

FEDERAL MARITIME COMMISSION

DOCKET NO. 15-10

REVOCATION OF LICENSE NO. 017843
WASHINGTON MOVERS, INC.

ORDER TO SHOW CAUSE

BUREAU OF ENFORCEMENT'S RESPONSE
TO RESPONDENT'S REPLY

The Bureau of Enforcement (BOE) files this Response To Respondent's Reply to BOE's Memorandum of Law. Washington Movers' reply was submitted by counsel as an attachment to Respondent's motion seeking leave to file a reply to BOE's reply.

This proceeding was commenced by the Commission's Order To Show Cause served October 8, 2015, directing Washington Movers to show cause why its license no. 017843 should not be revoked based in part on the felony conviction of Sam Ghanem, the sole owner, officer, director, and Qualifying Individual (QI) of Respondent. Respondent filed a Reply To Order To Show Cause on Nov. 2, which included two documents purporting to establish Sam Ghanem's removal from the company. On Nov. 17, BOE filed its Memorandum of Law accompanied by the verified statement of the Director of the Commission's Bureau of Certification and Licensing and

copies of publicly-filed documents which, among other things, refuted the claim of Sam Ghanem's separation from the company. On or about November 24, 2015, Respondent filed a motion seeking leave to file a reply to BOE's reply together with the tendered reply.

PRELIMINARY MATTER

The Commission's Order does not provide for or permit the filing of a further Reply by Respondent or allow any other pleadings beyond those specified therein. Nor do the Commission's regulations specifically address Respondent's filing in the context of a show cause proceeding.¹ Nonetheless, given the significant issues raised by Mr. Ghanem's felony conviction and the desire to see Respondent's concerns fully aired in this license revocation proceeding, BOE does not object to the filing of Respondent's Reply provided BOE is afforded equivalent treatment. Assuming that the Commission accepts Respondent's Reply for filing and consideration, BOE now submits this response to the reply for the Commission's consideration pursuant to 46 C.F.R. §502.69(f) ("Any party may file and serve a response to any written motion, pleading, petition, application, etc., permitted under this part . . .").

ARGUMENT IN RESPONSE TO REPLY

A. Respondent's Factual Arguments are Unavailing.

In responding to Washington Movers' claim that Sam Ghanem was separated from the company on Jan. 1, 2014, BOE submitted a copy of: (1) Washington Movers' 2014 Annual Report on file with the Virginia State Corporation Commission signed by Sam Ghanem on June 10, 2014, as Respondent's officer and director; and (2) a letter signed by Sam Ghanem on September 14,

¹ As this matter is pending before the Commission, Respondent's request is not treated as a motion, but rather as a petition and does not appear to be covered by the regulations governing motions. 46 C.F.R. §502.69. While Respondent's request is analogous to a motion to reopen, 46 C.F.R. §502.230, it does not squarely fit within the provisions of that rule either.

2015, representing to the federal court that he was at that time trying to make arrangements for the transfer of ownership and management of his company. (See BOE Memorandum of Law, pp. 9-12, and Exhibit Nos. 4 and 5).

Curiously, Respondent requests leave to submit its Reply solely to rebut one part of this evidence, asserting the 2014 Annual Report is “misleading” inasmuch as it “presented information from 2013.” (Motion For Leave, p. 2, paragraph 7). However, Respondent’s contention is flatly refuted by the Code of Virginia and the 2014 Annual Report. The Virginia Stock Corporation Act is set forth at Title 13.1, Chapter 9 of the Code. Section 13.1-775 requires the filing of annual reports by domestic and foreign corporations and provides in paragraph B: “The Report shall be made on forms prescribed and furnished by the Commission and shall supply the information as of the date of the report.” (emphasis added). By the terms of the statute, the 2014 Annual Report evidences current information as of the date of the report; indeed, Sam Ghanem could not have validly signed the Annual Report and personally affirmed on June 10, 2014, that such information was “accurate and complete” unless he was still an officer and director of the company as of that date. Respondent’s arguments to the contrary are conclusively undercut by the statement bearing Mr. Ghanem’s signature.

Seeking to somehow buttress Respondent’s argument in its Reply, counsel submits a copy of its 2015 Annual Report, contending that the 2015 Report better reflects Washington Movers’ status in 2014. (Motion For Leave, paragraph 7). By its terms the 2015 Annual Report was required to be filed with the State Corporation Commission by July 31, 2015. Both late-filed and indisputably self-serving, the 2015 Annual Report signed by Norma Ghanem on Nov. 20, 2015 does not discount the earlier filing by Sam Ghanem. For reasons already cited in the Virginia

Code, the document speaks for itself and says no more than she is the sole officer and director of Washington Movers as of the specified signature date in November 2015.² It does not refute, repeal, or in any way contradict the information provided on the 2014 Annual Report. This document may, of course, be officially noticed by the Commission for what it says. However, it provides no factual basis for counsel's argument as it mis-states both the Virginia law and the text of the form itself.

BOE also takes this opportunity to point out what Respondent failed to address in its Reply to BOE's Reply. Respondent does not attempt to address the September, 2015 letter from Sam Ghanem to the U.S. District Court relating to his pending incarceration. That letter affirmatively represents that Mr. Ghanem remained actively involved in, and in full and effective control of the company through the date of the letter, September 14, 2015. Counsel did not, and does not, refute or in any way contradict the information provided by Mr. Sam Ghanem to the court.³

B. Respondent's Legal Arguments are Equally Unavailing.

The Reply submitted on behalf of Washington Movers once again attempts to argue that Washington Movers played no role in the events resulting in Sam Ghanem's conviction and therefore cannot be sanctioned by means of license revocation. The evidence and the law reject these contentions.

