

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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Docket No.: 16-16

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

*Complainants,*

– vs. –

MARINE TRANSPORT LOGISTICS, INC. and DIMITRY ALPER,

*Respondents.*

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**COMPLAINANTS' REPLY TO RESPONDENTS' RESPONSES TO THE COMMISSION'S  
ORDER TO SHOW CAUSE WHY THE  
COMPLAINT SHOULD NOT BE PARTIALLY DISMISSED**

Pursuant to the Presiding Officer's Order dated September 15, 2016, complainants respectfully submit the following in reply to respondents' responses to the Order to Show Cause Why the Complaint Should Not Be Partially Dismissed.

**BRIEF STATEMENT**

As set forth herein, respondent have abjectly *failed* to respond to the arguments set forth in complainants' response to the Presiding Officer's Order to Show Cause with respect to complainants' allegations regarding the subject 2006 Mercedes SL65 (the "Mercedes") and three Harley Davidson motorcycles from which this action arises. Respondents' silence speaks volumes with respect to their failure to address the admissions made under oath by Alla Solovyeva regarding the Mercedes having been sold *in Dubai*, allegedly pursuant to the terms and conditions set forth in MTL's Bill of Lading. Respondents have further wholly ignored the fact that the Mercedes was issued a new title in Dubai *after* it was repaired in that country at the direction and request of the respondents.

Notably and with respect to the Mercedes (which as the Presiding Officer is aware, is also at issue in a proceeding ongoing in the U.S. District Court for the Eastern District of New York,

captioned as *MAVL Capital Inc. et al. v. Marine Transport Logistics Inc. et al.*, U.S.D.C. – E.D.N.Y. Docket No.: 13-cv-7110, referred to herein as the “EDNY” matter), the respondents herein have engaged in what can only be described as a game of ‘situational ethics’ as it has suited their individual pecuniary needs, and in the process making various conflicting representations in two different forums regarding the facts under which the Mercedes was shipped to Dubai.

In the first instance, and as explained below, respondents have flat out denied having converted the vehicle (*prior* to its shipment overseas) in their individual Answers filed in response to the Complaint herein, and respondent Alper now points the proverbial finger at MTL, averring that the conversion of the vehicle occurred in MTL’s warehouse, while at the same time, both Marine Transport Logistics, Inc. (“MTL”) and Alper *denied* having converted the Mercedes in their joint Answer filed in the EDNY matter in response to the Complaint of plaintiffs therein.

It is additionally submitted that in the EDNY matter, respondents claim to have sold the Mercedes in order to recover “outstanding debts owed by plaintiffs” and claim to have asserted a lien upon the Mercedes for “*prior debts*” pursuant to clause “15” of MTL’s Bill of Lading (which complainants submit is a clear violation of the Shipping Act).

With respect to MTL’s assertion that “this is not a case where Complainants can fall back on the age old plaintiff’s cry of needing ‘more discovery’ ...”, complainants note that discovery is indeed needed in order to assist the Presiding Officer in developing a complete record<sup>1</sup> in light of the conflicting statements made by respondents as set forth above; and additionally in that in the EDNY

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<sup>1</sup> It is well settled that the Commission favors the development of a complete record: “. . . it is Commission policy that the evidentiary record be fully developed fully [sic] before an initial decision is rendered. Maersk Line Agency for the Benefit of Mitsui and Co., 22 FMC 224 [19 SRR 1014] (1979). . . [i]tis not just the policy, but the responsibility of the Commission and, by delegation of authority, the presiding judge, to inquire into and consider all relevant facts. Michigan Consolidated Gas Co. v. Federal Power Commission, 283 F2d 204, 226, *cert. denied*, 364 US 913 (1960). The Commission’s role is not one of ‘an umpire blindly calling balls and strikes for adversaries appearing before it.’ Scenic Hudson Preservation Conference v. Federal Power Commission, 354 F2d 608, 620 (2d Cir. 1965). The Commission would not be fulfilling its responsibility if it were to decide the issues upon a [sic] incomplete record. Indeed of, even greater importance than the concept of fairness between the parties as they maneuver to develop a record which fits neatly within their positions, is the need to ensure that justice is served and all relevant facts are investigated and considered by the Commission. Isbrandtsen Co. v. United States, 96 F.Supp. 883, 892 (SDNY 1951); Landis, *The Administrative Process* 39 1938. Id. at 1377.

