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FEDERAL MARITIME COMMISSION

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WASHINGTON, D.C.

DOCKET NO. 07-09

JAMTECK INTERNATIONAL SHIPPING INC., AND
ANGELLA BARNETT-WALKER - POSSIBLE VIOLATIONS OF THE
COMMISSION'S REGULATIONS AT 46 C.F.R. PART 515

MEMORANDUM AND ORDER ON THE
BUREAU OF ENFORCEMENT MOTION FOR SANCTIONS

BACKGROUND

By Order of Investigation and Hearing (Order) served August 24, 2007, the Commission commenced an investigation into the activities of Jamteck International Shipping, Inc. (Jamteck), an ocean transportation intermediary (OTI) licensed by the Commission, and Angella Barnett-Walker, Jamteck's president and purportedly its Qualifying Individual,¹ for possible violations of the Commission's regulations applicable to OTIs. *Jamteck International Shipping, Inc., and Angella Barnett-Walker - Possible Violations of the Commission's Regulations at 46 C.F.R. Part 515*, FMC No. 07-09 (Aug. 24, 2007) (Order of Investigation and Hearing). The Order states that in response to questions on Jamteck's application for its OTI license, Respondents claimed Barnett-Walker worked in ocean transportation intermediary activities for two employers (Dennis Shipping and Gunter Shipping) over a period of four years. *Id.* at 1. When representatives of Dennis Shipping and Gunter Shipping contradicted Respondents' claim, the Commission's Office of Transportation Intermediaries sought documents that would confirm Barnett-Walker's employment at Dennis Shipping and Gunter Shipping from Barnett-Walker. Respondents did not produce the documents.

In its Order of Investigation and Hearing, Commission stated:

¹ "To be eligible for an ocean transportation intermediary license, the applicant must demonstrate to the Commission that: (1) It possesses the necessary experience, that is, its qualifying individual has a minimum of three (3) years experience in ocean transportation intermediary activities in the United States, and the necessary character to render ocean transportation intermediary services." 46 C.F.R. § 515.11(a).

It has come to the attention of the Commission that Ms. Barnett-Walker appears to have misrepresented her OTI experience on Jamteck's license application. Information provided by representatives of both employers indicates that Ms. Barnett-Walker does not have three (3) years of OTI experience as required by the Commission's regulations at 46 CFR 515.11(a). In addition to a lack of the requisite OTI experience of three (3) years, it appears that, in applying for its OTI license, Jamteck and Ms. Barnett-Walker made materially false or misleading statements to the Commission with regard to Ms. Barnett-Walker's previous OTI experience and subsequently failed to correct such omissions.

Id. at 2. The Order notes that section 19 of the Shipping Act of 1984 requires any person in the United States acting as an OTI to hold a license issued by the Commission. 46 U.S.C. § 40901(a). *Id.* Commission regulations require that an applicant for a license must demonstrate three years experience in OTI activities. *See* n.1, *supra*.

The Act provides that:

The . . . Commission, after notice and opportunity for a hearing, shall suspend or revoke an ocean transportation intermediary's license if the Commission finds that the ocean transportation intermediary – (1) is not qualified to provide intermediary services; or (2) willfully failed to comply with a provision of this part or with an order or regulation of the Commission.

46 U.S.C. § 40903(a). The Commission's regulations provide that an OTI's license:

may be revoked or suspended after notice and an opportunity for a hearing for any of the following reasons:

- (1) Violation of any provision of the Act, or any other statute or Commission order or regulation related to carrying on the business of an ocean transportation intermediary;
- (2) Failure to respond to any lawful order or inquiry by the Commission;
- (3) Making a materially false or misleading statement to the Commission in connection with an application for a license or an amendment to an existing license;
- (4) Where the Commission determines that the licensee is not qualified to render intermediary services; or
- (5) Failure to honor the licensee's financial obligations to the Commission

46 C.F.R. § 515.16(a).

The Commission ordered the investigation to determine:

- 1) whether Jamteck International Shipping, Inc., and Angella Barnett-Walker violated the Commission's regulations at 46 CFR Part 515 by submitting materially false or misleading information to the Commission on the OTI license application of Jamteck International Shipping, Inc., and whether such licensee is qualified to render licensed OTI services;
- 2) whether the Ocean Transportation Intermediary license, No. 020155N, of Jamteck International Shipping, Inc., should be suspended or revoked pursuant to section 19 of the 1984 Act; and
- 3) whether, in the event violations are found, appropriate cease and desist orders should be issued against Jamteck International Shipping, Inc., and Angella Barnett-Walker.

