desist order is appropriate.

#### **E. Shipco’s Request for Attorney’s Fees.**

Shipco asks for an award of attorney’s fees. Since Shipco has been awarded reparations, it is entitled to reasonable attorney’s fees as directed by 46 U.S.C. § 41305(b).

The Commission’s regulation (46 C.F.R. 502.254) provides that petitions for attorney’s fees shall normally be filed with the presiding judge in cases where there are no exceptions filed by respondents but only after the Commission makes the judge’s initial decision final, normally about 30 days after service of that decision. A ruling on the petition is not normally issued by the judge until the 30-day review period has expired. See Docket No. 99-14 – *Global Transporte Oceanico S.A. v. Coler Independent Lines Co.*, 28 S.R.R. 1162 (1999) (petition for attorney’s fees in default case filed within one week after service of Initial Decision; judge’s ruling on the petition not issued until after the Commission had made the Initial Decision final). Incidentally, the Commission is authorized only to award reasonable attorney’s fees, a term that does not include “costs.” See *Global Transporte*, 28 S.R.R. at 1163 n.5.

*Safmarine Container Lines N.V. v. Garden State Spices, Inc.*, 28 S.R.R. 1621, 1623 n.5 (ALJ 2000).

The question of attorney’s fees for Shipco will be addressed when and how set forth in 46 C.F.R. § 502.254.

### **ORDER**

Upon consideration of the Motion for Default Judgment against Jem Logistics, Inc., and Andi Georgescu, an Individual and Doing Business as Jem Logistics, Inc., the record herein, the conclusion that respondents Jem Logistics, Inc., and Andi Georgescu violated section 8 of the Shipping Act, 46 U.S.C. § 40501(a), section 19(a), 46 U.S.C. § 40901(a), section 19(b), 46 U.S.C. § 40902(a), and section 10(a)(1), 46 U.S.C. § 41102(c), and that complainant Shipco Transport Inc. suffered actual injury as a result of that violation, and for the reasons stated above, it is hereby

**ORDERED** that the motion be **GRANTED**. An Initial Decision on Default is entered against respondents Jem Logistics, Inc., and Andi Georgescu. It is

**FURTHER ORDERED** that respondents Jem Logistics, Inc., and Andi Georgescu are jointly and severally liable to Shipco Transport Inc. for a reparation award in the amount of \$8050.00 plus interest from May 4, 2011. It is

**FURTHER ORDERED** that respondents Jem Logistics, Inc., and Andi Georgescu be enjoined from holding out or operating as an ocean transportation intermediary in the United States foreign trades until and unless a license is issued by the Commission and respondents insure financial responsibility pursuant to Commission regulations. If licensed to operate as a non-vessel-operating common carrier, Jem Logistics, Inc., and Andi Georgescu must also publish as tariff. It is

**FURTHER ORDERED** that respondent Andi Georgescu be enjoined from working for, as an employee or in any other capacity, any company or any other entity engaged in providing ocean transportation services in the foreign commerce of the United States in a manner inconsistent with this Order for a period of three years. It is

**FURTHER ORDERED** that respondent Andi Georgescu be enjoined from controlling in any way or serving as an investor, owner, shareholder, officer, director, manager, or administrator in any company or other entity engaged in providing ocean transportation services in the foreign commerce of the United States in a manner inconsistent with this Order for a period of three years. This Order, however, does not enjoin Andi Georgescu from owning up to five percent of a class of shares of a publicly traded company.

  
Clay G. Guthridge  
Administrative Law Judge