matter, respondents claim to have sold the Mercedes to a non-party for \$3500 via wire transfer, a claim denied by said non-party, while at the same time, respondents have averred before the Presiding Officer in the matter of *Crocus Investments, LLC et al. v. Marine Transport Logistics Inc. et al.* (FMC Docket No.: 15-04) that this very same wire transfer was sent by that very same non-party to the respondents for the purchase of a boat trailer. Moreover, in the Crocus matter, and as explained below, MTL claims that “It was customer who was shipping panorama and a Mercedes [to Dubai]”, further creating inconsistent statements by respondents regarding the disposition of this vehicle.

It is further submitted that while respondents argue in conclusory fashion that the fact that a new title to the vehicle may have been issued in Dubai is irrelevant, it remains undisputed that the respondents shipped complainants’ Mercedes to Dubai, under complainants’ *original* title and then claimed to have executed a lien on said vehicle, allegedly pursuant to the terms and conditions of the MTL Bill of lading. Therefore, *ownership* of the Mercedes was transferred at the time that the new title was issued in Dubai.

A set forth below and with respect to the three Harley Davidson Motorcycles, respondent Alper has already *admitted in a sworn declaration* that MTL had received the titles for all three motorcycles after they were paid for in full by complainants *so that MTL could arrange the ocean carriage for the 3 Harley Davidson motorcycles*. This is also confirmed in the Sworn Declaration of Aleksandr Solovyev, who explains that the seller of the motorcycles sent the original titles to MTL so that MTL could arrange the ocean carriage the motorcycles.

In light of: (1) respondents’ continued “pivoting” in different forums with respect to their allegations regarding the Mercedes and their continued refusal to take a consistent position on the manner in which it was disposed; and (2) respondents’ admissions that the motorcycles were indeed purchased for the *sole* purpose of ocean transport by MTL, the Presiding Officer is respectfully urged to discharge the Order to Show Cause and to the extent necessary, allow complainants leave to amend the Complaint herein.

## ARGUMENT

### Respondents' Inconsistent Statements Regarding the Mercedes

It is notable that respondents have flat out denied having converted the vehicle (*prior* to its shipment overseas) in their individual Answers filed in response to the Complaint herein, and respondent Alper now points the proverbial finger at MTL, averring that “the conversion of the vehicle occurred in MTL’s warehouse” (See, page “2” of respondent Alper’s Letter Brief in response to the Order to Show Cause); while at the same time, both Marine Transport Logistics, Inc. (“MTL”) and Alper *denied* having converted the Mercedes in their joint Answer filed in the EDNY matter in response to the Complaint of plaintiffs therein (See, Complaint in the EDNY Matter annexed to MTL’s Response to the Order to Show Cause EXH “2”, ¶¶ “137” through “140”, and Answer of MTL and Dimitry Alper, annexed hereto as Appendix “A”, ¶¶ “137” through “140”).

It is additionally notable that in the EDNY matter, respondents claim to have sold the Mercedes in order to recover “outstanding debts owed by plaintiffs” and claim to have asserted a lien upon the Mercedes for “*prior debts*” pursuant to clause “15” of MTL’s Bill of Lading (See, Memorandum in Opposition to Plaintiff’s Motion for Injunctive Relief in the EDNY matter, pp. 2; 17-18, a copy of which is annexed hereto as Appendix “B”).

