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June 17, 2016					
FEDERAL MARITIME COMMISSION					

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.**

INITIAL DECISION

I. INTRODUCTION AND SUMMARY OF DECISION.

On May 27, 2015, complainants Crocus Investments, LLC, and Crocus FZE commenced this proceeding by filing a Complaint with the Secretary. Crocus Investments and Crocus FZE are owned and operated by Alexander Safonov. The Complaint alleges that respondents Marine Transport Logistics, Inc. (MTL) and Aleksandr Solovyev a/k/a Royal Finance Group, Inc., violated section 41102(c) of the Shipping Act of 1984 (Shipping Act or Act) when handling three boats. MTL is licensed by the Commission as a non-vessel-operating common carrier (NVOCC), license number 018709. Aleksandr Solovyev (Solovyev) operates Royal Finance Group, Inc. (RFG) and two other companies that are relevant to this proceeding. Solovyev at times works as an agent for MTL. MTL is owned and operated by Solovyev's wife Alla Solovyeva from whom he was and is separated. The Complaint alleges that Solovyev violated section 40901 of the Act by operating as an ocean transportation intermediary without holding a valid license to do so.

As set forth more fully below, in separate shipments, MTL operated as an NVOCC when it transported by water two of the boats at issue from the United States to Dubai, United Arab Emirates, and delivered them to the consignee without problem. Complainants do not claim that Respondents violated the Act on these shipments. The boats were then returned to the United States and delivered to MTL as consignee. Complainants contend that MTL operated as an NVOCC on this shipment, but the evidence does not establish that MTL operated as an NVOCC. The evidence establishes that the third boat never left the United States; therefore, the third boat never entered into

international commerce, the Shipping Act does not apply, and the Commission does not have jurisdiction to resolve disputes regarding its handling. Complainants have not proved by a preponderance of the evidence that Respondents violated the Act. Therefore, the Complaint is dismissed.

Part II of this decision sets forth the background in narrative form, Part III the procedural background, Part IV the controlling authority, and Part V the findings of fact on which the narrative and this decision is based. Parts VI and VII address the claims that Respondents violated the Act. Part VIII finds that as a prevailing party, Respondents may be awarded reasonable attorney fees.

II. BACKGROUND.

Entrepreneur – one who organizes, manages, and assumes the risks of a business or enterprise.¹

This proceeding is essentially about the business dealings of two entrepreneurs. Alexander Safonov (Safonov), the owner of Complainants, has a degree in jurisprudence from the Moscow State Law Academy. After graduating, Safonov registered a company in Moscow and spent the next three to six years buying and selling real estate until he bought an apartment for himself. Safonov then registered another company in Moscow to engage in engineering and communication. He ran this business until 2011 when he closed it and moved to Dubai. Safonov saw a business opportunity in purchasing used boats in the United States and shipping them to Dubai for repair and resale. In Dubai, Safonov opened and began operating complainant Crocus FZE to pursue investment opportunities. He then opened and operated another company relevant to this proceeding called Middle East Asia Alfa, FZC (Middle East Asia). “[T]here was agreement between Crocus FZE and company, Middle East Asia Alfa, that I [Safonov], as Crocus FZE, invest my money into Middle East Asia Alfa.” Middle East Asia was involved in the events that resulted in this proceeding, but is not a party. In 2013, Safonov opened complainant Crocus Investments, LLC (Crocus Investments), a Florida limited liability company. Safonov was the 100% owner of Crocus Investments and Crocus FZE and co-owner of Middle East Asia with decision-making rights for the company. (ALJFF 1-8.)

Respondent Solovyev, who holds a bachelors degree in music from a college in Moscow, operates or acts as agent for several businesses useful to someone who wants to purchase used boats in the United States and ship them overseas. In 2007, Solovyev relocated to New Jersey where he incorporated World Express & Connection, Inc. (World Express), a warehouse. World Express was involved in the events that resulted in this proceeding as it operates a warehouse in which the boats that are the subject of this proceeding were stored, but is not named as a respondent. Solovyev is

¹ Merriam-Webster, <http://www.merriam-webster.com/dictionary/entrepreneur> last visited May 27, 2016.

also the sole owner, officer, and director of respondent Royal Finance Group, Inc. (RFG).² RFG advances payments on international transactions on behalf of its customers for the purchase of used vehicles and boats at auction and for payment of transportation charges. Solovyev is also the sole owner, officer, and director of Car Express & Import, Inc. (Car Express). *Inter alia*, at the request of customers, Car Express purchases automobiles and boats from auctions and arranges on behalf of that customer for the transportation of the automobile or boat from the United States to a foreign country. (ALJFF 21.) Solovyev is married to Alla Solovyeva, although they are now separated. (ALJFF 17.) Alla Solovyeva owns respondent MTL. (ALJFF 16.) MTL and World Express are both located at 63 New Hook Road, Bayonne, NJ 07002. Solovyev/Car Express also acts as an agent for MTL on shipments transported by MTL. (ALJFF 28.)

Safonov, located in Dubai, contacted Solovyev, located in the United States, to engage his services and companies to assist in the purchase of used boats in on-line auctions operated by Copart, a company that conducts Internet auctions to sell used motor vehicles and boats. Safonov and Solovyev would view boats online and Safonov would decide which boats to purchase. Solovyev, operating as his companies and as agent for respondent MTL, would then carry out the tasks necessary to purchase the boats and transport them to Dubai. Car Express, identified as a “member” of Copart, would purchase the boats from Copart on behalf of Safonov’s companies. RFG provided financial services. One of Safonov’s companies would wire the money for purchase or transportation of a boat to RFG which would then transfer the money to the appropriate recipient – Copart for the purchase or respondent MTL for transportation, and RFG would retain a fee. World Express stored the boats before they were loaded on board vessels to be transported to Dubai. MTL operated as an NVOCC on the shipments of the boats from the United States to Dubai. Solovyev through his company Car Express would act as an agent for MTL in arranging the shipment. Approximately ten boats were purchased using this process. With one exception, the boats were sent to Middle East Asia in Dubai for repair and resale there. (ALJFF 29-37.)

Safonov and Solovyev each state that they are the sole decision-makers for their corporations, and of course, a corporation can only act through the natural persons who run it or are employed by it. The record suggests that both Safonov and Solovyev are somewhat casual about following corporate formalities. For instance, Safonov formed Middle East Asia to purchase used boats in the United States to be shipped overseas for repair and sale in Dubai, but Crocus FZE or Crocus Investments, not Middle East Asia, paid for the boats and their transportation. Solovyev used his corporation Car Express to purchase the boats from Copart for Safonov, used his corporation RFG to send invoices for the purchase and other costs, used his corporation World Express to store the boats, and arranged for shipping to Dubai in his role as agent for MTL. For that reason, in this narrative, I often refer to Safonov and Solovyev instead of their corporate identities.

On April 13, 2013, Safonov purchased the first boat that is a subject of this proceeding – a 2011 Monterey 20', VIN RGFMC1931011. On April 13, 2013, Crocus FZE wired \$30,000 to RFG

² The caption identifies “Aleksandr Solovyev a/k/a Royal Finance Group Inc.” as a respondent.

as payment for the Monterey and another invoice. The Monterey invoice indicates that Safonov³ paid \$9,855 for the Monterey, \$800 for delivery (apparently to World Express/MTL in New Jersey), \$2,400 for loading/shipping to Dubai, \$500 for commission, \$400 for documentation, and \$900 for a trailer for the boat, a total of \$14,855. Safonov instructed Solovyev to ship the Monterey to Dubai. On May 5, 2013, MTL through its agent Solovyev issued bill of lading number HBOL 13535 identifying “Tretiykov Andrey” as shipper, Middle East Asia Alfa, FZE, as consignee, New York as port of loading, and Jebel Ali as port of unloading, and identifying the cargo to include the Monterey. Also on May 5, 2013, vessel-operating common carrier (VOCC) Maersk Line issued Maersk non-negotiable waybill number 560010878 identifying MTL as shipper, Middle East Asia Alfa, FZE, as consignee, Newark as port of loading, and Jebel Ali, United Arab Emirates, as port of unloading, and identifying the cargo to include the Monterey. The Monterey was transported by water to Dubai and delivered to Middle East Asia. MTL operated as an NVOCC on this shipment. Complainants do not contend that Respondents violated the Shipping Act during the transportation of the Monterey from the United States to Dubai. (ALJFF 44-50.)