Jamteck International Shipping, Inc. – Possible Violations, FMC No. 07-09, Order at 3-4 (Aug. 24, 2007) (Order of Investigation and Hearing).

After the Commission issued the Order, BOE served discovery on Respondents. *Inter alia*, BOE sought copies of Barnett-Walker's personal federal and state tax returns for each year from 2000 through 2007, copies of Barnett-Walker's Forms W-2 and Forms 1099 for each year from 2000 through 2007, and all of Barnett-Walker's contracts of employment. (BOE Interrogatories and Requests for Production of Documents Directed to Jamteck International Shipping, Inc., and Angella-Barnett-Walker, requests for production of documents 8, 9, and 11.) If Barnett-Walker worked for Dennis Shipping and Gunter Shipping as Respondents claimed, the documents sought by the requests would provide supporting evidence.

When Respondents failed to serve responses to BOE's discovery, BOE filed a Motion of the Bureau of Enforcement to Compel Discovery from Respondents (BOE Motion to Compel) seeking response to interrogatories and requests for production of documents. BOE stated that on September 19, 2007, a process server served the Order of Investigation and Hearing and BOE's Interrogatories and Requests for Production of Documents Directed to Jamteck International Shipping, Inc., and Angella Barnett-Walker on Respondents. (BOE Motion to Compel at 1 n.1.)

Requests for² discovery were due on or before October 15, 2007. To date, Respondents have failed to respond to any of the discovery requests. It appears that Respondents do not voluntarily intend to answer BOE's discovery, either at all or in a timely manner, and therefore an order to compel discovery is warranted.

(*Id.* at 1-2 (footnote omitted).)

² I assumed BOE means "responses to."

BOE contended that the responses to its discovery were necessary so that BOE could “develop as full an evidentiary record as possible. . . . Respondents’ failure to provide the requested information and documents is preventing BOE from collecting probative evidence necessary to the proceeding.” (*Id.* at 2.) Respondents did not reply to the motion to compel. I granted BOE’s motion to compel responses to its discovery and ordered Respondents to respond to the discovery on or before November 21, 2008. *Jamteck International Shipping, Inc. – Possible Violations*, FMC No. 07-09 (ALJ Nov. 6, 2008) (Memorandum and Order on the Motion of the Bureau of Enforcement to Compel Discovery from Respondents).

On February 26, 2009, I entered an Order requiring the parties to file a joint status report stating the following:

(1) Whether Respondents have responded to BOE’s discovery; (2) Setting forth a proposed schedule that will result in filing, on or before May 27, 2009, of all statements, evidence, and argument necessary for an initial decision. If BOE is unable to secure the cooperation of Respondents in preparing the joint status report, BOE shall advise me of that fact and file an individual status report with a proposed schedule on or before March 18, 2009. Respondents are advised that failure to respond to discovery and failure to file prehearing statements may result in the imposition of sanctions. 46 C.F.R. § 502.95(c); 46 C.F.R. § 502.210.

Jamteck International Shipping, Inc. – Possible Violations, FMC No. 07-09 (ALJ Feb. 26, 2009) (February 26, 2009 Procedural Order). On March 5, 2009, BOE filed a Motion for Sanctions and Summary Judgment. BOE reported that Respondents had not responded to BOE’s discovery and did not cooperate in preparing a joint status report. BOE contended that sanctions should be imposed on Respondents pursuant to 46 C.F.R. § 502.210 because of Respondents’ failure to respond to discovery propounded by BOE and their failure to respond to the order compelling Respondents to respond to BOE’s discovery.

BOE hereby requests that sanctions be imposed against the Respondents by prohibiting them (1) from introducing evidence responsive to BOE’s discovery requests, and (2) from contesting BOE’s claims or evidence regarding those issues. Having failed to cooperate in the discovery process, the Respondents should be barred from challenging BOE’s evidence at a later stage in the proceeding. Specifically, BOE requests that Respondents be prohibited from introducing evidence as to whether they submitted materially false or misleading information to the Commission on the OTI license application of Jamteck, as well as whether Jamteck was qualified to render licensed OTI services.

(Motion for Sanctions and Summary Judgment at 4.)

