

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 13-02

LISA ANNE CORNELL and
G. WARE CORNELL, Jr.

v.

PRINCESS CRUISE LINES (CORP)
CARNIVAL plc
and CARNIVAL CORPORATION

**RESPONDENT, PRINCESS CRUISE LINES, EXCEPTIONS TO THE COMMISSION'S
INITIAL SUMMARY DECISION, AND/OR MOTION FOR RECONSIDERATION OF
THE *SUA SPONTE* SUMMARY DECISION IN FAVOR OF LISA ANNE CORNELL,
AND INCORPORATED MEMORANDUM OF LAW IN SUPPORT**

Respondent, Princess Cruise Line (Corp) (“Princess”) respectfully files its Exceptions to the Commission’s Initial Summary Decision and/or Motion for Reconsideration of the *Sua Sponte* Summary Decision in Favor of Lisa Anne Cornell, and Incorporated Memorandum of Law in Support. Pursuant to 46 C.F.R. § 502.227, the exceptions, motion and memorandum of law are timely filed. Except for the portion of the Initial Summary Decision which was decided *sua sponte*, Princess does not contest or take exception to the Decision.

A. PRINCESS’ EXCEPTIONS TO THE COMMISSION’S INITIAL SUMMARY DECISION

On July 23, 2013, the Administrative Law Judge (“ALJ”) served an Initial Summary Decision (hereinafter “the Decision”) in this matter. Princess files the following limited exceptions to the Decision:

1. The *sua sponte* summary decision entered on behalf of complainant Lisa Anne Cornell on her claim that respondent Princess Cruise Lines (Corp) violated 10(b)(10) of the Shipping Act of 1984, 46 U.S.C. § 41104(10), should be withdrawn (exception to the rationale and conclusions set forth in pages 52-64 of the Decision and the cease and desist order set forth on p. 64 of the Decision) since Respondent had no notice the Commission was considering ruling on complainant Lisa Anne Cornell’s 10(b)(10) claim *sua sponte* and there is further evidence which due process requires be considered before ruling on that issue;

For the reasons that follow, respondent Princess requests that changes to the Decision reflecting the foregoing exceptions be so ordered.

B. MEMORANDUM OF LAW

1. The *sua sponte* summary decision entered on behalf of complainant Lisa Anne Cornell on her claim that respondent Princess Cruise Lines (Corp) violated 10(b)(10) of the Shipping Act of 1984, 46 U.S.C. § 41104(10), should be withdrawn because respondent Princess was denied its due process right to submit all evidence and briefing on this issue

In the Commission's Initial Summary Decision, the court concedes that complainant Lisa Cornell had not moved for summary judgment. Nonetheless, the Decision *sua sponte* granted summary judgment in her favor. *See* Decision, at pp. 52-64. The ALJ ruled that summary judgment is appropriate for Lisa Cornell because Princess "has not articulated legitimate transportation-related factors to ban Lisa Cornell from its vessel," *see* the Decision, at p. 59, and because Lisa Cornell had taken past cruises on Princess ships with no information suggesting she had been disruptive to the ship's crew during any of those voyages:

She has sailed for years on Princess cruise ships, including forty-seven days during the Florida litigation, with no suggestion that she caused any problems with either shipboard staff or other guests ... Nothing suggests that Lisa Cornell's presence on board a Princess cruise ship would be disruptive to the ship's crew or other passengers.

See the Decision, at p. 60.

Because Lisa Anne Cornell did not move for summary judgment and because the FMC never gave Princess notice it was considering ruling *sua sponte* on her claims, Princess did not address the question of whether there are "transportation-related" factors justifying Princess' desire not to have Lisa Cornell vacation on its ships and Princess did not present any evidence one way or the other regarding whether Lisa Cornell's conduct during past cruises was disruptive to the ship's crew or other passengers.

