

FEDERAL MARITIME COMMISSION

DOCKET NO. 14-13

**METRO FREIGHT SERVICES, INC. d/b/a MARITIME EXPRESS LINES –
POSSIBLE VIOLATIONS OF SECTION 19(c)(3) OF THE SHIPPING ACT OF 1984 and
46 C.F.R. PART 515**

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

I. SUMMARY.

On September 29, 2014, the Commission issued an Order of Investigation and Hearing to determine whether respondent Metro Freight Services, Inc. d/b/a Maritime Express Lines (Metro Freight) violated the Shipping Act of 1984 and Commission's regulations. The Order set forth forty factual allegations in numbered paragraphs. On October 31, 2014, Metro Freight filed an answer admitting most of the factual allegations, setting forth some affirmative defenses, and asking for an opportunity to settle the Order with the Commission's Bureau of Enforcement (BOE). On February 9, 2015, Metro Freight and BOE filed a Joint Memorandum in Support of Proposed Settlement and a signed Settlement Agreement. As explained more fully below, the Settlement Agreement is approved and the Motion to Dismiss is granted.

II. BACKGROUND.

Metro Freight is a licensed, tariffed, and bonded ocean transportation intermediary (OTI), providing service as a freight forwarder and non-vessel-operating common carrier (Org. No. 006490).² Through April 2010, OTI licensing records maintained by the Commission's Bureau

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.

² The facts stated are alleged in the Order of Investigation and Hearing and admitted by Metro Freight in its Answer.

of Certification and Licensing (BCL) identified Georges T. Samaha as the sole Qualifying Individual (QI) for Metro Freight. In its February 12, 2012, response to a 2012 OTI compliance questionnaire, Metro Freight notified the Commission that Georges T. Samaha passed away on August 6, 2011. Metro Freight also identified G&M Export Corporation as a shipper affiliated with Metro Freight and identified Paola C. Samaha as the owner, chairman, and CEO of G&M Export.

By letter dated March 6, 2012, BOE notified Metro Freight of its obligation to submit an application for a proposed replacement QI. On May 11, 2012, Metro Freight submitted an application designating Paola C. Samaha as the proposed QI for Metro Freight, replacing Georges Samaha. The letter identified Paola C. Samaha as the President and 100% owner of Metro Freight. In support of its application, Metro Freight submitted a copy of a corporate resolution dated January 3, 2012, designating Paola Samaha as President of Metro Freight to replace the “decedent President, Mr. Georges T. Samaha.” On June 26, 2012, BCL notified Metro Freight that BCL closed the application for failure to demonstrate that Paola Samaha met the requirements to demonstrate prior OTI-related work experience, that Metro Freight was required to promptly submit another application to replace the QI, and that continued operation could result in civil penalties. BCL did not receive a response from Metro Freight. On May 28, 2014, the Commission’s New York Area Representative visited Metro Freight’s offices, interviewed staff at the offices of Metro Freight, and confirmed that Metro Freight was still operating as an OTI despite not having an approved QI. As of September 1, 2014, BCL had not approved a replacement QI for Metro Freight.

By letter to BOE dated March 16, 2012, Metro Freight notified BOE that it had collected freight forwarder compensation on twenty-eight shipments in which G&M Export was the shipper named on the bill of lading issued by an ocean common carrier. G&M Export is identified as the shipper party named in a series of service contracts with United Arab Shipping Company (UASC), an ocean common carrier. Georges T. Samaha signed the contracts for 2009 through 2011 as president and CEO of G&M Export. In 2011, Paola C. Samaha (signing as Paola C. Kamel) signed the contract as president and CEO of G&M Export. In 2012, Paola C. Samaha signed the contract as president and CEO of G&M Export. In all of the service contracts, G&M Export certified that its shipper status was cargo owner. The 2012 service contract was terminated effective February 5, 2013. Between December 11, 2010, and December 27, 2011, Metro Freight invoiced or collected freight forwarder compensation for twenty-five shipments in which G&M Exports was identified as the shipper on the UASC ocean bill of lading.

