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March 4, 2016

Federal Maritime Commission
Office of the Secretary
800 North Capital Street, NW
Washington, DC 29573

Attn: Karen V. Gregory, Secretary

Re: D.F. Young, Inc. v. NYK Line (North America), Inc.
Docket 16-02
Judge Clay G. Guthridge
Our File No.: 10102/PMK

Dear Ms. Gregory:

Enclosed for filing, please find an original and five copies of Notices of Appearance by Paul M. Keane and Joseph DeMay in the referenced matter together with the verified answer of Respondent, NYK Line (North America), Inc.

Respectfully submitted,
CICHANOWICZ CALLAN KEANE & De MAY, LLP

By: Paul M. Keane
Paul M. Keane

PMK:ecl.

cc: Honorable Clay G. Guthridge
Office of Administrative Law Judges
Federal Maritime Commission
800 North Capital Street, NW
Washington, DC 29573

cc: Law Offices of Thomas J. Wagner, LLC
8 Penn Center, 6th Floor
1628 John F. Kennedy Blvd.
Philadelphia, PA 19103
Attn: Thomas J. Wagner, Esq.

BEFORE THE U.S. FEDERAL MARITIME COMMISSION

DOCKET NO.: 16-02

D. F. YOUNG, INC.,

1235 Westlakes Drive
Suite 255
Berwyn, PA 19312

COMPLAINANT

v.

NYK LINE (NORTH AMERICA) INC.,

300 Lighting Way
5th Floor
Secaucus, NJ 07094

RESPONDENT

VERIFIED ANSWER

Paul M. Keane
Joseph De May, Jr.
Cichanowicz Callan Keane & De May, LLP
50 Main Street, Suite 1045
White Plains, NY 10606
(212) 344-7042
Attorneys for Respondent

Respondent, NYK LINE (NORTH AMERICA) INC. ("Respondent"), files this Verified Answer to the Verified Complaint of Complainant, D. F. YOUNG, INC., and alleges as follows:

I. COMPLAINANT

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 1.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 2.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 3.

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 4.

II. RESPONDENT

5. Admits the allegations of para. 5 except denies that it is organized or exists under the laws of the State of New York.

6. Admits that Nippon Yusen Kaisha is an ocean common carrier (VOCC) as defined and described in 46 U.S.C. §§ 40102(6) and 40102(17), as well as 46 C.F.R. §§ 515.2€ and (l), and that Respondent is the U.S. representative of Nippon Yusen Kaisha in North America, and except as so admitted, denies the truth of the allegations of para. 6.

III. JURISDICTION

7. Denies the truth of the allegations of para. 7.

IV. STATEMENT OF FACTS AND MATTERS COMPLAINED OF

A. TARIFFS

8. Admits that Respondent had in effect its Tariff NYKS-156 applicable to the shipments in question, and except as so admitted denies the truth of the allegations of para. 8.

9. Denies the truth of the allegation of para. 9 and specifically denies that the language quoted therein was ever in NYK Tariff NYKS-156.

10. Denies the truth of the allegation of para. 10 and specifically denies that the language quoted therein was ever in NYK Tariff NYKS-156.

11. Denies the truth of the allegation of para. 11 and specifically denies that the language quoted therein was ever in NYK Tariff NYKS-156.

B. COMPLAINANT FREIGHT FORWARDING

12. Denies the truth of the allegations of para. 12.

13. Admits that on or about April 2, 2015, Complainant and Respondent entered into an agreement to allow Complainant on behalf of Ford to print bills of lading remotely and except as so admitted denies the truth of the allegations of para. 13; and specifically denies that "transportation of shipments from Ford" was to be "by Complainant."

14. Admits that there were negotiations in regard to the Agreement and further admits that the Agreement sets forth the complete understanding of the parties, and except as so admitted denies the truth of the allegations of para. 14 and specifically

denies that Respondent ever agreed to pay Complainant brokerage or freight forwarder compensation.

15. Admits that the Agreement included a clause which stated inter alia "this Agreement sets forth the complete understanding and agreement of the parties and can be amended only in writing signed by the party against whom enforcement is sought." Except as so admitted denies the truth of the allegations of para. 15.

16. Denies the truth of the allegations of para. 16 and specifically denies that Complainant performed any freight forwarding services on behalf of Respondent.

17. Admits that Complainant remotely printed bills of lading related to the 4 shipments on behalf of Ford and accept as so admitted denies the truth of the allegations of para. 17.

18. Denies knowledge or information sufficient to form a belief as to the truth of allegations of para. 18.

19. Denies knowledge or information sufficient to form a belief as to the truth of allegations of para. 19.

20. Denies the truth of the allegations of para. 20 and specifically denies that the Complainant performed any freight forwarding services on behalf of Respondent in regard to the Ford shipments.

