

S E R V E D
October 19, 2016
FEDERAL MARITIME COMMISSION

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DOCKET NO. 15-10

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

ORDER ON OCTOBER 13, 2016, TELEPHONE STATUS CONFERENCE

The parties appeared on October 13, 2016, for a telephone status conference. The Bureau of Enforcement (BOE) was represented by attorneys Brian Troiano and Brenda Doty. Respondent Washington Movers, Inc. (Washington Movers) was represented by attorneys George Doumar and Raj Patel. An audio recording was made of the conference and copies have been forwarded to the parties. The Commission does not intend to make a written transcript.

As a result of the conference, the following changes were made to the second preliminary findings of fact issued by the undersigned without objection from the parties. *See Revocation of Ocean Transportation Intermediary License No. 017843 – Washington Movers, Inc.*, FMC No. 15-10 (FMC Sept. 12, 2016) (Changes to Preliminary Findings of Fact, Identification of Second Set of Exhibits, and Second Set of Preliminary Findings of Fact).

| FINDING | CHANGE |
|---------|---|
| 64 | “15-1070TE” changed to “15-107OTE” |
| 65 | “15-1070TE” changed to “15-107OTE” |
| 66 | “Turkon America Inc” changed to “Turkon Container Transport and Shipping Inc” |
| 67 | “amendment 4” inserted after “service contract 2013 0000252641” |

After the conference, the undersigned was advised that the September 12, 2016, preliminary findings of fact had two findings numbered “63.” The second “63” is changed to “64” and 64-68 are renumbered 65 through 69.

The parties do not dispute preliminary findings of fact 1-69. Therefore, they are issued in a document served this date and the parties may refer to them in their briefs on the merits.

The parties state that they do not object to admission of BOE Exhibits 1-31 and Washington Movers Exhibits A-W. A list of these exhibits is issued in a document served this date and the parties may refer to the exhibits without including them in an appendix accompanying their briefs on the merits. BOE submitted BOE Exhibits 32 and 33 to show that the correct number of the 2015 Mediterranean Shipping Company service contract is 15-107OTE, not 15-1070TE, a fact on which the parties agree. The parties agree that BOE Exhibits 32 and 33 do not have to be part of the record of this proceeding. The parties state that at this time, they do not have additional documents to submit as exhibits. Any exhibits that BOE submits with its brief on the merits will begin with the number "BOE Ex. 32." Any exhibits that Washington Movers submits with its brief on the merits will begin with the number "WM Ex. X."

Washington Movers states that it has requested signed copies of its 2013 and 2014 federal income tax returns from the Internal Revenue Service. Washington Movers states that it should receive the copies in about six weeks and will serve copies on BOE and file copies with the Commission.

Washington Movers will attempt to obtain copies of Washington Movers checks issued on its accounts in 2014 and 2015. If it obtains copies of checks, it will serve them on BOE and file them with the Commission.

BOE states that because Washington Movers will produce its 2013 and 2014 tax returns and its checks, no further action is needed on its motion to compel.

BOE states that it believes there are no factual disputes for which an oral hearing is necessary.

Washington Movers states that Norma Ghanem, the current owner and president of Washington Movers, should be permitted to present oral testimony. BOE objects to her testimony, arguing that the testimony would not present any relevant evidence.

Although the relevance of Norma Ghanem's testimony is not entirely clear, Washington Movers' request to permit her to testify will be granted. It does not appear that hearing her testimony will delay resolution of this proceeding, and relevance may be argued after the testimony has been taken. It appears that the Commission hearing room is currently available on November 7, November 8, November 9, and November 10. The parties are instructed to confer and provide a morning (except for November 9) or an afternoon on one of those dates when they are available to take Norma Ghanem's oral testimony. If both parties are not available on any of those dates, they are instructed to advise the undersigned of a date when both are available. Washington Movers believes that direct testimony will not take more than one hour. Therefore, Washington Movers will have one hour to conduct its direct examination, and may reserve a portion of this time for redirect examination. BOE will have one hour to cross-examine the witness.

BOE has the burden of proof and persuasion in this proceeding. *Revocation of Ocean Transportation Intermediary License No. 022025 – Cargologic USA LLC*, FMC No. 14-01, Order at 5-6 (FMC Aug. 28, 2014) (Order Revoking Ocean Transportation Intermediary License). BOE requests that its opening brief be due thirty days after the close of the record, currently when Washington Movers serves and files its 2013 and 2014 tax returns and 2014 and 2015 checks. Washington Movers requests twenty-eight days to respond, and BOE requests twenty days to reply. The requests are granted. An order setting forth the schedule will be issued when the record closes.

The parties are ordered to abide by the following requirements regarding their briefing and arguments on the merits.