On May 7, 2013, Safonov purchased the second boat that is a subject of this proceeding – a 2008 Chaparral, VIN FGDL 3738D808. The RFG invoice indicates that Middle East Asia was charged \$10,505 for the Chaparral, \$800 for delivery, \$2,400 for loading/shipping to Dubai, \$450 for commission, \$400 for documentation, and \$900 for a trailer, a total of \$15,455. I do not find proof of payment for the Chaparral in the record, but in closing argument, counsel for Respondents acknowledged that “there is really no dispute from respondents’ side that the Monterey and the Chaparral were ultimately paid for by one of Mr. Sofonov’s companies.” Closing Argument Transcript 49:3-6.⁴ Safonov instructed Solovyev to ship the Chaparral to Dubai. On May 22, 2013, MTL issued bill of lading number EO-20756 identifying MTL as shipper, Middle East Asia Alfa, FZE, as consignee, Newark as port of loading, and Jebel Ali as port of unloading, and identifying the cargo to include the Chaparral. On May 25, 2013, Maersk Line issued Maersk non-negotiable waybill number 560083476 identifying MTL as shipper, Middle East Asia Alfa, FZE, as consignee, Newark as port of loading, and Jebel Ali, United Arab Emirates, as port of unloading, and identifying the cargo to include the Chaparral. The Chaparral was transported by water to Dubai and delivered to Middle East. (ALJFF 51-56.) MTL operated as an NVOCC on this shipment. Complainants do not contend that Respondents violated the Shipping Act during the transportation of the Chaparral from the United States to Dubai.

³ The invoice identifies Andrey Tretiyakov, the Middle East employee in Dubai, as the purchaser.

⁴ During closing argument, counsel for Complainants suggested that the \$30,000 wire transfer to RFG on April 13, 2013, was for the Chaparral as well as the Monterey. Closing Argument Transcript 47:6-19. The Chaparral was not purchased and invoice 1177AT issued until May 7, 2013, so the April 13, 2013, wire transfer for invoices 1168AT and 1174 could not have been meant for payment of the Chaparral.

On August 7, 2013, Safonov instructed Solovyev to purchase a 2010 Formula boat 34PC, VIN TNRD7870C010 with the intention of sending the boat to Dubai for repair and resale. Solovyev, through Car Express, purchased the Formula for a total of \$56,280. The Formula required a trailer for ocean shipment. The record contains three different RFG invoices with the same number for this purchase. On August 7, 2013, RFG issued invoice #1189AT to Alexander Safonov, Crocus Investments in the amount of \$56,280 for purchase of the Formula and \$3,500 for delivery, a total of \$59,780. Also on August 7, 2013, RFG issued invoice #1189AT to Andrey Tretyakov, Dubai, UAE, Middle Asia Alfa in the amount of \$56,280 for purchase of the Formula, \$3,500 for delivery, \$12,000 for loading/shipping to Dubai, \$500 for commission, \$500 for documentation, and \$4,500 for a trailer, a total of \$77,280. Then on August 8, 2013, RFG issued invoice #1189AT to Crocus FZE in the amount of \$56,280.00 for purchase of the Formula, \$3,500 for delivery, \$12,000 for loading and shipping the Formula to Dubai, \$500 for commission, \$500 for documentation, and \$4,500 for a trailer, a total of \$77,280. On August 9, 2013, Crocus Investments wired \$59,780 to RFG to pay the \$56,280.00 for the Formula and the \$3,500 for delivery to the port of loading. Complainants did not pay the \$12,000 for loading and shipping the Formula to Dubai, \$500 for commission, \$500 for documentation, or \$4,500 for a trailer. (ALJFF 83-89.)

In November 2013, Solovyev told Safonov that he had found a trailer for the Formula but Safonov did not like the trailer. In December 2013, Solovyev offered what Safonov found to be a suitable trailer. The record contains three different RFG invoices with number 1204AS issued on December 3, 2013. The first is to Crocus FZE in the amount of \$12,000 for loading and shipping the Formula to Dubai, \$500 for commission, and \$500 for documentation. (CX 028.) The second invoice is to Crocus FZE in the amount of \$4,950 for boat trailer 2005 NTTRL VIN LW95151. (CX 035.) The third invoice is to Crocus FZE in the amount of \$4,950 for boat trailer 2005 NTTRL VIN LW95151, \$12,000 for loading/shipping the Formula to Dubai, \$500 for commission, and \$500 for documentation. (CX 038.) On December 4, 2013, Crocus FZE wired \$4,950 to RFG to pay for boat trailer 2005 NTTRL VIN LW95151. The record does not contain any evidence that Complainants paid the \$12,000 for loading/shipping the Formula to Dubai, \$500 for commission, or \$500 for documentation.

Safonov reached the conclusion that Tretyakov, the Middle East Asia employee in Dubai, “started to become a crook” and decided that he did not want to deal with “crooks.” On February 14, 2014, Safonov sent an email to Solovyev stating: “I am sending you the name of the company in Florida – from which you have received the money for Formula-34 – please prepare all documents for the boat reflecting this company’s information and send me all copies, ok? Do you know if copies of the documents will be enough to transfer Formula to Florida? It is good that we did [not] have time to send it to Dubai.” (CX 055.) Solovyev did not send the Formula to Florida.

The Monterey and the Chaparral remained in Dubai for about one year. Middle East Asia repaired the boats and, along with several other boats, they were offered for sale on March 1, 2014. Middle East Asia was able to sell several boats that had been purchased by Safonov using Solovyev’s services, but was not able to sell the Monterey and the Chaparral. (ALJFF 57-58.)

After the Monterey and the Chaparral did not sell, Safonov instructed two employees of Middle East Asia to arrange for the shipment of the boats back to the United States. A representative for Middle East Asia contacted Solovyev for assistance in arranging the shipment. On April 25, 2014, Solovyev sent an email from his address at mtlworld@mtlworld.com to Zahedi at Emirates Logistics, a freight forwarder in Dubai, stating “hi Zahedi, can u offer me 40hc, ocean freight only Dubai-NY, cargo boats?” Zahedi forwarded the email to Linnet at Emirates Logistics with a cc to Solovyev [sic] stating “Ms. Linnet, Plz assist with rate. Rgds/Zahedi.” On April 27, 2014, Linnet at Emirates Logistics sent Solovyev rates of US \$2492 on VOCC Hapag Lloyd and US \$3411 on VOCC MSC. (ALJFF 59-62.)

On May 30, 2014, another VOCC, APL, issued APL bill of lading number APLU 020188407 identifying Middle East Asia Alfa, FZE, as shipper, AEC Cargo Services LLC as the forwarding agent, MTL as consignee, Jebel Ali, Dubai, as port of loading, and Maher Terminal, NJ, as port of unloading, and identifying the cargo to include the Chaparral and the Monterey. Emirates Logistics, Solovyev’s contact in Dubai, is not mentioned on the APL bill of lading. MTL is not mentioned on the APL bill of lading except as consignee and MTL did not issue a bill of lading assuming responsibility for transporting the boats on their return voyage. Neither Hapag Lloyd nor MSC transported the Monterey and the Chaparral back to the United States and Emirates Logistics did not act as a forwarding agent on the shipment. APL issued a Notice of Arrival to MTL with an ETA of July 12, 2014. On July 23, 2014, Fauna & Flora Customhouse issued an invoice to MTL in the amount of \$615.70 for duty, custom entry service fee, bond preparation, and importer security filing (ISF) bond for the Monterey and Chaparral, and on August 26, 2014, MTL paid \$615.70 to Fauna & Flora. Solovyev notified Safonov that the Chaparral and the Monterey arrived in the United States and the boats were stored in the warehouse operated by World Express. (ALJFF 63-70.)

The Monterey and the Chaparral arrived in New Jersey from Dubai on or about July 12, 2014. On July 17, 2014, Safonov sent an email to Solovyev stating: “Aleksandr – please calculate the shipping from you to Ft. Lauderdale – Formula-34, + 2 boats that arrived from Dubai” followed by emails on July 24, 2014, and August 3, 2014, asking Solovyev to send the boats to Florida. On August 13, 2014, Solovyev sent Safonov an email requesting payment of invoices for storage of the three boats: an invoice to Crocus Investment for \$38,859.39 for 369 days of storage of the Formula, and an invoice to Crocus Investment for the port fee for the container that transported the Monterey and the Chaparral from Dubai to the United States, \$1,200 for custom clearance, \$1,250 for delivery and unloading/documentation/tracking/return empty back, \$700 for delivery to the storage lot/put together trailer and boat, \$800 for thirty-two days storage of the Chaparral, and \$800 for thirty-two days storage of the Monterey. On August 19, 2014, Safonov sent an email demanding the boats and threatening legal action. (ALJFF 93-99.)