With respect to MTL’s assertion that “this is not a case where Complainants can fall back on the age old plaintiff’s cry of needing ‘more discovery’ ...”, complainants note that discovery is indeed needed in order to assist the Presiding Officer in developing a complete record in light of the conflicting statements made by respondents as set forth above; and additionally in that in the EDNY matter, respondents claim to have sold the Mercedes to a company called Middle East Asia Alfa FZE (“MEAA”) for \$3500 via wire transfer<sup>2</sup>, a claim denied by MEAA, while at the same time,

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<sup>2</sup> Respondents claim that MEAA wired \$4950 to respondents for payment of the Mercedes in the amount of \$3500 plus an additional \$1,450.00 paid toward a motorcycle purchase, unrelated to this matter.

respondents have averred before the Presiding Officer in the matter of *Crocus Investments, LLC et al. v. Marine Transport Logistics Inc. et al.* (FMC Docket No.: 15-04) that this very same wire transfer was sent by MEAA to respondents for “the purchase of a boat trailer” (See, Certification of Alexander Safonov, annexed to complainants’ Response to the Presiding Officer’s Order to Show Cause as Appendix “D”, ¶¶ “3” through “12” and exhibits “A”, “B”, “C” and “D” annexed thereto).

On the issue of respondent MTL’s denial of having converted the Mercedes, MTL claims that complainants have proffered “unsubstantiated and self-serving testimony” purporting a communication on or about June 1, 2013, of which there is allegedly “no documented evidence whatsoever” regarding the verbal instructions given by complainants to MTL to export the Mercedes back to Germany (see footnote “2” on page “4” of MTL’s brief in response to the Order to Show Cause). Such an argument is belied by MTL’s admission, *documented in writing*, that it indeed received verbal instructions from complainants regarding the parties’ course of business in making such requests for export.

The President of MTL, Ms. Alla Solovyeva, explained in her sworn Response to Interrogatories, verified by her from the EDNY matter as follows:

Q4: “...Identify the manner in which the individuals or entities authorizing you to export these vehicles provided such authorization.”

A4: “Authorization for the export of the vehicles was given by plaintiffs orally...”

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(See, Appendix “C” to complainants’ Response to the Presiding Officer’s Order to Show Cause, p. 3).

The Presiding Officer is also respectfully asked to take note of additional inconsistent statements made by MTL in the matter of *Crocus Investments, LLC et al., supra*, which as explained herein, involves the very same vehicles Porsche and Mercedes at issue in the case at bar. During a deposition conducted of respondent MTL, a statement was made under oath regarding the Mercedes by Mr. Alexander Solovyev, who professes to be an “agent” of MTL. A copy of Mr. Solovyev’s

deposition transcript is annexed hereto as **Appendix “C”**, wherein he states that the Mercedes and Porsche were shipped to Dubai and sold at the request “of a customer in the U.S.A.” as follows:

- Q. Because I have an e-mail which we provided to you that is between you and Mr. Safonov in December 2013 talking about a Mercedes Benz SL and a Porsche that you had shipped over to Dubai. What's the deal of that? What was the understanding?
- A. *It was customer who was shipping panorama and a Mercedes.* It's salvage cars which Andre Trejaykov was supposed to sell in Dubai. Make his commission and return money back to let's say United States, that's all.
- Q. But do you buy the cars for them and did you charge them for them?
- A. No, It's not the business. *It was a business for one of the customers in U.S.A. which ask me to sell them In Dubai, that's all.* (emphasis added)

(See, Appendix “C” p.89; ln. 7-22)

### **Complainants Were the Owners of the Mercedes at the Time It Was Exported to Dubai**

While respondents argue in conclusory fashion that the fact that a new title to the vehicle may have been issued in Dubai is irrelevant, it remains undisputed that the respondents shipped complainants' Mercedes to Dubai, under complainants' original title and then claimed to have executed a lien on said vehicle pursuant to the terms and conditions of the MTL Bill of lading. Therefore, *ownership* of the Mercedes was transferred at the time that the new title was issued in Dubai. (See, Certification of Alexander Safonov, annexed to complainants' Response to the Presiding Officer's Order to Show Cause as Appendix “D”, ¶ “13”).

