

FEDERAL MARITIME COMMISSION

REVOCATION OF OCEAN
TRANSPORTATION
INTERMEDIARY LICENSE NO.
017843 WASHINGTON MOVERS,
INC.

Docket No. 15-10

Served: February 12, 2016

BY THE COMMISSION: Mario CORDERO, *Chairman*;
Rebecca F. DYE, Richard A. LIDINSKY, Jr., Michael A.
KHOURI, and William P. DOYLE, *Commissioners*.

Order Regarding Preliminary Issues

On October 8, 2015, the Commission ordered Respondent Washington Movers, Inc., (Washington Movers) to show cause why the Commission should not revoke its ocean transportation intermediary (OTI) license due to the felony weapons smuggling convictions of its qualifying individual Sam Ghanem, and various alleged regulatory violations. Pending before the Commission are Washington Movers' motion for leave to reply to the Bureau of Enforcement's (BOE) memorandum supporting revocation, and Norma Ghanem's motion to intervene. The Commission must also decide whether to assign this matter to the Office of Administrative Law Judges.

For the reasons set forth below, we grant Washington Movers' motion for leave to reply, deny Norma Ghanem's motion

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to intervene, and assign this matter to the Office of Administrative Law Judges for further proceedings.

I. BACKGROUND

Respondent Washington Movers is an ocean transportation intermediary licensed by the Commission in 2003 to act as an ocean freight forwarder and a non-vessel-operating common carrier. As part of the licensing process, Washington Movers represented to the Commission that its principal, president, sole owner, and qualifying individual is Sam Ghanem. In 2008, Washington Movers changed its name from Washington Movers, Inc. to Washington Movers International, Inc. In May 2015, Sam Ghanem was convicted of Attempted Unlawful Export of Defense Articles (22 U.S.C. § 2778) and Smuggling of Goods from the United States (18 U.S.C. § 554). Ghanem was sentenced to eighteen months of imprisonment and three years of supervised release and fined approximately \$71,000. He surrendered to prison in October 2015.

On October 8, 2015, the Commission ordered Washington Movers to show cause under 46 C.F.R. § 502.73 why its OTI license should not be revoked. The Commission cited 46 C.F.R. § 515.16(a)(1) and (4) as grounds for revocation. These regulations permit revocation after notice and opportunity for a hearing for, among other things, violation of any statute, order, or regulation relating to carrying on the business of an OTI, or where the licensee is not qualified to render intermediary services. The order to show cause noted that Sam Ghanem's felony convictions constitute violations of federal statutes related to carrying on the business of an OTI and directly reflect on Washington Movers' continued fitness and character to conduct OTI business. The order also pointed out that Washington Movers did not notify the Commission of its name change or of Ghanem's arrest, indictment and convictions, in violation of 46 C.F.R. §§ 515.12(d) and 515.18(a)(5).

Washington Movers timely replied to the order to show cause, arguing that revocation is not warranted because Sam

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Ghanem's conduct is independent of Washington Movers and because Washington Movers' failure to notify the Commission of its name change or of Ghanem's arrest and conviction is not egregious. Washington Movers also asserts that it is no longer associated with Sam Ghanem, and it submitted evidence purporting to show that Sam Ghanem transferred 100% ownership and control of the company to his wife, Norma Ghanem. At the same time Washington Movers replied to the order to show cause, Norma Ghanem moved to intervene in this proceeding.

BOE responded with a memorandum supporting revocation. BOE contends that Sam Ghanem used Washington Movers as the instrumentality to commit his crimes, and it challenges the notion that Sam Ghanem relinquished control over Washington Movers immediately after his arrest. BOE also argues that Washington Movers lacks the requisite character and fitness to serve as an OTI given Sam Ghanem's lack of character and fitness. BOE further asserts that in addition to failing to apprise the Commission of its name change and of Ghanem's arrest, indictment, trial, and conviction, Washington Movers itself violated 46 C.F.R. §§ 515.31(e) and (f) by preparing or assisting in the preparation of false or fraudulent documents and by not declining to participate in a transaction that violated United States law.

On November 24, 2015, Washington Movers moved for leave to reply to BOE's memorandum and requested "a corresponding hearing to preserve its rights." Mot. Leave Reply at 1. In its proposed reply, Washington Movers asserts that as a distinct corporate entity, it cannot be punished for the actions of Sam Ghanem when neither it nor any of its other employees had notice of the criminal conduct. On December 2, 2015, BOE filed a response to Washington Movers' reply.

