

ORIGINAL

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No.:

MAVL CAPITAL, INC.,
IAM & AL GROUP INC., and MAXIM OSTROVSKIY,

Complainants,

– vs. –

MARINE TRANSPORT LOGISTICS, INC. and DIMITRY ALPER,

Respondents.

VERIFIED COMPLAINT

Complainants MAVL CAPITAL, INC. ("MAVL"), IAM & AL GROUP INC. ("IAM"), and MAXIM OSTROVSKIY (collectively "Complainants") by their undersigned attorney, Marcus A. Nussbaum, Esq., file this complaint against the respondents herein, alleging violations of the Shipping act of 1984, 46 U.S.C. §40101, et. Seq. (the "Shipping Act") as follows:

I. Complainants

1. Complainant MAVL CAPITAL, INC. ("MAVL") is a New York corporation with its primary place of business at 115 East 57th Street, New York, NY 10022.
2. Complainant IAM & AL GROUP INC. ("IAM") is an Indiana corporation with its primary place of business at 100 N Center Street Ste. 131, Mishawaka IN 46544.
3. Complainant MAXIM OSTROVSKIY is an individual residing in Moscow, Russia, and is a principal of MAVL and IAM.

II. Respondents

4. Respondent MARINE TRANSPORT LOGISTICS, INC. ("MTL") is a New York

Corporation with its primary place of business at 63 New Hook Road, Bayonne NJ 07002.

5. Respondent DIMITRY ALPER is an individual with a last known business address located at 501 New County Road Unit # A Secaucus, NJ 07094.

6. Respondent MTL is in the business of providing services as an ocean transportation intermediary, and operates as a non-vessel operating common carrier ("NVOCC").

7. At all times relevant hereto, respondent Alper was the director of operations of MTL.

8. At all times relevant hereto, the operation and supervision of MTL's day-to-day activities were conducted by respondent Alper.

9. At all times relevant hereto, MTL is and was licensed by the Federal Maritime Commission as non-vessel operating common carrier ("NVOCC") under license number 018709.

10. Respondent Alper is a "person" pursuant to the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998 ("Shipping Act").

11. Upon information and belief, MTL has bond coverage with Great American Alliance Insurance Company, as required by the Shipping Act. MTL's NVOCC Bond No. is 91308.

12. The closeness of their relationships indicates that individual respondent Alper is the alter ego of the corporate entity and piercing the corporate veil is necessary to avoid injustice and fundamental unfairness.

13. At all times relevant to the instant lawsuit, respondents MTL and Alper were united in interest such that they are one and the same.

14. At all times relevant to the instant lawsuit, MTL and Alper: (a) ordered cargo to port; (b) prepared and/or processed export declarations; (c) booked, arranged for, and confirmed

cargo space; (d) prepared and processing delivery orders and/or dock receipts; (e) processed ocean bills of lading; (f) arranged for warehouse storage; (g) cleared shipments in accordance with United States Government export regulations; (h) handled freight or other monies advanced by shippers, and/or remitted or advanced freight or other monies or credit in connection with the dispatching of shipments; (i) coordinated the movement of shipments from origin to vessel; and (j) give expert advice to exporters concerning problems germane to the cargoes' dispatch.

15. At all times relevant hereto respondent Alper also served as the “Legal Department” of respondent MTL.

16. At all times relevant to the instant lawsuit, respondent Alper knowingly and intentionally used the corporate form of respondent MTL to perpetrate tortious and other wrongful conduct against the Complainants.

III. Jurisdiction

17. The Federal Maritime Commission (“FMC”) has subject matter jurisdiction over the claims in this action as this matter relates to contracts for carriage of goods by sea from ports of the United States in foreign trade and thus comes under the Carriage of Goods by Sea Act (“COGSA”), 46 U.S.C.S. § 30701, and the Shipping act of 1984, 46 U.S.C. §40101, et. Seq.

18. Complainants are seeking reparations for injuries caused to them by respondents MTL and Alper as a result of respondents’ violations of 46 U.S.C. §§41102, 41104, and the FMC’s regulations at 46 C.F.R. Part 515, by:

- i. Failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property;
- ii. Unreasonably refusing to deal or negotiate;
- iii. Retaliating against Complainants because the Complainants had patronized another carrier;

- iv. Knowingly misdelivering Complainants' cargo; and
- v. Converting Complainants' cargo under the false premise of having exercised a maritime lien.

19. MTL is a non-vessel operating common carrier within the meaning of the Shipping Act and is and was licensed by the Federal Maritime Commission as a non-vessel operating common carrier under license number 018709, and thus falls under the jurisdiction of the Commission.