The Commission issued the Order of Investigation and Hearing to determine two issues: (1) whether Metro Freight violated the Commission’s regulations codified at 46 C.F.R. § 515.18(a)(6) and (c) by failing to notify the Commission promptly after the death of its QI and failing to seek and obtain approval of a replacement QI; and (2) whether Metro Freight violated section 19(e)(3) of the Shipping Act of 1984, 46 U.S.C. § 40904(c), and the Commission’s regulations at 46 C.F.R. §515.42(i) by receiving freight forwarder compensation from a common carrier for shipments in which Metro Freight had a direct or indirect beneficial interest.

III. SETTLEMENT AGREEMENT AND JOINT MEMORANDUM.

BOE and Metro Freight submitted a Settlement Agreement resolving this proceeding accompanied by a joint memorandum asking for approval of the Agreement. The settling parties are represented by counsel. Metro Freight admits that the Commission has jurisdiction over the proceeding and admits that it committed the violations alleged in the Order of Investigation and Hearing. BOE and Metro Freight “believe it is in the best interests of the parties and the shipping public to resolve this proceeding under the conditions stated herein rather than engage in continued litigation.” (Settlement Agreement at 2.) The Settlement Agreement requires Metro Freight to pay a civil penalty of \$100,000.00 by March 16, 2015. The civil penalty will be held in escrow until a Commission order approving the settlement becomes administratively final. Metro Freight agrees to a suspension of its OTI license for a period of ninety days from the date the Commission approves the Settlement Agreement or the date the Commission approves Metro Freight’s application for a replacement QI, whichever is later. The Commission will make reasonable efforts to process Metro Freight’s application within the ninety day period. Within thirty days of Commission approval, Metro Freight will dissolve G&M Export and provide BOE with documentation of the dissolution. Either party may terminate the Settlement Agreement if the Commission does not approve the entire agreement, in which case, the funds placed in escrow will be returned to Metro Freight. Metro Freight waives all rights to seek judicial review of the Settlement Agreement, and the Agreement bars the Commission from instituting a claim for a civil penalty for the violations alleged in the Order of Investigation and Hearing.

IV. DISCUSSION.

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)).

A review of the record reveals no reason to disapprove the Settlement Agreement. The proposed Settlement Agreement lacks any indicia of fraud, duress, undue influence, or mistake and appears to reflect an arms-length resolution of the proceeding. The parties were represented by counsel who reviewed the case prospects, and BOE provided its view that settlement would not contravene law or public policy. The terms of the Settlement Agreement appear to be fair, reasonable, and adequate. The parties appear to have balanced the likelihood of success on the merits against the cost and complexity of proceeding to final judgment, and there is no evidence to the contrary. In the Joint Memorandum the Parties indicate their confidence in their respective cases were the issue to move forward. The parties have presumably weighed their respective chances of success against the cost of achieving such success and entered into terms that reflect such risk. Such calculations are common and promote efficient use of adjudicatory resources.

The amount Metro Freight has agreed to pay as a civil penalty does not appear to be insubstantial and will have the desired effect on Metro Freight and others because it will serve as a disincentive to future unlawful activity. The Settlement Agreement states that Metro Freight will suspend operation for a period of at least ninety days and take steps to secure approval of a new QI and will dissolve G&M Export, actions that serve the Commission’s enforcement policy. I find that

the Settlement Agreement is just and reasonable does not violate any law or policy and fully accords with the principles of law and Commission policy to encourage settlements. Therefore, I approve the Settlement Agreement.

ORDER

Upon consideration of the proposed Settlement Agreement, the Joint Memorandum in Support of Proposed Settlement, and the record herein, and for the reasons stated above, it is hereby

ORDERED that the Settlement be **APPROVED**. It is

FURTHER ORDERED that the license to operate as a freight forwarder and a non-vessel-operating common carrier granted to Metro Freight Services, Inc. d/b/a Maritime Express Lines by the Commission be **SUSPENDED** for a period of ninety days from the date that this decision becomes administratively final, or the date the Commission's Bureau of Certification and Licensing approves Metro Freight's application for recognition of a new Qualifying Individual, whichever occurs later. It is

FURTHER ORDERED that this proceeding be **DISCONTINUED**.



Clay G. Guthridge
Administrative Law Judge