

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' REPLY PRE-HEARING BRIEF

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:

Stephen H. Vengrow
Eric Chang
Cichanowicz, Callan, Keane,
Vengrow & Textor, LLP
61 Broadway 3000
New York, NY 10006

Dated: February 25, 2016

s/Louiza Tarassova

Louiza Tarassova, Esq.
Attorney for Complainants
Florida Bar Number: 96149
The Law Office of Louiza Tarassova, P.A.
1420 Lake Baldwin Lane Unit A
Orlando, FL 32814
Telephone: (407) 622-1885
Fax: (407) 536-5041
E-Mail: louiza@mylawadvocate.com
Secondary E-Mail: service@mylawadvocate.com

COMPLAINANTS' REPLY TO RESPONDENTS' PRE-HEARING BRIEF

I. Jurisdiction Under the Shipping Act

Complainants agree that the Federal Maritime Commission's jurisdiction is limited to claims involving alleged violations of the Shipping Act. The Shipping Act regulates conduct of non-vessel operating common carriers and ocean freight forwarders. 46 USC § 41102. Complainants' allege certain violations of the Shipping Act by Respondents. As Respondents themselves admit, Marine Transport Logistic, Inc. is a NVOCC and Solovyev was acting as MTL's agent. Therefore, FMC has jurisdiction over this matter and may order reparations under the provisions of the Shipping Act.

Under the Shipping Act, NVOCC's are responsible for establishing, observing, and enforcing just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property belonging to the cargo owner as required by 46 USC § 41102(c). Aleksandr Solovyev, either acting as MTL's agent or as an ocean freight forwarder, organized the shipment of the Chaparral and Monterey boats to New Jersey to be received by MTL and stored until the boats can be shipped to another location or be picked up by the Complainants. MTL was listed on the bill of lading as the consignee. And upon the arrival of the two boats in New Jersey, MTL "duly paid the port fee, customs clearance charges, and documentation charges" (*Respondents' Pre-Hearing Brief*, page 3, paragraph E) on behalf of the Complainants.

Furthermore, the Complainants' damages stem directly from MTL's violation of the Shipping Act as a licensed NVOCC. Therefore, no other jurisdiction can resolve this dispute between the Complainants and Respondents other than the Federal Maritime Commission.

II. Aleksandr Solovyev as Agent for Marine Transport Logistic, Inc.

The Complainants are in agreement with the notion that Aleksandr Solovyev would not have needed an ocean transportation intermediary license *if* the court finds that he was simply an agent for Marine Transport Logistic, Inc. and not acting as an ocean freight forwarder under 46 U.S.C. § 40102 (18).

When a person is acting as an agent on behalf of a non-vessel operating common carrier, the responsibility for the cargo is assumed by the principal NVOCC. *Judah v. Reiner*, 744 A.2d 1037, 1039-40 (D.C. 2000). Logic then follows that the agent acts only as an extension of the NVOCC and is not a common carrier by definition, and therefore does not need to obtain a separate FMC license, since they are in essence operating under the license of the NVOCC. *Landstar Express Am., Inc. v. FMC*, 569 F.3d 493 (D.C. Cir. 2009). Most importantly, the agent cannot hold himself out as an NVOCC or an ocean freight forwarder (OFF). *Id.*

In this case, if the court finds that Solovyev did not hold himself out to be an independent provider of ocean transportation intermediary services and was merely

acting as an extension of MTL, the court must find that Solovyev was operating in furtherance of MTL's business as its agent. Therefore, any wrong doing committed by Solovyev is the responsibility of MTL.

