

**BEFORE THE
FEDERAL MARITIME COMMISSION**

SHIPCO TRANSPORT INC..)

Complainant,)

v.)

JEM LOGISTICS, INC.,)

and)

ANDI GEORGESCU, an individual and)
doing business as JEM LOGISTICS INC.)

Respondents.)
-----)

DOCKET NO. 12-06

**RESPONSE TO PETITION OF RESPONDENT ANDI GEORGESCU
TO SET ASIDE DEFAULT**

Shipco Transport Inc. (Shipco), Complainant in this matter before the Federal Maritime Commission hereby responds pursuant to 46 CFR §502.70 to the Petition to Set Aside a Decision on Default, filed by Respondent Andi Georgescu on April 4, 2013, as an “answer” and then identified as a “petition” on April 5, 2013, with the Commission.

1. The Verified Amended Complaint in this matter was filed eight months ago on August 24, 2012, following an initial Verified Complaint filed nearly a year ago on April 18, 2012. Shipco’s Motion for Default Judgment was despite allegations of fraud against Georgescu, he did not respond denying substantial allegations against him until the current Petition submitted on April 4 and 5, 2013.

2. Georgescu's Petition does not comply with §502.65 requiring a defaulting party to "state in detail the reasons for failure to appear or defend." His Petition states no reasons why he did not appear or defend.

3. Also, the allegations in the Complaint and Amended Complaint show that he defrauded Shipco Transport Inc. by representing to Shipco that he was representing Aromark Shipping LLC that was a licensed NVOCC when there was no evidence to support such representations. These were false representations by Georgescu that were relied upon by Shipco and causing actual injury and entitling Shipco to reparations from Respondents.

4. Georgescu says in his Petition that he was an employee of Jem Logistics Inc. rather than a principal doing business under that name. Georgescu has presented no evidence to show that he was employed by Jem Logistics, Inc. We presented to FMC a Customs Cover Letter for the vehicle shipment in question signed by Andi Georgescu on May 10, 2010, submitted as a supplement to the record on March 14, 2013.

5. Moreover, Shipco alleges that the allegations of the Verified Amended Complaint are also against him personally as well as against Jem Logistics Inc. on the basis of fraud and related violations of the Shipping Act stated in paragraphs 18-23 of the Amended Complaint.

6. Georgescu signed the Customs Cover Letter relating to the shipment of the Ford Blazer, subject matter of the shipment in this matter. He was both the signer of the Cover Letter and the Contact person described on the letter.

7. Georgescu says in the petition "I also do not recall misrepresenting any identify as stated in this docket under Jem Logistics, Inc." Although he doesn't recall

this, the evidence contained in the documents filed with the Commission indicate that he did. We attached as Exhibit B to the Amended Complaint the Federal Maritime Commission NVOCC license in the name of Aromark that Georgescu presented to Shipco. Also the bill of lading and invoice attached were in the Aromark name based on his representation.

8. Georgescu's petition is stated in his name and signed by him under oath but does not petition the Commission on behalf of Jem Logistics Inc. His arguments based on his being an employee of Jem Logistics, Inc. and of naming the wrong business are moot because the Amended Complaint states causes of action against Andi Geoergescu as an individual respondent and identifies him as the source of the fraud allegation and related Shipping Act violations described in the Amended Complaint. Respondent Georgescu does not specify his proposed defense pursuant to 46 CFR 502.65 regarding Shipco's allegations that he provided to them a Certificate of License of Aromark that was completely false and provided that name for use on Shipco's Bill of Lading and invoice, attached to the Amended Complaint.

9. If this were an ordinary case of failure to defend or respond resulting in default, the Commission and Administrative Law Judge might treat the matter liberally. But, this is a clear case of fraud on the part of Respondent Georgescu in violating a number of Shipping Act provisions as stated in the Amended Complaint.

10. Moreover, this action has been pending at FMC for one year , and Georgescu definitely was served by t he Secretary with at least the Verified Amended Complaint filed with FMC on August 24, 2012, eight months ago. In the meantime, three orders to supplement the record and Complainant's responses were served on Georgescu. He had

substantial and adequate opportunity to respond but chose not to until April 4 and 5, 2013. His conduct in bringing about the default was willful.

