

FEDERAL MARITIME COMMISSION

SHIPCO TRANSPORT INC.

v.

JEM LOGISTICS, INC., AND ANDI
GEORGESCU, AN INDIVIDUAL AND
D/B/A JEM LOGISTICS, INC.

Docket No. 12-06

Served: August 21, 2013

BY THE COMMISSION: Mario CORDERO, *Chairman*,
Rebecca F. DYE, Richard A. LIDINSKY, Jr., Michael A.
KHOURI, and William P. DOYLE, *Commissioners*.

Order Affirming Initial Decision on Default

Shipco Transport Inc. (Complainant or Shipco) filed a complaint with the Federal Maritime Commission (FMC or Commission) on April 18, 2012. A Verified Amended Complaint was filed with the Commission on August 24, 2012. Complainant alleges that Jem Logistics, Inc. (Jem Logistics) and Andi Georgescu (Georgescu) (collectively Respondents) violated various sections of the Shipping Act and sought reparations and other relief.

On March 26, 2013, the Administrative Law Judge (ALJ) issued an Initial Decision on Default.

On April 4, 2013, Respondent Georgescu filed a Petition to Set Aside Default.

For the reasons stated below, the Commission:

- (1) denies the Petition to Set Aside Default;
- (2) affirms the Initial Decision on Default; and
- (3) awards reparations in the amount of \$8,050.00 plus interest.

BACKGROUND

On April 18, 2012, Complainant Shipco Transport Inc. filed a Complaint with the Commission, alleging that Respondents violated the Shipping Act of 1984 (Act) specifically section 8, section 19(a), section 19(b), and section 10(a)(1). Shipco is a non-vessel-operating common carrier (NVOCC) licensed by the Federal Maritime Commission. Shipco seeks a reparation award for actual injury suffered as a result of violations of the Act committed by Respondents, including \$8,050.00 plus interest and attorney's fees.¹

Shipco alleged that in January 2010, Respondents retained Complainant Shipco to transport a car to Australia and misrepresented the identity of Respondent Jem Logistics as Aromark Shipping LLC (Aromark), an NVOCC licensed by the Commission. Based on the misrepresentation, Shipco identified Aromark as the shipper on the bill of lading for the car. The

¹ The amount \$8,050.00 is derived from Shipco's payment to satisfy the claim for demurrage on May 4, 2011.

Amended Complaint alleges that Respondents have no connection to Aromark, nor are the two Respondents licensed NVOCCs. When the consignee did not pick up the shipment, Complainant was required to pay demurrage and fees to the vessel-operating common carrier (VOCC). Complainant then invoiced Aromark to the address of Respondents. At that point, Complainant learned of the misrepresentation and that Aromark had not been involved in the shipment. Complainant alleged that its demands to Respondents to pay the demurrage have been unsuccessful.

Complainant alleged that Respondents violated several sections of the Shipping Act, including: section 8, by operating as an NVOCC without a tariff (46 U.S.C. §40501(a)); section 19(a), by operating as an ocean transportation intermediary (OTI) without a license issued by the Commission (46 U.S.C. §40901(a)); section 19(b), by operating as an OTI without a bond (46 U.S.C. §40902(a)); and section 10(a)(1), by knowingly and willfully obtaining ocean transportation at less than the rates and charges that would otherwise be applicable (46 U.S.C. §41102(a)).²

Because Respondents did not answer or otherwise respond to the Complaint, Complainant filed a Motion for Default Judgment against both Respondents on June 29, 2012. Complainant purportedly served the motion on Respondents at an address not previously stated in the Complaint nor filed with the Secretary in the record. As a result of failing to serve the address of record, the Administrative Law Judge (ALJ) denied the Motion without prejudice.

² On October 14, 2006, the President signed a bill reenacting the Shipping Act as positive law. The bill's purpose was to "reorganize[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 continues to cite provisions of the Act by their former section references, and that practice will be followed in this Order.

On August 24, 2012, Complainant filed an Amended Complaint supplying the address of Respondents where the first Motion for Default Judgment service was made. Complainant filed a second Motion for Default Judgment on January 7, 2013. Respondents did not respond to these motions. On February 12, 2013, the ALJ served a Notice of Default and Order to Show Cause; Jem Respondents, once again, did not respond. The ALJ sent the Order to Respondents by first class mail and the mail was not returned. The Order to Show Cause required Respondents to respond by February 22, 2013, to which no response had been received by the ALJ when the Initial Decision on Default was served on March 26, 2013.

The Initial Decision on Default found that Respondents: (1) failed to respond and are in default; (2) violated the Act; (3) caused actual injury to Complainant by knowingly and willfully, by means of an unjust or unfair means, obtaining ocean transportation for property at less than the rates or charges that would otherwise apply; and (4) are liable for reparations to Complainant. The ALJ further ordered the Respondents to cease and desist operating as an ocean transportation intermediary in violation of the Act.