### **MTL Was Originally Hired By Complainants For Ocean Transport of the Three Harley Davidson Motorcycles**

With respect to the three Harley Davidson Motorcycles, respondent Alper has already *admitted in a sworn declaration* that MTL had received the titles for all three motorcycles after they were paid for in full by complainants “so that MTL could arrange the ocean carriage for the 3 Harley Davidson motorcycles.” (See, Declaration of Dimitry Alper, ¶ “34” a copy of which is annexed hereto as Appendix “D”). Additionally, this is also confirmed in the Sworn Declaration of Aleksandr Solovyev, who explains that: (1) he is “the sole principal and officer of Car Express & Import, Inc.

(“Car Express”); (2) Car Express has a “mutual referral arrangement” with MTL in which Car Express refers its buyers to MTL for the ocean transport of vehicles purchased through Car Express; and (3) “Pursuant to the agreement between Car Express and [complainants], Car Express sent the original titles for all 3 Harley Davidson Motorcycles to MTL so that MTL could arrange the ocean carriage for the 3 Harley Davidson motorcycles” (See, Declaration of Aleksandr Solovyev, ¶¶ “2”, “9”, “10” and “27” a copy of which is annexed hereto as Appendix “E”).

While it is undisputed that the three motorcycles eventually ended up in the custody of non-party NVOCC Unitrans-PRA Co. Inc. (“Unitrans”), counsel for respondents MTL and Alper have disingenuously taken the position that it was *Unitrans* that created the problems in the first instance by rejecting Alper’s request for Unitrans to hold the motorcycles. Respondents studiously ignore the fact that Alper had no legal right to interfere with the transport of the vehicles by Unitrans in the first place.

Even more troubling is respondents’ claim that it was *Unitrans* that allegedly violated the Shipping Act by refusing to export the motorcycles, specifically in light of the fact that counsel for respondents herein also currently represent Unitrans in the matter of *Quibec Inc. v. Unitrans-Pra Co., Inc. et al.*, (Docket No.: 1:09-cv-00144 -- .S.D.C. - E.D.N.Y.) and were previously counsel for Unitrans in the matter of *Transatlantic Auto Group, Inc. v. Unitrans-PRA Co. Inc. et al.*, (Docket No.: 08-cv-5070 -- U.S.D.C. - E.D.N.Y.).

In a feckless attempt to pass the blame and extricate respondents from what is otherwise a textbook example or retaliation under the Shipping Act, respondents’ counsel have apparently been very eager to throw Unitrans “under the bus” and in doing so have raised serious conflict of interest issues which may need to be addressed as this matter proceeds forward.

In light of respondents’ continued “pivoting” with respect to the Mercedes and their refusal to take a consistent position on the manner in which it was disposed, the Presiding Officer is respectfully

urged to discharge the Order to Show Cause and to the extent necessary, allow complainants leave to amend the Complaint herein.

**CONCLUSION**

It is respectfully submitted that based upon the foregoing, the Commission has jurisdiction over complainants' claims in this action, and the complaint states a cause of action against respondents for violations of the Shipping Act.

Consequently, it is respectfully urged and otherwise prayed for that the Presiding Officer now allow complainants to proceed forward with their claims regarding the Mercedes and motorcycles described herein, and to the extent necessary allow complainants leave to amend the complaint; and grant such other relief as the Commission may deem just and proper under the circumstances.

Dated: Brooklyn, New York  
October 23, 2016

Respectfully Submitted,



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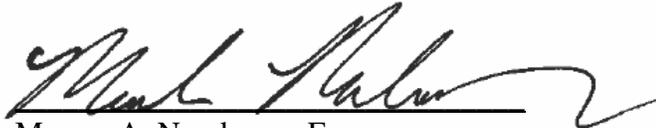
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the **COMPLAINANTS' REPLY TO RESPONDENTS' RESPONSES TO THE COMMISSION'S ORDER TO SHOW CAUSE WHY THE COMPLAINT SHOULD NOT BE PARTIALLY DISMISSED** upon Respondents' Counsel at the following address:

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Dated: Brooklyn, New York  
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