Safonov and Solovyev had at least one other business transaction during this period. Solovyev purchased two automobiles – a Mercedes and a Porsche – in the United States and shipped them to Middle East Asia in Dubai for repair and sale in Dubai. (ALJFF 101-102.)

Safonov commenced this proceeding before the Commission on May 27, 2015, and on November 15, 2015, World Express commenced an action against Crocus Investments, Crocus FZE, Alexander Safonov, and Middle East Asia in the United States District Court for the District of New Jersey seeking unpaid storage fees for the Monterey, the Chaparral, and the Formula. (ALJFF 100.)

III. PROCEDURAL HISTORY.

Crocus International and Crocus FZE filed their Complaint on May 27, 2015, and Respondents filed their Answer on July 10, 2015. The parties engaged in discovery. The parties completed their briefing on the merits on February 25, 2016. On March 3, 2016, Complainants were ordered to file translations of document in languages other than English that they had included in their appendix. *Crocus Investments, LLC and Crocus, FZE v. Marine Transport Logistics, Inc. and Aleksandr Solovyev a/k/a Royal Finance Group Inc. (Crocus v. MTL)*, FMC No. 15-04 (ALJ Mar. 3, 2016) (Order to File English Translations of Documents in Languages Other than English). Complainants filed the translations on March 23, 2016. On April 12, 2016, the parties were each ordered to file all shipping documents relating to the transportation of the Monterey and the Chaparral from Dubai back to the United States.

On April 26, 2016, two months after briefing on the merits had concluded, Complainants sought leave to amend their Complaint. The proposed amended complaint sought to clarify factual allegations in the original Complaint and did not allege any new violations of the Act. The motion to amend was denied. *Crocus v. MTL*, FMC No. 15-04 (ALJ Apr. 27, 2016) (Order Denying Motion to Amend Complaint).

On May 13, 2016, the parties appeared by telephone for closing argument. A transcript was made of the testimony and is part of the record. The parties' contentions in the closing argument have been considered along with their written briefs.

IV. CONTROLLING AUTHORITY.

A. Statutory Background.

Complainants filed their Complaint pursuant to section 41301 of the Act.

A person may file with the . . . Commission a sworn complaint alleging a violation of this part, except section 41307(b)(1). If the complaint is filed within 3 years after the claim accrues, the complainant may seek reparations for an injury to the complainant caused by the violation.

46 U.S.C. § 41301(a).

The Complaint alleges that MTL is an NVOCC licensed by the Commission. (Complaint ¶ 7.) "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).

The term “common carrier” – (A) means a person that – (i) holds itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation; (ii) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and (iii) uses, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.

46 U.S.C. § 40102(6).

The Act prohibits NVOCCs from taking certain actions. Paragraph 28 of the Complaint alleges that Respondents violated section 41102(c) of the Act: “A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.” 46 U.S.C. § 41102(c).

The Complaint also alleges that “[r]espondent Solovyev, doing business as Royal Finance Group violated 46 U.S.C. § 40901(a) when it presented invoices and collected payment for MTL’s transportation services acting in essence as an ocean transportation intermediary without holding a valid license to do so.” (Complaint ¶ 29.) Section 40901 provides:

A person in the United States may not act as an ocean transportation intermediary unless the person holds an ocean transportation intermediary’s license issued by the Federal Maritime Commission. The Commission shall issue a license to a person that the Commission determines to be qualified by experience and character to act as an ocean transportation intermediary.

46 U.S.C. § 40901(a).

The Complaint alleges that the Complainants were injured by Respondents’ alleged violations and seeks a reparation award for their injuries. (Complaint ¶¶ 25-27.) The Act defines actual injury.

(a) *Definition.* – In this section, the term “actual injury” includes the loss of interest at commercial rates compounded from the date of injury.

(b) *Basic amount.* – If the complaint was filed within the period specified in section 41301(a) of this title, the . . . Commission shall direct the payment of reparations to the complainant for actual injury caused by a violation of this part.

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(e) *Attorney Fees*. – In any action brought under section 41301, the prevailing party may be awarded reasonable attorney fees.

46 U.S.C. § 41305.

B. Evidence and Burden of Persuasion.

Under the Administrative Procedure Act (APA), an administrative law judge may not issue an order “except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.” 5 U.S.C. § 556(d). *See also Steadman v. SEC*, 450 U.S. 91, 102 (1981). All documents provided by the parties in support of their arguments are admitted as evidence. This initial decision is based on the Complaint and Answer, the parties’ briefs, the appendices filed with the briefs, the supplemental evidence filed by the parties, and the parties’ oral arguments.

This initial decision addresses only material issues of fact and law. It is not necessary to resolve disagreements on matters not material to the outcome of this proceeding. Administrative adjudicators are “not required to make subordinate findings on every collateral contention advanced, but only upon those issues of fact, law, or discretion which are ‘material.’” *Minneapolis & St. Louis R.R. Co. v. United States*, 361 U.S. 173, 193-194 (1959); *In re Amrep Corp.*, 102 F.T.C. 1362, 1670 (1983).

A complainant alleging a violation of the Shipping Act “has the initial burden of proof to establish the[] violation[]. The applicable standard of proof is one of substantial evidence, an amount of information that would persuade a reasonable person that the necessary premise is more likely to be true than to be not true.” *AHL Shipping Company v. Kinder Morgan Liquids Terminals, LLC*, FMC No. 04-05, 2005 WL 1596715, at *3 (ALJ June 13, 2005). *See* 5 U.S.C. § 556(d) (“Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.”); 46 C.F.R. § 502.155. “[A]s of 1946 the ordinary meaning of burden of proof [in section 556(d)] was burden of persuasion, and we understand the APA’s unadorned reference to ‘burden of proof’ to refer to the burden of persuasion.” *Director, Office of Workers’ Compensation Programs v. Greenwich Collieries*, 512 U.S. 267, 276 (1994). The party with the burden of persuasion must prove its case by a preponderance of the evidence. *Steadman v. SEC*, 450 U.S. at 102. “[W]hen the evidence is evenly balanced, the [party with the burden of persuasion] must lose.” *Greenwich Collieries*, 512 U.S. at 281. It is appropriate to draw inferences from certain facts when direct evidence is not available, and circumstantial evidence alone may even be sufficient; however, such findings may not be drawn from mere speculation. *Waterman Steamship Corp. v. General Foundries, Inc.*, 26 S.R.R. 1173, 1180 (ALJ 1993), adopted in relevant part, 26 S.R.R. 1424 (FMC 1994).

V. FINDINGS OF FACT.

The parties submitted appendices containing documents relevant to the claims in this proceeding and additional documents as ordered by the undersigned. All documents are admitted as evidence. Closing Argument Transcript 5:7-6-5.

1. Complainant Crocus Investments, LLC (Crocus Investments) is a Florida limited liability company. (CX 001-002.)⁵
2. Alexander Safonov (Safonov) is the 100% owner of complainant Crocus Investments. (RX 58 (Dep. of Safonov, 8:8-10); Resp. Comp. Prop. FF 1.)
3. Complainant Crocus FZE is a Free Zone Establishment licensed by the United Arab Emirates. (CX 003.)
4. Safonov is the 100% owner of complainant Crocus FZE. (RX 65 (Dep. of Safonov 37:11-12); Resp. Comp. Prop. FF 1.)
5. Safonov is the co-owner of Middle East Asia Alfa, FZC (Middle East Asia), not a party to this proceeding, and had decision-making rights for the company. (RX 60 (Dep. of Safonov 16:10-18); RX 61 (Dep. of Safonov 19:18-25); Resp. Comp. Prop. FF 2.)
6. Safonov formed Middle East Asia with Oleg Bortsov to purchase used boats in the United States and ship the boats overseas for repair and sale in Dubai. (RX 60 (Dep. of Safonov 17:7-8); RX 61 (Dep. of Safonov 18, 20-21); RX 62 (Dep. of Safonov 23-25).)
7. Safonov was co-owner with decision-making rights for Middle East Asia. (RX 60 (Dep. of Safonov 16:15-18).)
8. “[T]here was agreement between Crocus FZE and company, Middle East Asia Alfa, that I [Safonov], as Crocus FZE, invest my money into Middle East Asia Alfa.” (RX 67 (Dep. of Safonov 42:14-19).)
9. Middle East Asia employed Andrey Tretyakov (Tretyakov) as an associate in Dubai. (RX 61 (Dep. of Safonov 18:21-23); Resp. Comp. Prop. FF 2.)
10. Tretyakov also owned an interest in Middle East Asia. Closing Argument Transcript at 9-10.

