

**BEFORE THE
FEDERAL MARITIME COMMISSION**

BALTIC AUTO SHIPPING, INC.)	
)	
)	
COMPLAINANT,)	
)	
v.)	
)	DOCKET NO. 14-16
)	
MICHAEL HITRINOV a/k/a)	
MICHAEL KHITRINOV,)	
EMPIRE UNITED LINES CO., INC.,)	
)	
RESPONDENTS.)	
)	

**RESPONDENTS' MEMORANDUM IN OPPOSITION TO COMPLAINANT'S MOTION
FOR RECONSIDERATION OF FINDINGS**

Respondents herewith file and serve their Memorandum in opposition to Complainant's Motion for reconsideration of certain findings in the "Order Releasing Documents Submitted *In Camera*" (4/1/2015).

POINT 1:

RECONSIDERATION SHOULD BE DENIED BECAUSE ALJ GUTHRIDGE RELIED ON CONTEMPORANEOUS BUSINESS RECORDS AND COMPLAINANT HAS OFFERED NONE IN REBUTTAL

Complainant ("Baltic Illinois" sometimes referred to in this Proceeding as "Baltic Chicago") seeks to have certain findings with respect to twenty-one shipments contained in the April 1, 2015 "Order Releasing Documents Submitted *In Camera*" (the "Order") reconsidered and

“removed” (Complainant’s Motion, p. 1. Complainant also seeks to have new findings made. (*Id.*).

The specific findings concerning the twenty-one shipments were:

- “I find that the twenty-one shipments do not relate to Baltic Illinois or shipments at issue in this proceeding” (Order, p. 2); and
- “ ... these shipping records [showing Baltic Savannah and others, but not Baltic Illinois as shipper] do not appear to relate to shipments by Baltic Illinois, the complainant in this proceeding ...”. (Order, p. 3)

The Order is quite specific as to the evidence that supported these findings:

- “ ... a report from the Illinois Secretary of State indicating that Baltic Illinois is an Illinois corporation whose president is Andrejus Presniakovas ...”
- “ ...a report from the Georgia Secretary of State indicating that Baltic Savannah is a Georgia corporation ... whose president is Alla Kotova¹” ;
- “email exchanges from Baltic Savannah to Empire denying Baltic Savannah is related to Baltic Illinois²”;
- “The record for each of the twenty-one shipments consists of an email to Empire from “Alla Lina” at Baltic Savannah and a dock receipt for the shipment ... The dock receipts identify Baltic Savannah as the shipper on eight of the shipments ... Other entities are identified as the shipper on the remaining thirteen shipments ... There is no reference to Baltic Illinois in the “Alla Lina” emails or dock receipts. (Order, p. 2)

¹ Apparently also known as “Alla Lina” ; see Affidavit of Andrejus Presniakovas submitted in support of Complainant’s Motion (“Presniakovas Aff.”), ¶ 7 (“ ... my partner (Alla Kotova a/k/a Alla Lina)” ...)

² “These bookings was ordered directly from Baltic Auto Shipping corp. (below) and has no connection with Baltic auto Shipping in Bedford Park” [*sic*] (email 11/22/201) (Presniakovas Aff . Exhibit 4-3

“This booking was ordered directly by Baltic auto shipping corp. and has no any connection with Baltic auto Shipping in Bedford Park, IL” [*sic*] (email 11/23/2011); Presniakovas Aff. . Exhibit 4-2).

As noted above, ALJ Guthridge concluded: “Therefore I find that the twenty-one shipments do not relate to Baltic Illinois or shipments at issue in this proceeding.”(Id.)

In its Motion for Reconsideration, Complainant offers not a single contemporaneous shipping document that connects Baltic Illinois to the twenty-one shipments; nor does it offer any contemporaneous correspondence that connects Baltic Illinois to the twenty-one shipments. This must be given significant weight as Mr. Presniakovas states that with respect to the twenty-one shipments, “Baltic Chicago acted in the capacity of merchant for the various vehicles that it owned, or in the capacity of NVOCC for the vehicles that it was exporting on behalf of its customers” (Presniakovas Aff. ¶18). The failure to produce a single piece of relevant shipping documentation from a single shipping file casts significant doubt on Complainant’s claims, and further supports the ALJ’s finding.

Complainant has offered statements about the two “Baltic” companies being copied in the same emails, an explanation of “Alla Lina” that his email statements were made under “duress”, and a statement that Mr. Presniakovas had made Alla Lina an “agent”. But Complainant does not offer any corroborating documentary evidence to support its position that the findings were made in error, or that the shipments were Baltic Illinois shipments, or had any connection with Baltic Illinois.

Clearly, the scales fall in favor of having the findings remain in the Order, and therefore the Motion should be denied.

