

(S E R V E D)
(MAY 11, 2006)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 06-06

EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc. -- Possible Violations of Section 10 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. § 515.27

ORDER OF INVESTIGATION AND HEARING

Euroamerica Group, Inc. ("Euroamerica") was incorporated in the State of Maryland on May 23, 1994. The President and Qualifying Individual ("QI") of Euroamerica was Mr. Mark Nash. Euroamerica operated as a licensed non-vessel-operating common carrier ("NVOCC") until December 2005 when it merged with Deliver USA, Inc. The surviving corporation, EuroUSA Shipping, Inc. ("EuroUSA"), continues to operate as a licensed and tariffed NVOCC. EuroUSA maintains an NVOCC bond in the amount of \$75,000. The company's principal place of business is located at 10610 Iron Bridge Road, Unit 6, Jessup, Maryland 20794. Mr. Nash continues to serve as the President and QI of EuroUSA.

Based on evidence available to the Commission, it appears that between February 2004 and December 2005, EuroUSA knowingly and willfully accepted cargo from or transported cargo for the account of several ocean transportation intermediaries ("OTIs") that did not have tariffs and bonds as required by sections 8 and 19 of the Shipping Act of 1984

("the Act") and the Commission's regulations at 46 C.F.R. § 515.27.

Tober Group, Inc. ("Tober") was incorporated in the State of New York on March 1, 1996. The President and QI of Tober is Mr. Yonatan Benhaim. Tober received a license to operate as an ocean freight forwarder ("OFF") on July 17, 1996. In 1999, Tober applied for and received a license to operate as an NVOCC. Tober is presently active as a licensed and tariffed NVOCC and OFF with a principal place of business at 185 Randolph Street, Brooklyn, New York 11237. Tober maintains an NVOCC bond in the amount of \$75,000 and an OFF bond in the amount of \$50,000. Tober publishes its electronic tariff at www.dpiusa.com. The single commodity covered by this tariff is "Cargo, N.O.S." and the tariff has not been updated since its original issue on January 7, 2004. The tariff rate for Tober's N.O.S. cargo is \$500 per 1,000 kilograms or 1 cubic meter, whichever yields the higher amount.

Based on evidence available to the Commission, it appears that between May 2004 and December 2005, Tober knowingly and willfully accepted cargo from or transported cargo for the account of several OTIs that did not have tariffs and bonds as required by sections 8 and 19 of the Act and the Commission's regulations at 46 C.F.R. § 515.27. Section 10(b)(2)(A) of the Act states that no common carrier may provide service in the liner trade that is not in accordance with the rates and charges contained in a published tariff. 46 App. U.S.C. § 1709(b)(2)(A). It appears that from at least January 2004, Tober has provided liner service to its shippers that was not in accordance with the \$500 Cargo, N.O.S. rate published in its electronic tariff.

Container Innovations, Inc. ("CI") was incorporated in the State of New Jersey on March 27, 1985 and is presently located at 123 Pennsylvania Avenue, Kearny, New Jersey 07032. The President and QI of CI is Mr. Angelo J. Carrera. CI has been a licensed NVOCC since September 1999 and maintains an NVOCC bond in the amount of \$75,000.

Based on evidence available to the Commission, it appears that between September 2004 and March 2006, CI knowingly and willfully accepted cargo from or transported cargo for the account of several OTIs that did not have tariffs and bonds as required by sections 8 and 19 of the Act and the Commission's regulations at 46 C.F.R. § 515.27.

Section 10(b)(11) of the Act, 46 App. U.S.C. § 1709(b)(11), prohibits any common carrier from knowingly and willfully accepting cargo from or transporting cargo for the account of an OTI that does not have a tariff and a bond as required by sections 8 and 19 of the Act. The Commission's regulations at 46 C.F.R. § 515.27 affirm this statutory requirement. Any OTI operating as an NVOCC in the United States must provide evidence of financial responsibility in the amount of \$75,000. 46 C.F.R. § 515.21. Furthermore, section 8(a) of the Act, 46 App. U.S.C. § 1707(a), requires NVOCCs to maintain open to public inspection in an automated tariff system, tariffs showing their rates, charges, classifications and practices. Information gathered thus far indicates each of the Respondents provided ocean transportation services to entities known to be operating as unlicensed NVOCCs. A person is subject to a civil penalty of not more than \$30,000 for each violation knowingly and willfully committed. 46 C.F.R. Part 506.

NOW THEREFORE, IT IS ORDERED, That pursuant to section 11(c) of the Shipping Act of 1984, 46 App. U.S.C. § 1710(c), an investigation is instituted to determine:

1) Whether the Respondents violated section 10(b)(11) of the Shipping Act of 1984 and the Commission's regulations at 46 C.F.R. § 515.27 by knowingly and willfully accepting cargo from or transporting cargo for the account of an OTI that did not have a tariff and a bond as required by sections 8 and 19 of the Act;

2) Whether Respondent Tober violated section 10(b)(2)(A) of the Act by providing service in the liner trade that was not in accordance with the rates and charges contained in a

published tariff.

3) Whether, in the event one or more violations of section 10 of the Act and/or 46 C.F.R. § 515.27 are found, civil penalties should be assessed and, if so, the amount of the penalties to be assessed;

4) Whether, in the event violations are found, appropriate cease and desist orders should be issued; and

5) Whether, in the event violations are found, such violations constitute grounds for the revocation of any Respondent's OTI license pursuant to 46 C.F.R. § 515.16.

IT IS FURTHER ORDERED, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding Administrative Law Judge only after consideration has been given by the parties and the presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

IT IS FURTHER ORDERED, That the following corporate entities be designated as Respondents in this proceeding:

EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc.;

IT IS FURTHER ORDERED, That the Commission's Bureau of Enforcement be designated a party to this proceeding;

IT IS FURTHER ORDERED, That notice of this Order be published in the Federal Register, and a copy be served on the parties of record;

IT IS FURTHER ORDERED, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.72;

IT IS FURTHER ORDERED, That all further notices, orders, or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

IT IS FURTHER ORDERED, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.118, and shall be served on parties of record; and

IT IS FURTHER ORDERED, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by May 11, 2007 and the final decision of the Commission shall be issued by September 11, 2007.


Bryant L. VanBrakle
Secretary