BOE established that Respondents failed to respond to BOE’s discovery and the order of November 6, 2008, compelling Respondents to respond to BOE’s discovery. *Jamteck International Shipping, Inc. – Possible Violations*, FMC No. 07-09 (ALJ Nov. 6, 2008) (Memorandum and Order on the Motion of the Bureau of Enforcement to Compel Discovery from Respondents). However,

I deferred imposing sanctions on Respondents for their failure to respond to discovery pending further submissions by the parties. *Jamteck International Shipping, Inc. – Possible Violations*, FMC No. 07-09, Memorandum at 8 (ALJ Mar. 19, 2009) (Memorandum and Order on the Bureau of Enforcement Motion for Sanctions and Summary Judgment). I denied BOE's motion for summary judgment because the record contained conflicting evidence on whether Jamteck International Shipping, Inc., and Angella Barnett-Walker violated the Commission's regulations. *Id.* at 5-8. I also entered a procedural order requiring BOE to file its proposed findings and other papers on or before April 3, 2009 (extended to April 17, 2009), Respondents to file their papers in response to BOE's papers on or before April 17, 2009 (extended to May 1, 2009), and BOE to file its reply on or before April 28, 2009 (extended to May 12, 2009). *Jamteck International Shipping, Inc. – Possible Violations*, FMC No. 07-09 (ALJ Mar. 19, 2009) (March 19, 2009, Procedural Order); *Jamteck International Shipping, Inc. – Possible Violations*, FMC No. 07-09 (ALJ Mar. 24, 2009) (Order Extending Filing Dates Established by March 19, 2009, Procedural Order).

BOE filed its proposed findings of fact, appendix, and brief as required by the March 19 and March 24 orders. Respondents have not filed their replies. Respondents have not responded to BOE's discovery. It is now appropriate to enter sanctions against Respondents for their failure to respond to discovery as ordered.

DISCUSSION

Commission Rules provide:

If a party or an officer or duly authorized agent of a party refuses to obey an order requiring such party to answer designated questions or to produce any document or other thing for inspection, copying or photographing or to permit it to be done, the presiding officer may make such orders in regard to the refusal as are just, and among others, the following:

- (1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
- (2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the disobedient party from introducing designated matters in evidence or an order that with respect to matters regarding which the order was made or any other designated fact, inferences will be drawn adverse to the person or party refusing to obey such order;
- (3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any party thereto, or rendering a judgement by default against the disobedient party.

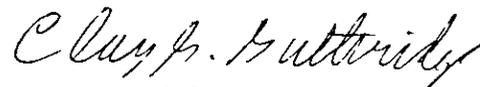
46 C.F.R. § 502.210(a). Respondents have not responded to BOE's discovery as ordered. Therefore, I will enter sanctions against Respondents as provided by Commission Rule 210. With regard to BOE's prayer that Respondents be prohibited (1) from introducing evidence responsive to BOE's discovery requests, and (2) from contesting BOE's claims or evidence regarding those issues, Respondents have not sought to introduce evidence or contest BOE's claims. I am issuing an initial decision today. Therefore, BOE's request is moot.

Under the adverse inference rule, "when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him." *Int'l Union, United Automobile, Aerospace and Agric. Implement Workers of Am. (U.A.W.) v. N.L.R.B.*, 459 F.2d 1329, 1336 (D.C. Cir. 1972). *See also Dazzio v. F.D.I.C.*, 970 F.2d 71, 78 (5th Cir. 1992) ("a party's failure to produce evidence under his control may, in an appropriate instance, give rise to a permissive inference that the evidence would be unfavorable to that party"). It is appropriate to draw an adverse inference against Respondents from Respondents' failure to produce Barnett-Walker's financial records in the form of personal federal and state tax returns for each year from 2000 through 2007, Forms W-2 and Forms 1099 for each year from 2000 through 2007. Accordingly, I infer that Barnett-Walker's financial records would not support Respondents' claim that Barnett-Walker worked for Dennis Shipping and Gunter Shipping.

ORDER

Upon consideration of the Bureau of Enforcement Motion for Sanctions and Summary Judgment, the record herein, and for the reasons stated above, it is hereby

ORDERED that the Bureau of Enforcement Motion for Sanctions be **GRANTED** in part and **DISMISSED AS MOOT** in part. The Bureau of Enforcement's prayer that respondents Jamteck International Shipping, Inc., and Angella Barnett-Walker be prohibited (1) from introducing evidence responsive to BOE's discovery requests, and (2) from contesting BOE's claims or evidence regarding those issues is dismissed as moot. Because Respondents failed to comply with the order requiring them to respond to requests for production of documents seeking Barnett-Walker's financial records in the form of personal federal and state tax returns for each year from 2000 through 2007, Forms W-2 and Forms 1099 for each year from 2000 through 2007, and contracts of employment, I draw the inference that Barnett-Walker's financial records would not support Respondents' claim that Angella Barnett-Walker worked for Dennis Shipping and Gunter Shipping as stated on the application for ocean transportation intermediary license filed by respondent Jamteck International Shipping, Inc. 46 C.F.R. § 502.210(a).



Clay G. Guthridge
Administrative Law Judge