

S E R V E D
September 10, 2014
FEDERAL MARITIME COMMISSION

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DOCKET NO. 14-05

**HUNTINGTON INTERNATIONAL, INC.,
JC HORIZON LTD., AND JUDY LEE – POSSIBLE VIOLATIONS OF
SECTIONS 10(a)(1) AND 19 OF THE SHIPPING ACT OF 1984**

**INITIAL DECISION APPROVING SETTLEMENT AGREEMENT,
GRANTING MOTION TO DISMISS, AND DISMISSING WITH PREJUDICE¹**

I. Summary

On September 4, 2014, the Commission's Bureau of Enforcement ("BOE") filed a Joint Memorandum in Support of Proposed Settlement with Respondents JC Horizon Ltd. ("JC Horizon") and Judy Lee and filed a Motion to Dismiss Respondent Huntington International, Inc. ("Huntington International"). As explained more fully below, the Settlement Agreement is approved and the Motion to Dismiss is granted.

On June 4, 2014, the Commission issued an Order of Investigation and Hearing to determine: (1) whether Huntington International, previously licensed as an ocean transportation intermediary ("OTI"), (a) violated Section 19(a) and (b) of the Shipping Act of 1984 ("Shipping Act"), 46 U.S.C. §§ 40901, 40902, by continuing to operate as an OTI after its license had been revoked; (b) violated section 19(e) of the Act, 46 U.S.C. § 40904, and the Commission's regulations, 46 C.F.R. Part 515, by collecting freight forwarder compensation on shipments in which Judy Lee, an officer and director of the company, had a beneficial interest; and (c) violated section 10(a)(1) of the Act, 46 U.S.C. § 41102(a) and the Commission's regulations, by sharing compensation with JC Horizon and Judy Lee; and (2) whether JC Horizon and Judy Lee violated section 10(a)(1) of the Shipping Act by knowingly and willfully obtaining ocean transportation at less than the rates and charges that would otherwise apply by directing Huntington International to pay over to Respondents monies derived from freight forwarder compensation paid by ocean common carriers that transported Respondent JC Horizon's shipments. The Commission's Order further directed that in the event violations of the Shipping Act were found, a determination be made whether civil penalties should be assessed

¹ This Initial Decision will become the decision of the Commission in the absence of review by the Commission. 46 C.F.R. § 502.227.

against Respondents and, if so, the amount of penalties to be assessed, and whether appropriate cease and desist orders should be issued. The Commission's Order named BOE as a party and required the Respondents to file an Answer.

On July 7, 2014, Respondents Judy Lee and JC Horizon filed an Answer denying the allegations, asserting affirmative defenses, and filing a counterclaim under the Equal Access to Justice Act. Respondent Huntington International has not entered an appearance in this proceeding. BOE indicates that Respondent Huntington International has not been served. Motion to Dismiss at 2-3. The Settlement Agreement and Motion to Dismiss will be addressed in turn.

II. Settlement Agreement

The settling parties submitted a copy of their Settlement Agreement, which indicates that BOE asserts it would submit a compelling case, settling respondents assert that they would submit a compelling defense, and the settling parties "believe it is in the best interests of the parties and the shipping public to fully and finally resolve the allegations against Respondents in this proceeding under the conditions stated herein rather than continue to engage in the extensive and protracted litigation anticipated by the parties." Settlement Agreement at 2. The settling parties agree that settling Respondents shall make a monetary payment to the Federal Maritime Commission in the amount of \$300,000.00, that the counterclaim will be dismissed, that BOE will move for the dismissal of Huntington International, and that the claims herein will be dismissed with prejudice. Settlement Agreement at 2-3.

Using language borrowed in part from the Administrative Procedure Act, 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 consistently adhered to a 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 & 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)).

The settling parties are all represented by counsel. In the Joint Memorandum, the settling parties indicate that the Settlement Agreement is the result of good faith negotiations, that without the settlement, the parties envision lengthy, complicated, and protracted litigation, that the ultimate outcome is by no means certain, and that it is in the best interests of the parties and the shipping public to resolve this proceeding. Joint Memorandum at 3. In addition, the settling parties indicate that the factual and legal issues involved in the proceeding are complex, requiring extensive discovery; the transactions giving rise to the allegations in this proceeding terminated when Huntington International went out of business; and the proposed settlement would serve as a disincentive to future unlawful activities. Joint Memorandum at 8.

Based on the representations in the Joint Memorandum, the Settlement Agreement, and other documents filed in this matter, 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. Accordingly, the Settlement Agreement is hereby approved.

III. Motion to Dismiss

BOE indicates that Huntington International has shut down its business and vacated its premises, and that its corporate status is suspended. Motion to Dismiss at 3. Service upon Huntington International has been unsuccessful and Huntington International has not entered an appearance, filed an answer, or otherwise participated in the proceeding. Motion to Dismiss at 2-3. BOE states that “BOE and the participating Respondents jointly support dismissal of Huntington International as a component of the parties’ determination to comprehensively resolve this proceeding via negotiation and compromise, rather than through litigation.” Motion to Dismiss at 3.

Under these circumstances, where this Respondent is unable to be served, the Respondent is no longer in business, and a settlement has been reached with the remaining Respondents, dismissal is appropriate.

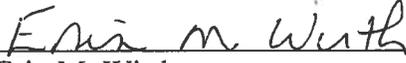
IV. Order

For the above stated reasons, it is

ORDERED that the Settlement Agreement between the Bureau of Enforcement and JC Horizon Ltd. and Judy Lee be **APPROVED**. It is

FURTHER ORDERED that the Motion to Dismiss Huntington International, Inc. be **GRANTED**. It is

FURTHER ORDERED that this proceeding be dismissed with prejudice.



Erin M. Wirth
Administrative Law Judge