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November 10, 2015					
FEDERAL MARITIME COMMISSION					

FEDERAL MARITIME COMMISSION

DOCKET NO. 14-15

NGOBROS AND COMPANY NIGERIA LIMITED

v.

OCEANE CARGO LINK, LLC, and KINGSTON ANSAH, individually

INITIAL DECISION¹

I. INTRODUCTION

A. Overview and Summary of Decision

On November 24, 2014, complainant Ngobros and Company Nigeria Limited (“Ngobros”) filed a complaint against respondents Oceane Cargo Link, LLC (“Oceane Cargo Link” or “OCL”) and Kingston Ansaah, individually. Complainant asserts that the complaint was served on December 1, 2014, to Kingston Ansaah at his residential address, and the complaint was served on January 15, 2015, on Oceane Cargo Link’s designated agent for service, Kingston Ansaah, at his residential address. Complainant’s Motion for Default (“Default Motion”) at 1-2.

The complaint alleges a violation of section 41102(c), formerly section 10(d)(1), of the Shipping Act of 1984 (“Shipping Act”), asserting that Ocean Cargo Link failed to deliver its cargo from Savannah, Georgia, to Tincan/Lagos, Nigeria, even after Complainant paid additional fees. Complaint at 6 (citing 46 U.S.C. § 41102(c)). Complainant alleges it suffered actual damages including the cost to purchase the vehicles that were shipped, freight charges, customs and clearing agent services, loan finance charges, and lost profits and that Kingston Ansaah should be personally liable.

¹ This initial decision will become the decision of the Commission in the absence of review by the Commission. 46 C.F.R. § 502.318. An appeal by a party must be filed with the Commission’s Office of the Secretary within twenty-two days from the date of service of the decision. 46 C.F.R. § 502.318.

Respondents filed a response but not an answer. Respondents do not contest the factual allegations in the complaint but attempt to negotiate the amount requested. Accordingly, the matter is resolved utilizing a summary decision standard, although the same result would be reached if the matter was decided as a default. As discussed more fully below, the Respondents are ordered to pay reparations of \$162,266.04 to the Complainant.

B. Procedural History

On December 1, 2014, a Notice of Complaint and Assignment was issued. On December 5, 2014, an Initial Order was issued, requiring the parties to submit a joint status report with proposed schedule within twenty days of the service of the answer. Complainant filed status reports on January 16, 2015, and January 26, 2015. Respondents did not file an answer and did not file a status report.

On March 6, 2015, Complainant filed a motion seeking a default judgement against Respondents Oceane Cargo Link and Kingston Ansah. On March 20, 2015, a Notice of Default and Order to Show Cause was issued, requiring Respondents to “file their answer and show cause why a decision on default should not be entered against them.” Notice of Default and Order to Show Cause at 2.

On April 17, 2015, the Commission received a filing (the “Respondents’ Response”) from Kingston Ansah “in response to Docket No. 14-15” regarding the “motion seeking a default judgment against Oceane Cargo Link and Kingston Ansah.” Respondents’ Response at 1. Respondents’ Response discusses the facts in the proceeding, Complainant’s claim of damages, and Respondents’ “hop[e that] we come out with a settlement amount” and indicating that they are “available and willing to cooperate till the process is over.” Respondents’ Response at 2.

On April 27, 2015, Complainant filed its response to the order to supplement the record, providing additional argument and evidence regarding its claim for damages. Complainant’s Response to Order to Supplement Record (“Complainant’s Supp.”). Complainant indicated that there was an “inadvertent mistake” in the original damages amount and clarified that Complainant’s damages totaled \$212,455.18. Complainant’s Supp. at 7-8.

On May 19, 2015, a Second Order to Show Cause (“Second OTSC”) was issued and on May 26, 2015, an erratum to the Order was served. The Second OTSC stated:

From the Respondents’ Response, it is clear that they are aware of the proceeding and the motion seeking a default decision. Respondents indicated an interest in resolving the proceeding. They did not, however, file an answer to the Complaint, nor did they show cause why a decision on default should not be entered.

