

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 15-04**

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**CROCUS INVESTMENTS, LLC AND CROCUS, FZE,**

– vs. –

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

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**COMPLAINANTS’ MOTION FOR LEAVE TO FILE REPLY TO PETITION TO  
REOPEN THE PROCEEDING FOR THE PURPOSE OF TAKING FURTHER  
EVIDENCE**

Pursuant to Rules 69 and 71 of the Federal Maritime Commission’s (the “Commission”) Rules of Practice and Procedure (46 C.F.R. 502 *et seq.*), Complainants, through their Counsel, Marcus A. Nussbaum, Esq. respectfully submit this Motion For Leave to file a Reply to the Complainants’ Petition to Reopen the Proceedings herein.

**“EXTRAORDINARY CIRCUMSTANCES” WARRANT COMPLAINANTS’ REPLY**

Pursuant to 46 C.F.R. § 502.71, as adopted by Rule 71 of the Commission’s Rules of Practice and Procedure (“CRPP”), a moving party may file a Reply to a non-dispositive motion “...upon a showing of extraordinary circumstances.” It is respectfully submitted that as set forth below extraordinary circumstances exist herein which warrant the granting of leave to Complainants to interpose a Reply to their Petition to Reopen the Proceeding, currently pending before the Commission.

In the first instance, a significant portion of respondents’ response to complainants’ instant petition consists of personal *ad hominem* attacks and accusations of gamesmanship against the undersigned regarding an alleged delay of these proceedings, which do not merit a point by point

response. Least the Commissioners construe the undersigned's silence as to these accusations as assent, it should be known that while complainants initially requested an extension of time for purposes of filing exceptions herein, it became apparent during the process of preparing exceptions that it was more appropriate in the first instance to apply to the Commission to reopen the proceedings for purposes of taking additional evidence. Respondents' argument that complainants were somehow obligated to *only* file exceptions is an attempt by respondents to improperly insert themselves into the decision making process of complainants and their counsel as to how to proceed in this matter, and should thus be disregarded.

*Respondents and Their Counsel Have Made Conflicting Representations of Fact in Two Different Legal Forums, Which to Date, They Have Failed To Address*

More importantly, the significance of the new evidence regarding the 2006 Mercedes SL65, Vehicle Identification Number ("VIN") ending in 3072 (the "Mercedes"); and (2) a 2011 Porsche Panamera, VIN ending in 7399 (the "Porsche") at issue in this matter should not be lost upon the Commission. While respondents disingenuously attempt to argue that "facts" regarding these two vehicles were previously known to complainants and that they do not consist of "new evidence", it is respectfully submitted that the "new evidence" was known *only* to respondents and their counsel in 2013 *and* in December of 2015, and was *secreted* by respondents and their counsel from the Commission, the Federal Court, and from the complainants.

It was only *after* the complainants made contact with the undersigned in April of 2016 did they discover the "new evidence" which consists of complainants' discovery (with the assistance of counsel) that the respondents and their counsel knowingly made two different conflicting representations in two different legal forums (to wit: the Federal Maritime Commission and the U.S. District Court for the Eastern District of New York) regarding the nature of a wire transfer from complainants to respondents in the amount of \$4950.00 (which respondents claim here was for the purchase of a boat trailer for the 2010 Formula 34 PC boat (the "2010 Formula") at issue

herein, and which they claim in Federal Court was for the purchase of the Mercedes). Respondents' response to complainants' Petition to Reopen the Proceedings fails to address this issue of inconsistent statements in two forums and is clearly an uncomfortable topic for discussion. This issue was brought to the attention of the Honorable Sandra L. Townes, presiding over the Eastern District of New York matter in which discovery is now closed, and as a result thereof, Judge Townes has granted leave to make a motion for relief from the Court's previous Order dismissing plaintiffs' claim therein against respondents Marine Transport Logistics, Inc., Aleksandr Solovyev, and Royal Finance Group Inc. pursuant to the Racketeer Influenced and Corrupt Organizations Act ("RICO"). This may possibly lead to the reopening of discovery in that matter and the adding of complainants herein as additional plaintiffs with a RICO claim against respondents Marine Transport Logistics, Inc., Aleksandr Solovyev, and Royal Finance Group Inc.<sup>1</sup>

