

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No.: 14-16

BALTIC AUTO SHIPPING, INC.,

Complainant,

– vs. –

**MICHAEL HITRINOV
a/k/a MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC.,**

Respondents.

**COMPLAINANTS' REPLY ON THEIR MOTION TO WITHDRAW APPEAL
AND DISCONTINUE ACTION**

Complainant, Baltic Auto Shipping, Inc. ("Baltic"), by and through its attorney, Marcus A. Nussbaum, Esq., hereby reply to respondents' Response to complainant's motion for an Order, pursuant to Rule 72 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.72: (1) discontinuing the instant matter with prejudice, and without costs, attorneys' fees or disbursements to either party as against each other; and (2) discontinuing the appeal/exceptions filed by Complainant herein, with prejudice.

RELIEF REQUESTED

Complainant's instant motion seeks withdrawal of the appeal/exceptions filed by Complainant herein, and additionally seeks an Order discontinuing the instant matter with prejudice, and without costs, attorneys' fees or disbursements to either party as against each other.

RECENT PROCEDURAL HISTORY

On August 15, 2016, complainants filed a motion for an Order dismissing this case with

prejudice and without attorneys' fees or costs to either party inclusive of withdrawal of complainant's pending appeal thereon.

On August 30, 2016 complainant received respondents' memorandum wherein respondents have opposed complainant's instant motion.

The instant Reply is respectfully submitted in further support of complainant's pending motion.

BRIEF STATEMENT

As set forth below, respondent, Michael Hitrinov ("Hitrinov") has acted in abject bad faith, and with manifest unclean hands in opposing complainant's Motion to Dismiss this case without costs or attorney's fees to either party. Specifically, and in the matter of *Empire United Lines Co. Inc. v. Baltic Auto Shipping Inc. et al.* (U.S.D.C. – D.N.J Docket No.: 2:15-cv-00355-CCC-MF), Hitrinov *agreed* 'on the record' that the instant case be discontinued *without costs or attorneys' fees to either party*.

Further, Hitrinov's agreement that the instant case be discontinued *without costs or attorneys' fees to either party* was memorialized in a Settlement Agreement drafted by Hitrinov's former counsel, Jon Werner, who as the Presiding Officer is aware has substantially interfered with the orderly discontinuance of the case at bar.

Accordingly, as further set forth below, and as contained in a transcript of proceedings annexed hereto, and memorialized in the Settlement Agreement also annexed hereto, Hitrinov has *waived* his right to now assert a claim for costs and attorneys' fees, and to oppose complainant's instant requested relief upon such ground.

ARGUMENT

Empire United Lines Co. Inc. v. Baltic Auto Shipping Inc. et al.

On April 21, 2016 the above referenced matter, in which Hitrinov and his company Empire United Lines Co. Inc. (“EUL”) were defendants represented by his attorney, Werner, was settled “to the mutual satisfaction of all parties”.

At Hitrinov’s insistence, a condition precedent for the settlement of said action was the withdrawal and discontinuance of the instant case, with prejudice, *and without costs or attorneys’ fees to either party*. Hitrinov’s insistence upon this provision was to protect himself against being sued in either this matter, an additional unrelated matter, or any new cause of action which might be instituted against him. Significantly, the latter is memorialized in the transcript of the settlement conference held thereon, as is Hitrinov’s and Werner’s insistence that the terms of the agreement be reduced to writing. A copy of said transcript is annexed hereto as Appendix “A”.

Annexed hereto as Appendix “B” is a copy of said Settlement Agreement which reads, in relevant part, as follows:

[REDACTED]

The Settlement Agreement further reads, in relevant part, as follows:

[REDACTED]

Following the drafting of the said settlement agreement by Hitrinov and his attorney, Werner, the defendants therein, represented by complainant's counsel herein, executed the Agreement and provided a copy of same to the Court, and to Hitrinov's attorney, Werner.

Hitrinov's 'Unclean Hands'

Despite having extracted the above referenced 'quid pro quo', primarily to protect himself from being sued for attorneys' fees, but ancillary to same, correspondingly *waiving the right to assert attorneys' fees on his own behalf*; despite having agreed to same 'on the record' in the transcript annexed hereto as Appendix "A"; and despite his attorney, Werner having reduced the terms so extracted to writing within the Settlement Agreement annexed as Appendix "B", Hitrinov has, to the time of this writing, steadfastly *refused* to sign and execute said Agreement, despite having stipulated to the terms and conditions of same 'on the record' at Appendix "A".

It is obvious and apparent that Hitrinov's purpose in refusing to sign the Settlement Agreement drafted by his own attorney, Werner, is specifically so Hitrinov can now, with manifest 'unclean hands' wrongfully attempt to assert the very claims for costs and attorneys' fees that he has undisputedly waived.

It is respectfully submitted that Hitrinov should not and cannot now be rewarded for his own deceitful intentions and the 'sharp practice' of his attorney, Werner, who is presently openly colluding with respondents' counsel herein, Gerard Doyle, Esq. in what can only be characterized as an attempted perpetration of a fraud upon the Commission.

CONCLUSION

As set forth above, respondent Hitrinov has explicitly *waived* his right to make *any* claims for costs or attorneys' fees arising out of the case at bar, having stipulated to such waiver 'on the record' and having reduced same to writing at Hitrinov's own insistence and as prepared by his

attorney, Werner.

Consequently, having waived all rights to any such claims in this action and in a parallel Court of competent jurisdiction, a record of which has been annexed hereto, it is respectfully submitted that Hitrinov is now *estopped* from seeking attorneys' fees and costs in this case; and correspondingly, from predicating any purported opposition to complainant's instant Motion to Dismiss this case with prejudice and without costs or attorneys' fees to either side, upon a claim to recover costs and attorneys' fees.

WHEREFORE, based upon the foregoing, the attachments annexed hereto, and the arguments set forth in complainant's original motion, it is respectfully submitted that the Presiding Officer and the Commission should now grant complainant's motion in its entirety, dismiss this case with prejudice and without costs and attorneys' fees to either party, and grant complainant leave to withdraw the pending appeal also without costs or attorneys' fees to either party, together with such other and further relief as may be just and proper under the circumstances.

Dated: September 2, 2016
Brooklyn, New York

Respectfully Submitted,



Marcus A. Nussbaum, Esq.
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Attorney for Complainant

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the within **COMPLAINANTS' REPLY ON THEIR MOTION TO WITHDRAW APPEAL AND DISCONTINUE ACTION** upon Respondents' Counsel, The Law Office of Doyle & Doyle, with the address of 636 Morris Turnpike, Short Hills, NJ 07078 by first class mail, postage prepaid, and by email (gdoyle@doyelaw.net).



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Dated: September 2, 2016
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