

BEFORE THE FEDERAL MARITIME COMMISSION

DOCKET NO. 14-01

**POSSIBLE REVOCATION OF
OCEAN TRANSPORTATION INTERMEDIARY
LICENSE NO. 022025 – CARGOLOGIC USA LLC**

ORDER TO SHOW CAUSE

**BUREAU OF ENFORCEMENT
SUPPLEMENTAL MEMORANDUM**

By Order dated February 18, 2014, the Federal Maritime Commission (Commission) instituted this proceeding and directed Cargologic USA LLC (Cargologic or Respondent) to show cause why the Commission should not revoke its license for failure to report the resignation of its Qualifying Individual (QI) and seek approval of a replacement, and for failure to respond to lawful inquiries of the Commission with respect to its business activities.

Respondent was directed to submit its affidavits of fact and memorandum of law on or before March 21, 2014. No affidavits of fact or memoranda of law have been filed on behalf of Respondent in response to the Commission's Order.

The Commission's Order also designated the Commission's Bureau of Enforcement (BOE) as a party thereto. In the absence of a substantive response by Cargologic, BOE submitted on March 27, 2014, a Memorandum of Law and Verified Statement of Sandra Kusumoto, Director of the Commission's Bureau of Certification and Licensing.

By Order issued June 23, 2014, the Commission directed BOE to supplement the record.

II. SUPPLEMENTAL VERIFIED STATEMENT

Responsive to the Commission's June 23 Order, BOE submits the appended Supplemental Verified Statement of Sandra Kusumoto. Director Kusumoto's statement includes copies of BCL's correspondence referenced in her first Verified Statement. See Supplemental Statement, ¶¶5-7 and Attachments A – C thereto.

The Supplemental Verified Statement also furnishes the Commission with available information regarding Mr. Gurfinkel's departure from the employ of Cargologic. The LinkedIn webpage of Mr. Gurfinkel identifies his current employer, Blue Cargo Group, in Chicago. The webpage purports to show that Mr. Gurfinkel departed the employ of Cargologic on or about January 2013. See Supplemental Statement, ¶9 and Attachment D thereto.

BCL also successfully contacted Mr. Gurfinkel by telephone on June 23. Director Kusumoto spoke directly with Mr. Gurfinkel, who confirmed his prior employment at Cargologic and advised that such employment ended on or about January 2013. See Supplemental Statement, ¶10.

III. LEGAL ARGUMENT

The Commission's Order to Show Cause provides clear notice of the Commission's assertion that the Respondent violated Commission regulations by failing to notify the Commission of the resignation of its QI, failing to seek approval of a replacement, and repeatedly failing to respond to lawful inquiries by the Commission with respect to its OTI business. The Order provides details sufficient to permit the Respondent to clearly understand the basis of the Commission's proposed action and the necessity to furnish affidavits, documents or legal argument addressing Cargologic's operations or otherwise contesting the conclusion that revocation of their license is warranted.

The effect of an order to show cause is to shift the burden of going forward to Respondent, and require it to “affirmatively demonstrate” the lawfulness of its operations. See *In re Interpool Ltd.*, 23 S.R.R. 899, 902 (FMC, 1986); *Agreement No. 9905*, 14 F.M.C. 163, 165 (FMC, 1970). Under show cause procedures, the Commission’s own Order has set forth a *prima facie* case of violation of the shipping statutes or Commission regulations. *Interpool, supra*; *Canaveral Port Authority – Possible Violations*, 29 S.R.R.1436, 1446 (FMC, 2003).

It is a familiar rule of evidence that a party having control of information bearing upon a disputed issue may be assigned the burden of bringing it forward or suffer an adverse inference for its failure to respond. *Revocation of OTI License No. 016019N – Central Agency of Florida*, 31 S.R.R. 486, 486-487 (FMC, 2008); *Commonwealth Shipping Ltd., Cargo Carriers Ltd, and Martyn C. Merritt – Submission of Materially False or Misleading Statements*, 29 S.R.R. 1408, 1412 (FMC, 2003); *Adair v. Penn-Nordic Lines*, 26 S.R.R. 11, 15 (ALJ, 1991) citing *Alabama Power Co. v. F.P.C.*, 511 F.2d 383, 391 (DC Cir. 1974). As summarized by the Commission in *Central Agency of Florida, supra*:

If a party fails to meet this burden, i.e. by not contesting allegations or evidence that another party provides to a disputed issue, it is deemed to have accepted the opposing party’s allegations and evidence as true. *Capitol Transportation Inc v United States*, 612 F2d 1312, 1318-1319 (1st Cir 1979); *Bermuda Container Line Ltd. v SHG Int’l Sales Inc, FX Coughlin Co, and Clark Building Systems Inc.*, 28 S.R.R. 312, 314 (ID, 1998). A default judgment, cease and desist order or other just ruling may issue against a party that fails to respond to a properly served order or pleading. *Commonwealth Shipping Ltd.*, 29 S.R.R. at 1412; *Helen Khadem d/b/a Worldwide Cargo Express/Trading*, 28 S.R.R. 994, 995-996 (FMC 1999); *Adair v Penn-Nordic Lines*, 26 S.R.R. at 15.

Central Agency, 31 S.R.R. at 487 (license ordered revoked upon failure to respond to Order to Show Cause for lack of required qualifying individual.) Mirroring provisions of the Federal

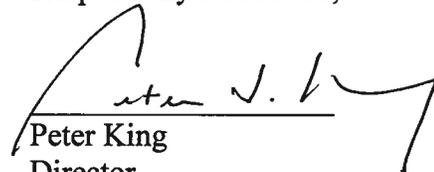
Rules of Civil Procedure, the Commission's rules have been amended to authorize entry of default against a party who has not filed an answer. See 46 C.F.R. 502.62(b)(6), 502.63(c)(4), and 502.65(b).

Notwithstanding Respondent's default and consequent admission to the well-pled allegations of the Commission's Order to Show Cause, BOE herewith submits the Supplemental Verified Statement of BCL Director Kusumoto to address those additional issues specified in the Commission's Order of June 23. The facts contained in the Supplemental Verified Statement provide further support for the entry of a Commission order revoking the license of Cargologic for failure to maintain a QI or seek approval of a replacement as required by 46 C.F.R. §515.18 and for failure to respond to a lawful request of the Commission as required by 46 C.F.R. §515.31(g).

IV. CONCLUSION

For the reasons set forth above, the Commission should find Respondent to be in violation of 46 C.F.R. §515.18 (a)(6) and (c) and §515.31(g). Pursuant to 46 U.S.C. 40903(a), the OTI license of Respondent should be revoked by order of the Commission and Respondent directed to immediately cease and desist all OTI activities.

Respectfully Submitted,


Peter King
Director
Bureau of Enforcement

June 25, 2014

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served upon all parties by first class, postage paid mail, or by UPS courier service on June 25, 2014.

Signed in Washington D.C. on June 25, 2014.


Peter King / Director
Bureau of Enforcement