**POINT 2:
THE CLAIM THAT ADMISSIONS WERE MADE UNDER DURESS IS UNSUPPORTED BY ANY CONTEMPORANEOUS EVIDENCE THAT BALTIC ILLINOIS HAD ANY CONNECTION WITH THE TWENTY-ONE SHIPMENTS**

In November of 2011 as Respondents and Complainants were sorting out their relationship, Baltic Savannah requested the “release” of various shipments – none of which were

among the twenty-one involved in this Motion. (“Release” being Empire authorizing the destination location to deliver the shipments on request of the consignee.) So as not to confuse Baltic Illinois and Baltic Savannah shipments, Empire asked for confirmation that the shipments were indeed Baltic Savannah’s. In responding emails (11/22 and 23, 2011), Savannah Baltic said they were and that there was no connection between the two “Baltic” companies (see footnote 1, *supra*). These email exchanges were considered by ALJ Guthridge in making his findings. Complainant has now provided a third exchange (11/25-28/2011) wherein Empire asked on a Friday afternoon, “Please confirm if those shipments belong to your Company – Baltic auto shipping corp., Savanna, GA” to which Baltic Savannah responded on Monday, “All 3 bookings below belongs to Savannah” (Presniakovas Aff. Exhibit 9). (The shipments addressed were different from the shipments in the earlier emails; none of the six shipments are part of the twenty-one.)

Baltic Savanna now claims that these statements were made under “duress”, in an effort to avoid “storage and demurrage” charges. (Affidavit of Alla Kotova, hereafter “Kotova Aff.”, ¶ 19). If this were truly the case, why would the “Baltic” companies (or either of them), continue to ship with Empire until “through October 18, 2012” (Presniakovas Aff. ¶ 25)? Similarly, why didn’t either “Baltic” company ever complain of such “duress”, before raising it in connection with the twenty-one shipments?

Messrs. Kotova and Presniakovas claim to be partners (Presniakovas Aff. ¶17, Kotova Aff. ¶11), and Kotova claims that Presniakovas is “the majority shareholder” of Baltic Savannah (Kotova Aff. ¶ 2).

Whatever their actual legal status as to each other, it would appear from the totality of documents filed in this Proceeding that they certainly had a close and lengthy business relationship. The relationship must be kept in mind in trying to sort through the declarations of independence (made at the time of the shipments) and the later claim of “duress”.

In any event, whether under duress or not, *vis-à-vis* Empire, the “Baltic” parties conducted business as independent operations, and were so treated by Respondent Empire. The actual course of conduct supports the findings of ALJ Guthridge.

The bare allegations of “agency” unsupported by any contemporaneous documentation cannot be given much weight.

In any event, it is unnecessary to sort out the Baltic-Baltic relationship, as Baltic Illinois has not provided any evidence with respect to the twenty-one shipments that would cast even a shadow of doubt on ALJ Guthridge’s findings. Even if the “duress” position is accepted, no evidence has been offered to link Baltic Illinois to the twenty-one shipments in question. Accordingly, the findings should stand, and the Motion for Reconsideration denied.

POINT 3:

THERE IS NO SUPPORTING CONTEMPORANOUS EVIDENCE TO SUPPORT A FINDING THAT THE TWENTY-ONE SHIPMENTS WERE BALTIC ILLINOIS’

Complainant “requests that the Commission find affirmatively that the twenty-one bookings do in fact belong to the Complainant, and are related to the shipments at issue” (Motion, p. 1).

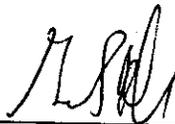
As noted above, Complainant offers no contemporaneous shipping documents³ or correspondence to in support its claim of ownership.

There is insufficient evidence to support the Complaint's "request", and certainly nothing to disturb ALJ Guthridge's finding to the contrary.

Accordingly, all of ALJ Guthridge's findings should stand, and the Motion for Reconsideration should be dismissed.

Respectfully submitted,

By:



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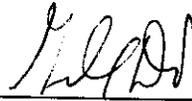
Dated in Short Hills, NJ eighth day of May 2015.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the RESPONDENTS' MEMORANDUM IN OPPOSITION TO COMPLAINANT'S MOTION FOR RECONSIDERATION OF FINDINGS upon

³ Respondents reserve the right to supplement the record with further contemporaneous correspondence and documentation as may be necessary.

Complainant's counsel, Marcus A. Nussbaum, Esq., with the address of P.O. Box 245599, Brooklyn, NY 11224 by first class mail, postage prepaid and by email (marcus.nussbaum@gmail.com); and that the original and five (5) copies are being filed with the Secretary of the Federal Maritime Commission.



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Dated in Short Hills, NJ. this eighth day of May, 2015.