FEDERAL MARITIME COMMISSION

DOCKET NO.: 15-04

CROCUS INVESTMENTS, LLC AND CROCUS, FZE

v.

MARINE TRANSPORT LOGISTICS, INC. AND ALEKSANDR SOLOVYEV a/k/a ROYAL FINANCE GROUP INC.

COMPLAINANTS' PROPOSED FINDINGS OF FACT, BRIEF, AND APPENDIX

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by mailing and emailing a copy to the persons listed below:

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I. Nature and Background of the Case

This case arises from two shipping orders that Complainants, Crocus FZE and Crocus Investments, LLC placed and paid for through Respondent Aleksandr Soloveyv who was acting as a middleman between Marine Transport Logistic, Inc., and Complainants' owner Alexander Safonov and his employees. Marine Transport Logistic, Inc. is also named as a Respondent in the Formal Complaint.

Respondent Marine Transport Logistic, Inc. is a licensed non-vessel operating common carrier (NVOCC).

Respondent Soloveyv held himself out as a provider of an all-in-one service for international customers who are interested in purchasing goods from auctions in the United States and shipping the goods internationally. Solovyev handled all communications, payments, and arrangements between Marine Transport Logistics, Inc. and the Complainants. The commodities at issue are three boats that were purchased by one of Solovyev's companies.

Two smaller boats, the Chapparal and the Monterey, were purchased in May 2013 and shipped by MTL to Dubai where Complainants made repairs to the boats. The larger boats, the Formula, was purchased in August 2013, but was never shipped to Dubai, despite Complainants' initial requests for Respondents' to do so. In spring of 2014, Safonov decided to relocate his business to Florida. Therefore, Complainants shipped the two smaller boats back to New Jersey, to be received by Respondents and kept until Safonov gave them further instructions.

The parties had an ongoing business relationship and Complainants understood that Marine Transport Logistics, Inc. was the NVOCC that was responsible for shipping their boats and safekeeping them when they were New Jersey. At some point after the two smaller boats came back to New Jersey, Marine Transport Logistics, Inc. released the boats to a third party storage facility, coincidently owned by Solovyev called World Express and Connection, Inc. MTL never notified the Complainants about transferring the boats to Solovyev's other company.

When Complainants were finally notified that they owed storage fees, the notification came via an invoice sent to them by Solovyev's company Royal Finance Group, Inc. in the amount of $39,409.39 The storage fees amounted to approximately one half of what the Complainants paid for the goods.

Complainants filed a Formal Complaint alleging that Respondents violated the Shipping Act of 1984. Complainants allege Marine Transport Logistics, Inc. failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property when it acquiesced or assisted Solovyev in illegally withholding the Complainants' property. Additionally,

Complainants allege that Solovyev violated 46 U.S.C. §40901(a) by acting as an ocean transportation intermediary without a license.

II. Proposed Findings of Fact

1. Alexander Safonov is the owner of Crocus, FZE and Crocus Investments, LLC. (See Appendix CX 1, 2, 3)
2. Alexander Safonov also owned Middle East Asia Alfa, FZC and employed Andrey Tretyakov. (See Appendix CX 4, 5, 6)
3. Aleksandr Solovyev is the owner of Royal Finance Group, Inc. (Aleksandr Solvyev's Deposition Transcript 23:14-23(page: line) dated November 20, 2015)
4. Solovyev, through Royal Finance Group, Inc. issued invoices for shipping to Complainants. (See Appendix CX 7, 8, 9, 10, 11, 12, 13)
5. Solovyev through Royal Finance Group, Inc. forwarded payments he had collected from Complainants for MTL's shipping services to MTL. (See Appendix CX 14)
6. Aleksandr Solovyev is the owner of World Express and Connection, Inc., the company which MTL alleges has current custody of Complainants' property. (Aleksandr Solvyev's Deposition Transcript 19:12-21:7 (page: line) dated November 20, 2015; Response to Complaint p. 7 ¶22 and 24)
7. World Express and Connection, Inc. and MTL both have the same address at 63 New Hook Road, Bayonne, NJ 07002. (Aleksandr Solvyev's Deposition Transcript 19:2-10 (page: line) dated November 20, 2015)
8. Aleksandr Solovyev is married to Alla Solovyeva who is the owner of MTL. (Alla Solvyeva's Deposition Transcript 7:7-23, 9:16-19 (page: line) dated November 19, 2015)
9. Aleksandr Solvyev used the email address mtlworld@mtlworld.com. (Aleksandr Solvyev's Deposition Transcript 15:7-12 (page: line) dated November 20, 2015)
10. Alla Solovyeva uses the email address alla@mtlworld.com. (Alla Solvyeva's Deposition Transcript 9:9-12 (page: line) dated November 19, 2015)
11. Aleksandr Solovyev has been identified as the managing member of Marine Transport Logistic, Inc. (See Appendix CX 16, 18)
12. Aleksandr Solovyev communicated on behalf of Marine Transport Logistics with the Complainants. (See Appendix CX 19)
13. Marine Transport Logistic, Inc. permitted Aleksandr Solovyev to act on its behalf and hold himself out as its agent. (See Appendix CX 16, 18, 19)
14. Complainants paid a total of $99,739.00 for the purchase and shipment of three boats: 2008 Chaparral 190 SSI; 2011 Monterey 2014; and 2010 Formula 34PC. (See Appendix CX 112, 7, 9, 11)
15. In May 2013 Solovyev purchased the two smaller boats, Chaparral and Monterey for the Complainants and was ordered to ship the boats to Dubai via Marine Transport Logistic, Inc. (See Appendix CX 115, 116, 4)
16. Those boats were shipped by MTL and arrived in Dubai. (See Appendix CX 116, 4)