21. Denies the truth of the allegations of para. 21.

22. Admits that Respondent has provided no compensation to Complainant for freight forwarding services and except as so admitted denies the truth of the allegations of para. 22; and specifically denies that Complainant performed any freight forwarding services on behalf of Respondent.

C. DEMAND FOR COMPENSATION

First Demand for Compensation

23. Admits that on or about September 24, 2015, Complainant, through its counsel, served Respondent with a Demand ("The First Demand") for freight forwarding compensation in the amount of $129,592.28 plus 1.25% of any accessorial charges, port charges, heavy lift and long length charges, origin receiving charges, destination delivery charges, rental fee and/or surcharges related to certain Ford shipments placed on Respondent' s vessel pursuant to the terms of Rule 9 of Respondent's applicable tariff, 46 C.F.R §§ 515.41 515.42 and 46 U.S.C §§ 40904 and 41102 et seq., and except as so admitted denies the truth of the allegations of para. 22; and specifically denies that Complainant was entitled to such freight forwarding compensation.

24. Admits that a Certification by Denise Traynor was enclosed with the First Demand and except as so admitted denies the truth of the allegations of para. 24; and specifically denies that Complainant was entitled to freight forwarding compensation.

25. Admits that with the First Demand was Complainant's F.M.C. Ocean Transportation Intermediary/Ocean Freight Forwarder License and except as so admitted denies the truth of the allegations of para. 25; and specifically denies that Complaint was entitled to freight forwarder compensation.

26. Admits that a copy of Complainant's License for Customhouse Broker from the U.S. Treasury Department, Bureau of Customs was enclosed with the First Demand and except as so admitted denies the truth of the allegations of para. 26; and specifically denies that Complainant is entitled to freight forwarding compensation.

27. Admits that copies of individual bills of lading for shipments for which complainant sought compensation along with reference charts for each shipment and a

separate summary of the applicable total charges and freight forwarding charges for those bills of lading was enclosed with the First Demand and except as so admitted denies the truth of the allegations of para. 27; and specifically denies that Complainant was entitled to freight forwarding compensation.

28. Admits the truth of the allegations of para. 28.

Second Demand for Compensation

29. Admits that a Second Demand for Compensation was made by Complainant on or about December 22, 2015 and except as so admitted denies the truth of the allegations of para. 29; and specifically denies that Complainant was entitled to freight forwarding compensation.

30. Admits that the Second Demand included the previously demanded sum of $129,592.28 and subsequent alleged freight forwarding charges in the amount of $73,588.58 for a total of $203,180.86 together with 1.25% of any accessorial charges, port charges, heavy lift and long length charges, origin receiving charges, destination delivery charges, rental fee and/or surcharges related to certain Ford shipments placed on Respondent' s vessel not referenced in plaintiff's First Demand and except as so admitted denies the truth of the allegations of para. 30; and specifically denies that Complainant is entitled to such freight forwarding compensation since it did not perform freight forwarding services on behalf of Respondent.

31. Admits that all additional shipments for which freight forwarder compensation was sought in the Second Demand took place within 6 months of the service of the Second Demand and except as so admitted denies the truth of the allegations of para. 31; and specifically denies that Complainant is entitled to freight forwarder compensation since it did not perform freight forwarding services on behalf of Respondent.

32. Admits that a Certification by Denise Traynor was enclosed with the Second Demand and except as so admitted denies the truth of the allegations of para. 27; and specifically denies that Complainant was entitled to freight forwarding compensation.

33. Admits that with the Second Demand was Complainant's F.M.C. Ocean Transportation Intermediary/Ocean Freight Forwarder and except as so admitted denies the truth of the allegations of para. 33; and specifically denies that Complaint was entitled to freight forwarder compensation.

34. Admits that copies of individual bills of lading for shipments for which Complainant sought compensation along with reference charts for each shipment and a separate summary of the applicable total charges and freight forwarding charges for those bills of lading was enclosed with the Second Demand and except as so admitted denies the truth of the allegations of para. 27; and specifically denies that Complainant was entitled to freight forwarding compensation.

Third Demand for Compensation

35. Admits that a Third Demand for Compensation was made by Complainant on or about January 13, 2016 and except as so admitted denies the truth of the allegations of para. 35; and specifically denies that Complainant was entitled to freight forwarding compensation.

36. Admits that the Third Demand included the previously demanded sum of $203,180.86 and subsequent alleged freight forwarding charges in the amount of $49,596.03 for a total of $252,776.89 together with 1.25% of any accessorial charges, port charges, heavy lift and long length charges, origin receiving charges, destination delivery charges, rental fee and/or surcharges related to certain Ford shipments placed on Respondent' s vessel not referenced in plaintiff's First or Second Demand and except as so admitted denies the truth of the allegations of para. 36; and specifically denies that

Complainant is entitled to such freight forwarding compensation since it did not perform freight forwarding services on behalf of Respondent.

