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February 27, 2015					
FEDERAL	MARITIME	COMMISSION			

FEDERAL MARITIME COMMISSION

DOCKET NO. 1946(F)

SMARTSTONE PRIVATE LIMITED

v.

**GENERAL NOLI USA, INC. and
SAVINO DEL BENE FREIGHT FORWARDERS (INDIA) PVT LTD**

**ORDER ON REQUEST FOR ORAL HEARING, ORDER TO
SUPPLEMENT THE RECORD, AND BRIEFING SCHEDULE**

I. Overview

Complainant Smartstone Private Limited (“Smartstone”) initiated this proceeding by filing a Complaint on August 5, 2014. Respondents General Noli USA, Inc. (“General Noli”) and Savino Del Bene Freight Forwarders (India) Pvt Ltd (“Savino”) filed an Answer and Request for Oral Hearing on September 22, 2014.

The Complaint alleges that Respondents violated sections 10(d)(1) and 10(d)(4) of the Shipping Act: “A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property,” 46 U.S.C. § 41102(c), and “A marine terminal operator may not . . . (2) give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person,” 46 U.S.C. § 41106(2). Smartstone asserts that the Respondents released a shipment of granite slabs shipped from Bangalore, India, to Houston, Texas, without obtaining the original bill of lading. The Respondents deny the allegations in the Complaint and raise a number of affirmative defenses.

As described below, the Respondents’ request for an oral hearing is denied. To assist the parties to prepare to present their cases most effectively, additional information will be exchanged prior to briefing the merits of the proceeding. Details on the deadlines and requirements for briefs are provided below.

II. Order on Request for Oral Hearing

In their Answer, the Respondents requested an oral hearing. In the September 30, 2014, Initial Order, the parties were advised:

The Respondents have requested an oral hearing. That request is denied at this time. In the status report due on October 30, 2014, the parties shall address whether they believe an oral hearing in Washington, DC, is necessary and how long it would take. Generally, Subpart T proceedings are decided without an oral hearing and the undersigned will make the final determination regarding whether an oral hearing will be held.

Initial Order at 2.

In the October 30, 2014, joint status report, Smartstone contends that an oral hearing is not necessary and the claim may be determined on the basis of the documents. Joint status report at 3. Respondent General Noli contends that an oral hearing is necessary and would take no longer than one day. Joint status report at 4. General Noli asserts that oral argument “provides the opportunity to address the fact issues in respect to the alleged delivery of the subject cargo and the alleged non-payment for the subject cargo” and that “oral argument would assist the proceeding by allowing a full and frank opportunity to determine the claim.” Joint status report at 4.

Pursuant to Commission Rule 315, “[i]n the usual course of disposition of complaints filed under this subpart, no oral hearing will be held.” 46 C.F.R. § 502.315. Respondent has not provided good cause to hold a live hearing. Accordingly, the parties shall present their evidence in written briefs after exchanging additional information. The request for an oral hearing is hereby **DENIED**.

III. Order to Supplement the Record

On October 30, 2014, respondent General Noli filed a motion seeking additional information (“Motion”). Respondent Savino did not join in the motion. On November 11, 2014, complainant Smartstone filed an opposition to the motion (“Opposition”).

General Noli’s motion seeks an order requiring Smartstone to respond to General Noli’s First Request for Production of Documents, dated October 26, 2014 (“Request”). General Noli asserts that the information requested is relevant to the proceeding, has not been provided voluntarily, and cannot be obtained by other means. Motion at 2-4.

Smartstone asserts that they were not provided sufficient time to comply with the request, relevant documents were already submitted with the Complaint, and a list of Smartstone employees and officers is irrelevant as the Complaint was signed by its Director. Opposition at 1-3.

Commission Rules provide that “[t]he administrative law judge may require the submission of additional affidavits, documents, or memoranda from complainant or respondent.” 46 C.F.R. § 502.314. The Commission’s discovery rules (Subpart L) are not applicable to Subpart T proceedings. See Rule 502.321 (“Except otherwise specifically provided in this subpart or in paragraph (b) of this section, the sections in subparts A through Q, inclusive, of this part do not apply to situations covered by this subpart.”)

After considering General Noli’s motion for additional information and reviewing the record, additional information has been identified which will help the parties to present their cases. This information will be simultaneously exchanged between the parties. It is hereby **ORDERED** that on or before March 24, 2015, the parties file additional affidavits, documents, or evidence with the Secretary addressing the following matters. Any responses to the information produced may be addressed in the parties’ briefs, which are described below.

A. Smartstone

Smartstone shall provide affidavits, documents, or evidence addressing the following questions:

1. Provide a list of the officers of Smartstone on the date of the shipment and on the date the Complaint was filed.
2. Provide any evidence regarding the present status of the shipment.
3. Provide evidence supporting your allegation that Respondents released the shipment without obtaining the original bill of lading.
4. When did you become aware that the Respondents had released the shipment? Provide evidence supporting your response, if available.
5. Provide purchase agreements, receipts, sales agreements or other documents demonstrating the value of the cargo and supporting each and every claim for damages.
6. Provide any evidence regarding the relationship between the Respondents.
7. Provide all agreements, contracts, correspondence, bills of lading, service agreements, or any documents which refer or relate to the claimant’s cargo.
8. The Shipping Act at 46 U.S.C. § 41106(2) refers to limitations on Marine Terminal Operators. Provide any information showing the Respondents are Marine Terminal Operators.

