

 ORIGINAL

cc: OS
OGC
Comms
Pub

BEFORE THE
FEDERAL MARITIME COMMISSION

BALTIC AUTO SHIPPING, INC.

COMPLAINANT,

v.

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

RESPONDENTS.

FILED

AUG 30 2016

Federal Maritime Commission
Office of the Secretary

DOCKET NO. 14-16

RESPONDENTS' MEMORANDUM:

1. **IN SUPPORT OF COMPLAINANT'S MOTION TO WITHDRAW ITS
EXCEPTIONS TO THE INITIAL DECISION;**

2. **IN OPPOSITION TO COMPLAINANT'S MOTION TO DISCONTINUE THE
INSTANT MATTER**

Respondents herewith file and serve their Memorandum in support of Complainant's Motion to withdraw the exceptions Complainant had taken to the Initial Decision; and in opposition to Complainant's Motion to "discontinue the instant matter with prejudice, and without costs, attorneys' fees or disbursements to either party as against each other".

POINT 1:

**RESPONDENTS CONSENT TO THE WITHDRAWAL OF THE EXCEPTIONS TO
ALJ GUTHRIDGE'S INITIAL DECISION**

Respondents consent, to the extent necessary, if at all, to the Complainant withdrawing the exceptions it had taken to ALJ Guthridge's Initial Decision. Accordingly, upon the Commission's acceptance of the withdrawal of the exceptions, the Initial Decision shall become the Decision of the Commission thirty (30) days after such acceptance (46 CFR 502.227 (a) (3), (c)).

POINT 2:

**RESPONDENTS DO NOT CONSENT TO THE DISCONTINUANCE OF THE
INSTANT MATTER**

The Commission's Rules of Practice permit a voluntary discontinuance (actually a "dismissal") after an Answer has been filed (as it has in this matter), only upon a stipulation of the parties (46 CFR 502.72 (a) (2)). In this matter the Respondents do not so stipulate.

Accordingly, the Initial Decision shall remain in place and become the Decision of the Commission thirty (30) days after the Commission's acceptance of the withdrawal of the Complainant's exceptions.

POINT 3:

THE ONLY LIMITATION ON THE AWARD OF ATTORNEY FEES IS THAT THE FEES SOUGHT BE “REASONABLE” UNDER THE CIRCUMSTANCES

In the Initial Decision ALJ Guthridge found

“ ... that because the FMC Complaint has been dismissed, [Respondent] Empire is the prevailing party in this proceeding. Therefore, [Respondent] Empire may be awarded reasonable attorney fees for service performed after the effective date of the Coble Act. Determination of the fee awarded, if any, should be deferred until the decision [*i.e.*, the Initial Decision] is final.”

(Initial Decision, p. 58)

The Commission’s Rules clearly set forth the requirements for the award of attorney fees, requiring that the petition for such relief establish that the fees are reasonable based on:

- sound analysis (46 CFR 502.254 (d) (1)) (i)) – “why attorney fees should be awarded in the proceeding”);
- the number of hours claimed (46 CFR 502.254 (d) (1) (ii));
- with supporting evidence justifying the hours and rates claimed (46 CFR 502.254 (d) (1) (iii)).

The “sound analysis” must necessarily address those issues that the Commission has always considered when awarding attorney fees, for example:

- whether the award of attorney fees is consistent with the purposes of the Shipping Act (*see Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534, n. 19 (1994));
- the degree of success obtained (*see Hensley v. Eckerhart*, 461 U.S. 424, 434-36 (1983));
- and, of course, the guidance of the Commission's own precedent and that of relevant federal case law (*see* Supplementary Information accompanying the notice of the adoption of the Final Rule awarding attorney fees to the prevailing party, Fed. Reg. Vol. 81, No. 40, p. 10508 at 10515 (3/1/2016)).

Any argument that use of the term "may" in the Rules and in ALJ Guthridge's decision means that the award is fully discretionary is misplaced, as the Rules clearly state the award is made "upon petition" and then state what the contents of the petition are to be. So long as the Rule is complied with, the award is to be made.

