

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 1945(F)**

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**OKOYE CHRISTIAN OGOCHUKWU**

**v.**

**EMEKA ONYECHI d/b/a DONEM INTERNATIONAL, LLC**

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**INITIAL ORDER**

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On July 8, 2014, the Commission received a Complaint filed by complainant Okoye Christian Ogochukwu (Ogochukwu). The Secretary docketed this filing as an informal complaint pursuant to 46 C.F.R. Subpart S. Respondent Emeka Onyechi d/b/a Donem International, LLC (Respondent) objected to proceeding informally and on October 15, 2014, the Secretary referred this proceeding to the Office of Administrative Law Judges. Therefore, the claim is considered to be a formal complaint under 46 C.F.R. § 502.311 and will be adjudicated pursuant to 46 C.F.R. Subpart T.

The Complaint contends that Respondent violated section 10(d)(1) of the Shipping Act of 1984, 46 U.S.C. § 41102(c), when Ogochukwu paid \$1,330.00 to Respondent allegedly to transport medical equipment by water to Nigeria, but Respondent did not transport the equipment. (Complaint ¶¶ III and IV.) Respondent alleges that it is an “Indirect Air Carrier” not licensed by the Commission and that it “does not offer ocean shipping services.” (Answer at 1.)<sup>1</sup> Respondent alleges that it had an “initial agreement” with Ogochukwu’s representative Mr. Obioma Ukegbu to pick up the equipment and send it to Nigeria by air freight (Answer at 1), but did not enter into an agreement with Ogochukwu to transport the equipment by water. (Answer at 3.) Respondent alleges:

\$1,330 paid into Respondent’s account . . . represents the balance for the shipping and clearing of the medical computer which was forwarded to the new shipper

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<sup>1</sup> Respondent submitted a six-page response that begins with a section entitled “The Real ISSUE” [*sic*] (Answer at 1), continues with a “Response in Opposition” to the Complaint (Answer at 2-4), and concludes with a “Motion to Dismiss the Complaint.” (Answer at 4-5.) For convenience I call this response an Answer.

immediately that was determined. The payment was to complete what Mr. Obioma Ukegbu has already paid for the same purpose. What Respondent is demanding now is storage charges that were accumulated in the Respondents's facility until the computers were picked up by another party for onward forwarding to Nigeria. Respondent did not retain the money paid into its account but transferred it to the party that provided the service.

(Answer at 3.) Respondent argues that the Commission does not have jurisdiction over this proceeding. (Answer at 5-6.)

To prevail in a proceeding brought to enforce the Shipping Act, a complainant has the burden of proving by a preponderance of the reliable, probative, and substantial evidence that the respondent violated the Act. 5 U.S.C. § 556(d) ("Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof."); 46 C.F.R. § 502.155; *Exclusive Tug Franchises*, 29 S.R.R. 718, 718-719 (ALJ 2001). Commission Rules provide that in a Subpart T proceeding, the "administrative law judge may require the submission of additional affidavits, documents, or memoranda from complainant or respondent." 46 C.F.R. § 502.314. Pursuant to this authority, the parties are **ORDERED** to supplement the record by responding to the following questions and producing the requested documents. Responses to the questions must be made under oath before a notary public or by declaration subject to the penalties for perjury. *See* 28 U.S.C. § 1746. An original and five copies of the responses to the questions and any accompanying documents must be filed with the Secretary, Federal Maritime Commission, 800 N. Capitol Street, NW, Washington, DC 20573-0001. *See* 46 C.F.R. § 502.321(b) and 46 C.F.R. § 502.2(c) (Commission rules for filing documents). The parties are advised that regular mail to the Commission is often delayed and occasionally damaged by security precautions; accordingly, the parties are encouraged, but not required, to send filings to the Secretary by overnight delivery service. In addition, the filing party may send the document electronically to the Commission at the following email addresses: [secretary@fmc.gov](mailto:secretary@fmc.gov) and [judges@fmc.gov](mailto:judges@fmc.gov). At the time of filing, a copy of the responses and documents must be served on the other party as required by 46 C.F.R. § 502.320.

On or before November 20, 2014, complainant Okoye Christian Ogochukwu is **ORDERED** to file and serve responses to the following questions and file and serve the requested documents.