IV. Statement of Facts and Matters Complained of

20. Respondents MTL and Alper are engaged in the business of exporting used cars, motorcycles, and other cargo (from warehouse to warehouse) from the United States to ports abroad. Respondent MTL was hired to ship Complainants' vehicles described below from a warehouse operated by MTL in the United States to various locations abroad via ocean going vessel.

21. Respondents MTL and Alper are in the business of providing services as an ocean transportation intermediary, and operate as a non-vessel operating common carrier ("NVOCC"). Respondents arrange for the warehouse to warehouse transport of automobiles overseas for automobile dealerships and personal shippers, and during the course of the parties' business relationship had shipped a number of Complainants' automobiles from the United States to ports abroad.

22. Complainants have been forced to bring the instant action as a result of respondents having retaliated against Complainants because the Complainants had patronized another carrier.

23. Complainants have additionally been forced to bring the instant action due to respondents' knowingly having misdelivered Complainants' vehicles and due to respondents' unlawful conversion of same.

24. MTL, as an NVOCC, contracts with its customers as principal, agreeing to transport their goods on a voyage that includes an ocean leg.

25. An NVOCC commonly issues house bills of lading to its customers in its own name, even though it does not operate the ship that will carry the goods on the ocean voyage.

26. The NVOCC buys space on the carrying ship like any other customer, receiving a bill of lading from the owner or charterer of that ship when the goods are loaded on board.

THE INDIVIDUAL VEHICLES FROM WHICH THIS ACTION ARISES

The 2006 Mercedes SL65

27. On or about December 3, 2012, Complainants requested that MTL act as Complainants' "receiving agent" and store a 2006 Mercedes SL65, Vehicle Identification Number ("VIN") ending in 3072, imported to the United States by Complainants so that maintenance could be performed on the vehicle after which it would subsequently be shipped overseas.

28. Said Mercedes was then received by MTL's warehouse facility.

29. On or about December 3, 2012, Complainants explained to MTL that the 2006 Mercedes SL65 was to be shipped to Germany by respondents on a date to be determined by Complainants after Complainants could inspect said vehicle and order custom made repair parts.

30. Because of the commercial relationship between Complainants and MTL, MTL agreed to charge Complainants a monthly storage charge of \$150 for the storage of the 2006 Mercedes SL65.

31. The respondents unlawfully converted this vehicle and shipped it to the United Arab Emirates on or about August 24, 2013 without the permission or direction of the Complainants.

32. The respondents unlawfully shipped this vehicle overseas without obtaining a

Power of Attorney or other Written Authorization from the Complainants.

33. The respondents have further failed to follow all legal prerequisites to selling this vehicle, such as notifying the Complainants prior to the sale, and the requirement that respondents obtain valid title this vehicle. Respondents have further failed to provide documentation establishing that a sale took place, nor have they come forward with the specific sum realized from the sale of the vehicle.

34. In addition, the consignee listed on the bill of lading for the shipment of this vehicle is a third-party that has no relationship, commercial or otherwise with the Complainants.

35. The respondents unlawfully converted this vehicle for the purposes of shipping it overseas and selling it for a profit.

36. Therefore, as a result of respondents' unlawful conversion of this vehicle, complainants are entitled to damages in the amount of \$39,931.81, which includes the sum of \$25,615.00 paid to purchase this vehicle, \$1000 for shipment from the U.S. to Germany for repairs, \$7000.00 expended on repairs of the vehicle in Germany, and \$6316.81 in freight, U.S. customs clearance and other charges for shipment of this vehicle back to the United States.

The 2011 Porsche Panamera

37. On or about April 22, 2013, complainant IAM purchased a 2011 Porsche Panamera, VIN ending in 7399 to be shipped overseas via MTL and sold to an overseas customer.

38. Specifically, this vehicle was destined for shipment to the port of Kotka, in Finland.

39. IAM subsequently received an invoice from a third-party Royal Finance Group, Inc. ("RFG") who was acting on behalf of MTL, which indicated that RFG was charging amounts for, among other things, the delivery, shipping to Kotka, and a commission.

40. The shipping charges for shipment of this vehicle to Kotka was prepaid by

Complainants.

41. The respondents unlawfully converted this vehicle and shipped it to the United Arab Emirates on or about August 24, 2013 without the permission or direction of the Complainants.

42. The respondents unlawfully shipped this vehicle overseas without obtaining a Power of Attorney or other Written Authorization from the Complainants.

43. The respondents have further failed to follow all legal prerequisites to selling this vehicle, such as notifying the Complainants prior to the sale, and the requirement that respondents obtain valid title this vehicle. Respondents have further failed to provide documentation establishing that a sale took place, nor have they come forward with the specific sum realized from the sale of the vehicle.