Good Cause to Set Aside Default

11. In order to set aside a default judgment in accordance with 46 CFR §502.65 the petitioning party must base the set aside “for good cause shown.” Also, the petitioning party must state in detail the reasons for failure to appear or defend.”

11. The courts have interpreted good cause to mean three essential criteria of good cause for setting aside a default, *Dierschke v. Ocheskey*, 975 F.2d 181 (5th Cir. 1992); *Effjohn International Cruise Holdings, Inc.* 346 F3d 552 (5th Cir. 2003); *Moldwood Corporation v. Stutts*, 410 F.2d 351 (5th Cir. 1969); *Enron Oil Corp v. Diakuhara*, 10 F.3d 90 (2d Cir. 1993); and *United States v. Rodriguez-Barrientos* (1st Cir. 2004), among others:

- (1) Whether the default was willful;
- (2) Whether a set aside of the default would prejudice plaintiff;
- (3) Whether the alleged defense was Meritorious Defense.

12. We have described Georgescu’s conduct in this transaction as willful and lacking good cause as a basis for setting aside the default. The excessive time to respond and appear taken by Respondent Georgescu coupled with the case being based on fraud committed against Shipco should prevent a finding of good cause and set aside of the default.

13 . In the *Moldwood* case supra, the court determined that the District Court properly denied a Motion to set aside a default because there was no meritorious defense by the party seeking to set aside the default. Respondent Georgescu has stated no

meritorious defense in the Shipco case with regard to his own conduct as stated in the Amended Complaint and the Supplements to the Record.

14. Respondent's Petition contains a very limited presentation of evidence to support his position and instead provides conclusory statements that do not address or oppose most of the issues raised in the Amended Complaint. There is no defense to the individual claims that Georgescu himself committed fraud against Shipco. In short, Georgescu does not address most of essential allegations contained in the Verified Amended Complaint and the Motion for Default Judgment, and does not address the fraud allegation.

Shipping Act Allegations Not Addressed

15. Georgescu did not address any of the Shipping Act violation allegations from Paragraphs 18-22 of the Verified Amended Complaint in this matter, essentially alleging (1) that Georgescu and Respondents by using a false name, Aromark, to conduct transportation-related activity as any NVOCC without being licensed or bonded in violation of 46 USC § 40901 and 46 USC §40902; (2) Georgescu and Respondents failed to meet the standards of financial responsibility required by the Shipping Act. 46 USC §40901 and §40902; (3) Georgescu and respondents by misrepresenting their name and license status, relied upon by Shipco, committed fraudulent conduct violating 46 USC §41102 to obtain shipping services from Shipco using unjust or unfair devices to secure ocean transportation at less than rates currently charged. (4) By relying on Georgescu's misrepresentations, Shipco believed it was providing shipping services to a financially responsible party when there was in fact no required bond or financial responsibility 46 USC § 40901 and §40902, and §40102.

Georgescu Is Individually Liable

16. Even if hypothetically Georgescu is not shown to be an officer of Jem Logistics, Inc., Shipco has claimed that Georgescu himself is liable as an individual for his wrongful conduct of defrauding Shipco and causing reparations arising from his fraud. The name of this case, Docket No. 12-06, includes Andi Georgescu, an individual in addition to Andi Georgescu d/b/a Jem Logistics, Inc. Thus, even if the Administrative Law Judge determines that Georgescu as dba is not liable in this matter, Georgescu the individual does remain liable, and the facts and legal arguments in the Amended Complaint and Supplements to the Record support that conclusion.

17. But, Georgescu does not provide defenses to the allegations against Georgescu as an individual.

WHEREFORE, Complainant Shipco Transport Inc. respectfully requests that Respondent Andi Georgescu's Petition to Set Aside the Decision on Default against him and Jem Logistics Inc. be denied.

Date: April 19, 2013

/s/

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CERTIFICATE OF SERVICE

RE SHIPCO TRANSPORT INC. V. JEM LOGISTICS, INC., ET AL.

DOCKET NO. 12-06

I hereby certify that I have on this 19th day of April at Boonsboro, Maryland., I served a copy of the foregoing Response to Petition of Respondent Andi Georgescu to Set Aside Default. upon the following Respondents via first class mail postage prepaid:

Andi Georgescu
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/s/

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