1. On what date did you complete the purchase of the medical equipment in sale/lot 21QSCI13077/059 (the medical equipment)?
2. The Answer states that the medical equipment was stored at Respondent's facility for five months and that the medical equipment was "initially meant to be air freighted by [Respondent's] company but were later forwarded and cleared to the approved destination by a third party with the consent of the main contact/owner by name Obioma Ukegbu." (Answer at 1.)
  - A. Did Obioma Ukegbu act as your representative regarding transportation of the medical equipment?

- B. What involvement, if any, did Obioma Ukegbu have with the medical equipment and its transportation or negotiations for its transportation to Nigeria?
  - C. What discussions, if any did complainant Ogochukwu or Obioma Ukegbu have with Respondent about shipping the medical equipment by air freight?
  - D. Was the medical equipment stored at Respondent's facility? If so, for how long and how much was charged for the storage? File copies of all documents relating to the storage of the medical equipment with your response.
  - E. Was the medical equipment or were some items of medical equipment transported to Nigeria by a third party with the consent of complainant Ogochukwu or Obioma Ukegbu? If so, was this equipment included in sale/lot 21QSC113077/059 or another purchase? Who transported the equipment and how and when was it transported? File copies of all documents relating to the purchase and transportation of the medical equipment transferred to Nigeria with your response.
3. The Complaint states: "On 7/15/2013, Claimant signed an Authorization Letter for Respondent to collect and ship the equipments to Nigeria on Claimant's behalf. Exhibit '2.'" (Complaint ¶ III.B.)
- A. Is Complaint Exhibit 2 a photocopy of the original Authorization Letter?
  - B. To whom, when, and by what means was the original Authorization Letter delivered?
  - C. The Authorization Letter authorizes "DONEE CARGO INC. STAFF" to pick up sale/lot 21QSC113077/059 and states: "With this letter DONEE CARGO INC. have my full authority to collect and sign any document that might be required for easy collection of the said item." Who is DONEE CARGO INC.?
4. The Complaint states: "Claimant paid the respondent the sum of \$1,330.00 for shipment of the equipments. Exhibit '3.'" (Complaint ¶ III.C.)
- A. How did you identify Respondent as a company that transports cargo from the United States to foreign countries?
  - B. When and whom did you contact at Respondent to discuss shipping the medical equipment and what was the substance of your discussions?
  - C. Did you or your representative have any negotiations or discussions with Respondent about transporting the medical equipment by air freight? If so, who participated in the discussions and what was the substance of the discussions? File copies of any documents relating to the discussions with your response.

- D. Did you or your representative have any negotiations or discussions with Respondent about transporting the medical equipment by water? If so, who participated in the discussions and what was the substance of the discussions? File copies of any documents relating to the discussions with your response.
  - E. What information did you provide to Respondent about the shipper, consignee (recipient), and destination address for the medical equipment?
  - F. When and how did Respondent agree to transport the medical equipment to Nigeria? Produce any documents that relate to this agreement, including any bill of lading or other document issued by Respondents setting forth the agreement to transport the equipment with your response.
  - G. The Purchaser's Receipt to Bidder for Sale/Lot 21QSCI13077/059 (Complaint Exhibit 1) indicates that the medical equipment consists of computers. What if any license or authorization was necessary from United States Customs and Border Protection was necessary to export the medical equipment? Produce any documents that relate to any license or authorization sought or obtained with your response.
5. The Complaint states: "Respondent is engaged in Transportation by water in New Jersey under the jurisdiction of the Federal Maritime Commission." (Complaint ¶ III.E.) Respondent's Answer states: "Respondent as an Indirect Air Carrier is not licensed by the Federal Maritime Commission (FMC), does not offer ocean shipping services and thus will not be regulated by FMC." (Answer ¶ 1.)
- A. On what evidence do you base your claim that Respondent is engaged in transportation by water of cargo between the United States and a foreign country for compensation? File copies of any documentary evidence on which you rely with your response.
6. The Complaint alleges damages of "(i) \$1,330.0[0], money paid and cashed by Respondent for shipping of Equipments that was not done, (ii) \$3,027.00, cost of the equipment that were not shipped or returned and (iii) \$5,228.40 as 10% annual, compound interest for \$4,357.00, for a total of {\$9,585.40} in Damages." (Complaint ¶ VI.)
- A. State your legal authority to claim 10% annual compound interest and your underlying mathematical calculations supporting your claim for "\$5,228.40 as 10% annual, compound interest for \$4,357.00."