II. DISCUSSION

A. Washington Movers' Motion for Leave to Reply

Washington Movers seeks leave to reply to BOE's memorandum to "rebut the BOE's allegations concerning Washington Movers' corporate structure and ownership," and in particular to counter BOE's reference to "outdated documents" such as Washington Movers' 2014 annual report. Mot Leave Reply at 2. It "also intends to provide legal guidance from Federal courts' concerning due process and respect for distinct corporate forms; namely, that an individual cannot be punished for the transgressions of another." *Id.* at 3.

BOE does not oppose Washington Movers' motion but instead states that "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, [it] does not object to the filing of Respondent's reply provided BOE is afforded equivalent treatment." BOE Resp. to Reply at 2. BOE nonetheless points out that the order to show cause does not provide for a reply and that the motion for leave should have been designated a "petition" under 46 C.F.R. § 502.69(a).

We grant Washington Movers' motion for leave to reply to BOE's memorandum. The Commission has applied its rules on motions to petitions. *See Mitsui O.S.K. Lines Ltd. v. Global Link Logistics, Inc.*, FMC Docket No. 09-01, 2013 FMC LEXIS 6 (FMC Jan. 31, 2013); *Green Master Int'l Servs. Ltd. – Possible Violations of Sections 10(A)(1) and 10(B)(1) of the Shipping Act of 1984*, 29 S.R.R. 1319, 1322 (FMC 2003). Under these rules, Washington Movers' motion is a non-dispositive motion governed by 46 C.F.R. §§ 502.69 and 502.71. Although Washington Movers has not complied with the duty-to-confer requirement of 46 C.F.R. § 502.71(a), its unopposed motion satisfies the requirements of 46

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C.F.R. § 502.69(b) and (e)¹ and is intended to rebut arguments and evidence raised for the first time in BOE's memorandum of law.

B. Norma Ghanem's Motion to Intervene

Norma Ghanem seeks leave to intervene in this proceeding as a matter of right or permission. BOE opposes intervention. We deny Norma Ghanem's motion because she has failed to show that Washington Movers inadequately represents her interests or that permissive intervention would be appropriate.

1. Intervention as of right

Norma Ghanem first argues that the Commission should grant her leave to intervene as a matter of right. Under 46 C.F.R. § 502.68(c)(1), the

Commission must permit anyone to intervene who claims an interest relating to the property or transaction that is subject of the proceeding, and is so situated that disposition of the proceeding may as a practical matter impair or impede the ability of such person to protect its interest, unless existing parties adequately represent that interest.

46 C.F.R. § 502.68(c)(1).

The moving party bears the burden of showing that it meets the requirements for intervention as of right. *Exclusive Tug Franchises—Marine Terminal Operators Serving the Lower Miss. River*, 29 S.R.R. 247, 248 (FMC 2001). "The key is whether the person seeking intervention 'will gain or lose by the direct legal

¹ Under 46 C.F.R. § 502.69(b), motions must be in writing unless made at a hearing. Section 502.69(e) requires written motions to be served on all parties and to state the purpose of the motion, the relief sought, the authority relied on, and the supporting facts.

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operation of the judgment’ in the proceeding.” *Contract Marine Carriers, Inc.*, 21 S.R.R. 1387, 1389 (FMC 1982). Although the “original burden of showing inadequate representation” “rests on the applicant for intervention,” this burden “is not onerous” and the “applicant need only show that representation of his interest ‘may be’ inadequate, not that representation will in fact be inadequate.” *Dimond v. Dist. of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986).² Courts assume that intervenors’ allegations are true, absent sham, frivolity, or other objections. *See Keepseagle v. Vilsack*, 307 F.R.D. 233, 241 (D.D.C. 2014); *Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 9 (D.D.C. 2010).