⁵ “CX” followed by a number refers to a page in Complainants’ Appendix, “RX” followed by a number 1-89 refers to a page in Respondents’ Appendix, “RX” followed by a number 90-95 refers to Respondents’ Notice of Filing dated May 4, 2016, “Resp. Comp. Prop. FF” refers to Respondents’ Proposed Findings of Fact and Response to Complainants’ Proposed Findings of Fact filed February 11, 2016.

11. Middle East Asia sold seven boats in Dubai that had been purchased in the United States. (RX 67 (Dep. of Safonov 42:23-25).)
12. Until the summer of 2014, Safonov lived in Dubai, United Arab Emirates. (RX 58 (Dep. of Safonov 6:11-12).)
13. In business situations, Safonov sometimes acts as Crocus Investments, sometimes as Crocus FZE, and sometimes as Middle East Asia. (Closing Argument Transcript at 8.)
14. Respondent Marine Transport Logistic, Inc. (MTL) is licensed by the Commission as a non-vessel-operating common carrier, license number 018709. Official notice of Commission records, <http://www2.fmc.gov/oti/NVOCC.aspx>, last visited June 13, 2016.
15. MTL is located at 63 New Hook Road, Bayonne, NJ 07002. Official notice of Commission records, <http://www2.fmc.gov/oti/NVOCC.aspx>, last visited June 13, 2016.
16. Alla Solovyeva is the owner of MTL. (Resp. Comp. Prop. FF 8.)
17. At the time the relevant events occurred, respondent Aleksandr Solovyev (Solovyev) and Alla Solovyeva were husband and wife, but separated. (Resp. Comp. Prop. FF 8; RX 30 (Dep. of Aleksandr Solovyev 11:20-12-5).)
18. Solovyev uses the email address mtlworld@mtlworld.com. (Resp. Comp. Prop. FF 9.)
19. Alla Solovyeva uses the email address alla@mtlworld.com. (Resp. Comp. Prop. FF 10.)
20. Solovyev is the sole owner, officer, and director of Car Express & Import, Inc. (Car Express). (Complaint ¶ 6; Answer ¶¶ 5, 6.)
21. At the request of customers, Car Express purchases automobiles and boats from auctions and arranges on behalf of that customer for the transportation of the automobile or boat from the United States to a foreign country. (Complaint ¶¶ 5, 9; Answer ¶¶ 5, 9.)
22. Solovyev is the sole owner, officer, and director of the owner of respondent Royal Finance Group, Inc. (RFG). (Complaint ¶ 6; Answer ¶ 6.)
23. Solovyev is the owner, officer, and director of World Express & Connection, Inc. (World Express). (Resp. Comp. Prop. FF 6.)
24. World Express is a warehouse company providing loading and storage services for vehicles, boats, and other cargo, including for ocean transportation from the United States to foreign ports. (Resp. Comp. Prop. FF 6; RX 32 (Dep. of Aleksandr Solovyev 20:13-22).)

25. World Express is located at 63 New Hook Road, Bayonne, NJ 07002. (Resp. Comp. FF 7.)
26. MTL's tariff provides that MTL's container freight station/container yard (CFS/CY) "may be a designated warehouse. Shipper, at its own expense, will deliver its vehicle to [MTL's] designated warehouse for loading into the container for movement to the U.S. load port." (CX 178.)
27. MTL uses World Express as its CFS/CY. (RX 14 (Dep. of Alla Solovyeva at 33-36).)
28. At times, Solovyev or one of his companies acts as agent for MTL. (CX 024 (Email dated October 31, 2013, from Solovyev to Complainants).)
29. Safonov engaged Solovyev and his three companies to perform services for Safonov and his three companies to purchase used boats in the United States and ship the boats to Dubai for repair and resale. (RX 63 (Dep. of Safonov 28:21-23).)
30. Copart is a company that conducts Internet auctions of vehicles and boats in part by posting photographs and descriptions of the vehicles and boats online. (RX 64 (Dep. of Safonov 32:13-22).)
31. Safonov and Solovyev would view boats together online and Safonov would decide which boats to purchase. (RX 63 (Dep. of Safonov 29:1-12); RX 68 (Dep. of Safonov 46:3-23).)
32. All of the boats were purchased from the auction company Copart. (RX 64 (Dep. of Safonov 30:6-13).)
33. Car Express was a member of Copart and was able to purchase boats from Copart on behalf of buyers. (CX 115, 118.)
34. When Safonov wanted Aleksandr Solovyev to purchase a boat, RFG would often pay for the boat and incur other fees related to the purchase.
35. [RFG] advanced payments on behalf of the foreign Complainants to Co-Part (a U.S. auction site), and to other companies (e.g. MTL, Car Express, inland trucking companies). This was done as a convenience to Complainants so that Complainants would only need to make a single "lump sum" wire-transfer payment to RFG and, accordingly, could avoid paying the fees associated with sending multiple wire transfers. In this way, Complainants would also avoid incurring penalties for late payment to the auction site, which could occur if there are delays with the foreign wire transfers. (See Dep. Tr. of [Aleksandr] Solovyev, at 45-17 - 47:25). RFG, in turn, charged

a commission to Complainants for its services. (*See* Dep. Tr. of [Aleksandr] Solovyev, at 46:8-14).

(Resp. Comp. Prop. FF 4; Closing Argument Transcript 36:9-39:11.)

36. Q Did Royal Finance Group receive payment on behalf of MTL?
A Yes.
Q Why did it do that?
A Because it was easy to receive one lump sum from Dubai and Andre was asking to pay once to the company for the all services out of USA and Royal Finances – Royal Finance Group was receiving money for all services, five, six services and paying on behalf of the customer for all the services up to shipping to the pay Dubai.
Q So Royal Finance Group would receive money on behalf of MTL and then pay MTL its portion for its services?
A Yes.

(RX 41 (Dep. of Aleksandr Solovyev 54:19-55:10); Closing Argument Transcript 37-39).)

37. Solovyev through RFG forwarded payments he had collected from Complainants for MTL's shipping services to MTL. (Resp. Comp. Prop. FF 5.)
38. Safonov or a Middle East Asia associate "Sergey" had final decision-making authority about which boats to buy. (RX 63 (Dep. of Safonov 29:1-12).)
39. Safonov purchased about ten boats using Solovyev's services. (RX 63-64 (Dep. of Safonov 29:13-30:13).)
40. Crocus FZE wired the money to pay for the boats to RFG. (RX 65 (Dep. of Safonov 34:12-35:4).)
41. After purchase from Copart, the boats would be transported to the World Express warehouse. (Resp. Comp. Prop. FF 27.)
42. Solovyev/Car Express, as agent for MTL, would arrange for the shipment of the boats to Dubai. (Resp. Comp. Prop. FF 12, 13.)
43. Other than the three boats at issue in this proceeding, Complainants did not have any problems with boats purchased and shipped to Dubai using Solovyev and his companies. (RX 67 (Dep. of Safonov 44:6-9).)

44. On April 18, 2013, RFG sent invoice 1168AT to Andrey Tretyakov at Middle East Asia for the purchase of a boat identified as 2011 Monterey 20', VIN RGFMC1931011. (CX 011.)
45. The RFG invoice indicates that Andrey Tretyakov was charged \$9,855 for the boat, \$800 for delivery, \$2,400 for loading/shipping to Dubai, \$500 for commission, \$400 for documentation, and \$900 for a trailer for the Monterey, a total of \$14,855. (CX 011.)
46. On April 13, 2013, Crocus FZE wired \$30,000 to RFG as payment for invoice 1168AT (the Monterey) and invoice 1174.⁶ (CX 112.)
47. Safonov instructed Solovyev to ship the Monterey to Dubai. (RX 68 (Dep. of Safonov 48:12-14).)
48. On May 5, 2013, MTL issued bill of lading number HBOL 13535 identifying Tretykov Andrey as shipper, Middle East Asia Alfa, FZE, as consignee, New York as port of loading, and Jebel Ali (Dubai) as port of unloading, and identifying the cargo to include the 2011 Monterey. (CX 006.)
49. On May 5, 2013, Maersk Line issued Maersk non-negotiable waybill number 560010878 identifying MTL as shipper, Middle East Asia Alfa, FZE, as consignee, Newark as port of loading, and Jebel Ali, United Arab Emirates, as port of discharge, and identifying the cargo to include the 2011 Monterey. (RX 01.)
50. The Monterey arrived in Dubai and was delivered to Middle East Asia Alfa, FZE. (RX 69 (Dep. of Safonov 50:21-51:1).)
51. On May 7, 2013, RFG sent invoice 1177AT to Middle East Asia for the purchase of a boat identified as 2008 Chaparral, VIN FGBL 3738D808. (CX 007.)
52. The RFG invoice indicates that Middle East Asia was charged \$10,505 for the Chaparral, \$800 for delivery, \$2,400 for loading/shipping to Dubai, \$450 for commission, \$400 for documentation, and \$900 for a trailer, a total of \$15,455. (CX 007.)
53. Safonov instructed Solovyev to ship the Chaparral to Dubai. (RX 68 (Dep. of Safonov 48:12-14).)
54. On May 22, 2013, MTL issued bill of lading number EO-20756 identifying MTL as shipper, Middle East Asia Alfa, FZE, as consignee, Newark as port of loading, and Jebel Ali as port of unloading, and identifying the cargo to include the Chaparral. (CX 116.)