On or before December 18, 2014, respondent Emeka Onyechi d/b/a Donem International, LLC is **ORDERED** to file and serve responses to the following questions and file and serve the requested documents.

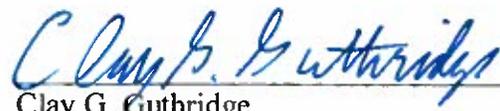
1. Respondent may offer rebuttal to Complainant's assertions filed in response to this Order. The rebuttal should restate each assertion, then set forth Respondent's rebuttal immediately below.
2. The Answer states that Respondent is an "Indirect Air Carrier." (Answer ¶ 1.)
  - A. Has Respondent been licensed or approved by a governmental agency as an Indirect Air Carrier?
  - B. If so, when and by what agency? File copies of any license or approval with your response.
3. In the period prior to December 2013, how did Respondent advertise its transportation services to the public? File representative copies of Respondent's advertising with your response.
4. Has Respondent ever held itself out to the general public to provide transportation by water of cargo between the United States and a foreign country for compensation?
5. Did Respondent negotiate with Ogochukwu or Ogochukwu's representative about transporting Ogochukwu's medical equipment by air to Nigeria or other foreign location? If so, who participated in the discussions and what was the substance of the discussions? File copies of any documents regarding the negotiations and/or any resulting agreement with your response.
6. Did Respondent negotiate with Ogochukwu or Ogochukwu's representative about transporting Ogochukwu's medical equipment by water to Nigeria or other foreign location? If so, who participated in the discussions and what was the substance of the discussions? File copies of any documents regarding the negotiations and/or any resulting agreement with your response.
7. The Answer states: "The initial agreement Mr. Obioma Ukegbu had with Respondent was to pick up and air freight the Nine pieces of used medical computers to Nigeria, but that agreement was terminated the moment another party authorized by Mr. Ukegbu picked up the said computers for the Respondent's facility for forwarding to Nigeria." (Answer at 1.)
  - A. Identify the party that picked up the computers and file copies of any documents regarding pick up with your response.
8. Regarding the \$1,330 that Ogochukwu paid to Respondent, the Answer states that Respondent "did not retain the money paid into its account but transferred it to the party that provided the service." (Answer at 3.)
  - A. Identify the party to whom the money was transferred.

- B. How and when was the money transferred to the party? File copies of any documents showing the transfer with your response.
9. The Answer states that Respondent “is demanding . . . storage charges that were accumulated in the Respondents’s facility until the computers were picked up by another party for onward forwarding to Nigeria.” (Answer at 3.)
- A. What was the agreement pursuant to which Respondent agreed to store the computers. File any documents reflecting the agreement and invoices that Respondent sent seeking payment for the charges with your response.
10. Does Respondent currently have possession of any of the medical equipment that purchased by Ogochukwu as part of Sale/Lot 21QSCI13077/059? If so, identify the equipment.

On or before January 8, 2015, Ogochukwu may file and serve rebuttal to Respondent’s assertions filed in response to this Order. The rebuttal should restate each assertion, then set forth Ogochukwu’s rebuttal immediately below.

The Commission’s rules governing discovery are not applicable to proceedings under Subpart T; therefore, there is no formal discovery in this proceeding. While there is no formal discovery, the parties are urged to cooperate and voluntarily produce any information requested by the other party. If a party is unable to obtain information from another party by voluntary means, on or before December 4, 2014, the party seeking the information may file a motion asking the administrative law judge to require submission of the information pursuant to Rule 314. The motion must explain why the information is relevant to this proceeding, what attempts have been made to obtain the information voluntarily, and why the information cannot be obtained in some other manner. The motion must be filed and served as described above. A party opposing the motion must file and serve its response to the motion as described above within ten business days of service of the motion. Neither a motion nor an opposition may exceed ten pages, excluding exhibits or appendices, without permission of the administrative law judge.

The parties are instructed to discuss with each other whether settlement is possible. On or before December 3, 2014, the parties must file a joint status report. The report *must not provide details regarding settlement negotiations* but should indicate whether or not settlement was discussed. In addition, the parties may describe any issues that need to be resolved prior to issuing a briefing schedule.

  
Clay G. Guthridge  
Administrative Law Judge