The Respondents will be given one more opportunity to respond to the Complaint and the Order to Show Cause. In their answer, Respondents should indicate whether they admit, deny, or lack sufficient information to respond to the allegations in the Complaint. In addition, they should file an opposition to the motion for default judgment, indicating that they will participate in this proceeding by responding to requests in a timely fashion. Failure to respond in a timely fashion at any stage of the proceeding may be grounds for a default decision.

Second OTSC at 1.

On July 2, 2015, Respondents' response to the Second OTSC was received. This second response is nearly identical to Respondents' Response filed on April 17, 2015. On July 29, 2015, an Order Scheduling Pre-Hearing Conference was issued.

On August 26, 2015, a pre-hearing conference was held by telephone. Complainant Ngobros was represented by attorney Henry Gonzalez. Respondent Kingston Ansah participated on behalf of himself and Oceane Cargo Link. At the pre-hearing conference, Respondents confirmed that they did not dispute the facts alleged by Complainant. The parties were advised that the motion for default could be treated as a motion for summary decision. On August 28, 2015, an Order was issued scheduling additional briefing. Complainant and Respondents were provided with additional time to file an additional brief addressing issues raised in the pending motions, the conference call, or the other parties' filings.

On September 11, 2015, Respondents filed their brief ("Respondents' Brief").² On September 25, 2015, Complainant filed its reply ("Complainant's Reply"). The matter is now ripe for decision.

C. Default and Summary Decision Standards

Although Complainant filed a motion for default, the proceeding is more appropriately resolved under procedures for summary decision. The parties were notified of the possibility of a summary decision at the August 26, 2015, pre-hearing conference. As explained below, under the facts of this particular case, the result is the same regardless of which procedure is utilized.

1. Decision on Default

Oceane Cargo Link and Kingston Ansah had notice of the possibility of a decision on default based upon the two orders to show cause served upon them and the pre-hearing conference. The Commission's rule regarding decisions on default states that:

² The exhibits attached to the Respondents' Brief were not labeled or numbered when filed. Treating the first document, the State of Georgia Certificate of Organization, as page 1, the exhibits have been sequentially numbered.

(b) When a party is found to be in default, the Commission or the presiding officer may issue a decision on default upon consideration of the record, including the complaint or Order of Investigation and Hearing.

(c) The presiding officer may require additional information or clarification when needed to issue a decision on default, including determination of the amount of reparations or civil penalties where applicable.

46 C.F.R. § 502.65.

“The Commission’s regulations provide that well-pleaded factual allegations in a complaint will be deemed to be admitted when a respondent fails to answer a complaint within the time provided.” *Century Metal Recycling Pvt. Ltd. v. Dacon Logistics, LLC*, 33 S.R.R. 17, 19 (FMC Nov. 12, 2013) (Order Affirming Initial Decision on Default). When a respondent defaults, the finder of fact accepts as true all well-pleaded facts in the order. 10A Wright & Miller § 2688, pp. 58-61; *Finkel v. Romanowicz*, 577 F.3d 79, 83-84 (2d Cir. 2009); *Au Bon Pain Corp. v. Artect, Inc.*, 653 F.2d 61, 65 (2d Cir. 1981).

The Commission’s default rule specifically permits consideration of the record, which would include evidence submitted with the motion for default decision. Accordingly, the whole record, including evidence submitted with the motion for default, the brief, and the reply may be considered in deciding a decision on default.

Respondents could be found in default for failure to file an answer after being provided multiple opportunities to do so. However, Respondents did file three documents and appeared at the pre-hearing conference. Respondents have clearly and repeatedly indicated that they do not dispute the factual allegations in the complaint, so that there is no dispute of material fact. Therefore, summary decision is a more appropriate procedure, although, the same outcome would be reached if the matter was treated as a default.