⁶ Invoice 1174 is not in the record. I assume it was for another boat or other items Solovyev purchased for Safonov.

55. On May 25, 2013, Maersk Line issued Maersk non-negotiable waybill number 560083476 identifying MTL as shipper, Middle East Asia Alfa, FZE, as consignee, Newark as port of loading, and Jebel Ali, United Arab Emirates, as port of discharge, and identifying the cargo to include the Chaparral. (RX 02.)
56. The Chaparral arrived in Dubai and was delivered to Middle East Asia. (RX 69 (Dep. of Safonov 50:21-51:1).)
57. Middle East Asia repaired the Monterey and the Chaparral in Dubai and they boats were ready for sale on March 1, 2014. (RX 69 (Dep. of Safonov 51:2-51:14).)
58. Middle East Asia was not able to sell the Monterey and the Chaparral in Dubai. (RX 69 (Dep. of Safonov 51:18-52:9).)
59. Safonov instructed two employees of Middle East Asia to arrange the shipment of the Monterey and the Chaparral to the United States. (RX 69 (Dep. of Safonov 52:13-53:9).)
60. Tretyakov contacted Solovyev for assistance in shipping the Monterey and the Chaparral back to the United States. (RX 42 (Dep. of Solovyev 52:13-53:9).)
61. On April 25, 2014, Solovyev sent an email from his address at mtlworld@mtlworld.com to Zahedi at Emirates Logistics stating "hi Zahedi, can u offer me 40hc, ocean freight only Dubai-NY, cargo boats?" Zahedi forwarded the email to Linnet at Emirates Logistics with a cc to Solovyev [sic] stating "Ms. Linnet, Plz assist with rate. Rgds/Zahedi." (CX 058.)
62. On April 27, 2014, Linnet at Emirates Logistics sent Solovyev rates of US \$2492 on Hapag Lloyd and US \$3411 on MSC. (CX 056.)
63. On May 30, 2014, APL issued bill of lading number APLU 020188407 identifying Middle East Asia Alfa, FZE, as shipper, AEC Cargo Services LLC as forwarding agent, MTL as consignee, Jebel Ali, Dubai as port of loading, and Maher Terminal, NJ, as port of discharge and place of delivery, and identifying the cargo to include the Monterey and the Chaparral. (RX 05.)
64. APL charged a total of \$3,593.46 for the transportation. (RX 05.)
65. APL operated as a vessel-operating common carrier transporting the boats from Dubai to the United States. (RX 05.)
66. APL issued a Notice of Arrival to MTL with an ETA of July 12, 2014. (RX 90 (Resp. Notice of Filing May 4, 2016).)

67. The Notice of Arrival states: "You are requested to arrange for prompt delivery of your cargo. By doing so, you will avoid any unnecessary cargo and equipment detention costs. If incurred, these costs (DEMURRAGE/STORAGE CHARGES) will be assessed in accordance with the applicable tariff for any delays after expiration of free time. These charges must be paid before cargo can be released." (RX 90 (Notice of Filing May 4, 2016).)
68. The Monterey and the Chaparral arrived at Maher Terminal in New Jersey on July 12, 2014. (RX 93 (Resp. Notice of Filing May 4, 2016).)
69. On July 23, 2014, Fauna & Flora Customhouse issued an invoice to MTL in the amount of \$615.70 for custom and related fees for the Monterey and Chaparral. (RX 93 (Resp. Notice of Filing May 4, 2016).)
70. On August 26, 2014, MTL paid \$615.70 to Fauna & Flora Customhouse for duty, custom entry service fee, bond preparation, and ISF bond for the Chaparral and the Monterey. (RX 92 (Resp. Notice of Filing May 4, 2016).)
71. MTL received delivery of the Monterey and the Chaparral. (Resp. Comp. Prop. FF 27.)
72. The international transportation on the return trip ended when the Monterey and the Chaparral were delivered to MTL at Maher Terminal in New Jersey. (RX 05.)
73. Solovyev notified Safonov that the Monterey and the Chaparral arrived in the United States. (RX 69-70 (Dep. of Safonov 53:23-54:2).)
74. On August 7, 2013, Car Express purchased a 2010 Formula boat 34PC, VIN TNRD7870C010, for Safonov for a total of \$56,280. (CX 118.)
75. Safonov bought the Formula with the intention of sending it to Dubai for repair and resale. (RX 72 (Dep. of Safonov 62:21-64:15).)
76. On August 7, 2013, RFG sent invoice 1189AT to Alexander Safonov, Crocus Investments for the purchase of a Formula boat 34PC, VIN TNRD7870C010. (CX 009.)
77. The RFG invoice indicates that Alexander Safonov, Crocus Investments, was charged \$56,280 for the Formula and \$3,500 for delivery, a total of \$59,780. (CX 009.)
78. On August 7, 2013, RFG sent invoice 1189AT to Andrey Tretyakov, Dubai, UAE, Middle Asia Alfa for the purchase of the Formula. (CX 031.)
79. The RFG invoice indicates that Andrey Tretyakov, Dubai, UAE, Middle Asia Alfa was charged \$56,280 for the Formula, \$3,500 for delivery, \$12,000 for loading/shipping to Dubai,

- \$500 for commission, \$500 for documentation, and \$4,500 for a trailer, a total of \$77,280. (CX 031.)
80. On August 9, 2013, Crocus Investments wired \$59,780 to RFG to pay for the Formula (\$56,280.00) and the delivery to the intended port of loading (\$3,500). (CX 114.)
 81. The Formula required a trailer for ocean shipment. (RX 72 (Dep. of Safonov 64:7-12).)
 82. On August 13, 2013, Crocus FZE made a wire transfer of \$5,000.00, Fed Wire Out 028409, Reference Number W028409 0813. (CX 114.)
 83. In November 2013 Solovyev told Safonov he found a trailer for the Formula but Safonov did not like the trailer. (RX 72 (Dep. of Safonov 64:18-19).)
 84. In December 2013, Solovyev found another trailer for the Formula that Safonov found acceptable. (RX 72 (Dep. of Safonov 64:20-24).)
 85. On December 3, 2013, RFG issued invoice #1204AS to Crocus FZE in the amount of \$12,000 for loading and shipping the Formula to Dubai, \$500 for commission, and \$500 for documentation, a total of \$13,000. (CX 028.)
 86. On December 3, 2013, RFG issued invoice #1204AS to Crocus FZE in the amount of \$4,950 for a boat trailer 2005 NTTRL VIN LW95141 for the Formula. (CX 035.)
 87. On December 3, 2013, RFG issued invoice #1204AS to Crocus FZE in the amount of \$4,950 for boat trailer 2005 NTTRL VIN LW95141, \$12,000 for loading/shipping the Formula to Dubai, \$500 for commission, and \$500 for documentation, a total of \$17,950. (CX 038.)
 88. Complainants did not pay the \$12,000 for loading and shipping the Formula to Dubai, the \$500 for commission, or the \$500 for documentation. (Complainants' Response to Respondents' Proposed FF 5.)
 89. On December 4, 2013, Crocus FZE wired \$4,950 to RFG to pay for boat trailer 2005 NTTRL VIN LW95141. (CX 113.)
 90. Complainants reached the conclusion that Tretyakov, the Middle East Asia employee in Dubai, "started to become a crook." (RX 72 (Dep. of Safonov 65:3-6).)
 91. Safonov decided that he did not want to deal with "crooks," so in February 2014 Complainants instructed Solovyev to ship the Formula to Miami. (RX 72 (Dep. of Safonov 65:6-10).)

