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September 4, 2013					
FEDERAL MARITIME COMMISSION					

FEDERAL MARITIME COMMISSION

DOCKET NO. 13-03

SEAGULL MARITIME AGENCIES PRIVATE LTD.

v.

**GREN AUTOMOTIVE, INC.; CENTRUS AUTOMOTIVE DISTRIBUTERS INC.; and
LIU SHAO, INDIVIDUALLY**

INITIAL DECISION APPROVING SETTLEMENT¹

BACKGROUND

On February 22, 2013, complainant Seagull Maritime Agencies Private Limited (SMA) filed a Complaint with the Secretary. SMA is a non-vessel-operating common carrier licensed by the Commission. The Complaint alleges that respondents Gren Automotive, Inc. (Gren), Centrus Automotive Distributors, Inc., and Liu Shao, an individual, are shippers who violated section 10(a)(1)² of the Shipping Act of 1984. SMA and Respondents are represented by counsel. Section 10(a)(1) provides:

¹ The initial decision will become the decision of the Commission in the absence of review by the Commission. Any party may file exceptions to this decision within twenty-two days of the date of service. 46 C.F.R. § 502.227.

² On October 14, 2006, the President signed a bill reenacting the Shipping Act as positive law. The bill's purpose was to "reorganiz[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 often refers to provisions of the Act by their section numbers in the Act's original enactment, references that are well-known in the industry. *See, e.g., United Logistics (Lax) Inc. – Possible Violations of Sections 10(a)(1) and 10(b)(2) of the Shipping Act of 1984*, FMC No. 13-01 (FMC Jan. 25, 2013) (Order of Investigation and Hearing). I follow that practice in this Initial Decision.

A person may not knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or any other unjust or unfair device or means, obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise apply.

46 U.S.C. § 41102(a).

The following claims are set forth in the Complaint. SMA alleges that respondent Liu Shao uses respondents Gren and Centrus Automotive Distributors, Inc., as his alter egos. Between December 20, 2010, and April 25, 2011, Gren retained SMA to provide shipping services from China to the United States. Centrus Automotive Distributors, Inc., was identified as the consignee on the bills of lading. United States Customs Entry Forms 7501 identified Centrus Distributors, Inc., not respondent Centrus Automotive Distributors, Inc., as the consignee, however. A search of Florida corporate records does not find that Centrus Distributors, Inc., was ever licensed to do business in Florida. The Florida Secretary of State administratively dissolved Centrus Automotive Distributors, Inc., on September 23, 2011. Respondents did not pay the freight and other charges that are due SMA for its services. SMA alleges that it suffered actual injury in the amount of \$63,010.68 as a result of Respondents' violations.

On March 1, 2013, the Secretary served the Complaint and other documents on Respondents. Respondents did not timely answer or otherwise respond to the Complaint. On April 26, 2013, SMA filed a motion for default against Respondents. On May 7, 2013, Respondents filed an Answer to the Complaint denying most of the factual allegations in the Complaint, denying that they violated the Act as alleged in the Complaint, and asserting several affirmative defenses. On May 14, 2013, SMA filed a Notice that after conversations with counsel for Respondents, it was voluntarily withdrawing its motion for default.

The parties engaged in settlement discussions and settled their differences. On July 2, 2013, pursuant to Commission Rule 72, the parties submitted a Voluntary Dismissal of the proceeding signed by attorneys for SMA and Respondents. *See* 46 C.F.R. § 502.72(a)(1) ("The complainant may dismiss an action without an order from the presiding officer by filing . . . a stipulation of dismissal signed by all parties who have appeared."). On July 8, 2013, the Secretary served a Notice of Voluntary Dismissal. *Seagull Maritime Agencies Private Ltd. v. Gren Automotive, Inc.; Centrus Automotive Distributors Inc.; and Liu Shao, Individually*, FMC No. 13-03 (FMC July 8, 2013) (Notice of Voluntary Dismissal).

On August 7, 2013, the Commission issued a notice to review the voluntary dismissal. *Seagull Maritime Agencies Private Ltd. v. Gren Automotive, Inc.; Centrus Automotive Distributors Inc.; and Liu Shao, Individually*, FMC No. 13-03 (FMC Aug. 7, 2013) (Notice of Commission Determination to Review). On August 16, 2013, the Commission ordered the parties to supplement the record. "The Commission has . . . received information that suggests the voluntary dismissal is

based on a settlement agreement entered into by the parties. No settlement agreement was submitted to the Administrative Law Judge (ALJ) for approval prior to the dismissal.” *Seagull Maritime Agencies Private Ltd. v. Gren Automotive, Inc.; Centrus Automotive Distributors Inc.; and Liu Shao, Individually*, FMC No. 13-03 (FMC Aug. 16, 2013) (Order to Supplement the Record). The Commission noted that the Administrative Procedure Act strongly encourages settlements and that the Commission favors settlements. It also noted that the Commission has a “long-standing history of reviewing settlement agreements to assure that they accord with law and public policy,” *id.*, citing *Ellenville Handle Works v. Far Eastern Shipping Co.*, 20 S.R.R. 761, 762 (1981), a requirement that the recent amendment to Commission Rule 72 was not intended to alter. The Commission instructed the parties “to file a copy of the settlement agreement, if any, with the ALJ on or before August 23, 2013. If the parties did not enter into a settlement agreement in this proceeding, the parties are instructed to so indicate.” *Id.*