44. In addition, the consignee listed on the bill of lading for the shipment of this vehicle is a third-party that has no relationship, commercial or otherwise with the Complainants.

45. The respondents unlawfully converted this vehicle for the purposes of shipping it overseas and selling it for a profit.

46. As a result of the foregoing, and as a result of respondents' failure to deliver this vehicle to its proper destination and due to respondents' conversion of same, complainants are entitled to the return of \$15,500.00 paid for this vehicle plus the additional \$2900.00 paid for the parts used for the repair of this vehicle, plus consequential damages in the amount of \$98,088.00 arising out of lost contract of sale between Complainants' and their overseas customer.

The Three Harley Davidson Motorcycles

47. Between June 7, 2013 and July 8, 2013, complainants purchased a 2004 Harley Davidson FXDXI, VIN ending in 7436 ("Harley #1"); a 2007 Harley Davidson FXD, VIN ending

in 1645 ("Harley #2"); and a 2000 Harley Davidson XL883, VIN ending in 3838 ("Harley #3").

48. After having made payment in full for these motorcycles, all three of said vehicles were released to complainants with their original titles.

49. As a result of MTL's previous failures to deliver complainants' vehicles to their overseas destinations, complainants retained the services of another NVOCC not a party to this action and known as Unitrans-PRA ("Unitrans"), and Harley #'s "1", "2", and "3" were delivered to the Unitrans' storage facility for shipment overseas.

50. On or about September 6, 2013, respondent Alper contacted Unitrans on behalf of MTL via email, and directed Unitrans to refrain from shipping Harley #'s "1", "2", and "3" and to "hold" that cargo.

51. As a result of respondents' fraudulent acts described herein, the complainants incurred approximately \$22,920.00 in storage charges for the storage of these motorcycles.

V. Violations of the Shipping Act

A. MTL and Alper violated 46 U.S.C. §41102(c) by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property; and by failing to provide Complainants and any other necessary parties with: (1) proper and lawful documents of ownership; (2) shipping invoices and house bills of lading; and (3) the terms and conditions of transport; (4) failing to deal in good faith.

B. MTL and Alper violated 46 U.S.C. §§ 41104(3), and 41104(10) by: (i) retaliating against Complainants by resorting to unfair and unjustly discriminatory methods; and (ii) by unreasonably refusing to deal or negotiate.

C. MTL and Alper have violated 46 U.S.C. 41102(c) by exercising a purported maritime lien for monies allegedly owed to third parties, and by detaining, misdelivering, and

converting Complainants' automobiles in order to sell them overseas for a profit.

VII. Injury to Complainants

A. As a result of respondents' aforementioned violations of the Shipping Act of 1984, the complainants have sustained and continue to sustain injuries and damages as follows:

- Direct damages in excess of \$180,000.00 constituting the amounts paid for the purchase of the vehicles plus additional consequential damages for sums arising out of lost contracts, plus interest;

The full extent of damages can only be determined after obtaining discovery in this matter, and after final calculation of interest due and owing to Complainants on this sum and calculation of the legal fees incurred by complainants due to respondents' violations of the Shipping Act.

VIII. Prayer for Relief

- A. Statement regarding ADR procedures: Alternative dispute resolution procedures were not used prior to filing the Complaint and Complainants have not consulted with the Commission Dispute Resolution Specialist about utilizing alternative dispute resolution.
- B. **WHEREFORE**, Complainants pray that: (1) respondents be required to answer the charges herein; (2) that after due hearing, an order be made commanding said respondent to pay to Complainants by way of reparations for the unlawful conduct hereinabove described, the sums described herein, with interest and attorney's fees, costs and expenses, or such other sum as the Commission may determine to be proper as an award of reparation; (3) that the Commission issue an Order holding that the respondents Dmitry Alper individually, and Marine Transport Logistics Inc. violated the Shipping Act of 1984; and (4) that the Commission issue such other and further order or orders as the Commission determines to be just and

proper.

- C. Complainants request a hearing on this matter, and further request that the hearing be held in Washington, D.C.



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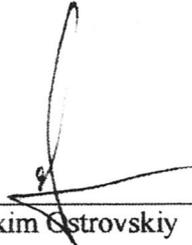
Dated: July 31, 2016

VERIFICATION

Maxim Ostrovskiy declares and states that he is a Complainant in this proceeding, and that the foregoing annexed VERIFIED COMPLAINT is true to the best of his information and belief, and that the grounds to his belief as to those matters therein not stated upon personal knowledge, is based upon information which has otherwise been provided to Complainant and which Complainant believes to be true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 31, 2016.



Maxim Ostrovskiy