

**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.

MOTION TO WITHDRAW APPEAL AND DISCONTINUE ACTION

Complainant, Baltic Auto Shipping, Inc. ("Baltic"), by and through its attorney, Marcus A. Nussbaum, Esq., hereby moves the Federal Maritime Commission ("FMC") and the Presiding Officer 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 10, 2016, Complainants' Counsel corresponded directly with the Assistant

Secretary of the FMC advising of Complainants' intention to withdraw the instant pending appeal/exceptions in this matter of the Presiding Officer's Initial Decision of September 15, 2015. A copy of said correspondence was copied to Respondents' Counsel Gerard Doyle, Esq., and is annexed hereto as Appendix "A".

To that end, a Stipulation of Withdrawal was then sent to Mr. Doyle on August 10, 2016. A copy of the Stipulation and covering email are annexed hereto as Appendix "B".

Thereafter on August 11, 2016, Mr. Doyle was then copied on subsequent correspondence making reference to said Stipulation, a copy of which is annexed hereto as Appendix "C".

Additionally, on August 11, 2016, Mr. Doyle was copied on further correspondence making reference to said Stipulation of Withdrawal, a copy of which is annexed hereto as Appendix "D".

Following this, Complainants' counsel wrote to Mr. Doyle directly on August 12, 2016 regarding said Stipulation, having received neither a response, nor an executed copy of the Stipulation. A copy of said correspondence is annexed hereto as Appendix "E".

In addition to all of the above, Complainants' counsel made several phone calls to Mr. Doyle, and left a voicemail message which was unreturned.

As of the time of this writing, Complainants' counsel has not heard from Mr. Doyle, either by telephone or email; nor has Mr. Doyle as counsel for the Respondents executed the Stipulation and returned it to Complainants' counsel via email or facsimile as requested.

Accordingly, and due to the silence and inaction of Respondents' counsel Mr. Doyle set forth above, together with the unwarranted interference of a non-appearing attorney, Mr. Jon Werner described below, Complainant now brings on their instant motion.

BRIEF STATEMENT

It is respectfully submitted that the main protagonist who has sought to wrongfully interfere with the otherwise orderly withdrawal of Complainant's pending appeal and underlying action, is the aforementioned Mr. Werner.

It should be noted that Mr. Werner was prior counsel to Respondent, Hitrinov in an unrelated matter, and continues to maintain demonstrated close ties with Respondent Hitrinov now with respect to a matter in which Mr. Werner is manifestly and grossly uninvolved.

Conspicuous by its silence is Mr. Doyle's inexplicable refusal to execute the Stipulation of Withdrawal, which would appear to be in conflict with his clients' own interests. Further, and upon information and belief, Mr. Doyle's inaction and reticence to even respond to Complainants' counsel would appear to be subject to the direction of the said Mr. Werner and his former client, Hitrinov in furtherance of a continuing personal vendetta against Complainants' counsel, thus necessitating the instant motion.

ARGUMENT

Standard of Review

Rule 72 of the Commission's Rule of Practice and Procedure, 46. U.S.C. §502.72 reads in relevant part as follows:

Dismissals.

...By stipulation of the parties. The parties may dismiss an action at any point without an order from the presiding officer by filing a stipulation of dismissal signed by all parties who have appeared. In the stipulation the parties must certify that no settlement on the merits was reached. Unless the stipulation states otherwise, the dismissal is without prejudice.

...By order of the presiding officer. Except as provided in paragraphs (a)(1) and (a)(2) of this section, an action may be dismissed at the complainant's request only by order of the presiding officer, on terms the presiding officer considers proper. If the motion is based on a settlement by the parties, the settlement agreement must be submitted with the motion

for determination as to whether the settlement appears to violate any law or policy and to ensure the settlement is free of fraud, duress, undue influence, mistake, or other defects which might make it unapprovable. Unless the order states otherwise, a dismissal under this paragraph is without prejudice.

Complainant's 'Due Diligence'

It is respectfully submitted that Complainants' counsel exercised due diligence in attempting to have the subject appeal withdrawn by Stipulation, absent the need for intervention of the FMC or the Presiding Officer. Indeed, Mr. Doyle as Respondents' counsel was accorded multiple opportunities to 'confer', communicate, and respond to Complainants' counsel, all to no avail. It is thus further respectfully submitted that the foregoing constitutes a 'good faith' effort by Complainant to achieve an orderly withdrawal of the said appeal prior to resorting to motion practice.

CONCLUSION

It is respectfully submitted that as set forth above, it has been and continues to be Complainants' intention to withdraw the subject appeal, with prejudice. To that end, Complainants reasonably constructed and served a Stipulation of Withdrawal upon Respondents' counsel with customary and usual terms and language as to the parties' post withdrawal recourse. For reasons unknown, but reasonably suspected to be due to the orchestrations of the aforementioned Mr. Werner, Respondents by their counsel Mr. Doyle have inexplicably failed to execute said Stipulation, or even to contact Complainant's counsel with regard to same.