On August 22, 2013, the parties filed their Settlement Agreement. The Agreement, signed by Siddharth Khara for SMA and Liu Shao for himself and Gren after consultation with their respective attorneys (Settlement and Release Agreement at 3),³ states that “the Parties wish to settle and compromise all claims and matters by and between the Parties arising out [of] FMC Case No. 13-03 and other disputes by and between SMA and Respondents. No Party admits any liability to the other in making this settlement.” (Settlement and Release Agreement at 1.) The Agreement required Respondents to make payments totaling \$49,000.00 to SMA through SMA’s attorney by June 28, 2013. The Agreement provides protection for SMA in the event a Respondent files for bankruptcy before the required payments were made. (*Id.* at 1.)⁴ Respondents agreed that SMA may enforce the Agreement in the United States District Court for the Southern District of New York. (*Id.* at 2.) Upon payment of the \$49,000.00, the parties release all claims against each other. (*Id.*)

³ Centrus Automotive Distributors, Inc., which according to the Complaint was administratively dissolved in 2011, did not sign the Agreement and apparently has not signed a settlement agreement. The Voluntary Dismissal filed July 2, 2013, dismiss the Complaint against Centrus Automotive Distributors, Inc.

⁴ The Agreement twice refers to an entity named “Patriot.” (Settlement and Release Agreement at 1 (“Patriot also agrees to waive any claim of duress.”); at 2 (“Respondents [*sic*] Patriot agrees to waive all defenses (except the defense of proof of payment) affirmative or otherwise to any action by SMA to enforce the payment terms of this agreement.”).) I find that where the Agreement refers to “Patriot,” SMA, Gren, and Liu Shao intended to refer to Gren and Liu Shao.

DISCUSSION

Using language borrowed in part from the Administrative Procedure Act,⁵ Rule 91 of the Commission's Rules of Practice and Procedure gives interested parties an opportunity, *inter alia*, to submit offers of settlement "where time, the nature of the proceeding, and the public interest permit." 46 C.F.R. § 502.91(b).

The Commission has a strong and consistent policy of "encourag[ing] settlements and engag[ing] in every presumption which favors a finding that they are fair, correct, and valid." *Inlet Fish Producers, Inc. v. Sea-Land Serv., Inc.*, 29 S.R.R. 975, 978 (ALJ 2002), *quoting Old Ben Coal Co. v. Sea-Land Serv., Inc.*, 18 S.R.R. 1085, 1091 (ALJ 1978) (*Old Ben Coal*). *See also Ellenville Handle Works, Inc. v. Far Eastern Shipping Co.*, 20 S.R.R. 761, 762 (ALJ 1981).

The law favors the resolution of controversies and uncertainties through compromise and settlement rather than through litigation, and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy. . . . The courts have considered it their duty to encourage rather than to discourage parties in resorting to compromise as a mode of adjusting conflicting claims. . . . The desire to uphold compromises and settlements is based upon various advantages which they have over litigation. The resolution of controversies by means of compromise and settlement is generally faster and less expensive than litigation; it results in a saving of time for the parties, the lawyers, and the courts, and it is thus advantageous to judicial administration, and, in turn, to government as a whole. Moreover, the use of compromise and settlement is conducive to amicable and peaceful relations between the parties to a controversy.

Old Ben Coal, 18 S.R.R. at 1092 (*quoting* 15A American Jurisprudence, 2d Edition, pp. 777-78 (1976)).

"While following these general principles, the Commission does not merely rubber stamp any proffered settlement, no matter how anxious the parties may be to terminate their litigation." *Id.* However, if "a proffered settlement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake or other defects which might make it unapprovable despite the strong policy of the law encouraging approval of settlements, the settlement will probably pass muster and receive approval." *Old Ben Coal*, 18 S.R.R. at 1093. "[I]f it is the considered judgment of the parties that whatever benefits might result from vindication of their positions would be outweighed by the costs of continued litigation and if the settlement otherwise complies with law the Commission authorizes the settlement." *Delhi Petroleum Pty. Ltd. v. U.S. Atlantic &*

⁵ "The agency shall give all interested parties opportunity for – (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit." 5 U.S.C. § 554(c).

Gulf/Australia – New Zealand Conf. and Columbus Line, Inc., 24 S.R.R. 1129, 1134 (ALJ 1988) (citations omitted).

“Reaching a settlement allows the parties to settle their differences, without an admission of a violation of law by the respondent, when both the complainant and respondent have decided that it would be much cheaper to settle on such terms than to seek to prevail after expensive litigation.” *APM Terminals North America, Inc. v. Port Authority of New York and New Jersey*, 31 S.R.R. 623, 626 (FMC 2009) (citing *Puerto Rico Freight Sys. Inc. v. PR Logistics Corp.*, 30 S.R.R. 310, 311 (ALJ 2004)).

SMA claims that it suffered actual injury of \$63,010.68 as a result of Respondents’ alleged violations of the Act. It has compromised this claim for an immediate payment of \$49,000.00. The settlement also means that SMA ceases to incur litigation costs associated with this proceeding. Gren and Liu Shao deny that they violated the Act. Nevertheless, they agree to pay \$49,000.00 now to avoid the potential of a larger reparation award that could also include payment of substantial attorney’s fees incurred by SMA prosecuting its claim. *See* 46 U.S.C. § 41305(b) (“If the complaint was filed within [three years after the claim accrues], the . . . Commission shall direct the payment of reparations to the complainant for actual injury caused by a violation of this part, plus reasonable attorney fees.”). Gren and Liu Shao also cease to incur litigation costs associated with this proceeding.

Based on the Settlement and Release Agreement signed by the parties after the opportunity to consult their attorneys and the verified Complaint and the Answer filed in this proceeding, and engaging in every presumption which favors a finding that the Agreement is fair, correct, and valid, I find that the Agreement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake, or other defects which might make it unapprovable. Therefore, the Settlement and Release Agreement is approved.



Clay G. Guthridge
Administrative Law Judge