The significance of the issue of wire transfer and these two vehicles, which should be fleshed out fully herein in the interest of developing a complete record in this matter, is that they go directly to the issue of whether or not the Presiding Officer had enough information to decide that the Commission did not jurisdiction over this matter. Specifically, and in rendering his decision, the Presiding Officer accorded certain weight and credibility to the testimony and documents proffered by respondent Solovyev regarding facts alleged by him in these proceedings. As explained below, if it were known that respondent Solovyev was attempting to mislead this tribunal by perjuring himself while testifying under oath and by providing documents, the

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<sup>1</sup> Annexed hereto as Appendix "1" is a copy of a Memorandum and Order dated November 22, 2016 from the Honorable Sandra L. Townes, in which she has made reference to this proceeding and has directed the undersigned to confer with Mr. Chang and Mr. Vengrow no later than December 9, 2016 for purposes of proposing a briefing schedule for a motion by plaintiffs therein for relief pursuant to Federal Rule of Civil Procedure Rule 60(b)(2). Judge Townes specifically makes reference to the undersigned's request (on behalf of plaintiffs therein) to reopen discovery and amend the complaint in that matter (which the undersigned explained to the Court in motion papers, was for purposes of adding complainants Crocus Investments, LLC and Crocus, FZE as plaintiffs to that matter and proceeding with a cause of action pursuant to the Racketeer Influenced and Corrupt Organizations Act ("RICO"), against Marine Transport Logistics, Inc., Aleksandr Solovyev, and Royal Finance Group Inc.).

authenticity of which is now called into question, it is respectfully submitted that the findings of fact in the Initial Decision would have been different.

*Respondents May Have Misled the Commission by Proffering Fabricated Invoices in These Proceedings*

As the Commission is aware, complainants have argued that certain issues were not previously brought to the attention of the Presiding Officer as a result of the inexperience of complainants' former counsel, who was not a maritime attorney:

“Former counsel was not a maritime attorney. Former counsel ***relied on the veracity of representations made by the respondents during discovery and depositions.*** New facts identify clear inconsistencies that call into question the ***credibility and veracity of the evidence*** presented upon which the Initial Determination rests.” (Petition at p. 4) (emphasis added).

In *opposition* to complainants' instant petition, respondents cite case law explaining that:

“no case has been cited or discovered where relief from res judicata principles has been granted ***simply*** because the plaintiff was represented by inexperienced counsel”. (Respondents' Response at p.7) (emphasis added).

On this specific issue, complainants respectfully request leave of the Commission to interpose a reply, which would set forth details explaining that complainants' instant petition to reopen the proceeding has not been made 'simply' because complainants were previously represented by inexperienced counsel, but rather that in addition thereto, respondents may have attempted to perpetrate a fraud upon the Commission by proffering fabricated invoices in these proceedings in support of their defenses in this matter, an issue on which complainants fully intend to brief the Commission, should leave to interpose a reply be granted.

It may be one matter that prior counsel's inexperience may have resulted in *her* having relied upon the veracity of representations made by the respondents during discovery, however, it is an entirely different matter when the *Presiding Officer's Initial Decision* is based upon such false and fraudulent representations. The fact that the Commission was provided with invoices (the authenticity of which is now called into question) is material to the weight and credibility

previously accorded to the documentary evidence, testimony<sup>2</sup> and assertions of fact proffered by the respondents during the course of discovery herein.

As the Commission is aware, this proceeding arises out of respondents' alleged violation of the Shipping Act with respect to three pleasure boats purchased by complainants from the respondents, who also acted in the capacity of NVOCC (and as argued by complainants, in the additional capacity of Ocean Freight Forwarder). As explained below, respondents Solovyev and MTL committed a fraud by purporting to accept into their possession a boat in preparation for shipment overseas which they also purported to have purchased for complainants with complainants' money, when in actuality, they did not acquire possession or control of said boat until years *after* complainants paid for same. In the interim, respondents provided complainants with excuses as to why said boat could not be exported, such as the need for a suitable trailer for same, discussed in detail in complainants' instant Petition to Reopen the Proceedings herein. Ultimately, and as the Commission is aware, the respondents purported to have exercised a lien over said boat for international shipping and storage charges, however, based upon New York State Department of Motor Vehicle records described below, the respondents apparently charged complainants for shipping and storage during a time period prior to when said boat was "purchased" by respondent MTL (via its 'agent' Car Express and Import Inc.) from the prior owner, VW Parts, Inc.