92. On February 14, 2014, Safonov sent an email to Solovyev stating: "I am sending you the name of the company in Florida – from which you have received the money for Formula-34 – please prepare all documents for the boat reflecting this company's information and send me all copies, ok? Do you know if copies of the documents will be enough to transfer Formula to Florida? It is good that we did [not] have time to send it to Dubai." (CX 055.)⁷
93. On July 17, 2014, Safonov sent an email to Solovyev stating: "Aleksandr – please from you to Ft. Lauderdale – Formula-34 PC, + 2 boats that arrived from Dubai." (CX 061.)
94. On July 24, 2014, Safonov sent an email to Solovyev stating: "I went to get a license plate for mercedes – GL450 – they asked for Title, I said I don't have it – then they asked for proof of purchase reflecting paid taxes. What is going on with the boats?" (CX 064.)
95. On August 3, 2014, Safonov sent an email to Solovyev stating: "We agreed with Andrei that he will ship those boats to the USA for me to sell – he kept another boat for sale Four winns (\$40000) – he will sell it in Dubai and will come to the US. Now he is changing the plan – we did not agree to that! That's why I am asking to send the boats to me in Miami." (CX 064.)
96. On August 13, 2014, Solovyev sent Safonov an email stating:

Alexander, your attention to unpaid invoices for your boats! [Unfortunately] because of non-payment, we are not able to hold your boats anymore in our storage facility and have to cover all expenses of their storage, not later than Monday, 18th of August of year 2014! Your boat Formula has been stored in our storage facility for more than a year? This will not work! Therefore, immediately I request to cover all your expenses! If you need help delivering the boats to Miami, our prices are as follows: Monterey and Chaparral- for \$3,500 each! Boat Formula to Miami- \$17,000.

(CX 103.)

97. On August 13, 2014, Solovyev (RFG) sent an invoice to Crocus Investment for \$38,859.39 for 369 days of storage of the Formula. (CX 106.)

⁷ On March 23, 2016, Complainants filed copies of pages 19-110 of Complainants' Appendix with English translations. The English translation does not say "not." Given the context, I conclude that either the English translation inadvertently omitted "not" or in the original transmission, Safonov omitted the negative. Because the Formula was not shipped to Dubai, the sentence has no meaning with the "not."

98. On August 13, 2014, Solovyev (RFG) sent an invoice to Crocus Investment for the port fee for the container that transported the Monterey and the Chaparral from Dubai to the United States, \$1,200 for custom clearance, \$1,250 for delivery and unloading/documentation/tracking/return empty back, \$700 for delivery to the storage lot/put together trailer and boat, \$800 for thirty-two days storage of the Chaparral, and \$800 for thirty-two days storage of the Monterey. (CX 107.)
99. On August 19, 2014, Safonov sent an email to Solovyev stating: “I am attaching copies of the documents for the boats that were shipped from [Dubai] by Middle East Asia Alfa to your company MTL. Based on the agreement between the partners Bortcov [*sic*] Oleg (manager) and Safonov Alexander – I have the last say in this company! In case of not meeting my lawful demands – I will be forced to go through the legal system of the USA.” (CX 077.)
100. On November 15, 2015, World Express commenced an action against Crocus Investments, Crocus FZE, Alexander Safonov, and Middle East Asia in the United States District Court for the District of New Jersey seeking unpaid storage fees for the Monterey, the Chaparral, and the Formula. *World Express & Connection, Inc. v. Crocus Investments, LLC, Crocus FZE, Alexander Safonov, and Middle East Asia Alfa FZE*, 2:15-cv-08126-KM-MAH (D.N.J. Nov. 18, 2015) (complaint filed). (CX 254.)
101. Solovyev shipped two automobiles – a Mercedes and a Porsche – to Middle East Asia for sale in Dubai for another customer. (RX 62 (Dep. of Safonov 22-23).)
102. On August 20, 2014, Middle East Asia sent invoice #a20 to RFG for repairs to the Mercedes and the Porsche. (CX 101-102.)
103. MTL’s tariff states: “Carrier provides 30 calendar days free storage prior for vehicles, trucks and boats received for US export shipment at its CFS/CY as listed herein. Beyond 30 days, storage charges per day apply as follows: A. STORAGE CHARGES AT BAYONNE, NJ . . . Boats: USD 20 per day.” (CX 178.)

VI. COMPLAINANTS HAVE NOT PROVED THAT ALEKSANDR SOLOVYEV OPERATED AS AN OCEAN TRANSPORTATION INTERMEDIARY WITHOUT A VALID LICENSE.

Complainants allege that “[r]espondent Solovyev, doing business as Royal Finance Group violated 46 U.S.C. § 40901(a) when it presented invoices and collected payment for MTL’s transportation services acting in essence as an ocean transportation intermediary without holding a valid license to do so.” (Complaint 29.) Complainants argue:

Solovyev provided services in arranging the shipment of certain good[s] internationally to his customers, such as the Complainants. Complainants never actually dealt directly with Marine Transport [Logistics], Inc., to coordinate the

shipment of the boats that they acquired from the United 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, Solovyev 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.

(Complainants' Proposed Findings of Fact, Brief, and Appendix at 6-7.)⁸

The record shows that upon purchase of Complainants' boats in the United States, Solovyev/Car Express, acting as agent for MTL, would arrange for the international ocean transportation of the boats to Dubai, MTL issued the bills of lading for transporting the boats to Dubai, and MSC identified MTL as the shipper on the MSC bills of lading. (ALJFF 42, 48, 49, 54, 55.) Solovyev also used the email mtlworld@mtlworld.com in arranging for the ocean shipment of Complainants' 2001 Monterey and Chaparral from Dubai back to the United States. (ALJFF 61).

Section 40901 provides:

A person in the United States may not act as an ocean transportation intermediary unless the person holds an ocean transportation intermediary's license issued by the Federal Maritime Commission. The Commission shall issue a license to a person that the Commission determines to be qualified by experience and character to act as an ocean transportation intermediary.

46 U.S.C. § 40901(a). In *Landstar*, the court, held that "the plain language of [section 40901's] licensing requirement does not extend to agents of Ocean Transportation Intermediaries." *Landstar Express America, Inc. v. Federal Maritime Commission*, 569 F.3d 493, 499 (D.C. Cir. 2009). The court stated that this was so because a person providing NVOCC services only falls within the ambit of the Commission's licensing requirement when it holds itself out to the general public to provide transportation and assumes responsibility for the transportation.

An agent providing NVOCC services on behalf of a disclosed NVOCC principal possesses neither of those two defining characteristics . . . because it holds out only in the name of the NVOCC, subject to that NVOCC's control . . . [and] . . . does not ordinarily assume responsibility for the transportation of the cargo as the principal bears the burdens of liability.

⁸ It is not clear whether Complainants contend that Solovyev operated as an OTI regarding the three boats at issue in this proceeding or on all the boats that Safonov purchased and shipped to Dubai using Solovyev's services.

Id. at 497 (emphasis in original, internal citations omitted).

Because Solovyev made it known that he was acting as an agent for the disclosed NVOCC principal MTL, Solovyev did not hold himself or RFG out to the public to provide transportation and did not assume responsibility for Complainants' boats. Operating as an NVOCC, MTL issued the bills of lading for the transportation from the United States to Dubai. ALJFF 48, 54. Complainants have not proved by a preponderance of the evidence that Aleksandr Solovyev acted as an ocean transportation intermediary (OTI), not as an agent for MTL in arranging for the international ocean transportation of Complainant's boats. I find that Solovyev did not operate as an NVOCC when the Monterey and the Chaparral were transported to Dubai and is not subject to the Commission's section 40901 licensing requirements. The claim that Solovyev violated section 40901(a) of the Act by operating as an OTI without a license issued by the Commission is dismissed.

VII. COMPLAINANTS HAVE NOT PROVED THAT RESPONDENTS VIOLATED SECTION 41102(c) OF THE SHIPPING ACT.

A. Claims Regarding the 2011 Monterey and the 2008 Chaparral.

1. Transportation of the Monterey and the Chaparral from the United States to Dubai.

MTL operated as an NVOCC for the transportation of the Monterey and the Chaparral from the United States to Dubai. MTL issued bills of lading on the separate shipments of each boat. Each boat was transported by water to Dubai and delivered to Middle East Asia, the consignee, without problem. Complainants do not claim violations of the Act occurred when the boats were transported to Dubai. Closing Argument Transcript at 52-54.

