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October 3, 2011					
FEDERAL MARITIME COMMISSION					

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WASHINGTON, D.C.

DOCKET NO. 1923(F)

THE EAGLES WINGS FOUNDATION

v.

CHATELAIN CARGO SERVICES

**MEMORANDUM AND ORDER
DISMISSING COMPLAINANT WITHOUT PREJUDICE**

Complainant The Eagles Wings Foundation (Eagles Wings) filed a Complaint with the Commission seeking adjudication as an informal proceeding pursuant to 46 C.F.R. Subpart S. Eagles Wings alleges that respondent "Chatelain Cargo Services" violated the Shipping Act of 1984 when it failed to deliver a container in Haiti. Chatelain Cargo Services objected to proceeding informally and the Complaint was assigned to the Office of Administrative Law Judges for adjudication pursuant to 46 C.F.R. Subpart T. *The Eagles Wings Foundation v. Chatelain Cargo Services*, FMC No. 1923(F) (ALJ Aug. 9, 2011) (Notice of Assignment).

The supporting documents filed with its Eagles Wings' Complaint and in response to an order to supplement the record, as well as Chatelain Cargo Services' filings, suggested that the Commission does not have subject matter jurisdiction over Eagles Wings' Complaint because the loss about which Eagles Wings complains occurred during transportation between two points in Haiti that was not part of transportation on a multimodal through bill of lading. Therefore, on September 21, 2011, I issued an Order for Eagles Wings to show cause why its Complaint should not be dismissed for lack of subject matter jurisdiction. *The Eagles Wings Foundation v. Chatelain Cargo Services*, FMC No. 1923(F) (ALJ Sept. 21, 2011) (Memorandum and Order for Complainant to Show Cause Why the Complaint Should Not Be Dismissed for Lack of Subject Matter Jurisdiction). On October 3, 2011, Eagles Wings filed a Notice of Voluntary Dismissal. The Notice states:

The Petitioner, The Eagles Wings Foundation, Inc., respectfully files this Notice of Voluntary Dismissal, without prejudice. The Petitioner has retained Searcy, Denny, Scarola, Barnhart & Shipley in Palm Beach County, Florida, where the Petitioner will be filing a civil action in the 15th Circuit of Palm Beach County, Florida, as recommended by the Respondents' law firm in one of its recent pleading to this Court.

(Notice of Voluntary Dismissal.)

Chatelain Cargo Services filed a Verified Response in Opposition to Eagles Wings' Complaint. The Verified Response answered the allegations in the Complaint; therefore, the Response serves as an answer to the Complaint. (*See* Verified Response at 1-2.) Chatelain Cargo Services also sought dismissal of the Complaint on the ground that the Commission does not have subject matter jurisdiction over the Complaint. (*Id.* at 2-4.)

The FMC's Rules of Practice and Procedure do not address voluntary dismissals of actions; but Rule 41(a) of the Federal Rules of Civil Procedure ("FRCP") which governs voluntary dismissals of actions provides that, where, as here, an answer to the complaint has been filed, dismissal may only be had by an order of the court. Rule 41(a)(2) further states that such dismissal is without prejudice unless otherwise specified in the order.

Maritrend, Inc. v. The Galveston Wharves, FMC No. 94-05 (ALJ July 18, 1994) (Order Approving Stipulation of Dismissal with Prejudice on Condition). *See also Shipco Transport, Inc. v. Inter-Maritime Container Lines, Inc.*, FMC No. 99-04, 2001 WL 1634407, at *1 (ALJ Nov. 19, 2001) (Voluntary Dismissal of Complaint Granted), *quoting So. Pacific Trans. Co. and Atchison, Topeka & Santa Fe Rwy. Co. v. Port of Long Beach*, 27 S.R.R. 690, 692 (FMC 1996). Therefore, I will treat Eagles Wings' Notice of Voluntary Dismissal as a motion to dismiss pursuant to Federal Rule of Civil Procedure 41(a), made applicable to this proceeding through Commission Rule 12.46 C.F.R. § 502.12.

Eagles Wings seeks dismissal of the Complaint without prejudice. I find that this is appropriate under Federal Rule 41(a). This is also consistent with the fact that Eagles Wings has not established that the Commission has subject matter jurisdiction over the Complaint, and as noted above, Chatelain Cargo Services challenges the Commission's subject matter jurisdiction.

"The basic rule that dismissal for lack of subject matter jurisdiction does not preclude a second action on the same claim is well settled." 18 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* § 4436 (1981) (citing *Hughes v. U.S.*, 4 Wall. (71 U.S.) 232, 237, 18 L. Ed. 303 (1866), and other cases).

Holloway v. Brush, 220 F.3d 767, 778 (6th Cir. 2000). Therefore, the Complaint is dismissed without prejudice.

ORDER

Upon consideration the Notice of Voluntary Dismissal filed by complainant The Eagles Wings Foundation and the record herein, and for the reasons stated above, it is hereby

ORDERED that the Notice of Voluntary Dismissal be treated as a Motion for Voluntary Dismissal. Fed. R. Civ. P. 41(a); 46 C.F.R. § 502.12. It is

FURTHER ORDERED that the Motion for Voluntary Dismissal be **GRANTED**. It is

FURTHER ORDERED that the Complaint filed by The Eagles Wings Foundation be **DISMISSED WITHOUT PREJUDICE**.



Clay G. Guthridge
Administrative Law Judge