B. Respondents General Noli and Savino

General Noli and Savino shall provide affidavits, documents, or evidence addressing the following questions:

1. Provide documents which show the corporate relationship between respondent General Noli and respondent Savina Del Bene Freight Forwarders.
2. Provide affidavits or documents showing what role each Respondent played in the shipping and delivery of the shipment in question.
3. Respondents refer to the terms on the bill of lading. Provide a copy of the bill of lading in question, front and back.
4. If Savino is licensed as a non-operating-operating common carrier or ocean freight forwarder, provide its license number.
5. Do Respondents allege that Claimant's shipment was not loaded in good order and condition? If yes, provide evidence supporting the allegation.
6. Provide affidavits or documents showing the present status of the shipment.
7. If the shipment was released by Respondents, provide evidence regarding which Respondent released the shipment and to whom it was released. Provide information regarding what document was obtained prior to the shipment's release.
8. If Respondents allege that Complainant acted improperly or in violation of the law with regard to the shipment in question, provide evidence supporting that position.

IV. Briefing Schedule

It is hereby **ORDERED** that the parties comply with the following deadlines:

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|----------------|--|
| March 24, 2015 | Parties file additional information. |
| April 21, 2015 | Smartstone shall file its Initial Brief. |
| May 21, 2015 | Respondents shall file their Opposition Brief. |
| June 5, 2015 | Smartstone shall file its Reply Brief. |

All briefs should be filed with the Secretary, served on the other party, and an electronic copy in a word-processing format should be sent to all parties and to judges@fmc.gov. The following requirements shall be followed when filing briefs:

A. Initial Brief and Proposed Findings of Fact

The Initial Brief should explain what evidence supports the Complainant's allegation that the Respondents violated the Shipping Act. This document should include: (1) introductory section describing the nature and background of the case, (2) proposed findings of fact, with each fact in a separately numbered paragraph with citations to the appendix, (3) argument based upon principles of law with appropriate citations of the authorities relied upon, and (4) conclusions.

B. Opposition Brief and Response to Proposed Findings of Fact

The Opposition Brief should explain what evidence supports the Respondents' allegation that they did not violate the Shipping Act and any affirmative defenses. This document should include: (1) introductory section describing the nature and background of the case, (2) responses to Complainant's proposed findings of fact, and additional findings if necessary, with each fact in a separately numbered paragraph with citations to the appendix, (3) argument based upon principles of law with appropriate citations of the authorities relied upon, and (4) conclusions.

C. Reply Brief

The Reply Brief should respond to the legal arguments discussed in Respondents' brief. This brief may include responses to any findings of fact proposed in the Opposition Brief but may not include new proposed findings of fact.

D. Appendix¹

The documentary evidence on which a party bases its proposed findings of fact must be included in an appendix in the following format:

1. The cover of the appendix must identify the party or parties that prepared the appendix; e.g., "Complainant's Appendix."
2. The pages of the appendix must be numbered sequentially.

¹ The parties can see examples of the format required for the Proposed Findings of Fact ("Served October 4, 2007, Procedural Order, Attachment A Administrative Law Judge Tentative Findings of Fact") and the appendix ("Served October 4, 2007, Procedural Order, Attachment A Administrative Law Judge Tentative Findings of Fact, Appendix") in the proceeding *Clutch Auto, Ltd. v. International Touch Consolidator, Inc.*, FMC No. 1880(F), accessed from the Commission's web site through "Docket Activity Logs."

3. The appendix must begin with a table of contents identifying each document and identifying the appendix page at which each document begins and noting if any pages are entitled to confidential treatment.
4. Each party must ensure that all documents in its appendix are legible.
5. The parties are instructed, to the extent practicable, to cite to a document in an appendix already in the record rather than include the same document in its own appendix. For instance, if Respondents contend that a document included in Complainant's appendix rebuts the evidence Complainants claim supports a proposed finding of fact, Respondents should cite to Complainant's appendix rather than include a second copy of the same document in its own appendix.
6. The parties should include in the appendix only those pages necessary to identify the document and support its proposed fact. For instance, if support for a party's proposed fact is found on pages 79 and 80 of a document, the party should include the cover sheet, pages 79 and 80, and only those preceding and following pages necessary for context.
7. If a party includes documents in a language other than English in its appendix, Commission Rule 7 provides:

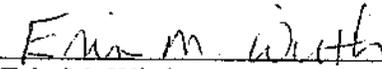
Every document, exhibit, or other paper written in a language other than English and filed with the Commission or offered in evidence in any proceeding before the Commission under this part or in response to any rule or order of the Commission pursuant to this part, must be filed or offered in the language in which it is written and must be accompanied by an English translation thereof duly verified under oath to be an accurate translation.

46 C.F.R. § 502.7. Unless the document has already been translated by another party, the party who wants to use the document must supply the translation.

8. The parties must avoid including multiple copies of the same document in the appendix.

E. Stipulations

The parties may, by stipulation, agree upon any facts involved in the proceeding. 46 C.F.R. § 502.162. The parties are expected to attempt to narrow the issues and to shorten the proceeding by stipulations. Stipulations must be signed by the parties and should be included in the appendix. This document must set forth stipulations in numbered paragraphs. Each paragraph must be limited as nearly as practicable to a single factual proposition. The parties must provide an electronic copy of the Stipulations in a word-processing format to judges@fmc.gov.



Erin M. Wirth
Administrative Law Judge