As it did in its prior filing, Respondent argues that it should not be held accountable for the actions of its sole owner, officer, director, and Qualifying Individual (QI). Commission precedent

² Respondent's representation concerning the departure of Sam Ghanem as of the November 2015 date must be considered wholly unremarkable, inasmuch as Mr. Ghanem had surrendered to commence his prison term prior to that date.

³ Indeed, for Washington Movers and Mrs. Ghanem to directly dispute Mr. Ghanem's factual representations would effectively concede that Mr. Ghanem was perjuring himself in his post-trial representations in the Federal criminal proceedings.

is to the contrary. See *Falcon Shipping, Inc. and Abdiel Falcon – Application for License as an Ocean Transportation Intermediary*, 32 S.R.R. 382, 383-384 (FMC 2012), and *AAA Nordstar Line, Inc. – Revocation of License No. 12234*, 29 S.R.R. 663 (FMC 2002).

Nonetheless, Respondent suggests as instructive the Supreme Court decision in *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998), a case brought under Title IX of the Education Amendments of 1972, in which a student sought to recover damages for sexual harassment from a school district based on the unlawful conduct of one of its teachers. The Court held that the action did not lie unless an official of the district had actual notice of the misconduct. From that proposition, Respondent posits that no employee or officer of Washington Movers had notice of Sam Ghanem's conduct and therefore Respondent cannot be held responsible. To accept that contention is to ignore the undisputed facts in this case that at the time of his criminal behavior, Sam Ghanem was an officer of Washington Movers – in fact, its sole officer, owner and QI.

Little need be said with respect to Respondent's constitutional argument attempting to invoke the corporate separateness of Washington Movers. Respondent again ignores the facts in this case. Washington Movers was the instrumentality through which Sam Ghanem committed his crimes. As explained in BOE's Memorandum of Law, Washington Movers issued shipping documents in its name for the attempted export shipment of contraband leading to Sam Ghanem's arrest and conviction; Washington Movers booked the shipment in its name; shipping documents were issued to Washington Movers as the shipper; and the loading and concealment of the prohibited cargo took place at Washington Movers' facility. (BOE Memorandum, pp. 7-8). Respondent's argument to the contrary is simply wrong.

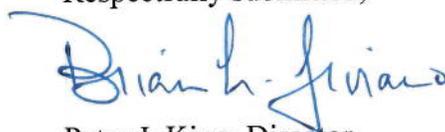
Finally, Respondent iterates that the change in its corporate name is inconsequential because it has generally continued business under Washington Movers name and there was no risk of confusion. (Reply, p. 4). Thus, it urges that its failure to advise the Commission does not warrant revocation. Again, Respondent plays fast and loose with facts. BOE pointed out that Washington Movers holds itself out through its website under its amended corporate name. (See VS Kusumoto, p.4, ¶ 14). Its annual reports filed with Virginia are likewise filed in that name. Its self-serving assertion that there is no risk of confusion is a matter not for its determination, but rather for the Commission and the shipping public. Counsel's assertion that the name change was inconsequential could not be more at odds with the Commission's regulation requiring the filing of an FMC-18 application containing the new information. 46 C.F.R. §515.18(a)(5). Respondent's effort to pass off this continuous 7 year violation as simply an "untimely notification" reaches too far and likewise undermines the portrayal of Norma Ghanem as a leader who is committed to compliance with the Commission's regulations.

Washington Movers' request to file a reply in order to dispute facts documented by BOE is ill-conceived and without merit. In an effort to salvage its license by alleging that Washington Movers timely divorced itself from Sam Ghanem, Respondent engaged in a series of material misrepresentations to the Commission. The facts are undisputed that Sam Ghanem's ties to the company were not severed on Jan. 1, 2014, as asserted, and do not appear to have been changed, in fact, earlier than September of this year (if at all).

Respondent's tendered reply ultimately raises greater concern for the veracity and character of the corporate licensee and its putative new owner than have been answered in its attempt to distance itself from the crimes of Mr. Sam Ghanem. Those crimes, however, are not

severable from Mr. Ghanem's use of Washington Movers as the instrumentality by which to secure the transportation needed to effectuate his criminal acts of smuggling arms. BOE submits that the existing record, inclusive of arguments submitted in Respondent's recent Motion for Leave and its Reply to BOE's November 17 Memorandum of Law, are more than sufficient for the Commission to order revocation of the license of Washington Movers.

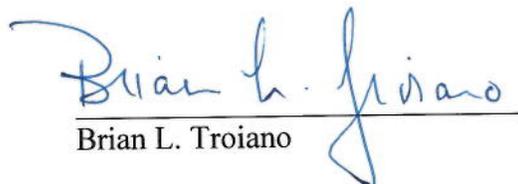
Respectfully submitted,



Peter J. King, Director
Brian L. Troiano, Deputy Director
Bureau of Enforcement
Federal Maritime Commission
800 N. Capitol St., N.W.
Washington D.C. 20573
(202) 523 - 5783

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Bureau of Enforcement' Response To Respondent's Reply has been served upon counsel for Respondent identified below by email and by first class mail with postage prepaid this 2nd day of December, 2015.


Brian L. Troiano

George R. A. Doumar
Raj H. Patel
2000 N. 14th Street
Suite 210
Arlington, VA 22201
gdoumar@doumarmartin.com
rpatel@doumarmartin.com