Accordingly, it is further respectfully submitted that consistent with the standard of review cited above, Complainant now seeks by motion an Order from the Presiding Officer dismissing the pending appeal together with all underlying claims, with prejudice and without costs, attorneys' fees or disbursements to either party as against each other.

WHEREFORE, the Presiding Officer is respectfully urged to grant Complainant's instant motion in its entirety, together with such other and further relief as the Presiding Officer may deem just and proper under the circumstances.

Dated: August 15, 2016
Brooklyn, NY

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Marcus A. Nussbaum", is written over a horizontal line.

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Attorney for Complainant

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the within **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).



Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Fax: 347-572-0439
Attorney for Complainant
marcus.nussbaum@gmail.com

Dated: August 15, 2016
Brooklyn, NY

**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.

APPENDIX TO MOTION TO WITHDRAW APPEAL AND DISCONTINUE ACTION

- APPENDIX “A” Correspondence to the Assistant Secretary of the FMC dated August 10, 2016.
- APPENDIX “B” Stipulation of Withdrawal and covering email to Gerard Doyle, Esq. dated August 10, 2016.
- APPENDIX “C” Correspondence to the Jon Werner, Esq., dated August 11, 2016.
- APPENDIX “D” Correspondence to the Honorable Dennis M. Cavanaugh, dated August 11, 2016.
- APPENDIX “E” Correspondence to Gerard Doyle, Esq. dated August 12, 2016.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the within **APPENDIX TO 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).



Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Fax: 347-572-0439
Attorney for Complainant
marcus.nussbaum@gmail.com

Dated: August 15, 2016
Brooklyn, NY

APPENDIX “A”

Marcus A. Nussbaum

From: Marcus Nussbaum <marcus.nussbaum@gmail.com>
Sent: Wednesday, August 10, 2016 6:09 PM
To: Secretary
Cc: Gerry Doyle; Jon Werner
Subject: Re: FMC Docket No.: 14-16

Dear Ms. Dickon,

In response to yours of August 2, 2016 please be advised that Complainant's pending appeal in the above referenced matter shall be withdrawn with prejudice upon submission of a formal Stipulation of Withdrawal, which as of the time of this writing has been sent to counsel for Respondents under separate cover.

We thank the Commission for its patience and its many courtesies in this matter.

Regards,

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Fax: 347-572-0439
<http://www.nussbaumlawfirm.com/>

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is confidential and may be subject to attorney client privilege. If the reader of this message is not the intended recipient, any dissemination, distribution or copying of this communication is prohibited. If you received this message in error, please delete and/or notify the sender by return e-mail. Although our company attempts to sweep e-mail and attachments for viruses, it does not guarantee that either are virus-free and accepts no liability for any damage sustained as a result of viruses. Thank you.

IRS Circular 230 Disclosure: To ensure compliance with U.S. Treasury regulations we inform you that any U.S. tax advice contained in this communication (including any attachments or enclosures) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.

On Tue, Aug 2, 2016 at 8:04 AM, Secretary <secretary@fmc.gov> wrote:

Dear Mssrs. Nussbaum, Doyle and Werner,

By reply to this email please provide a status update on this proceeding today if possible.

APPENDIX “B”

Marcus A. Nussbaum

From: Marcus Nussbaum <marcus.nussbaum@gmail.com>
Sent: Wednesday, August 10, 2016 5:24 PM
To: Gerry Doyle
Subject: Docket 14-16
Attachments: Stipulation of Withdrawal.pdf

Dear Mr. Doyle,

Attached, please find a Stipulation of Withdrawal of the pending appeal in the above referenced matter. Kindly execute same and return to me via email at your earliest possible convenience so that the Stipulation can expeditiously be filed with the Commission.

Regards,

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Fax: 347-572-0439
<http://www.nussbaumlawfirm.com/>

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is confidential and may be subject to attorney client privilege. If the reader of this message is not the intended recipient, any dissemination, distribution or copying of this communication is prohibited. If you received this message in error, please delete and/or notify the sender by return e-mail. Although our company attempts to sweep e-mail and attachments for viruses, it does not guarantee that either are virus-free and accepts no liability for any damage sustained as a result of viruses. Thank you.

IRS Circular 230 Disclosure: To ensure compliance with U.S. Treasury regulations we inform you that any U.S. tax advice contained in this communication (including any attachments or enclosures) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any matters addressed herein.

**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.

STIPULATION OF WITHDRAWAL OF APPEAL

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the parties to this matter, whereas no party hereto is an infant or incompetent person for whom a committee has been appointed, that Complainant's appeal is hereby withdrawn, and this matter shall be discontinued with prejudice, and without costs, attorneys' fees or disbursements to either party as against each other.

This stipulation may be filed without further notice. A facsimile copy of same may be filed with the same force and effect as that of the original.