2. Transportation of the Monterey and the Chaparral from Dubai to the United States.

Middle East Asia repaired the boats and offered them for sale, but they were not purchased. Safonov decided to ship the boats back to the United States. He instructed Tretyakov to find transportation to the United States. Because the only document in the parties' appendices filed with their briefs on the merits was the APL bill of lading submitted by Respondents (RX 06), the parties were ordered to serve and file:

all documents related to the transportation of the 2008 Chaparral and the 2011 Monterey from Dubai to the United States, including, but not limited to, bills of lading, waybills, dock receipts, notices of arrival, invoices, and records of payment for the transportation created by Complainants, Respondents, Middle East Asia Alfa, FZE, AEC Cargo Services LLC, APL, or any other entity.

Crocus v. MTL, FMC No. 15-04 (ALJ Apr. 12, 2016) (Order to Supplement the Record). Complainants responded by identifying emails between Solovyev and Emirates Logistics already in the record at CX 058-059 and submitting the Certification of Safonov dated April 21, 2016, but did not file any documents from AEC Cargo Services LLC or APL. (Complainants' Response to Supplement the Record (filed April 22, 2016).) On May 4, 2016, Respondents submitted the APL Notice of Arrival sent to MTL, a Fauna & Flora Customhouse invoice to MTL in the amount of \$615.70 for the Chaparral and the Monterey, MTL check no. 479 to Fauna & Flora Customhouse in the amount of \$615.70, and Solovyev's response to Safonov's certification. (Respondents' Response to the April 12, 2016, Order filed May 4, 2016.)

In his Certification dated April 21, 2016, Safonov states that Tretyakov "found two companies that can deliver the boats for approximately \$4,000.00, but then he received a better offer for the same delivery from Aleksandr Solovyev for \$1,500.00." (Safonov Certification ¶ 4.) Safonov states that he "agreed to the proposal made by Aleksandr Solovyev with the understanding that [MTL] will arrange for the shipment of the boats from Dubai . . . and the boats will be picked up and held by MTL in the USA." (Safonov Certification ¶ 5.)

Solovyev acknowledges that Tretyakov contacted him to obtain a freight quote for the transportation of the boats from Dubai to the United States and that he "emailed Zahedi, an agent at Emirates Logistics, LLC, in Dubai, to obtain a freight quote for a 40' high cube container, moving from Dubai to New York." (Declaration by Aleksandr Solovyev in Response to Complainants' April 21, 2016 Certification (Solovyev Dec.) ¶ 2-3; ALJFF 59.) Zahedi responded with quotes of US \$2492 on Hapag Lloyd and US \$3411 on MSC that Solovyev forwarded to Tretyakov. (Solovyev Dec. ¶¶ 6-7; ALJFF 60.) Solovyev states that these are the only quotes that he gave Tretyakov and that he did not send a better offer of \$1,500 and did not offer for MTL to arrange for the shipment of the boats from Dubai to the United States. (Solovyev Dec. ¶¶ 8-10.)

MTL's only connection to the Dubai-United States shipment of the Monterey and Chaparral from Dubai to the United States established by the documents is as consignee. APL is the carrier, Middle East Asia Alfa, FZE, is the shipper, and AEC Cargo Services LLC is the forwarding agent. (ALJFF 61.) It is clear that MTL was contacted about the shipment through its agent Solovyev and that Solovyev and that Solovyev forwarded quotes to Tretyakov at Middle East Asia, but those quotes were for transportation by VOCCs Hapag Lloyd and Mediterranean Shipping Company. Another VOCC, APL, transported the boats and nothing connects Solovyev or MTL to the transportation by APL. Although Solovyev conveyed offers to Complainants, Complainants have not proved by a preponderance of the evidence that Middle East Asia shipped the Monterey and the Chaparral to the United States using a carrier identified by Solovyev or that MTL assumed responsibility for transporting the boats.

Complainants argue that the facts that Solovyev forwarded the quotes from Hapag Lloyd and MSC for transportation from Dubai to the United States to Tretyakov at Middle East Asia and that MTL paid the Fauna & Flora Customhouse charges and took possession of the boats proves MTL was involved in their transportation.

MS. TARASSOVA: It is my client's position that Mr. Solovyev who was acting on behalf of MTL throughout the course of their dealings arranged that. It is corroborated by the fact that MTL did not object to picking up the boats once they arrived. They did not object to paying customs and taking custody or control over the boats and that is evident in the respondents' supplemental documents which they filed just a week ago or so. It looks like MTL not only acquiesced to being a consignee they also took responsibility for the cargo.

JUDGE GUTHRIDGE: Took responsibility at what point?

MS. TARASSOVA: When the boats arrived to the United States they paid customs fees for it and they produced documentation that showed that MTL – if you look at RX 92 it looks like a copy of the check from Marine Transport Logistics –

JUDGE GUTHRIDGE: RX 92? Oh, that's one of the supplemental responses.

MS. TARASSOVA: Yes, Your Honor. And then I guess the check relates to RX 93 for an invoice to MTL from Fauna and Flora for duty customs, entry fee, bond preparation, et cetera which they paid on behalf of the complainants when they picked up the cargo which is the two boats in question. So how they got to be the consignee it is unclear. That is the question again for the actual parties to answer but it certainly looks like they did not have an objection to that and picked up the boat.

Closing Argument Transcript 59:16-61:5.

Regarding the fact that Solovyev sent the quotes, the Monterey and the Chaparral were transported by APL, not one of the VOCCs from which Solovyev obtained quotes. Other than the fact that MTL was named as consignee, no documentary evidence in the record links MTL to the transportation of the Monterey and the Chaparral by APL. When an NVOCC is involved in the transportation of cargo, the VOCC bill of lading would normally identify the NVOCC as the shipper. The APL identifies Middle East Asia (not MTL) as the shipper and AEC Cargo Services LLC (not MTL or Emirates Logistics, the entity in Dubai that Solovyev contacted for rates) as the forwarding agent. Furthermore, Safonov's certification filed April 22, 2016, states that Safonov's assistant received an offer from Solovyev for \$1,500. APL charged \$3,593.46 for the transportation.

Regarding the payment of the charges and taking possession of the Monterey and the Chaparral, the APL Notice of Arrival sent to MTL states:

You are requested to arrange for prompt delivery of your cargo. By doing so, you will avoid any unnecessary cargo and equipment detention costs. If incurred, these costs (DEMURRAGE/STORAGE CHARGES) will be assessed in accordance with

the applicable tariff for any delays after expiration of free time. These charges must be paid before cargo can be released.

(RX 91.) As consignee, MTL was potentially liable for demurrage charges that would accrue if the boats were not picked up within the free time allotted by the VOCC. *See Capitol Transportation, Inc. v. United States*, 612 F. 2d 1312, 1319-1321 (1st Cir. 1979) (upholding Commissions decision that Capitol was a carrier as well as a consignee subject to liability for payment of demurrage under the underlying vessel-operating carriers' tariffs); *Safmarine v. Columbia Container Lines (USA), Inc.*, No. 10-CV-1825 (KAM), 2010 U.S. Dist. LEXIS 143502 *10, 2010 WL 7134001 (E.D.N.Y. Dec. 15, 2010) ("The general rule is that shippers or consignees are liable for demurrage."); *Prudential Lines, Inc. v. Farrell Lines, Inc., Zim Container Service and Zim Israel Navigation Co., Ltd.*, 1984 FMC LEXIS 15, 26 F.M.C. 497 (ALJ June 7, 1984). The litigation costs defending an action brought against MTL contesting liability, even if MTL prevailed, would far exceed the \$615.70 that MTL paid to secure release of the container. Securing release of the shipment was a prudent business decision by MTL.

Complainants contend that MTL "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, [and] (2) releasing the Complainants' property to a third party, World Express and Connection, which was owned by Solovyev." (Complainants' Brief at 8.) The Monterey and the Chaparral arrived from Dubai on July 12, 2014. (ALJFF 68.) On July 17, 2014, Safonov sent an email to Solovyev stating: "Aleksandr – please calculate the shipping from you to Ft. Lauderdale – Formula-34, + 2 boats that arrived from Dubai." (ALJFF 93.) Safonov knew that the boats arrived within five days of their arrival. The evidence does not support Complainants' claim that they were not notified that the boats arrived from Dubai. MTL's tariff provides that MTL's container freight station/container yard "may be a designated warehouse." (ALJFF 26.) If it were determined that MTL operated as a common carrier when the boats were transported from Dubai to the United States, storing the boats in the World Express warehouse is contemplated by MTL's tariff.