Under federal maritime law, an agency relationship arises between the NVOCC and the cargo's owner, since the NVOCC is considered to be acting on behalf of the owner as the owner's agent when it agrees to arrange the shipment to an international destination and coordinates the receipt of goods at the final destination. *Ins. Co. of N. Am. v. M/V Ocean Lynx*, 901 F.2d 934, 937 n.2 (11th Cir. 1990); *Ins. Co. of N. Am. v. S/S Am. Argosy*, 732 F.2d 299, 301 (2d Cir. 1984); *Orion Ins. Co. v. M/V "Humacao"*, 851 F. Supp. 575, 577-78 & 577 n.4 (S.D.N.Y. 1994). Therefore an NVOCC owes a fiduciary duty to the cargo's owner, which includes establishing, observing, and enforcing just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property belonging to the cargo owner as required by 46 USC § 41102(c).

III. Piercing the Corporate Veil

It is a well-settled principal that the fiction of a corporate entity must be disregarded whenever it has been adopted or used to circumvent the provisions of a statute. *Casanova Guns, Inc., v. Connally*, 454 F.2d 1320 (7th Cir. 1972) citing *Anderson v. Abbott*, 321 U.S. 349, 362- 363, 64 S.Ct. 531, 88 L.Ed. 793 (1944); *Kavanaugh v. Ford Motor Co.*, 353 F.2d 710, 717 (7th Cir. 1965); *Joseph A. Kaplan & Sons, Inc. v. F.T.C.*, 121 U.S. App. D.C. 1, 347 F.2d 785, 787-788 (1965); *Ohio Tank Car Co. v. Keith Ry. Equip. Co.*, 148 F.2d 4, 6 (7th Cir.), cert. denied, 326 U.S. 730, 66 S. Ct. 38, 90 L. Ed. 434 (1945). Several factors may be considered when deciding to disregard the corporate status of the wrongdoer but there is no set rule as to which or how many factors must be present to warrant piercing the corporate veil. The guiding principle applied by the courts is that liability will be imposed when doing so would achieve an equitable result. *Williamson v. Recovery Ltd. P'ship*, 542 F.3d 43,53 (2d Cir. 2008); *Budisukma Permai SDNBHD v. N.MK. Products & Agencies Lanka (Private) Ltd.*, 606 F.Supp.2d 391, 399 (S.D.N.Y. 2009).

Here, Aleksandr Solovyev took on many identities as he conducted the transactions with the Complainants. First he acted as an auto dealer through Car Express, then he acted as an agent for MTL "through Car Express", later he acted as a pre-funding company through Royal Finance Group, Inc., and finally he acted as a storage facility through World Express and Connection. All businesses except for RFG (a Florida corporation) had primary places of business at the same address as that of MTL which is "owned and controlled" by Solovyev's wife Alla Solovyeva. RFG's official address as at a residence in Florida. All of the businesses through which Solovyev transacted business share the same phone numbers, the same employees, and the same manager who is Solovyev. Soloveyv does not even use a different email address for all of his business, but instead uses an MTL email address.

Solovyev uses the various identities solely to avoid being personally responsible for his wrongdoings. It is clear that the business entities were established for ulterior purposes and not to conduct legitimate business. When Solovyev's company RFG provided pre-funding services to Complainants it is not doing so on paper only. When MTL is billed by World Express and Connection for the storage of Complainants' boats, it "paid" WEC, which in turn billed RFG, which then invoiced the Complainants. Yet in reality, this was all a scheme for Solovyev to charge exorbitant fees for storage which are in excess of MTL's published tariffs.

Ultimately, Solovyev under the cover of his business entities conspired with MTL to defraud Complainants by fabricating a complicated scheme to wrongfully withhold Complainants' property and use it as ransom to extort more money from Complainants.

IV. Conclusion

Therefore, FMC has jurisdiction to resolve this dispute between the parties because it arose directly out of the actions of an NVOCC and its agents or in the alternative an independent OFF (Solovyev) while performing duties under the Shipping Act. Both of the Respondents should be held responsible for unlawfully withholding Complainants' property and causing Complainants damages, which are directly related to the Respondents' violations of the Shipping Act. Further, Solovyev should be held personally responsible for his wrongdoing, and not be allowed to hide behind the protections of a corporation.