<p>MARCUS A. NUSSBAUM, ESQ. <i>Attorney for Complainant</i></p> <p>P.O. Box 245599 Brooklyn, NY 11224</p> <p>By: _____ Marcus A. Nussbaum, Esq.</p> <p>Dated: _____</p>	<p>THE LAW OFFICE OF DOYLE & DOYLE <i>Attorney for Respondents</i></p> <p>636 Morris Turnpike Short Hills, NJ 07078</p> <p>By: _____ Gerard S. Doyle, Esq.</p> <p>Dated: _____</p>
---	--

APPENDIX “C”

Marcus A. Nussbaum

From: Marcus Nussbaum <marcus.nussbaum@gmail.com>
Sent: Thursday, August 11, 2016 9:24 AM
To: Jon Werner
Cc: Gerry Doyle; secretary@fmc.gov
Subject: Re: FMC Docket No.: 14-16

Mr. Werner,

Even you would surely agree that the execution of a stipulation appurtenant to the withdrawal of an appeal in a pending legal action is an entirely reasonable and necessary procedure. As you are aware, Complainants have already represented to the FMC that this matter “...*shall be withdrawn with prejudice*” upon the execution of the stipulation (emphasis added).

Accordingly, it is our contention that any motion made by you on behalf of your client at this time to reopen the case for alleged failure to meet the terms and conditions of the settlement in the Federal Court case would be wholly without merit, entirely frivolous in nature, and will be met with an immediate cross-motion for costs and the imposition of Rule 11 sanctions for the making of an undeniably frivolous motion.

In light of the foregoing, we trust that you will reconsider your position and refrain from any such misguided motion practice at this time.

In closing, we note your having curiously copied the Secretary of the FMC with your email to which this responds. Needless to say, you have no standing to take any position in either the underlying matter pending before the FMC, or the manner and means of the withdrawal of the appeal thereon; neither will this office tolerate any interference in the otherwise orderly withdrawal of said appeal.

Be guided accordingly.

Regards,

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Fax: 347-572-0439

APPENDIX “D”

Marcus A. Nussbaum

From: Marcus Nussbaum <marcus.nussbaum@gmail.com>
Sent: Thursday, August 11, 2016 11:32 AM
To: Dennis M. Cavanaugh
Cc: Jon Werner; Gerry Doyle
Subject: Re: FMC Docket No.: 14-16

Dear Hon. Judge Cavanaugh,

I am in receipt of your email of this date on the above matter; kindly allow this to respond to same.

Defendants fully acknowledge their obligation to withdraw their appeal in the FMC matter as part of the terms and conditions of the settlement of this case.

To that end, and as may not have been made clear in Mr. Werner's email, I have provided counsel for the Respondents in the FMC matter, Gerard Doyle, Esq. with a Stipulation of Withdrawal with regard to said appeal. By copy of this email, I am respectfully requesting that Mr. Doyle forthwith execute said stipulation and return to my office today, via facsimile or email. Upon receipt of same, I will countersign the stipulation and *immediately* forward it to the FMC so that the appeal may be formally withdrawn. I will further copy Mr. Werner with a copy of said stipulation including the cover email thereto.

I trust this resolves the issue at hand.

Very truly yours,

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Fax: 347-572-0439
<http://www.nussbaumlawfirm.com/>

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is confidential and may be subject to attorney client privilege. If the reader of this message is not the intended recipient, any dissemination, distribution or copying of this communication is prohibited. If you received this message in error, please delete and/or notify the sender by return e-mail. Although our company attempts to sweep e-mail and attachments for viruses, it does not guarantee that either are virus-free and accepts no liability for any damage sustained as a result of viruses. Thank you.

APPENDIX “E”

Marcus A. Nussbaum

From: Marcus Nussbaum <marcus.nussbaum@gmail.com>
Sent: Friday, August 12, 2016 10:26 PM
To: Gerry Doyle
Cc: secretary@fmc.gov; Dennis M. Cavanaugh; Jon Werner
Subject: FMC Docket No: 14-16

Mr. Doyle,

As you are aware on August 8, 2016, the Secretary of the FMC issued an Order for the parties to file a Joint Status Report regarding this matter on or before August 15, 2016.

On August 10, 2016, I provided you with a Stipulation of Withdrawal of Complainants' pending appeal in this matter, via email.

To date, and despite my continuing attempts to reach you by email and telephone, inclusive of leaving you a detailed voicemail, I have yet to receive a response from your office despite the fact that you have been copied on all recent correspondence relating to the withdrawal of this appeal.

It is Complainants' contention that as you are still the attorney of record for the Respondents herein, you cannot simply ignore my repeated inquiries, nor those from the Secretary.

You are hereby advised that in the event that I do not receive a signed copy of the Stipulation of Withdrawal that you have been provided with via facsimile or email (with an ink original to follow via regular mail) by 12:00 p.m. on Monday, August 15, 2016, Complainant shall file a motion for an Order dismissing all claims and counterclaims, inclusive of the pending appeal herein, with prejudice, and without costs, attorneys' fees or disbursements to either party.

You may consider the foregoing a good faith effort to 'confer' on this issue prior to institution of motion practice.

Regards,

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Fax: 347-572-0439
<http://www.nussbaumlawfirm.com/>

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is confidential and may be subject to attorney client privilege. If the reader of this message is not the intended recipient, any dissemination, distribution or copying of this communication is prohibited. If you received this message in error, please delete and/or notify the sender by return e-mail. Although our