

FEDERAL MARITIME COMMISSION

REVOCATION OF OCEAN
TRANSPORTATION INTERMEDIARY
LICENSE NO. 016019N - CENTRAL
AGENCY OF FLORIDA, INC.

Docket No. 08-02

Served: November 7, 2008

BY THE COMMISSION: Joseph E. BRENNAN, Harold J. CREEL, Jr., and Rebecca F. DYE, *Commissioners*.

ORDER OF REVOCATION

By Order served June 6, 2008, the Commission directed Central Agency of Florida, Inc. ("Central Agency" or "Respondent") to show cause why the Commission should not revoke its ocean transportation intermediary ("OTI") license for failing to maintain a qualifying individual ("QI"), as required by Commission regulations at 46 C.F.R. §§ 515.11(a),(b) and 515.18(c). Despite adequate notice of the issues as set forth in the Order to Show Cause, Respondent never submitted any evidence, memoranda of law or affidavits to contest these allegations. Accordingly, we revoke OTI License No. 016019N.

BACKGROUND

On October 23, 2006, the Bureau of Certification and Licensing (“BCL”) received a letter from Respondent requesting a transfer of its OTI license to Loginorth, Inc. (“Loginorth” or “Applicant”). While that transfer request was being processed in BCL, respondent’s QI, Mr. Quevedo, filed an Officer/Director Resignation Form with the Florida Secretary of State on January 24, 2007, formally resigning as an officer of Respondent.

Thereafter BCL worked for nearly six months with Loginorth to obtain the information necessary for BCL to approve the license transfer under 46 C.F.R. § 515.18. Id. Despite these efforts, Loginorth failed to provide BCL with the information requested, and accordingly, the license transfer to Loginorth was never effectuated.¹ Central Agency thus remained the OTI licensee, albeit the licensee’s QI was no longer a corporate officer of record, as required by 46 C.F.R. § 515.11(b).

To address this deficiency, BCL sent a letter to Respondent on November 2, 2007, requesting that Central Agency designate a replacement QI. Despite receiving such notice, Respondent did not subsequently nominate a new QI or respond to BCL’s letter.

On June 6, 2008, the Commission issued its Order directing that Respondent show cause why the Commission should not revoke the Respondent’s OTI license and order it to cease and desist from operating as an OTI. BOE timely submitted its Memorandum of Law and supporting Affidavit of Sandra Kusumoto, Director of BCL. Respondent, however, never submitted any evidence, memoranda of law or response to BOE’s allegations or the Order.

¹By letter dated April 10, 2007, BCL returned Loginorth’s application due to Applicant’s failure to provide information necessary to process the license transfer.

DISCUSSION

It is a familiar rule of evidence that the party with control of information relevant to a disputed issue may be assigned the burden to provide such information or suffer an adverse inference for its failure to respond. *Commonwealth Shipping Ltd., Cargo Carriers Ltd., Martyn C. Meritt - Submission of Materially False or Misleading Statements to the Federal Maritime Commission and False Representation of Common Carrier Vessel Operations*, 29 S.R.R. 1408, 1412 (FMC, 2003); *Adair v. Penn-Nordic Lines*, 26 S.R.R. 11, 15 (ALJ, 1991), citing *Alabama Power Co. v. FPC*, 511 F.2d 383, 391 (D.C. Cir. 1974). If a party fails to meet this burden, i.e., by not contesting allegations or evidence that another party provides to a disputed issue, it is deemed to have accepted the opposing party's allegations and evidence as true. *Capitol Transportation, Inc. v. United States*, 612 F.2d 1312, 1318-1319 (1st Cir. 1979); *Bermuda Container Line Ltd. v. SHG Int'l Sales Inc., FX Coughlin Co., and Clark Building Systems, Inc.*, 28 S.R.R. 312, 314 (I.D. 1998). A default judgment, cease and desist order or other just ruling may issue against a party that fails to respond to a properly served order or pleading. *Commonwealth Shipping Ltd.*, 29 S.R.R. at 1412; *Helen Khadem d/b/a Worldwide Cargo Express/Trading*, 28 S.R.R. 994, 995-996 (FMC 1999); *Adair v. Penn-Nordic Lines*, 26 S.R.R. at 15.

BOE's Memorandum of Law and supporting affidavit present four major points: First, BOE asserts that Central Agency has not complied with Commission regulations by reason of its failure to obtain a QI, despite notice to Respondent of such deficiency. BOE Memo at 4; Affidavit of Sandra Kusumoto at 1-2. Second, BOE asserts that it has shown that the Order to Show Cause was properly served upon Respondent. BOE Memo at 4-5. Third, BOE asserts that Respondent has defaulted since it failed to reply to the Order or to BOE's Memorandum and Affidavit. BOE Memo at 5; Affidavit of Sandra Kusumoto at 2. Fourth, BOE asserts that it is appropriate for the Commission to revoke Respondent's OTI license and order it to cease and desist from

operating as an OTI based on the uncontested record. BOE Memo at 4.

Despite adequate notice of the issues as set forth in the Order to Show Cause, and opportunities to respond by two specific dates,² Respondent never submitted any evidence, memoranda of law or affidavits to dispute these allegations. Given the uncontested nature of BOE's case, the Commission finds that Central Agency failed to meet its obligations to maintain a QI under 46 C.F.R. §§515.11(a),(b) and 515.18(c) as a condition of its license to operate as an OTI.

CONCLUSION

THEREFORE, IT IS ORDERED, That Respondent Central Agency of Florida, Inc. is found in violation of Commission regulations at 46 C.F.R. §§515.11(a)(b) and 515.18(c) for failure to maintain a Qualifying Individual;

IT IS FURTHER ORDERED, That Respondent's OTI License, No. 016019N, is hereby revoked; and

IT IS FINALLY ORDERED, That Respondent cease and desist from operating as an OTI.

By the Commission.



Karen V. Gregory
Secretary

² The Order provided that Respondent should submit memoranda of law and affidavits of fact addressing the Order to Show Cause by July 11, 2008, with Respondent's rebuttal memorandum, if any, due August 26, 2008.