17. On or about August 7, 2013 Solovyev purchased the larger boat, Formula, for Complainants and Complainants ordered the boat to be shipped to Dubai via Marine Transport Logistic, Inc. (See Appendix CX 118, 19)
18. Complainants paid for the purchase and shipping of the boat. (See Appendix CX 112, 7, 9, 11)
19. Marine Transport Logistic, Inc. did not ship the larger boat to Dubai between August 2013 and December 2013 (six months). (Safonov's testimony)
20. In December 2013, Soloveyv on behalf of MTL contacted Safonov requesting a second payment for a trailer on which the larger boat was to be shipped roll on/roll off to Dubai. (See Appendix CX 10)
21. Safonov paid for a trailer for the Formula. (See Appendix CX 19)
22. Solovyev stopped communicating after receiving the second payment for the trailer until summer of 2014 (12 months passed since the purchase of the Formula. (See Appendix CX 19)
23. In August 2014, Safonov sent Solovyev a Demand Letter, requesting that Respondents immediately return his property. (See Appendix CX 117)
24. Respondents did not give Complainants notice of the storage fees until August 13, 2014, over a year after the Formula was purchased, and shipping to Dubai was paid by Complainants. (See Appendix CX 119, 19)
25. In response to the Demand Letter, Solovyev issued an invoice for the storage of the Formula in the amount of $39,409.39, charging for storage at the rate of $9.60 per linear meter, equaling to $105.31 per day. (See Appendix CX 19)
26. The storage fees in the invoice were contrary to Marine Transport Logistic, Inc.'s posted tariffs of $20.00 per day. (See Appendix CX 121)
27. After receiving the invoice for storage, Safonov gave Solovyev notification that he refused to pay the exorbitant and conjured up fees and demands his property be returned. (See Appendix CX 253)
28. While the two smaller boats were in Dubai, Complainants purchased parts and refurbished the boats to a marketable condition. (Proffered Testimony of Alexander Safonov). (See Appendix CX 242)
29. On November 18, 2015, Solovyev through his company World Express & Connection, Inc. filed a lawsuit styled *World Express & Connection, Inc. v. Crocus Investents, LLC, Crocus FZE, Alexander Safonov*, and Middle East Asia Alfa FZE, in the United States District Court, District of New Jersey under case number 2:15-cv-08126-KM-MAH claiming that Complainants owe the company $115,259.51 in storage fees as a result of the transactions at issue. (See Appendix CX 254)
30. Marine Transport Logistic, Inc. produced copies of invoices during the discovery phase of this lawsuit that showed it paid World Express and Connection, Inc. for the storage of Complainants' boats. (See Appendix CX 261)

III. Argument

Issues

The issues for the court to decide in this case are as follows:

1) Whether Aleksandr Solovyev was acting as an unlicensed freight forwarder who had a fiduciary duty to Complainants and whether he violated 46 U.S.C. § 41102(c) by unlawfully withholding Complainants' property?

2) Whether Marine Transport Logistic, Inc. violated 46 U.S.C. § 41102(c) by acquiesced and assisting Solovyev in withholding Complainants' property?

Jurisdiction

The Federal Maritime Commission has sole jurisdiction over cases involving violations of the Shipping Act of 1984. *Yakov Kobel, Et. Al. v. Hapag-Lloyd A.G. Et. Al.,* 33 S.R.R. 594 (ALJ 2014).