2. Summary Decision

During the August 26, 2015, pre-hearing conference, Complainant agreed that its motion for default judgement could be treated as a motion for summary decision. Both parties were provided notice and an opportunity to raise any issues prior to ruling on summary decision.

The Commission has emphasized that:

At the summary judgment stage, the role of the judge “. . . is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” The party seeking summary judgment . . . has the burden of demonstrating that there is no genuine issue of material fact.

EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc., 31 S.R.R. 540, 545 (FMC 2008) (citations omitted).

The party moving for summary judgment bears the initial burden of identifying evidence that demonstrates the absence of any genuine issue of material fact. *Greene v. Dalton*, 164 F.3d 671, 675 (D.C. Cir. 1999) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). The mere existence of a factual dispute will not in and of itself defeat an otherwise properly supported motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-448 (1986). However, “[w]here the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation omitted). The inferences to be drawn from the underlying facts must be viewed in the light most favorable to the nonmoving party. *Matsushita*, 475 U.S. at 587.

D. Evidence

Under the Administrative Procedures Act, an Administrative Law Judge may not issue an order “except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.” 5 U.S.C. § 556(d); *see also Steadman v. SEC*, 450 U.S. 91, 98 (1981). This initial decision is based on the pleadings, exhibits, testimony, status reports, and motions filed by the parties.

This initial decision addresses only material issues of fact and law. Proposed findings of fact implicit in the motion and not included in this initial decision were rejected, either because they were not supported by the evidence or because they were not dispositive or material to the determination of the allegations of the complaint or the defenses thereto. Administrative adjudicators are “not required to make subordinate findings on every collateral contention advanced, but only upon those issues of fact, law, or discretion which are ‘material.’” *Minneapolis & St. Louis R.R. Co. v. United States*, 361 U.S. 173, 193-194 (1959). To the extent individual findings of fact may be deemed conclusions of law, they shall also be considered conclusions of law. Similarly, to the extent individual conclusions of law may be deemed findings of fact, they shall also be considered findings of fact.

All of the exhibits submitted by the parties are hereby admitted and were considered. As discussed more fully below, there are no disputes of material facts and Complainant is entitled to a decision as a matter of law. This initial decision provides a discussion of legal and factual issues and the order.

II. ANALYSIS

A. 46 U.S.C. § 41102(c)

1. Positions of the Parties

Complainant alleges that Respondents have not responded to the allegations in the complaint, opposed Complainant's motion for a decision on default, or responded to the presiding officers' show cause orders why a default should not be entered. Reply at 2-3. Complainant further alleges that Respondents have not addressed the issues of damages as ordered in the August 28th Order and have not provided argument or evidence to rebut the damages sought by the Complainant. Reply at 3-5. In addition, Complainant contends that Respondent Kingston Ansa should be personally liable for the damages sought by Complainant. Reply at 5-6.

Respondents filed a brief as required by the August 28, 2015, order and in response to the motion for default and pre-hearing conference. Brief at 1. Respondents do not contest or discuss the factual allegations in the complaint. Respondents' brief acknowledges the revised damages request, stating:

At this point we are trying to reach a settlement amount and therefore if the amount keeps changing and going up, it does not help both parties in this process. Ocean Cargo Link hasn't been provided with any proof of paperwork to show how the increase in charges was arrived but due to the mutual respect we have for the complainant; we will like to split bank settlement agreement increment of \$31,826.52. Which means OCL will take responsibility for an additional \$15,913.26, which is half the increase.

Brief at 1. Respondents' brief states that on September 3, 2015, "I gave \$2500 cash to Obinna Ngonadi of Ngobros and Company Nigeria Limited as part payment of the returned \$10,000 check." Brief at 1. Respondent also included Ocean Cargo Link's certificate of organization, including bylaws, and bank records.