Although courts possess the power to enter summary judgment *sua sponte*, they may do so *only* in those circumstances where the dismissed claims have been fully developed in the evidentiary record **and** where the non-moving party has received adequate notice. *Burton v. City of Belle Glade*, 178 F.3d 1175, 1203-04 (11th Cir. 1999) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986)). As a matter of law, a party adversely affected by such a ruling must have received adequate notice to submit evidence and arguments on the issue in question. *Flood v.*

Young Woman's Christian Ass'n of Brunswick, Georgia, Inc., 398 F.3d 1261, 1267 (11th Cir. 2005) (“[D]istrict court may enter summary judgment *sua sponte* if the parties are given adequate notice that they must present all of their evidence”); *Otis Elevator Co. v. George Washington Hotel Corp.* 27 F.3d 903, 910 (3d Cir. 1994) (holding that a court may not grant summary judgment *sua sponte* unless the court gives notice and an opportunity to oppose summary judgment); *Artistic Entm't, Inc. v. City of Warner Robins*, 331 F.3d 1196, 1201 n.10 (11th Cir. 2003); *Ramsey v. Coughlin*, 94 F.3d 71, 74 (2nd Cir. 1996) (reversing court's grant of summary judgment *sua sponte* in favor of the defendant because “an orderly and reviewable record” did not exist).

Here, the record has not been fully developed because Princess never received notice it needed to address these issues since Lisa Cornell never moved for summary judgment and the FMC's order requesting supplemental briefing never mentioned that the issue was going to be considered. Furthermore, Princess never had an opportunity to address whether “transportation related” reasons exist to justify Princess' desire to not have Lisa Cornell vacation on its ships since (1) Complainant never moved for summary judgment, (2) the Commission never provided Respondent notice that it intended to consider her claims *sua sponte*, (3) because nowhere in section 10(b)(10) of the Shipping Act of 1984 did Congress limit justifications for refusing to deal or negotiate to only “transportation related” reasons, and (4) there is evidence suggesting Lisa Cornell may have been disruptive to the ship's crew during at least one of her previous cruises and under due process Princess is entitled to have sufficient time to investigate this issue

and present evidence of same before a final summary judgment is entered one way or the other on Lisa Cornell's claim against Princess.¹

A. Respondent has not had an opportunity to fully brief “transportation related” reasons that justify Princess’ decision

In short, because the term “transportation-related” is not referenced in 10(b)(10), 46 U.S.C. § 41104(10), because Complainant did not move for summary judgment, and because the Commission never provided notice to Princess that it was considering *sua sponte* ruling on Lisa Cornell's claim against Princess, Princess never submitted briefing on this issue and therefore the record is not fully developed on that subject. As a matter of law, Princess must have received adequate notice to submit evidence and arguments on the issues in question.

B. Respondent has not had an opportunity to present evidence of Lisa Cornell's conduct during her past cruises

The Initial Summary Decision states that nothing in the record suggests that Lisa Cornell caused any problems with either shipboard staff or other guests during her previous cruises including the cruise she took during the pendency of the initial lawsuit between the parties. However, because Princess had no notice the Commission would consider ruling on Lisa Cornell's claim against it *sua sponte* Princess did not have an opportunity to present such evidence.

As the Initial Summary Decision concedes, a *sua sponte* summary ruling should not be made unless the record is fully developed and all evidence has been submitted and considered. In this case, Princess has received information suggesting Lisa Cornell's conduct during her

¹ Nowhere in the statute the Commission relied upon is the phrase “transportation related” used to limit possible justifications for refusing to deal or negotiate. This appears to be a court added requirement – never authorized by Congress – which the Commission has mentioned in passing in several previous rulings but never with any analysis or discussion of where this additional requirement came from.