With respect to the 2010 Formula for which complainants paid respondents the sum of \$56,280.00 in or about August of 2013 in order to *purchase* said boat, the Commission is urged to

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<sup>2</sup> It is also noted that numerous findings of fact made by the Presiding Officer were based solely upon the testimony of respondent Solovyev (the veracity of which the Presiding Officer accepted on its face), who, upon information and belief is a convicted criminal, having previously been charged by a New Jersey state Prosecutor in June of 2010 with receiving stolen property, to wit: multiple pleasure boats and boat trailers resulting in a five year sentence of probation starting on or about June 3, 2011. Additionally, during the time in which it is alleged that respondent Solovyev violated the Shipping Act herein, it is apparent that he was still on probation, which appears to have concluded on June 3, 2016. See, Appendix "2".

note that while respondents may have *collected* the sum of \$56,280.00 from complainants in 2013 for a virtual bid on the boat at the auction warehouse known as “COPART” (in which the owner of said boat, Travelers Indemnity Co. placed for auction), that the respondents did not acquire legal ownership of the boat until two years later, to wit: in or about April 28, 2015, at the time that MTL’s ‘agent’ Car Express & Import Inc. purchased this boat from the company (identified as VW Parts Inc.) that had bought it from Travelers Indemnity Co. (See, New York State Department of Motor Vehicles Salvage Certificate produced by respondents during discovery herein, bates numbered “RESP 027” annexed hereto as Appendix “3”). The Commission is further respectfully urged to take note that respondents have also admitted in their answer to the complaint herein to collecting monies from complainants (charging \$500) for the preparation of “shipping documents” for this boat, as explained in the Petition to Reopen the Proceedings, thus making respondents’ activities subject to the jurisdiction of the Commission.

In other words, respondents *purport* to have purchased the Formula for complainants in 2013 (which is when complainants paid for same) (See, COPART Invoice dated August 7, 2013 from Complainants Proposed Findings of Fact and Appendix, bates numbered “CX 118” annexed hereto as Appendix “4”). This COPART invoice (the authenticity of which is called into question) was provided to complainants by respondent Solovyev in 2013 after complainants wired the funds to Solovyev who purported to have purchased it at that time. Notably, the New York State DMV Salvage Certificate indicates that the Formula was owned by Travelers Indemnity Co. and “acquired” by VW Parts Inc. on April 27, 2015. It was then purchased by Car Express & Import Inc. in or about April 28, 2015. The COPART invoice raises questions as to its authenticity, in that it indicates that the Formula was sold directly by Travelers Indemnity Co. to Car Express & Import Inc. on August 7, 2013, as contradicted by New York State DMV records.

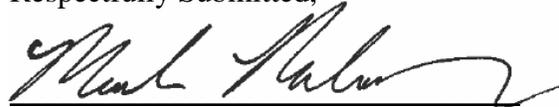
The COPART invoice has also been compared against the COPART invoices annexed hereto as Appendix "5" which were provided to complainants by Solovyev at the time that Solovyev shipped the Mercedes and Porsche to Dubai. It can be seen that all three COPART invoices have indicia of having been fabricated, in that they contain the same exact hour, minute, and second on the "Time" that the invoices were created for the Formula and the Mercedes. The entirety of the questions raised by a review of these documents would be set forth fully in a reply brief, should leave be granted to do so.

In closing, and in order to prevent a potential fraud against the Commission and the Complainants herein, complainants respectfully request leave to fully brief and inform the Commission as to the above. As set forth herein, and despite representations made to the complainants to the contrary, the respondents did not acquire the Formula for shipment overseas until a time period certain after which they had: (1) already purported to be in custody and control of same in preparation for export; and (2) already charged complainants twice for the purchase of a boat trail for same; and (3) collected \$500 for the preparation of shipping documents.

**WHEREFORE**, it is respectfully requested that Complainants' motion for leave to file a reply be granted in its entirety.

Dated: November 26, 2016  
*Brooklyn, New York*

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the **COMPLAINANTS' MOTION FOR LEAVE TO FILE REPLY TO PETITION TO REOPEN THE PROCEEDING FOR THE PURPOSE OF TAKING FURTHER EVIDENCE** upon Respondents' Counsel at the following address:

Montgomery, McCracken, Walker & Rhoads, LLP  
437 Madison Ave., 29th Floor  
New York, NY 10022  
Attn: Stephen H. Vengrow, Esq.  
Attn: Eric Chang, Esq.

by first class mail, postage prepaid, and by email ([echang@mmwr.com](mailto:echang@mmwr.com) and [svengrow@mmwr.com](mailto:svengrow@mmwr.com)).



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Dated: November 26, 2016 in *Brooklyn, New York*.