2. Facts

There is no dispute of material facts. The uncontested facts reflect that Complainant is a Nigerian limited liability company with its principle place of business at No. 11 Ihiala Street, Nnewichi, Nnewi, Anambra State, Nigeria. Complaint at 1.

Respondent Oceane Cargo Link is a Georgia corporation and an ocean freight forwarder and non-vessel-operating common carrier licensed by the FMC. Complaint at 2. Respondent Kingston Ansa is the President, Secretary, CFO, and sole member of Oceane Cargo Link. Default Motion, Ex. 1 at 1; Respondents' Brief at Ex. 1-2.

On February 6, 2012, Complainant received a purchase order from its client in Nigeria for six vehicles to be delivered by October 26, 2012. Complaint at 2-3; Default Motion, Ex. 2 at 1, Ex. A. Complainant intended to make a profit of \$9,259.25³ on each vehicle and to cover a non-refundable application fee of \$3,703.70. Complainant's Supplement at 2-3. Claimant shipped three vehicles with Respondents without problem. Complainant's Supplement at 3.

On March 5, 2012, Complainant obtained an overdraft loan from Mbawulu Microfinance Bank Limited to partially finance the acquisition of the vehicles. Complaint at 3; Default Motion, Ex. 2 at 1-2, Ex. B; Complainant's Supp. at 5-6. On June 28, 2012, Complainant purchased three vehicles, with a value of \$63,308.00. Complaint at 3; Default Motion, Ex. 2 at 2, Ex. C; Complainant's Supp. at 2-3.

Complainant paid Respondent freight charges in the amount of \$5,100 and received MSC Bill of Lading No. MSCUT8109096 with container no. MSCU8334680 from Savannah, Georgia, to Tincan/Lagos, Nigeria. Complaint at 3; Default Motion, Ex. 2 at 2, Ex. D. When the vessel arrived in Tincan/Lagos, Nigeria, in September 2012, following normal practice, Complainant engaged the services of a clearing agent to clear Nigerian customs. Complainant was provided a bill of lading obtained from MSC and paid the customs duties. Complainant paid \$22,161.40 for Nigerian customs duties and agent services. Complaint at 3-4; Default Motion, Ex. 2 at 2, Ex. E. However, during the customs examination, Complainant discovered that the container cleared at customs in Tincan/Lagos, Nigeria, contained used goods which did not belong to Complainant, who refused to take delivery of the goods. Complaint at 3-4.

Complainant contacted Respondents and was informed by Mr. Ansah that its vehicles had been mistakenly shipped to Tema, Ghana, but would be re-exported to the correct destination, Tincan/Lagos, Nigeria. Complaint at 4. Mr. Ansah states that, while he was traveling, his employee mistakenly switched and shipped two containers to the wrong destinations at the time of loading. Respondents' Response at 1.

On November 28, 2012, MSC emailed Complainant and Respondents, requesting payment of \$8,108.00 for storage and other charges to secure the release of Complainant's container and for re-export from Ghana to Nigeria. On November 29, 2012, Complainant took out an additional overdraft loan for part of the amount needed. Complaint at 4-5; Default Motion, Ex. 2 at 2, Ex. F, Ex. G. Complainant's Supp. at 5-6. After making this additional payment, Complainant followed up with Respondents through telephone calls and emails but did not receive the cargo.

On July 3, 2013, Complainant received an email from Mr. Ansah demanding an additional \$18,000 to re-export the vehicles, however, Complainant could not afford to make this payment due to the accrued bank charges on the loan. Complaint at 5. Complainant did agree to pay \$5,000

³ Complainant converted the amounts from Nigerian NGN to United States dollars. Claimant's Supp. at 2 n.1. No objection has been made to the conversion rate used and for convenience, the amounts listed in this initial decision are listed in United States dollars.

towards the charges with a written agreement from Respondents that once paid, Complainant would receive its cargo. Complaint at 5. This was the second additional payment made by Complainant after the cargo was delivered to the wrong port. Complainant's Supp. at 5.