Here, Complainants filed a Formal Complaint claiming that Respondents violated the Shipping Act of 1984 and that their losses resulted directly from the Respondents' violations of the Act.

Solovyev was acting as a freight forwarder

The Shipping Act of 1984 requires any person acting as an ocean transportation intermediary to hold a license issued by the Federal Maritime Commission. 46 U.S.C. § 40901(a). An ocean transportation intermediary is defined as a person that is either a *freight forwarder* or a non-vassal-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).

Solovyev provided services in arranging the shipment of certain good internationally to his customers, such as the Complainants. Complainants never actually dealt directly with Marine Transport Logisitc, Inc., to coordinate the shipment of the boats that they acquired from the Untied States. Solovyev was the one that communicated between the Complainants and MTL. Solovyev collected payment for Marine Transport Logistic, Inc.'s services via an entity called Royal Finance Group, Inc. and forwarded

payment to Marine Transport Logistic, Inc. He also was the one that set up all the shipment arrangements with Safonov and his employees. In essence, Soloveyv was the middleman between Complainants and Marine Transport Logistic, Inc. Therefore, Solovyev was acting as an ocean freight forwarder in the transactions out of which this lawsuit arises.

Solovyev breached his fiduciary duty to Complainants

The freight forwarder acts as an agent on behalf of the shipper. The Commission has long held that a freight forwarder owes the utmost duty of care to the shippers or principals and a violation of this fiduciary duty can be a violation of 46 U.S.C. § 41102(c). *Nordana Line AS v. Jamar Shipping, Inc.,* 27 S.R.R. 233, 236 (ALJ 1995). Freight forwarders are specifically held to a high standard of care because they are in the unique position of trust and are able to inflict harm on their clients and the shipping public. *Tractors and Farm Equipment Ltd. v. Cosmos Shipping Co., Inc.*, 26 S.R.R. 788, 796 (ALJ 1992).

Complainants entrusted Solovyev with their money and property during the transactions at issue. Complainants relied on Solovyev to fully arrange the delivery of the Formula boat to Dubai from New Jersey within a reasonable time and manner. Solovyev breached that duty when he delayed the shipment of the boat for six months. After receiving a payment for a trailer to transport the Formula in December 2013, Soloveyv stopped communicating with Complainants until a year had passed since he first received payment for the shipment of the Formula boat (August 2014).

Complainants also relied on Solovyev to inform them when the two smaller boats arrived in New Jersey from Dubai and received by Marine Transport Logistic, Inc. Solovyev owed a duty to Complainants to issue accurate invoices for the shipping of the two smaller boats, in accordance with the Bill of Lading and any off-sets to which the Complainants were entitled.

Solovyev breached his fiduciary duty and therefore violated § 41102(c) of the Shipping Act of 1984 by 1) failing to ship the Formula boat within the first six months of Complainants' order, 2) by charging additional money for the trailer which Complainants had already purchased, 3) by becoming unresponsive for the next six months after Complainants paid for the trailer again, 4) by issuing an invoice on behalf of Marine Transport Logistic, Inc. which did not comport to Marine Transport Logistic, Inc.'s posted tariffs and was not justified due to Solovyev's own delays in shipping the boat, and 5) by possibly illegally liquidating the Formula boat without notice to Complainants.

Marine Transport Logistic, Inc. assisted Solovyev

A third party who deals with a principal through an agent, knowing or having reason to know that the agent acts adversely to the principal, does not deal in good faith for the purposes of determining a principal's legal relations with the third party. Restatement (Third)

of Agency, § 5.04. In other words when a third party knows or should know that the agent is not acting in the best interest of the principal or doing something that is contrary to the interest of the principal, the third party is put on notice that the agent does not have authority to act in such a way, and therefor the third party should not acquiesce to the agent's requests. *Yakov Kobel, Et. Al. v. Hapag-Lloyd A.G. Et. Al.,* 33 S.R.R. 594 (ALJ 2014).

A non-vassal operating common carrier, like Marine Transport Logistic, Inc. assumes responsibility for transportation of a shipment. 46 U.S.C. § 40102(6)(A). And an NOVCC's failure to fulfill its obligation constitutes a violation of 46 U.S.C. § 41102(c). *Houben v. World Moving Serv., Inc.,* 31 S.R.R. 1400, 1405 (FMC 2010); *William J Brewer v. Saeid B. Maralan and World Line Shipping, Inc*., 29 S.R.R. 6, 9 (FMC 2001); *William R. Adair v. Penn-Nordic Lines,* Inc., 26 S.R.R. 11, 22 (ALJ 1991).