Here, Norma Ghanem asserts that she is the sole owner, officer, and director of Washington Movers and that “[a]s Washington Movers’ owner for approximately two (2) years and its employee for approximately twenty (20) years,” she “has an undeniable interest in Washington Movers.” Mot. Intervene at 2-3. She further asserts that “the Commission’s proposed revocation threatens to destroy [her] livelihood and ability to support her three children.” *Id.* at 3. According to Norma Ghanem, she intends “to determine the priorities of Washington Movers’ defense and control corresponding elements of the proceedings,” including using “discovery procedures to uncover and present relevant and non-duplicative evidence.” *Id.*

BOE counters that “serious questions exist as to the veracity” of Norma Ghanem’s “representations that she is the sole owner, officer, and director of [Washington Movers] with a protectable interest in the proceeding.” BOE Resp. at 4 n.2. BOE also argues that Norma Ghanem’s position is “duplicative of the position of Washington Movers.” *Id.*

² Although caselaw interpreting Federal Rule of Civil Procedure 24, which governs intervention in federal court, is not binding because the Commission has its own rule on intervention, *Exclusive Tug Franchises*, 29 S.R.R. at 248 n.3, the Commission has looked to such caselaw because the Commission’s rule is patterned after Rule 24, *Contract Marine Carriers*, 21 S.R.R. at 1388 n.3.

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We do not need to reach a decision on the veracity of Norma Ghanem's representations because Norma Ghanem has not shown that Washington Movers would inadequately represent her interests. We therefore deny her motion to intervene as of right. Although Norma Ghanem's burden in this regard is "*de minimis*," *Wildearth Guardians*, 272 F.R.D. at 13, she fails to address this issue at all in her motion. Further, it appears that Washington Movers will adequately protect Norma Ghanem's interests. Washington Movers and Norma Ghanem both want the company to retain its OTI license, and Washington Movers is equally capable of seeking discovery.

2. Permissive intervention

As an alternative, Norma Ghanem seeks leave to intervene with the Commission's permission under 46 C.F.R. § 502.68(c)(2). This regulation provides that:

The presiding officer or Commission may permit anyone to intervene who shows that a common issue of law or fact exists between such person's interest and the subject matter of the proceeding; that intervention would not unduly delay or broaden the scope of the proceeding, prejudice the adjudication of the rights, or be duplicative of the positions of any existing party; and that such person's participation may reasonably be expected to assist in the development of a sound record.

Id.

We deny Norma Ghanem's request for permissive intervention because she has failed to show that she meets the above criteria. Instead, she repeats the language of the regulation. Additionally, her positions appear to be duplicative of those of Washington Movers.

C. Assignment to an ALJ

The Commission instituted this revocation proceeding via an order to show cause rather than an Order of Investigation and Hearing. Washington Movers did not object to the order-to-show-cause proceeding in its reply, nor did it timely request a hearing. But Norma Ghanem, in her motion to intervene, states that she “intends to utilize discovery procedures to uncover and present relevant and non-duplicative evidence to the Commission” and that she “has the right to use discovery, present evidence and examine witnesses to the fullest extent permitted by the Code of Federal Regulations” Mot. Intervene at 3. Similarly, in Washington Movers’ proposed reply to BOE’s memorandum, it requests “a hearing so that any forthcoming decision is made with the benefit of a complete and accurate record, as at least certain of the corporate records the BOE relies upon are outdated, or soon will be.” Mot. Leave Reply at 3.

BOE argues that the existing documentary record is more than sufficient to support revocation. BOE Resp. at 16. BOE nonetheless asserts that “in the event that the Commission believes that the development of a more detailed factual record is required, BOE suggests that the proceeding be assigned to the Office of the Administrative Law Judges for hearing to determine resolution of designated issues, and issuance of appropriate orders to include cease and desist and revocation of [Washington Movers’] license.” *Id.* According to BOE, “[s]uch proceeding necessarily should include whether civil penalties should be assessed for any violations of the Shipping Act or Commission regulations that may be found at hearing.” *Id.* at 16-17.

The Commission may institute a proceeding using an order to show cause. 46 C.F.R. § 502.73;³ *Am. Export & Isbrandtsen Lines*

³ Section 502.73 provides that an order to show cause “must be served upon all persons named therein, must include the information specified in § 502.143, must require the person named therein to answer, and may require such person to appear at a specified time and place and present evidence upon the matters specified.” Other than § 502.73 and a passing reference in 46 C.F.R. § 502.41, the