Complainant followed up with Respondents on September 9, 2013, at which time Complainant was informed that MSC Ghana had lost the vehicles to Ghana customs, although Complainant was unable to validate Respondent's claims because MSC Ghana refused to speak with Complainant. Complaint at 5; *see also* Respondent's Response at 1. Respondents claim that "MSC shipping Lines and Ghana Customs lied to us which made it difficult to reshipe the container back to Nigeria and the cargo was confiscated by the Ghana government." Respondents' Response at 1.

Complainant's purchase order with its customer was cancelled and Complainant suffered lost profits of \$59,259.26 for all six vehicles and the non-refundable application fee. Default Motion, Ex. 2 at 3, Ex. H; Complainant's Supp. at 2-3. Complainant entered into a settlement agreement with the bank that issued the loans. Default Motion, Ex. 2 at 3, Ex. I.

Complainant contacted the Commission's Office of Consumer Affairs and Dispute Resolution in September of 2013. On March 31, 2014, Respondents issued Complainant a check for \$20,000, which bounced. Complaint at 5; Default Motion, Ex. 2 at 3, Ex. J. Respondent tendered two other checks which were not deposited, as it appeared that the account on which they were drawn had been closed. Complaint at 5-6.

On August 22, 2014, Complainant filed a claim against Ocean Cargo Link's surety bond. On February 10, 2015, Respondents' surety offered to pay Complainant \$37,681.14 to settle the claim and Complainant accepted the offer. Default Motion at Ex. 2 at 4, Ex. K. Respondents made a payment of \$10,000 to Complainant in March of 2015 and a payment of \$2,508 to Complainant in September of 2015. Complainant's Reply at 5. Complainant has continued to attempt to recover damages.

3. Legal Framework

The Commission has jurisdiction over this proceeding because Ocean Cargo Link is an ocean transportation intermediary and the allegations are violations of the Shipping Act. There has been no objection to jurisdiction in this proceeding.

Complainant alleges that Respondents violated section 41102(c) of the Shipping Act, formerly section 10(d)(1), which states:

(c) Practices in Handling Property. - A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

46 U.S.C. § 41102(c).

The Shipping Act defines and regulates a number of different types of entities that are involved in the international shipment of goods by water, including two types of ocean transportation intermediaries. “The term ‘ocean transportation intermediary’ means an ocean freight forwarder or a non-vessel-operating common carrier.” 46 U.S.C. § 40102(19).

“The term ‘ocean freight forwarder’ means a person that – (A) in the United States, dispatches shipments from the United States via a common carrier and books or otherwise arranges space for those shipments on behalf of shippers; and (B) processes the documentation or performs related activities incident to those shipments.” 46 U.S.C. § 40102(18). “The term ‘non-vessel-operating common carrier’ means a common carrier that – (A) does not operate the vessels by which the ocean transportation is provided; and (B) is a shipper in its relationship with an ocean common carrier.” 46 U.S.C. § 40102(16).

As discussed below, the evidence shows that Oceane Cargo Link was an ocean transportation intermediary which violated section 41102(c) the Shipping Act.

4. Analysis

Complainant contends that:

Respondents failed to “establish” just and reasonable regulations and practices, as well as “observe and enforce” the established just and reasonable regulations and practices including, but not limited to: not delivering Complainant’s vehicles to the designated destination port; forcing Complainant to pay additional fees in order to receive its container, which it never did receive; and issuing fraudulent checks to Complainant from a closed bank account.

Complainant’s Supp. Record at 7. Respondents do not contest these allegations.