The ALJ's analysis for the default judgment was two-fold: whether Respondents properly received notice of the proceeding and whether Respondents responded in any way. First, the ALJ determined that Respondents were properly given notice of the proceeding because mailings were made by UPS, regular mail, and first class mail. These multiple mailings were not returned.

Second, the ALJ determined that Respondents have defaulted because, despite having received the Complaint and Order to Show Cause, Respondents have failed to answer or otherwise respond to the Amended Complaint or the Notice of Default and Order to Show Cause. The ALJ relied on the Commission's regulations at 46 C.F.R. §502.62(b)(6)(ii) ("Well pleaded factual allegations in the complaint not answered or

addressed will be deemed to be admitted”) to support a finding that it is customary for the Commission and other courts to find that a defaulting respondent has admitted the well-pleaded allegations both to the specific violations of law alleged and as to the specific money damages alleged.

DISCUSSION

The ALJ correctly determined that Respondents are in default because they were properly given notice of the proceedings and failed to answer or otherwise respond to any actions or motions in this proceeding.

On April 4, 2013, two weeks after the ALJ issued the decision on default, Respondent Georgescu filed an “Answer to the Complaint and Petition to Set Aside.” Accepting filings after default only occurs in limited circumstances, pursuant to 46 C.F.R. §502.65(d), which states:

(d) A respondent who has defaulted may file with the Commission a petition to set aside a decision on default. Such a petition must be made within 22 days of the service date of the decision, state in detail the reasons for failure to appear or defend, and specify the nature of the proposed defense. In order to prevent injustice, the Commission may for good cause shown set aside a decision on default.

Furthermore, the evidence admitted by Complainants supports a finding of unlawful conduct by Respondents based on the four Orders to Supplement the Record.

In Respondent Georgescu’s Answer and Petition to Set Aside, he stated that “the decision and the letters” were “sent to the wrong company,” that he is not Jem Logistics Inc., and that he has “no affiliation with Jem Logistics Inc.” See Georgescu Answer and Petition, at 1. (April 4, 2013). Respondent Georgescu also stated

that he “was an employee of Jem Logistics Inc, not ever doing business as a D/B/A and [he hasn’t] been working for that company for at least 3 years.” Id. Respondent Georgescu stated, “I also do not recall misrepresenting any identity as stated in this docket under Jem Logistics Inc.” Id.

Pursuant to 46 C.F.R. §502.65(d), a petition to set aside a decision must “state in detail the reasons for failure to appear or defend, and specify the nature of the proposed defense.” Here, Respondent Georgescu simply stated that he was not an employee of Jem Logistics and that he did not recall misrepresenting any identity as stated. While the answer is succinct, it is hardly a detailed statement on his failure to appear or defend. Furthermore, as stated in the last line of the rule, “in order to prevent injustice, the Commission may for good cause shown set aside a decision on default.” It would be improper to conclude that Respondent Georgescu’s statements, without any evidentiary support, show a level of good cause that would compel the Commission to set aside the decision on default to prevent injustice. Although Respondent Georgescu states that he has not been an employee of Jem Logistics’ for at least three years, the signature line on his email correspondence clearly shows “JEM Logistics Services Ltd Inc...” and the mailing address is the same as that provided for Respondents in the Amended Complaint. Moreover, Respondent Georgescu makes no attempt to explain why he, individually, failed to respond. As an individual named in the Complaint, he had a duty to appear and contest the allegations, or suffer the consequences of inaction.

In some cases, alleging that the complainant named the wrong defendant in a proceeding may be properly asserted as a defense; however, in this instance Respondent Georgescu had ample opportunity to articulate a “wrong defendant” claim. Respondent Georgescu failed to raise this defense in a timely fashion despite being properly served multiple times. Instead, he first raised the defense after the Initial Decision had been issued and did not provide evidentiary support of his claim.

The safety valve that allows for the setting aside of decisions of default is not to provide a convenient method for haphazard objection, but rather an opportunity for a party who was unable to appear or defend to state their case and show good cause why the decision on default should be set aside to prevent injustice. 46 C.F.R. §502.65(d). In this instance, Respondent Georgescu has not satisfied the requirements of 46 C.F.R. §502.65(d) and therefore the Commission denies Respondent Georgescu's petition to set aside default and affirms the default judgment.

CONCLUSION

THEREFORE, IT IS ORDERED, that the Initial Decision on Default is Affirmed;

IT IS FURTHER ORDERED, that Respondents Jem Logistics, Inc. and Andi Georgescu are jointly and severally liable to Shipco Transport Inc. and shall pay to Complainant by September 5, 2013, reparations in the amount of \$8,050.00 and interest (\$18.57) totaling \$8,068.57.³

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 a tariff;

³ The Commission's rules at 46 C.F.R. §502.254(c)(1) provide petitions for attorney's fees shall be filed within 30 days of a final reparation award.

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 Respondent Andi Georgescu from owning up to five percent of a class of shares of a publicly traded company; and

FINALLY, IT IS FURTHER ORDERED that this proceeding is discontinued.

By the Commission.

Karen V. Gregory
Secretary