Federal Maritime Commission
Washington, D.C.

Edaf Antillas, Inc.,

Docket No. 14-04

Complainant

v.

Crowley Caribbean Logistics, LLC,
IFS International Forwarding, S.L.
and IFS Neutral Maritime Services,

Respondents.

IFS NEUTRAL MARITIME SERVICE, INC.'S AND IFS INTERNATIONAL FORWARDING, S.L.'S MOTION TO DISMISS THE ACTION AND FOR ATTORNEY FEES

Respondents IFS Neutral Maritime Service, Inc. ("Neutral") and IFS International Forwarding, S.L. ("IFS"), by and through their attorneys, Betancourt, Van Hemmen, Greco & Kenyon LLC, hereby move the Federal Maritime Commission ("Commission") for an Order: (1) dismissing the remaining claim of Edaf Antillas, Inc. ("Edaf" or "Complainant" herein) with prejudice as against Neutral; and (2) granting Neutral and IFS the attorney fees incurred in defending against this action.

POINT I

COMPLAINANT HAS FAILED TO PROSECUTE ITS CLAIM AND HAS FAILED TO COMPLY WITH AN ORDER IN THE PROCEEDING

Commission Rule 72 provides, in pertinent part:

Involuntary dismissal; effect. If the complainant fails to prosecute or to comply

> with these rules or an order in the proceeding, a respondent may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subpart, except one for lack of jurisdiction or for failure to join a party, operates as an adjudication on the merits.

46 C.F.R. § 502.72(b). Edaf has failed to prosecute its claim, and has failed to comply with an order in the proceeding. Accordingly, Edaf's complaint should be dismissed.

On January 14, 2015, Administrative Law Judge Guthridge entered as an order a briefing schedule as proposed by the parties. See January 14, 2015 Briefing Schedule, Document No. 37. As per that order, Complainant's proposed findings of fact, brief, and appendix were to be filed on February 23, 2015. Edaf failed to file its proposed findings of fact, brief, and appendix on February 23, 2015, in violation of ALJ Guthridge's order. Accordingly, Edaf has failed to comply with a significant order in this proceeding, and through its failure to comply, has also failed to prosecute its claim. Therefore, Edaf's remaining claim against Neutral should be dismissed with prejudice in accordance with Commission Rule 72.

POINT II

NEUTRAL AND IFS ARE ENTITLED TO REASONABLE ATTORNEY FEES

The Shipping Act was recently amended to permit an award of reasonable attorney fees to any prevailing party. The Howard Coble Coast Guard and Maritime Transportation Act of 2014, S.2444 (the "Act"), became Public Law 113-281 on December 18, 2014. The Act amended 46 U.S.C. § 41305, award of reparations, which now provides in pertinent part as

follows: "In any action brought under section 41301, the prevailing party may be awarded reasonable attorney fees." 46 U.S.C. § 41305(e). As the prevailing parties, Neutral and IFS are therefore entitled to recover their attorney fees from Edaf.

IFS previously prevailed on all of Complainant's claims against it. ALJ Guthridge's November 6, 2014 Order on Motions to Dismiss dismissed Edaf's claims against IFS in their entirety. Order on Motions to Dismiss, Document No. 22. Accordingly, IFS, which is the prevailing party on all of Edaf's claims against it, is entitled to an award of attorney fees incurred in defending against this action.

Neutral previously prevailed on two of Complainant's three claims against it. ALJ Guthridge's November 6, 2014 Order on Motions to Dismiss dismissed Edaf's section 10(b)(3) and section 10(b)(8) claims against Neutral, leaving Edaf's section 10(d)(1) claim as its sole surviving claim against Neutral. Order on Motions to Dismiss, Document No. 22. Neutral, through Edaf's failure to prosecute its claim and failure to comply with an order in the proceeding, should now prevail on Complainant's third and sole remaining claim- the section 10(d)(1) allegations. Accordingly, Neutral, as the prevailing party, is entitled to an award of attorney fees incurred in defending against this action.

CONCLUSION

For the aforementioned reasons, the Commission should dismiss Edaf's remaining claim against Neutral with prejudice, and grant Neutral and IFS the attorney fees incurred in defending against this action.[1]

Dated: February 24, 2015

Respectfully Submitted,

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[1]Neutral and IFS will file their detailed petition for attorney fees within the prescribed time period should this motion for an order dismissing this action be granted.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing IFS Neutral Maritime Service, Inc.'s and IFS International Forwarding, S.L.'s Motion to Dismiss the Action and for Attorney Fees upon the following addressees by e-mail:

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Dated: February 24, 2015

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