A. Stipulations.

The parties may, by stipulation, agree upon any additional facts involved in the proceeding. 46 C.F.R. § 502.162. The parties are expected to attempt to narrow the issues and to shorten the proceeding by stipulations. Stipulations must be signed by the parties. This document must set forth stipulations in numbered paragraphs. Each paragraph must be limited as nearly as practicable to a single factual proposition. The parties must provide an electronic copy of the Stipulations in a word-processing format *to the Office of Administrative Law Judges*.

B. Proposed Findings of Fact.

This document must set forth any additional proposed findings of fact in numbered paragraphs. Each paragraph must be limited as nearly as practicable to a single factual proposition. Each factual proposition must be followed by an exact citation to evidence that the party contends will support the proposed finding of fact; *i.e.*, an exhibit already admitted into the record or an additional exhibit filed with the brief.¹ See 46 C.F.R. § 502.221. The party filing Proposed Findings of Fact must provide an electronic copy of the Proposed Findings of Fact in a word-processing format to all parties *and to the Office of Administrative Law Judges*.

C. Response to Proposed Findings of Fact.

This document must set forth verbatim each additional proposed finding of fact to which it responds, then admit or deny the proposed finding. Each proposed finding of fact that the responding party denies must be followed by an exact citation to evidence that the responding party contends will rebut the evidence the proposing party claims supports the proposed finding of fact. The party filing a Response to Proposed Findings of Fact must provide an electronic copy of the Response in a word-processing format to all parties *and to the Office of Administrative Law Judges*.

¹ Parties must designate specific facts and provide the court with their location in the record. *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 775 (9th Cir. 2002). “General references [to evidence] without page . . . numbers are not sufficiently specific.” *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 889 (9th Cir. 2003).

D. Appendix.²

The documentary evidence on which a party bases its additional Proposed Findings of Fact must be included in an Appendix in the following format:

1. The cover of the appendix must identify the party or parties that prepared the appendix; e.g., "Respondent's Appendix."
2. The pages of the appendix must be numbered sequentially.
3. The appendix must begin with a table of contents identifying each document and identifying the appendix page at which each document begins and noting if any pages are entitled to confidential treatment.
4. Each party must ensure that all documents in its appendix are legible.
5. The parties are instructed, to the extent practicable, to cite to a document in an appendix already in the record rather than include the same document in its own appendix. For instance, if Respondents contend that a document included in Complainants' appendix rebuts the evidence Complainants claim supports a proposed finding of fact, Respondents should cite to Complainants' appendix rather than include a second copy of the same document in its own appendix.
6. The parties should include in the appendix only those pages necessary to identify the document and support its proposed fact. For instance, if support for a party's proposed fact is found on pages 79 and 80 of a deposition transcript, the party should include the cover sheet, pages 79 and 80, and only those preceding and following pages necessary for context, not the entire deposition transcript.
7. If a party includes documents in a language other than English in its appendix, Commission Rule 7 provides:

Every document, exhibit, or other paper written in a language other than English and filed with the Commission or offered

² The parties can see examples of the format required for the Proposed Findings of Fact (Document 21 "Served October 4, 2007, Procedural Order, Attachment A Administrative Law Judge Tentative Findings of Fact") and the Appendix (Document 22 "Served October 4, 2007, Procedural Order, Attachment A Administrative Law Judge Tentative Findings of Fact, Appendix") in the proceeding *Clutch Auto, Ltd. v. International Touch Consolidator, Inc.*, FMC No. 1880(F), accessed from the Commission's web site through "Docket Activity Logs."

in evidence in any proceeding before the Commission under this part or in response to any rule or order of the Commission pursuant to this part, must be filed or offered in the language in which it is written and must be accompanied by an English translation thereof duly verified under oath to be an accurate translation.

46 C.F.R. § 502.7. Unless the document has already been translated by another party, the party who wants to use the document must supply the translation.

8. The parties must avoid including multiple copies of the same document in the appendix.

E. Brief.

A party's brief must meet the requirements of Commission Rule 221, 46 C.F.R. § 502.221, with the exception that the proposed findings of fact required by section 502.221(d) must be included in the Proposed Findings of Fact described above. The pages of the additional Proposed Findings of Fact do not count toward the page limitation stated in Commission Rule 221(f). The party filing a brief must provide an electronic copy of the brief in a word-processing format *to the Office of Administrative Law Judges*.

F. Confidential Information.

The parties are reminded of the requirements set forth in paragraphs 17 through 22 of the Initial Order governing the filing of information that a party claims is confidential.

G. Electronic Copies of Documents in a Word-Processing Format.

Electronic copies of documents in a word-processing format should be provided by email or on a portable electronic storage device. The parties are directed to consult with each other to determine the most practicable way to send electronic copies to each other. The parties are directed to send the electronic copy to the Office of Administrative Law Judges at the following email address – judges@fmc.gov – or send a portable electronic storage device directly to the Office of Administrative Law Judges.



Clay G. Guthridge
Administrative Law Judge