

FEDERAL MARITIME COMMISSION

UNITED LOGISTICS (LAX) INC. –
POSSIBLE VIOLATIONS OF SECTIONS
10(A)(1) AND 10(B)(2)(A) OF THE
SHIPPING ACT OF 1984

Docket No. 13-01

Served: February 6, 2014

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

Memorandum Opinion and Order

I. INTRODUCTION

The November 25, 2013, Initial Decision on Default (Default Decision) of the Administrative Law Judge (ALJ) is before the Commission on *sua sponte* review requested by a member of the Commission pursuant to 46 C.F.R. § 502.227(d). No exceptions have been filed by either United Logistics (LAX) Inc. (Respondent) or the Bureau of Enforcement (BOE). For the reasons set forth below, we affirm the Default Decision but modify its ordering language.

II. PROCEDURAL HISTORY

On January 25, 2013, the Commission issued an Order of Investigation and Hearing (Order) against Respondent.¹ BOE was

¹ The Order alleged that Respondent violated § 10(a)(1) of the Shipping Act of 1984 (Shipping Act), 46 U.S.C. § 41102(a), by unlawfully accessing service contracts to which it was neither a signatory nor an affiliate and violated §

named a party to the proceeding. The Order required Respondent to file an answer to the allegations within 25 days pursuant to the Commission's regulations set forth at 46 C.F.R. § 502.63(c). Respondent has not entered an appearance or filed an answer.² On April 3, 2013, the ALJ issued a Notice of Default and Order to Show Cause requiring Respondent to respond to the proceeding and show cause why a decision should not be entered. No response was received from Respondent.

On May 17, 2013, BOE filed a motion for summary judgment focusing on issues not addressed in the Order, including the amount of civil penalties to be imposed, the suspension of Respondent's tariff and the issuance of a cease and desist order. The Respondent did not file an opposition to BOE's motion for summary judgment. On November 25, 2013, the ALJ issued the Default Decision finding that Respondent had violated §§ 10(a)(1) and 10(b)(2)(A). The ALJ imposed a civil penalty of \$2,700,000.00, revoked Respondent's ocean transportation intermediary (OTI) license, suspended Respondent's tariff, and issued a cease and desist order. On December 24, 2013, the matter came before the Commission on *sua sponte* review requested by a member of the Commission pursuant to 46 C.F.R. § 502.227(d).

For the reasons stated below, the Commission:

1) affirms the Default Decision;

10(b)(2)(A) of the Shipping Act, 46 U.S.C. § 41104(2)(A), by providing transportation in the liner trade that was not in accordance with the rates contained in its published tariff.

² On February 14, 2013, BOE initiated discovery procedures pursuant to 46 C.F.R. § 502.207 by issuing requests for admissions. BOE's request included language notifying Respondent that each request for admission would be deemed admitted unless Respondent replied within thirty days. That period expired on March 18, 2013.

- 2) vacates the cease and desist ordering language contained in the Default Decision; and
- 3) issues new cease and desist ordering language.

III. DISCUSSION

A. Standard of Review

Pursuant to the Commission's rules of practice and procedure, where exceptions are filed to, or the Commission reviews an initial decision, "the Commission, except as it may limit the issues upon notice or by rule, will have all the powers which it would have in making the initial decision." 46 C.F.R. § 502.227(a)(6). We review the ALJ's decision *de novo* and, with the exceptions discussed below, adopt its findings of fact and law, as they are well-reasoned and supported by evidence in the record.

B. Decision on Default

The ALJ resolved this proceeding under the Commission's recently adopted rules regarding decisions on default. The ALJ found that Respondent had notice of the possibility of a decision on default based on the Order to Show Cause issued on April 3, 2013. The ALJ found, citing 46 C.F.R. §502.62(c)(4) and the Commission's recent decision in *Century Metal Recycling PVT. Ltd. v. Dacon Logistics, LLC dba Coda Forwarding*, 33 S.R.R. 17 (FMC 2013), that well-pleaded allegations in a complaint will be deemed admitted when a respondent fails to answer a complaint. While under the Commission's rules, the principle applies to both private party complaints and Commission enforcement actions, this proceeding is a Commission enforcement action governed by 46 C.F.R. § 502.63 rather than a private party complaint governed by the rule cited by the ALJ and the *Century Metal* case. We find, however, that the ALJ's reliance on *Century Metal* was appropriate based on the identical language used in both Rule 63(c)(4)

(investigation proceedings) and Rule 62(b)(6) (private party complaint proceedings).

C. Ordering Language

BOE requested in its motion for summary judgment that Respondent be directed to cease and desist from violating §§ 10(a)(1) and 10(b)(2)(A) of the Shipping Act. Additionally, BOE requested that, if the ALJ revoked Respondent's license, the ALJ should also direct Respondent to cease and desist from violating §§ 8(a) and 19 of the Shipping Act by operating as an unlicensed OTI in the United States. The ALJ found that Respondent had repeatedly violated §§ 10(a)(1) and 10(b)(2)(A) of the Shipping Act and therefore a cease and desist order was warranted as there was a likelihood that offenses would continue. The ALJ also revoked Respondent's OTI license and suspended Respondent's tariff. The ALJ's ordering language, however, does not include any language related to §§ 8, 10 or 19 of the Shipping Act and simply ordered Respondent to cease and desist from operating in the United States as an OTI. As written, this provision ostensibly prevents Respondent from operating as an OTI even if it were to eventually obtain an OTI license. We therefore determine to vacate the cease and desist ordering language contained in the Default Decision and replace it with the following:

FURTHER ORDERED, That Universal Logistics cease and desist from violating §§ 10(a)(1) and 10(b)(2)(A) of the Shipping Act and cease and desist from operating in the United States as an Ocean Transportation Intermediary until and unless a license is issued by the Commission and it publishes a tariff and obtains a bond pursuant to Commission Regulations.

Upon consideration of the conclusions above:

THEREFORE, IT IS ORDERED, That the cease and desist ordering language contained in the Default Decision be stricken;

IT IS FURTHER ORDERED, That Universal Logistics cease and desist from violating §§ 10(a)(1) and 10(b)(2)(A) of the Shipping Act and cease and desist from operating in the United States as an Ocean Transportation Intermediary until and unless a license is issued by the Commission and it publishes a tariff and obtains a bond pursuant to Commission Regulations.

Finally IT IS ORDERED, That this proceeding be discontinued.

By the Commission.

Karen V. Gregory
Secretary