Complainants have "the initial burden of proof to establish the[] violation[]." *AHL Shipping Company v. Kinder Morgan Liquids Terminals, LLC*, FMC No. 04-05, 2005 WL 1596715, at *3 (ALJ June 13, 2005). Based on the evidence in the record, Complainants have not proved by a preponderance of the evidence that MTL assumed responsibility for the transportation of the Chaparral and the Monterey from Dubai to the United States and operated as an NVOCC on the shipment.

3. Request to transport the Monterey and the Chaparral from New Jersey to Florida.

One of the purposes of the Shipping Act is to "establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs." 46 U.S.C. § 40101(1). The Act imposes requirements on common carriers that "provide transportation by water of . . . cargo

between the United States and a foreign country for compensation [and] assume[] responsibility for the transportation from the port or point of receipt to the port or point of destination [and] use[] for all or part of that transportation, a vessel operating on the high seas . . . between a port in the United States and a port in a foreign country.” 46 U.S.C. § 40102(6) The Act provides that a common carrier “may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.” 46 U.S.C. § 41102(c). The Act and the Commission’s power to enforce the Act is limited to transportation that fits within these definitions. Therefore, the Commission has jurisdiction over the transportation by water of the Monterey and the Chaparral on their voyages from the United States to Dubai and from Dubai to the United States and the concomitant power to sanction violations of the Act that occur during that transportation. As discussed above, Complainants do not contend that Respondents committed any violations of the Act on the transportation of the Monterey and the Chaparral from the United States to Dubai, and Complainants have not proved by a preponderance of the evidence that Respondents operated as a common carrier when the boats were transported back to the United States.

The record indicates that on July 17, 2014, after the Monterey and the Chaparral arrived in the United States, Safonov sent an email to Solovyev stating: “Aleksandr – please calculate the shipping from you to Ft. Lauderdale – Formula-34 PC, + 2 boats that arrived from Dubai.” (CX 061.)⁹ Assuming that there was an agreement between Safonov and any respondent – Solovyev, any of his corporations, or MTL – to transport the Monterey and the Chaparral by water or any other means from New Jersey to Florida, this was not an agreement to “provide transportation by water of . . . cargo between the United States and a foreign country” subject to the Shipping Act or Commission jurisdiction.

Even if it were determined that MTL assumed responsibility for the transportation of the Monterey and the Chaparral from Dubai to New Jersey, the APL bill of lading shows that the ultimate destination of the boats was New Jersey and that international transportation ended when the boats were delivered to MTL. *See, e.g., Norfolk Southern R. Co. v. James N. Kirby, Pty Ltd.*, 543 U.S. 14, 23-27 (2004) (finding that federal maritime law applies to the inland portions of international shipments transported under a through bill of lading). *See also, Kawasaki Kisen Kaisha, Ltd. v. Regal-Beloit Corp.*, 561 U.S. 89, 108 (2010) (finding that ocean transportation occurring under a through bill of lading cannot be separated into ocean and domestic inland transportation); *accord, Mitsui O.S.K. Lines Ltd. v. Global Link Logistics*, 2011 FMC LEXIS 12, 56 (FMC 2011) (“[L]egislative history demonstrates that Congress intended that the Commission have jurisdiction over through transportation including the inland segment of such transportation.”) Because, in this case, the international shipment of the boats terminated in New Jersey with delivery

⁹ The first request regarding sending the third boat – the Formula – to Florida came in February 2014. Presumably, if Safonov had decided then or at any time before they were shipped from Dubai on May 30, 2014, that he wanted the Monterey and Chaparral to go to Florida, Safonov would have had them shipped from directly from Dubai to Florida, not to New Jersey.

to MTL and the arrangement to ship the boats to Florida was a separate and new arrangement, the transportation in question is a purely domestic one, over which the Commission has no jurisdiction.

B. Claims Regarding the Formula.

The record shows that Complainants originally intended to ship the Formula to Dubai for repair and resale. On August 7, 2013, RFG sent invoice 1189AT for payment in the amount of \$77,280 to Complainants' employee in Dubai, Andrey Tretyakov, reflecting \$56,280 for the Formula, \$3,500 for delivery, \$12,000 for loading/shipping to Dubai, UAE, \$500 for commission, \$500 for documentation, and \$4,500 for a trailer to load the boat. (FF 75 (CX 031)). Complainants wired \$59,780 on August 9, 2013, to RFG to pay for the Formula (\$56,280.00) and the cost of the delivery to the port of loading (\$3,500), and \$4,950 on December 4, 2013, to pay for the boat trailer.¹⁰ Complainants never paid the \$12,000 for loading and shipping the Formula to Dubai or the \$500 for Commission and \$500 for documentation. (ALJFF 76, 85, 92.) Safonov subsequently reached the conclusion that Tretyakov, the Middle East Asia employee in Dubai, "started to become a crook," and on February 2014, instructed Solovyev to ship the Formula to Miami instead. (ALJFF 86, 87.) Therefore, Complainants and Respondents (MTL, Solovyev, or any of Solovyev's companies) never entered into an agreement to transport the Formula by water from the United States to a foreign port.

As discussed above, an agreement to transport the Formula from New Jersey to Florida is not an agreement to "provide transportation by water of . . . cargo between the United States and a foreign country." Therefore, any controversy about an alleged agreement to ship the Formula to Florida is not subject to the Shipping Act or the Commission's jurisdiction.

C. Claims Regarding Storage Fees.

Complainants also contend that MTL "failed to establish, observe, and enforce just and reasonable regulations and practices . . . (3) by issuing invoices for storage at rates contrary [to] its posted tariffs." (Complainants' Brief at 8.) MTL's tariff states: "Carrier provides 30 calendar days free storage prior for vehicles, trucks and boats received for US export shipment at its CFS/CY as listed herein. Beyond 30 days, storage charges per day apply as follows: A. STORAGE CHARGES AT BAYONNE, NJ . . . Boats: USD 20 per day." (ALJFF 103.) Complainants were not charged storage fees for the Monterey and Chaparral when they were shipped from the United States to Dubai. When the Monterey and Chaparral returned to the United States, even if MTL were operating as an NVOCC, the boats were not "received for US export shipment" and the tariff does not apply. As found above, although Safonov originally intended to ship the Formula to Dubai, there was never

¹⁰ On August 13, 2013, Crocus FZE made a wire transfer of \$5,000.00. Complainants state that this payment was for a trailer for the Formula, Closing Argument Transcript 113, but nothing in the record indicates that the transfer for an amount different from the \$4,500 for a trailer stated in the August 7 and 8 invoices went to RFG or that it was for a trailer.

an agreement to transport the Formula by water from the United States to a foreign port. Therefore, the Formula was not “received for US export shipment” and the tariff does not apply.

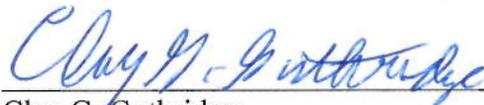
VIII. ATTORNEY FEES.

“In any action brought under section 41301, the prevailing party may be awarded reasonable attorney fees.” 46 U.S.C. § 41305. I find that because the Complaint has been dismissed, the Respondents are prevailing parties in this proceeding and may be awarded reasonable attorney fees. “In order to recover attorney fees, the prevailing party must file a petition within 30 days after a decision becomes final. For purposes of this section, a decision is considered final when the time for seeking judicial review has expired or when a court appeal has terminated.” 46 C.F.R. § 502.254(c). *See also Organization and Functions; Rules of Practice and Procedure; Attorney Fees – Notice of Proposed Rulemaking*, FMC No. 15-06, available on the Commission’s electronic reading room at http://www.fmc.gov/electronic_reading_room/proceeding_or_inquiry_log_search.aspx?F_DocketType=1; *Organization and Functions; Rules of Practice and Procedure; Attorney Fees, Final rule*, 81 Fed. Reg. 10508 (Mar. 1, 2016).

ORDER

Upon consideration of the record in this proceeding and for the reasons set forth above, complainants Crocus Investments, LLC, and Crocus FZE, have not proved by a preponderance of the evidence that respondents Marine Transport Logistics, Inc., and Aleksandr Solovyev a/k/a Royal Finance Group, Inc., violated section 41102(c) of the Shipping Act of 1984, 46 U.S.C. § 41102(c) or that respondent Aleksandr Solovyev a/k/a Royal Finance Group, Inc., violated section 40901(a) of the Shipping Act of 1984, 46 U.S.C. § 40901(a). Therefore, it is hereby

ORDERED that Complainants’ Complaint against respondents Marine Transport Logistics, Inc., and Aleksandr Solovyev a/k/a Royal Finance Group, Inc., be **DISMISSED WITH PREJUDICE**.



Clay G. Guthridge
Administrative Law Judge