Necessarily, the Commission is required to explain any adjustments (46 CFR 502.254 (f) (1) (i)); or explain in what regard the petition failed to satisfy the Rule, resulting in a denial of the petition (46 CFR 502.254 (f) (1) (ii)). In sum, the Rule does not speak in precatory language, but rather mandates the award on a showing of reasonableness under the circumstances.

Accordingly, the Respondent will have 30 days after the acceptance of the withdrawal of the Complainant's exceptions to the Initial Ruling to file a petition for the award of attorney fees, and to the extent that the request is reasonable, the Commission is required to grant the request.

Respectfully submitted,

By:



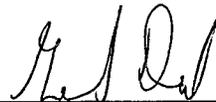
Gerard S. Doyle, Jr.
THE LAW OFFICE OF DOYLE & DOYLE
636 Morris Turnpike

Short Hills, NJ 07078
973-467-4433 (Telephone)
973-467-1199 (Facsimile)
gdoyle@doylelaw.net
Attorneys for Respondents
Michael Hitrinov, a/k/a
Michael Khitrinov, and
Empire United Lines, Co., Inc.

Dated in Short Hills, NJ 30th day of August 2016.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the RESPONDENTS' MEMORANDUM: 1. IN SUPPORT OF COMPLAINANT'S MOTION TO WITHDRAW ITS EXCEPTIONS TO THE INITIAL DECISION; 2. IN OPPOSITION TO COMPLAINANT'S MOTION TO DISCONTINUE THE INSTANT MATTER upon 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.



Gerard S. Doyle, Jr.
THE LAW OFFICE OF DOYLE & DOYLE
636 Morris Turnpike
Short Hills, NJ 07078
973-467-4433 (Telephone)
973-467-1199 (Facsimile)
gdoyle@doylelaw.net
Attorneys for Respondents
Michael Hitrinov, a/k/a
Michael Khitrinov, and
Empire United Lines, Co., Inc.

Dated in Short Hills, NJ. this thirtieth day of August, 2016.

The Law Office of Doyle & Doyle

636 Morris Turnpike
Short Hills, New Jersey 07078
(973) 467-4433
Fax (973) 467-1199
gdoyle@doylelaw.net

Eleanor J. Doyle
Gerard S. Doyle, Jr.
David Donald Gabel

August 30, 2016

Via email: secretary@finc.gov

Federal Maritime Commission
800 North Capitol Street, N.W
Washington, D.C. 20573

Att: Office of the Secretary

RE: Baltic Auto Shipping, Inc. v. Michael Hitrinov a/k/a Michael Khitrinov, Empire
United Lines Co., Inc.
Docket No: 14-16

RECEIVED
2016 SEP 12 PM 2:46
OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

RESPONDENTS' MEMORANDUM: 1. IN SUPPORT OF COMPLAINANT'S
MOTION TO WITHDRAW ITS EXCEPTIONS TO THE INITIAL DECISION;
2. IN OPPOSITION TO COMPLAINANT'S MOTION TO DISCONTINUE
THE INSTANT MATTER

Dear Secretary of the Federal Maritime Commission:

Attached please find the original (signed) RESPONDENTS' MEMORANDUM: 1. IN
SUPPORT OF COMPLAINANT'S MOTION TO WITHDRAW ITS EXCEPTIONS TO
THE INITIAL DECISION; 2. IN OPPOSITION TO COMPLAINANT'S MOTION TO
DISCONTINUE THE INSTANT MATTER
along with five (5) copies.

Counsel for Complainant is served by email and mail.

A Certificates of Service is attached to the Motion

If there are any questions, please contact me.

Respectfully submitted,



Gerard S. Doyle, Jr.
THE LAW OFFICE OF DOYLE & DOYLE

636 Morris Turnpike
Short Hills, NJ 07078
973-467-4433 (Telephone)
973-467-1199 (Facsimile)
gdoyle@doylelaw.net
Attorneys for Respondents
Michael Hitrinov, a/k/a
Michael Khitrinov, and
Empire United Lines, Co., Inc.

Cc: Marcus A. Nussbaum, Esq.,
Attorney for Complainant
P.O. Box 245599,
Brooklyn, NY 11224
email (marcus.nussbaum@gmail.com)