COMPLAINANTS' RESPONSE TO RESPONDENTS' PROPOSED FINDINGS OF FACT

1. Respondent Solovyev, through his company Car Express, is an agent of MTL. (See Complainants' Proposed Finding of Fact No. 20, See Dep. Tr. of Solovyev, at 37:24 – 38:16, 48:2 – 49:4; See Dep. Tr. of Alla Solovyeva, at 18:13-16; See also August 13, 2014 email from Solovyev to Complainants, with the signature block stating that "Car Express & Import, Inc., As an agent for Marine Transport", at Appendix CX 103).

Response:

Admit that Solovyev's signature block stated that he was an agent for Marine Transport, and that his wife Alla Solovyeva made statements at her deposition to that effect, but deny that Solovyev did not hold himself out as an independent OFF to the Complainants and deny that Solovyev actions always comported to that of an agent for MTL. Denied as to the statement "through his company Car Express." (Proffered testimony of Safonov).

2. World Express & Connection, Inc. is a warehouse, separate and independent from Marine Transport Logistics, Inc. (See deposition testimony from Aleksandr Solovyev ("Solovyev"), at 19:2-3, and Alla Solovyeva, Dep. Tr. of Alla Solovyeva, at 15:9-16, Appendix CX 261-264).

Response:

Denied, World Express and Connection is a sham corporation established for the benefit of MTL and for the purpose of charging customers storage fees in excess of the tariffs published by MTL. (Reasonable inference can be drawn from the totality of the evidence).

3. Andrey Tretyakov, an employee at Middle East Asia Alfa, was the person responsible for booking shipments with MTL on behalf of Complainants. (See Dep. Tr. of Solovyev, at 48:20 – 49:4, 51:16-19; Dep Tr. of Alla Solovyeva, at 24:14-16, 29:3-15, 46:16 – 47:9).

Response:

Admit that at some point Andrey Tretyakov did handle booking shipments for Middle East Asia Alfa, but denied as to the fact that he dealt directly with MTL. At all time material, Safonov, on behalf of the Complainants dealt directly with Soloveyv in booking shipments through MTL. (See CX 019-103)

4. Complainants did not book the export shipment of the 2010 Formula Boat from U.S. to Jebel Ali, with MTL. (See Dep. Tr. of Alexander Safonov, on behalf of Complainants, at 64:25 – 65:8).

Response:

Unable to admit or deny due to the vagueness of the term “book.” Aleksandr Solovyev was responsible for “booking” all shipments on behalf of Complainants with MTL and Complainants never dealt directly with MTL. (Alexander Safonov’s proffered testimony).

5. Complainants did not pay ocean freight for the shipment of the 2010 Formula Boat. (See Appendix CX 031 and Respondents’ Proposed Findings of Fact No. 14 for the total paid by Complainants, which is not inclusive of the \$13,000 estimated ocean freight for the 2010 Formula Boat.)

Response:

Admit that Complainants did not pay a separate payment of \$13,000, but denied as to the assumption that Respondents notified Complainants of the required payment and denied as to any notification by Respondent of specific instructions on how payment was to be transmitted, the amount, and the deadline for payment.

6. The May 30, 2014 shipment from Dubai to U.S. of the 2008 Chaparral Boat and 2011 Monterey Boat, was performed by APL under APL B/L No. APLU020188407. (See Appendix RX 05).

Response:

Admit only as to the fact that a Bill of Lading was issued by APL for that shipment. Denied as to the assumption that MTL and Solovyev were not directly involved in that shipment. (See CX 056 –CX 059, CX 77)

7. MTL is not a shipper on the APL B/L No. APLU020188407. (See Appendix RX 05).

Response:

Admit as to the fact that the Bill of Lading No. APLU020188407 lists Middle East Asia Alfa FZE as the shipper.