Marine Transport Logistic, Inc. has a long-standing relationship with Solovyev. MTL's owner is Solovyev's wife. Solovyev uses MTL's address for his other businesses, including the company World Express and Connection where MTL purports the Complainants property is currently kept. Solovyev even used MTL's an email address.

Based on all the evidence, a reasonable inference can be drawn that MTL was very well aware of Soloveyv's dealings with the Complainants and knew or should have known about Solovyev's actions in relation to the Complainants' property.

Further, Marine Transport Logistic, Inc. failed to establish, observe, and enforce just and reasonable regulations and practices by 1) failing to notify Complainants when the two smaller boats arrived in New Jersey, 2) releasing the Complainants' property to a third party, World Express and Connection, which was owned by Solovyev and 3) by issuing invoices for storage at rates contrary its posted tariffs.

Complainants' damages

The injured party is entitled to reparations for actual injury caused by a violation of the Shipping Act of 1984. 46 U.S.C. § 41305(b). Respondents' violation must have been the proximate cause of the loss or injury. *Adair v. Penn-Nordic Lines*, Inc., *v. Penn-Nordic Lines, Inc.,* 26 S.R.R. 11, 25 (ALJ 1991). Reparations may be determined based on a reasonable approximation and reasonable inferences drawn from the totality of the evidence. *Tractors & Farm*, 26 S.R.R. at 798-99.

The market value of the commodity at issue at the port of destination may be reviewed to determine amount of damages in cases dealing with cargo claims. *Santiago v. Sea-Land Serv., Inc.*, 366 F. Supp. 1309, 1314 (D.P.R. 1973) (citing *St. Johns NF. Shipping Corp. v. S.A. Companhia Geral Commercial*, 263 U.S. 119 (1923)). But, the goal of reparations is to make the injured party whole and the market value method may be replaced by a different manner of calculating actual damages, if the particular circumstances of the case require. *Ill. Cent. R.R. Co. v. Crail*, 281 U.S. 57, 64-65 (1930). In other words, "each case must be governed by its own facts." *Marine Office of Am. Corp. v. Lilac Marine Corp*., 296 F. Supp. 2d 91, 104 (D.P.R. 2003).

Here, the Complainants were originally in the business of buying used boats,

refurbishing them, and selling them at a profit. But at the time of the transactions at issue, the owner of the Complainants, Safonov had moved to Florida from Dubai to transfer the business operations to the United States. Complainants were planning on renting out the three boats at issue in this lawsuit. Based on market research that Safonov performed, the two smaller boats currently rent out for $350.00 per day each, and the larger boat currently rents for $600.00- $1,000.00 per day, depending on the season.

Therefore, according to a calculation of damages that determines the Complainants' loss in use and loss in rents, the total amount of damages is approximately $416,739.00.

The current market value of the 2008 Chaparrel is approximately $30,000.00 as of today, according to the National Automobile Dealers Association website www.NADAguides.com. The current market value of the 2011 Monterey is approximately $36,000.00 as of today, according to the National Automobile Dealers Association website www.NADAguides.com. The boats came with trailers, which Complainants paid $900.00 for each according to the invoices from Solovyev. It is important to note that it has been one and a half years since Respondents' illegal withholding of the boats, and it is difficult to ascertain what the market value of the two smaller boats were in the Summer of 2014, therefore some credit must be given to Complainants for the loss in value over the last year and a half. Complainants approximate that in 2014, the boats were valued $10,000.00 more than their current market values. Therefore, the total approximate market value of the two smaller boats, together with the trailers is between $67,800.00 and $87,800.00.

Complainants paid $59,780.00 for the 2010 Formula boat, and $4,950.00 for its trailer.

Therefore, according to a calculation of damages based on market value, the total amount of damages is approximately $132,530.

Additionally, as a direct and proximate cause of the Respondents' failure to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property by unlawfully withholding Complainants' property, Complainants have been sued in the amount of $115,259.51.

Therefore whatever reparations are awarded in connection to the lost value of the three boats, another $115,259.51 should be added to the amount in light of the resulting lawsuit against the Complainants.

IV. Conclusion

In conclusion, Respondents violated the Shipping Act of 1984 by failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property by illegally withholding Complainants' property by issuing bogus storage fee invoices that were not justified by the circumstances nor supported by Marine Transport Logistic, Inc.'s own posted tariff.