“The Commission has recognized in numerous decisions instances of ocean transportation intermediaries violating §41102(c). These violations have been found when carriers and freight forwarders fail, through single or multiple actions or omissions, to fulfill obligations, and therefore fail to observe and enforce just and reasonable regulations and practices.” *Pedro Tarazona v. MH Int’l Freight Services, SC Line and ATI*, FMC Dkt. 1941(I) at 8 (FMC July 29, 2015); *Auto 1 Pay and Saleh Altayyar v. Heavy Haulers, Inc., Mediterranean Shipping Co, and AA Shipping, Inc.*, FMC Dkt. 1940(I) at 5 (FMC June 26, 2015). In a recent case, the Commission found that an ocean transportation intermediary violated section 41102(c) when, among other charges, it breached its contract with the shipper, delayed delivery of the shipper’s cargo, and required the shipper to pay additional fees. *Hermione Toussaint v. K.O.V. Shipping Express Cargo/Kessie & Oreste Lysius*, FMC Dkt. 1942(I) at 6-7 (FMC Aug. 27, 2015).

There is no dispute that Respondent Oceane Cargo Link is a licensed ocean transportation intermediary which engaged in traditional services, such as arranging for the shipment of Complainant's cargo from a United States port to a foreign port. There is also no dispute that Complainant's cargo was delivered to the wrong port and that Respondents sought additional payments, promising to deliver the cargo to the correct port. There is also no dispute that the cargo never arrived at the destination port and that Respondents failed to deliver the cargo as promised. These acts or omissions constitute a failure to establish, observe, and enforce just and reasonable regulations and practices in violation of section 41102(c) as a matter of law.

The evidence further establishes that the damages alleged by Complainant, including the cost to purchase the vehicles, freight charges, customs and clearing agent services, loan finance charges, and lost profits, were caused by the Respondents' violation of the Shipping Act.

There is no dispute of material fact and Complainant is entitled to a decision as a matter of law. Accordingly, Respondents are found in violation of the Shipping Act.

B. Damages

1. Calculation

Complainant seeks a reparation award including the costs of purchasing the vehicles that were lost, freight charges, customs and clearing agent services, loan finance charges, and lost profits. Complainant has the burden of proving entitlement to reparations.

As the Federal Maritime Board explained long ago: "(a) damages^[4] must be the proximate result of violations of the statute in question; (b) there is no presumption of damage; and (c) the violation in and of itself without proof of pecuniary loss resulting from the unlawful act does not afford a basis for reparation."

James J. Flanagan Shipping Corp. v. Lake Charles Harbor and Terminal Dist., 30 S.R.R. 8, 13 (FMC 2003) (citation omitted).

The statements of the Commission in [*California Shipping Line, Inc. v. Yangming Marine Transport Corp.*, 25 S.R.R. 1213 (FMC 1990)] and the other cited cases are in the mainstream of the law of damages as followed by the courts, for example, regarding the principles that the fact of injury must be shown with reasonable certainty, that the amount can be based on something less than precision but something based on a reasonable approximation supported by evidence and by reasonable inferences, the principle that the damages must be foreseeable or proximate or, in contract law, within the contemplation of the parties at the time they

⁴ Reparations under the Shipping Act and damages are synonymous. See *Federal Maritime Comm'n v. South Carolina State Ports Auth.*, 535 U.S. 743, 775 (2002) (Breyer, J., dissenting).

entered into the contract, the fact that speculative damages are not allowed, and that regarding claims for lost profits, there must be reasonable certainty so that the court can be satisfied that the wrongful act caused the loss of profits.

Tractors and Farm Equipment Ltd. v. Cosmos Shipping Co., Inc., 26 S.R.R. 788, 798-799 (ALJ 1992).

Complainant asserts that “Respondents have not addressed the issues of damages as ordered in the August 28th Order and have not provided argument or evidence to rebut the damages sought by the Complainant.” Complainant’s Reply at 3-5. Complainant alleges \$212,455.18 total in damages, including the cost to purchase the vehicles, freight charges, customs and clearing agent services, loan finance charges, and lost profits. Complainant’s Supp. at 7-8.