previous cruise may well have been sufficiently disruptive to justify its continuing desire not to have her vacation on its ships. Specifically, while Princess' onboard staff had no idea Lisa Cornell was involved in litigation against the company at the time she cruised, at least four of the ship's officers or supervisory crewmembers had to dedicate time specifically dealing with complaint(s) Lisa Cornell made regarding aspects of her cruise. Several of these officers apparently considered the time they had to spend dealing with Mrs. Cornell sufficient that they documented in their onboard records that they had been forced to deal with Ms. Cornell's complaint(s) and notifying the company's accounting department that they had ultimately refunded Lisa Cornell a portion of the money she had paid Princess to keep her satisfied. None of this information was presented in the record because Princess did not have notice the Commission was *sua sponte* considering granting summary judgment on behalf of Lisa Cornell.

Further, Princess will require approximately 60-90 days to develop admissible evidence and to fully investigate the circumstances on this subject since (1) two of the four shipboard employees who had to deal with Mrs. Cornell's issues during her past cruise no longer work for the company and both are believed to be either in a foreign country or working onboard some other cruise line's vessels, (2) one of the four shipboard employees is still employed by Princess but is currently on vacation somewhere in New Zealand, and (3) the fourth employee who dealt with Mrs. Cornell's complaint(s) during her past cruise is currently working on a Princess ship sailing in Europe. Because of the logistics involved in locating these current and former employees (none of whom are in the United States), interviewing them about their recollections of the incident, and obtaining admissible evidence on the subject, due process requires that Princess be given a reasonable amount of time to locate these individuals and obtain evidence from them before the Commission makes a *sua sponte* ruling on Lisa Cornell's claim against

Princess. Since claimant Lisa Cornell has not even requested summary judgment, Princess would request the portions of the Initial Summary Decision dealing with Lisa Cornell's section 10(b)(10) ["failure to deal or negotiate"] be withdrawn and Princess given 90 days to present evidence and briefing on this subject before any final summary decision is rendered.²

In light of the fact that Complainants have filed their own exceptions challenging just about all of the ALJ's rulings and demanded resolution by the Commission, the 90 days sought by Princess to fully explore the circumstances under which the officers and crewmembers had to deal with Lisa Cornell will not result in delay or prejudice to either party.

C. CONCLUSION

For the reasons set forth above, the *sua sponte* summary decision entered on behalf of complainant Lisa Anne Cornell and the cease and desist order related thereto should be withdrawn at least until such time as respondent Princess has an opportunity to brief the "transportation related" issue and present all available evidence regarding Lisa Cornell's past cruises.

Dated: August 13, 2013
Miami, Florida

Respectfully Submitted,

MALTZMAN & PARTNERS, P.A.
Attorneys for Princess Cruise Lines
55 Miracle Mile, Suite 320
Coral Gables, Florida 33134
Tel: (305) 779-5665
Fax: (305) 779-5664

² Because of the international locations of the individuals involved and because several no longer work for the company, Princess has not had sufficient time to fully explore the circumstances under which these officers and crewmembers had to deal with Lisa Cornell but due process requires that Princess be given sufficient time to explore this evidence and present same to the Commission before any *sua sponte* final summary ruling is made against Princess.

By:

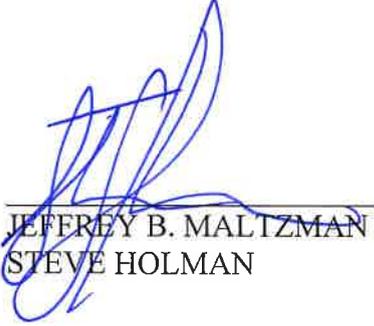


JEFFREY B. MALTZMAN
Florida Bar No. 0048860
STEVE HOLMAN
Florida Bar No. 0547840

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing Supplement to the Record has been furnished via Electronic Mail to G. Ware Cornell, CORNELL & ASSOCIATES, P.A. 2645 Executive Park Drive, Weston, FL 33331 on this 13th day of August, 2013.

By:



JEFFREY B. MALTZMAN
STEVE HOLMAN