

S E R V E D
February 19, 2015
FEDERAL MARITIME COMMISSION

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DOCKET NO. 14-14

MARK BARR

v.

OCEAN TRADE LINES, INC.

INITIAL DECISION APPROVING PROPOSED SETTLEMENT AGREEMENT¹

I.

On February 5, 2015, a joint motion seeking dismissal due to a settlement (“settlement motion”) and a settlement agreement were filed by complainant Mark Barr with the consent of respondent Ocean Trade Lines, Inc. (“Ocean Trade Lines”)² and the Federal Maritime Commission’s Bureau of Enforcement (“BOE”), which had filed a motion requesting to intervene in this proceeding.

II.

The Notice of Filing of Complaint and Assignment was issued on November 18, 2014. The complaint alleges that Ocean Trade Lines violated the Shipping Act of 1984, 46 U.S.C. 41102(c), 41104(2), 41104(3), and 41104(4), by failing to publish a tariff and to adhere to tariff publishing requirements and failing to adhere to just, reasonable, and non-discriminatory practices regarding its cancellation and refund policies with respect to international ocean transport of Complainant’s yacht. On November 19, 2014, BOE filed a motion seeking leave to intervene.

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 settlement motion and settlement agreement refer to “Ocean Trade Line,” although the complaint and documents attached to the settlement agreement indicate that Respondent’s name is “Ocean Trade Lines.”

The settlement agreement was entered into by the President of Ocean Trade Lines and counsel for Mark Barr and BOE. In the settlement agreement, Ocean Trade Lines agrees to make a \$15,000 refund to Mark Barr, and agrees to modify both its tariff filing and refund practices to: provide refunds in 15 days, commence transportation within 120 days from the first requested pick up date or estimated shipping date, eliminate language prohibiting shipper from disclosing details of their transaction, eliminate language appearing to disclaim liability as a non-vessel-operating common carrier, and publish the revised shipping contract and its cancellation and release form in Respondent's tariff.

The parties to the settlement agreement indicate that "this settlement is fair, reasonable and adequate; and is further free of fraud, duress, undue influence, mistake, or other defect." Settlement motion at 2. The parties to the agreement further indicate that "after balancing the costs, complexity and likelihood of success of continued litigation, [they] have determined that the settlement is in the best interest of all parties and interests." Settlement motion at 2. The settlement agreement is detailed and comprehensive and resolves the outstanding issues between the parties and protects future shippers. According to the parties, "the settlement does not itself violate any provision of law or policy, and these prospective changes in Respondent's carrier practices and refund policies will benefit future shippers and customers." Settlement motion at 2.

III.

Using language borrowed in part from the Administrative Procedure Act,³ 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 a strong and consistent 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

³ "The agency shall give all interested parties opportunity for – (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit." 5 U.S.C. § 554(c).

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. 777-778 (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)).

Based on the representations in the settlement motion, settlement agreement, and other documents filed in this matter, the parties have established that 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. The parties have determined that the settlement reasonably resolves the issues raised in the complaint without the need for additional costly litigation. The parties appear to have engaged in arms-length negotiations. There is no evidence of fraud, duress, undue influence, or mistake nor harm to the public. Accordingly, the proposed settlement agreement is approved.

IV.

Upon consideration of the settlement motion, the settlement agreement, and the record, and good cause having been stated, it is hereby:

ORDERED that the proposed settlement agreement between Mark Barr, Ocean Trade Lines, and BOE be **APPROVED**. It is

FURTHER ORDERED that all other pending motions be **DISMISSED AS MOOT**. It is

FURTHER ORDERED that this proceeding be **DISMISSED WITH PREJUDICE**.



Erin M. Wirth
Administrative Law Judge