Complainant seeks \$63,308 which it paid to purchase the three vehicles that were shipped and lost. Complainant provides purchase orders and a bill of sale confirming the amount paid. Default Motion at Ex. 2, Ex. C. Complainant has provided sufficient evidence to support its claim for the cost to purchase the vehicles, totaling \$63,308.

Complainant paid Respondents \$5,100 to ship the vehicles. Complainant paid duty to Nigerian customs of \$13,390.05, and paid clearing agent service fees of \$8,771.35. After the vehicles were shipped to Ghana, in November of 2012, Complainant paid \$8,108 to MSC Ghana for release of the cargo. Complainant paid an additional \$5,000 to Respondents in July 2013 to ship the vehicles from Ghana to Nigeria. Complaint at 5. Complainant has provided sufficient evidence to support its claim for freight charges and customs and clearing agent services totaling \$40,369.40.

Complainant seeks \$49,518.52 for loan finance charges of \$81,000 secured to finance this transaction minus the principal of \$31,481.48. Complainant received an overdraft loan on March 5, 2012, to finance the transaction and when Respondents requested additional freight of \$8108.00 to MSC to re-ship the vehicle, Complainant took out an additional overdraft for part of the amount needed on November 29, 2012. Complainant’s Supp. at 5-6. Complainant accepted an agreement with the bank to settle the outstanding charges by January 2014. Default Motion at Ex2, Ex. I. Complainant has provided sufficient evidence to support its claim for the bank settlement agreement, totaling \$49,518.52.

Complainant seeks lost profits of \$55,555.56 plus an application fee of \$3,703.70. Complainant states “that its lost profits were proximately caused by OCL’s failure to deliver Complainant’s container to designated destination port.” Complainant’s Supp. at 2. Respondent does not contest this amount. Claims of lost profits must be shown with reasonable certainty. *Rose Int’l, Inc. v. Overseas Moving Network*, 29 S.R.R 119, 189 (FMC 2001). Complainant had a written contract for the delivery of six vehicles. Default Motion at Ex. 2, Ex. A. The contract, dated January 9, 2012, specifically states that “[f]ailure to supply the specified number of vehicles, specified color and specified important features as mentioned above would result to [*sic*] cancellation of the purchase order.” Default Motion at Ex. 2, Ex. A. When Complainant failed to deliver all six

vehicles by the date required in the contract, the contract was cancelled. Complainant's Reply at 3-5. Complainant's assertion that this amount constitutes its profits from a contract for a much larger amount is reasonable. Complainant has provided sufficient evidence to support its claim for lost profits totaling \$59,259.26.

Complainant has established damages of \$63,308.00 for the cost to purchase the vehicles, \$40,369.40 for freight charges and customs and clearing agent services, \$49,518.52 for loan finance charges, and \$59,259.26 for lost profits, for a total damages claim of \$212,455.18.

On August 22, 2014, Complainant filed a claim against Ocean Cargo Link's surety bond. On February 10, 2015, Respondents' surety offered to pay Complainant \$37,681.14 to settle the claim and Complainant accepted the offer. Default Motion at Ex. 2 at 4, Ex. K. In addition, Respondents made payments of \$10,000 in March 2015 and \$2,508.00 in September 2015. These amounts are subtracted from the amount of damages claimed by Complainant for a total amount remaining of \$162,266.04.

Complainant has established that its actual injury is currently in the amount of \$162,266.04 caused by Respondents' violations of section 41102(c) of the Shipping Act. 46 U.S.C. § 41102(c). Respondents are ordered to pay a reparation award of \$162,266.04 to Complainant. The shipment was scheduled to arrive in September 2012. Complaint at 3. Therefore, interest on the reparation award runs from October 1, 2012, to be calculated by the Commission when this decision becomes administratively final. *See* 46 C.F.R. § 502.253. In addition, Complainant may be eligible for attorney's fees, upon petition. 46 U.S.C. § 41305.