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v. Fed. Mar. Comm'n, 334 F.2d 185, 191 (9th Cir. 1964); *Pac. Coast European Conference Port Equalization Rule*, 7 F.M.C. 623, 626 (FMC 1963); *In re Pac. Coast European Conference*, 7 F.M.C. 27, 38 (FMC 1961). But this “expedited hearing procedure[] is generally reserved for situations involving issues only of law, where there is no question as to the material facts involved but only as to the legal implications of those facts.” *In re Interpool Ltd. Pet. for Order to Show Cause*, 23 S.R.R. 899, 902 (FMC 1986); *see also Am. Export & Isbrandtsen Lines*, 334 F.2d at 194 (lack of evidentiary hearing in order-to-show-cause proceeding did not violate APA because petitioners did not apprise Commission of any disputed facts); *The Persian Gulf Outward Freight Conference (Agreement 7700)*, 7 S.R.R. 441, 445 (FMC 1966) (use of order to show cause appropriate to resolve legal question where no material facts were in dispute); *Pac. Coast European Conference Port Equalization Rule*, 7 F.M.C. at 625-26; *In re Pac. Coast European Conf.*, 7 F.M.C. at 39. In addition, recent orders to show cause have resulted in largely uncontested license revocations. *See, e.g., Cargologic*, 33 S.R.R. at 667 (respondent did not respond to order to show cause); *Revocation of OTI License No. 021899—Trans World Logistics Corp.*, 32 S.R.R. 758, 759 (FMC 2012) (respondent did not respond to order to show cause); *Revocation of License No. 012234—AAA Nordstar Line Inc.*, 29 S.R.R. 663, 663 (FMC 2002) (respondent consented to revocation of OTI license).

In contrast, this revocation proceeding involves disputes about material facts, making an expedited order-to-show-cause proceeding before the Commission inappropriate. Washington Movers not only argues that revocation is unwarranted as a legal matter, it disputes factually the extent to which Sam Ghanem’s criminal conduct implicates Washington Movers and the extent of Sam Ghanem’s current involvement with the company. BOE

Commission’s regulations do not discuss orders to show cause, and the regulations applicable to private party complaints and Orders of Investigation and Hearing do not apply to such orders. *Revocation of OTI License No. 022025—Cargologic USA LLC*, 33 S.R.R. 666, 669 n.2 (FMC 2014).

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challenges the veracity of Washington Movers' factual representations. Further, Washington Movers requests an evidentiary hearing, and Norma Ghanem states that she intends to use discovery procedures.⁴

In light of the disputed factual issues, Washington Movers' request for a hearing, potential discovery issues, potential impact of license revocation on Washington Movers and its employees, and the logistical difficulty in having the full Commission preside over evidentiary or discovery matters, we assign this matter to the Office of Administrative Law Judges to consider whether further submissions are necessary, to determine whether an evidentiary hearing is warranted, to make factual findings, and to issue an Initial Decision regarding revocation of Washington Movers' OTI license. 46 C.F.R. § 502.223. This proceeding is limited to revocation because the order to show cause did not give Washington Movers notice that civil penalties were a possibility.⁵ If BOE believes that civil penalties or other affirmative action is warranted in addition to revocation, it may seek an Order of Investigation and Hearing under 46 C.F.R. § 502.63.

III. CONCLUSION

Washington Movers' motion for leave to reply is granted, and Norma Ghanem's motion to intervene is denied.

⁴ Although Norma Ghanem may not intervene in this proceeding, her intent to seek discovery is relevant given her apparent involvement with the company and given that she and Washington Movers share the same counsel.

⁵ The Commission's regulations do not expressly require an order to show cause to include the possible penalties at issue. *Compare* 46 C.F.R. §§ 502.73, 502.143 (order to show cause), *with* 46 C.F.R. § 502.63(b)(4) (requiring Order of Investigation and Hearing to contain "[n]otice of penalties, cease and desist order, or other affirmative action sought"). But an order to show cause must notify a respondent of "the nature of the proceeding" and "the terms, substance, and issues involved," 46 C.F.R. § 502.143, and principles of due process recommend notifying a respondent that the Commission may seek monetary penalties.

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Accordingly, **IT IS ORDERED**, That, the Office of the Secretary file Washington Movers' Reply to Bureau of Enforcement's Memorandum of Law in the docket of this case;

IT IS FURTHER ORDERED, That, this matter be assigned to the Office of Administrative Law Judges to consider whether further submissions are necessary, to determine whether an evidentiary hearing is warranted, to make factual findings, and to issue an Initial Decision regarding revocation of Washington Movers' OTI license; and

FINALLY IT IS ORDERED, That, the Initial Decision of the presiding officer in this preceding shall be issued by February 13, 2017 and the Final Decision of the Commission shall be issued by August 28, 2017.

By the Commission.

Karen V. Gregory
Secretary