37. Admits that all additional shipment which freight forwarder compensation was sought in the Third Demand took place within 6 months of the service of the Third Demand and except as so admitted denies the truth of the allegations of para. 37; and specifically denies that Complainant is entitled to freight forwarder compensation since it did not perform freight forwarding services on behalf of Respondent.

38. Admits that a Certification by Denise Traynor was enclosed with the Third Demand and except as so admitted denies the truth of the allegations of para. 38; and specifically denies that Complainant was entitled to freight forwarding compensation.

39. Admits that with the Third Demand was Complainant's F.M.C. Ocean Transportation Intermediary/Ocean Freight Forwarder and except as so admitted denies the truth of the allegations of para. 39 and specifically denies that Complaint was entitled to freight forwarder compensation.

40. Admits that copies of individual bills of lading for shipments for which Complainant sought compensation along with reference charts for each shipment and a separate summary of the applicable total charges and freight forwarding charges for those bills of lading was enclosed with the Third Demand and except as so admitted denies the truth of the allegations of para. 40 and specifically denies that Complainant was entitled to freight forwarding compensation.

41. Admits the truth of the allegations of para. 41 but specifically denies that Complainant was entitled to freight forwarding compensation.

V. STATEMENT OF VIOLATIONS

42. Admits the truth of the allegations of para. 42 except denies that it violated the statute.

43. Admits the truth of the allegations of para. 43 except denies that it violated the statute.

44. Admits the truth of the allegations of para. 44 except denies that it violated the statute.

45. Admits the truth of the allegations of para. 45 except denies that it violated the regulation.

46. Admits the truth of the allegations of para. 46 except denies that it violated the statute.

47. Admits that it has refused to compensate the Complainant and except as so admitted denies the truth of the allegations of para. 47; and specifically denies that Complainant performed any freight forwarding service, that it was entitled to freight forwarding compensation, and that it violated the statute or regulation.

VI. DAMAGES

48. Denies the truth of the allegations of para. 48.

49. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 49.

50. Denies the truth of the allegations of para. 50.

51. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of para. 51.

VII. PRAYER FOR RELIEF

52. Admits that ADR procedures were not used prior to filing of the Complaint and except as so admitted denies the truth of the allegations of para. 52.

53. Denies the truth of the allegations of para. 53.

54. Denies the truth of the allegations of para. 54.

55. Denies the truth of the allegations of para. 55.

56. Denies the truth of the allegations of para. 56.

57. Respondent requests that a hearing in this matter be held in the Metropolitan New York area, or alternatively, in Washington, D.C.

58. Denies the truth of the allegations of para. 58.

VIII. AFFIRMATIVE DEFENSES

First: The Complainant did not perform any freight forwarding services and is not entitled to any of the compensation it claims.

Second. The compensation claimed by Complainant would unjustly enrich it since Complainant performed no freight forwarding services.

Third: The compensation claimed by complainant is unsupported by consideration since Complainant performed no freight forwarding services.

Respondent asks that verified complaint be dismissed and that it be awarded its costs and disbursements incurred in the defense of this case.

Dated: March 3, 2016

Respectfully submitted,

Cichanowicz Callan Keane & De May, LLP
50 Main Street, Suite 1045
White Plains, NY 10606
(212) 344-7042
Attorneys for Respondent
NYK LINE (NORTH AMERICA) INC.

By: Paul M. Keane
Paul M. Keane

VERIFICATION

STATE OF NEW JERSEY, COUNTY OF HUDSON, SS:

John Grbic, being duly sworn, deposes and says:

I am the Senior Director of RoRo Trade for Respondent, NYK Line (North America) Inc. I have read the foregoing answer and know its contents. The same is true and correct to the best of my knowledge. As to those matters stated to be alleged on information and belief, I believe then to be true based upon facts, records, and/or other pertinent information in Respondent's files.

John Grbic,

Subscribed and sworn to

before me on March 4, 2016

HYUNAH K. CHUNG
NOTARY PUBLIC, State of New Jersey
No. 2417911
Qualified in Bergen County
My Commission Expires Feb. 28, 2017

VERIFICATION OF SERVICE

Pursuant to 28 U.S.C. 1746(2), I, PAUL M. KEANE, verify under penalty of perjury that the following is true and correct.

On March 4, 2016, I served the prefixed notice of appearance and verified answer of Respondent, NYK Line (North America), Inc., on the Complainant by sending a true and complete copy of same to Complainant's attorneys by courier, postage prepaid:

Law Offices of Thomas J. Wagner, LLC
8 Penn Center, 6th Floor
1628 John F. Kennedy Blvd.
Philadelphia, PA 19103
Attn: Thomas J. Wagner, Esq.

Executed on March 4, 2016

Paul M. Keane

PAUL M. KEANE