

**ORIGINAL**

**(S E R V E D)**  
**( January 9, 2007 )**  
**(FEDERAL MARITIME COMMISSION)**

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**DOCKET NO. 07-01**

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**APM TERMINALS NORTH AMERICA, INC**

**v.**

**PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

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**NOTICE OF FILING OF COMPLAINT AND ASSIGNMENT**

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Notice is given that a complaint has been filed with the Federal Maritime Commission ("Commission") by APM Terminals North America, Inc. ("APMT"). Complainant asserts that it is a marine terminal operator engaged in the business of furnishing marine terminal services to ocean common carriers at facilities throughout the United States, including the Port Elizabeth Terminal in Elizabeth, New Jersey. Complainant alleges that Respondent Port Authority of New York and New Jersey ("PANYNJ") is a marine terminal operator that owns marine terminal facilities in the New York and New Jersey area, including the Port Elizabeth Terminal in Elizabeth, New Jersey. Complainant alleges that on January 6, 2000, Complainant entered into FMC Agreement No. 201106 with Respondent, pursuant to which Complainant leased certain land and facilities at the Elizabeth-Port Authority Marine Terminal. (The Agreement became effective under the Shipping Act on August 2, 2002). The

Agreement covered both "Initial Premises" and an additional 84 acres referred to as "Added Premises" which Complainant claims were to be delivered to Complainant between January 6, 2000 and December 31, 2003. Complainant alleges that despite numerous requests to Respondent, the Added Premises were not delivered until December 25, 2005. In addition, Complainant alleges that Respondent allowed these premises to be used by Maher Terminals to the detriment of Complainant. Complainant alleges that the failure to adhere to the Agreement's terms by failing to turn over the Added Premises had an adverse effect on their business, and this failure constitutes violations of the following Sections of the Shipping Act of 1984 ("The Act"): Section 10(a)(3) (46 U.S.C. § 41102(b)(2) for failure to operate in accordance with the terms of the Agreement; Section 10(d)(1) (46 U.S.C. § 41102(c)) for unjust, unreasonable, and unlawful practices; Sections 10(d)(3) and 10(b)(4) (46 U.S.C. §§ 41106(3) and 41104(10)) for unreasonable refusal to deal or negotiate; and Section 10(d)(4) (46 U.S.C. § 41106(2)) for the imposition of undue or unreasonable prejudice or disadvantage. Complainant prays the Commission to: (a) order PANYNJ to desist from the aforementioned alleged violations of the Act; (b) order PANYNJ to pay reparations for any violations of the Act plus interest, costs, attorney's fees, and any other damages to be determined; (c) command PANYNJ to comply with all applicable provisions of the Agreement; and (d) any other relief as the Commission determines to be proper, fair, and just.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 C.F.R. 502.61, and only after consideration has been given by the

parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 C.F.R. 502.61, the initial decision of the presiding officer in this proceeding shall be issued by January 8, 2008, and the final decision of the Commission shall be issued by May 7, 2008.

A handwritten signature in black ink, appearing to read "Bryant L. VanBrakle". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Bryant L. VanBrakle  
Secretary