2. Personal Liability

The federal standard for when it is proper to pierce the corporate veil to impose personal liability is notably imprecise and fact intensive. *Brotherhood of Locomotive Engineers v. Springfield Terminal Ry. Co.*, 210 F.3d 18, 26 (1st Cir. 2000); Note, *Piercing the Corporate Law Veil: The Alter Ego Doctrine Under Federal Common Law*, 95 Harv. L. Rev. 853 (1982). Federal courts are not bound by the "strict standards of the common law alter ego doctrine which would apply in a tort or contract action." *Capital Tel. Co. Inc. v. FCC*, 498 F.2d 734, 738 (D.C. Cir. 1974). Some federal courts have allowed the piercing of the corporate veil in the interest of justice, noting that it "is well settled that the fiction of the corporate entity must be disregarded whenever it has been adopted or used to circumvent the provisions of a statute." *Casanova Guns, Inc. v. Connally*, 454 F.2d 1320 (7th Cir. 1972).

The Commission has addressed when it is appropriate to pierce the corporate veil, stating that the "federal common law that has been developed generally recognizes a two-prong test to determine whether to disregard corporate form: the evidence must show (1) control and domination over the shell corporation, and (2) a federal violation." *Rose International, Inc. v. Overseas Moving Network International, Ltd.*, 29 S.R.R at 166.

The factual tests vary from circuit to circuit, but some of the major factors used to determine domination and control, and which we will consider, are as follows: (1) the nature of the ownership and control; (2) failure to maintain corporate minutes or adequate corporate records and failure to follow corporate formalities; (3) commingling of funds and other assets; (4) inadequate capitalization; (5) diversion of the corporations's funds of assets to non-corporate uses; (6) use of the same office or business location by the corporation and its shareholders; (7) overlapping ownership, officers, directors and personnel; (8) the amount of business discretion displayed by the allegedly dominated corporation and (9) whether the corporations are treated as independent profit centers.

Rose International, Inc. v. Overseas Moving Network International, Ltd., 29 S.R.R at 167-168. Among the factors the Commission has considered in piercing the corporate veil are: "the nature of the corporate ownership and control, the failure to maintain adequate corporate records and minutes, and the failure to follow corporate formalities, including the approval of stock issues by an independent board of directors." *Ariel Mar. Group, Inc.*, 24 S.R.R. 517, 530 (FMC 1987).

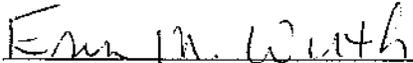
There is no evidence of corporate formalities beyond the initial corporate filing for Oceane Cargo Link. There are overlapping officers, as Kingston Ansah is Ocean Cargo Link's President, Secretary, CFO, and sole member. As discussed above, Mr. Ansah personally demanded payment of additional freight to transport the cargo to the agreed upon destination and then did not deliver the cargo. Mr. Ansah wrote and signed checks from Oceane Cargo Link to Complainant from a bank account that was closed. Mr. Ansah did not appear to separate his personal interests from that of Ocean Cargo Link. The evidence supports the Complainant's allegation that Mr. Ansah established and controlled Oceane Cargo Link. Accordingly, the evidence is sufficient to pierce the corporate veil and hold Kingston Ansah personally liable for the acts of Oceane Cargo Link.

III. ORDER

Upon consideration of the whole record, the conclusion that Oceane Cargo Link and Kingston Ansah knowingly and willfully violated section 41102(c) of the Shipping Act, 46 U.S.C. § 41102(c), and for the reasons stated above, it is hereby

ORDERED that Oceane Cargo Link and Kingston Ansah be found in violation of section 41102(c) of the Shipping Act. It is

FURTHER ORDERED that Oceane Cargo Link and Kingston Ansah jointly and severally be ordered to pay Ngobros and Company Nigeria Limited reparations in the amount of \$162,266.04.


Erin M. Wirth
Administrative Law Judge