

FEDERAL MARITIME COMMISSION

DOCKET NO. 14-04

EDAF ANTILLAS, INC.

v.

**CROWLEY CARIBBEAN LOGISTICS, LLC;
IFS INTERNATIONAL FORWARDING, S.L.; and
IFS NEUTRAL MARITIME SERVICES**

RESPONDENT CCL'S MOTION TO DISMISS FOR FAILURE TO PROSECUTE

Respondent CCL moves pursuant to Rule 72 to dismiss the Complaint in this case due to Complainant Edaf's failures to prosecute the matter and to comply with an Order of the Presiding Judge. CCL further requests an award of attorney's fees pursuant to 46 U.S.C. 41305, as recently amended.

I. FACTS

By Order dated January 14, 2015, the Presiding Judge set a briefing schedule for this proceeding. Under that schedule, Edaf was required to file its brief (including proposed findings of fact and appendix of documentary evidence) no later than February 23, 2015. That date has come and gone, and Edaf has neither filed its brief nor requested an extension of time in which to do so. Indeed, Edaf has maintained radio silence even in the face of the similar motion to dismiss filed by respondent IFS.

This is not the first time that Edaf has flouted an order of the ALJ. As previously documented, Edaf has: (i) failed to provide answers to interrogatories or documents in a timely

manner as specified in the discovery schedule, and (ii) failed to make its accountant available for deposition within the time frame for completion of discovery.

II. ENTITLEMENT TO RELIEF

A. Dismissal

Rule 72 authorizes dismissal where a complainant “fails to prosecute or to comply with . . . an order in the proceeding.” See, e.g., *Kawasaki Kisen Kaisha, Ltd. v. Port Authority of New York & New Jersey*, ____ SRR ____; FMC Docket No. 11-12 (Order Affirming Dismissal of Complaint, FMC, November 20, 2014) (failure to obey order); *CTM International, Inc. v. Medtech Enterprises, Inc.*, 28 SRR 1091, 1094 (ALJ, Admin. Final 1999) (failure to prosecute); *Prudential Lines, Inc. v. Waterman Steamship Corp.*, 23 SRR 1323 (ALJ 1986).¹ To like effect, see *Webber v. Eye Corp.*, 721 F.2d 1067, 1069 (7th Cir.1983) (dismissal may be ordered “when there is a clear record of delay or contumacious conduct, or when other less drastic sanctions have proven unavailing”).

As demonstrated above, Complainant has repeatedly failed both to prosecute this matter and to comply with orders of the Presiding Judge. This willful misconduct is ample to justify dismissal, especially given the extremely tenuous nature of the remaining claim against CCL.

B. Attorney’s Fees

The Shipping Act, as amended in 2014, authorizes the Commission to award attorney’s fees to a prevailing party: “In any action brought under section 41301, the prevailing party may be awarded reasonable attorney fees.” 46 U.S.C. 41305(e). If the motion to dismiss is granted, CCL will indisputably be a “prevailing party,” as even the one claim not previously dismissed

¹ These latter two dismissals arose before the express authority of Rule 72 was promulgated, based on the inherent right of an adjudicatory body to control its docket.

will be terminated in favor of CCL.² An award of attorney's fees to CCL is particularly warranted given Edaf's repeated failures to comply with orders of the Presiding Judge and the weakness of its claim against CCL.

III. CONCLUSION

For the reasons given above, the Presiding Judge should dismiss with prejudice Edaf's remaining claim against CCL, and award CCL attorney's fees in an amount to be determined after dismissal.

Respectfully submitted,

BY: 

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February 25, 2015

² Rule 72 states that a dismissal for failure to prosecute and/or obey an order of the Presiding Judge will normally act as an adjudication on the merits."

Certificate of Service

I hereby certify that I have this day served the foregoing document upon all parties of record by e-mailing a copy to each person.³

Dated at Washington, DC, this 25th day of February, 2015.


Eric C. Jeffrey
Counsel for Crowley Caribbean Logistics, LLC

³ The Parties agreed in the August 11, 2014 Joint Status Report that service among them would be effectuated by email, to reduce both delays and costs.