

MANELLI DENISON & SELTER PLLC
ATTORNEYS



January 23, 2007

Bryant L. VanBrakle, Esq.
Secretary
Federal Maritime Commission
Room 1046
800 North Capitol Street, N.W.
Washington, D.C. 20573

Re: Docket No. 99-16 - Carolina Marine Handling, Inc. v.
Charleston International Projects, Inc. and
Charleston International Ports, LLC

Dear Mr. VanBrakle:

Enclosed for filing in the captioned proceeding are the original and fifteen copies of Carolina Marine Handling, Inc. Motion to Dismiss.

An additional copy is enclosed. Please stamp it "Received" and return it to us in the enclosed addressed and stamped envelope.

Sincerely,

A handwritten signature in black ink, appearing to read "Eliot J. Halperin".

Eliot J. Halperin

Enclosures

ORIGINAL

BEFORE THE FEDERAL MARITIME COMMISSION



_____)
 CAROLINA MARINE HANDLING, INC.,)
)
 Complainant.)
 v.)
 CHARLESTON INTERNATIONAL PROJECTS,)
 INC. and)
 CHARLESTON INTERNATIONAL PORTS, LLC,)
 Respondents.)
 _____)

Docket No. 99-16

CC:
 OGC
 C/Exec
 Dye
 Anderson
 Branston
 Pub
 ALS (2)

CAROLINA MARINE HANDLING, INC. MOTION TO DISMISS

Carolina Marine Handling, Inc. hereby moves for dismissal of this proceeding, with prejudice, for the reasons set forth in the attached Affidavit of H.R. Jock Stender, President - Carolina Marine Handling, Inc., Charleston, SC.

Respectfully submitted,

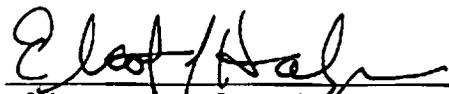
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 2000 M Street, N.W., #700
 Washington, D.C. 20036
 202-261-1000

Attorneys for
 Carolina Marine Handling, Inc.

Dated: January 23, 2007

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January, 2007
a copy of the foregoing Carolina Marine Handling, Inc.
Motion to Dismiss was served by email and by first class
mail on the following:


Eliot J. Walperin

Michael Joseph, Esq.
Joseph O. Click, Esq.
BLANK ROME LLP
600 New Hampshire Avenue, N.W.
Washington, D.C. 20037

Affidavit of H.R. Jock Stender, President
Carolina Marine Handling, Inc., Charleston, SC

The purpose of this affidavit is to support a motion to dismiss and to protest the FMC's inexcusably slow processing of my company's Complaint, Docket 99-16, filed August 10, 1999 and finally adjudicated on June 30, 2006, almost seven years later, and about four years after the last appeals of Judge Dolan's dismissal rulings. FMC's "slow-rolling" of my Complaint effectively put my company out of business, sent my customers to other ports and threw all my employees out of work. The FMC's behavior deprived me of due process under the 14th Amendment: justice delayed has been justice denied. No relief remains for my company at the FMC, despite the belated remand, or in court. Nothing in the June 30, 2006 ruling explained or provided a reason for the inordinate delay in issuing a decision.

My company, Carolina Marine Handling, Inc. ("CMH"), was a marine terminal operator, stevedore and line handler with over 100 employees operating at the just-closed Charleston Navy Base. I had invested over \$1 million in the operation, including \$350,000 in repairs to a cold storage warehouse for handling frozen chicken and pork loaded to vessels to the former Soviet Union -- business I personally solicited during six trips to Russia, Ukraine and Poland. We trained our employees, mostly unskilled, untrained, unemployed and poor men and women, black and white, young and very old, to handle extremely laborious, backbreaking work, hand-stowing 40 to 80 pound boxes of frozen meats in the holds of breakbulk reefer vessels chilled to 20 degrees below zero.

In its May 28, 2002 decision in *Federal Maritime Comm'n v. South Carolina State Ports Auth.* ["SPA"], 535 U.S. 743 (2002), the U.S. Supreme Court held that private parties cannot sue states in Article III tribunals or federal agencies such as the FMC. Thus SPA and another

defendant state agency, Charleston Naval Complex Redevelopment Authority ("RDA"), were removed from my Complaint, enjoying 11th Amendment immunity from CMH. However, the FMC chose to not investigate, *sua sponte*, the anti-competitive, capricious and predatory behavior described in FMC Judge Dolan's May 2, 2000 76-page Ruling that CMH made a *prima facie* case of violation of the Shipping Act of 1984 by both state agencies. The FMC did not follow the Supreme Court's statement that the FMC should exercise its enforcement authority to take up the issues that private parties were thereafter barred from litigating at the FMC, and that were barred also from court jurisdiction under the 11th Amendment.

Meanwhile, the South Carolina Legislative Audit Council, in a 78-page investigative report, lambasted both agencies for corruption, insider dealings, and potential criminal violation of the state Ethics Act by an SPA official who quit his job to work for other defendants in my Complaint, collectively known as "CIP." The FMC now rules, almost seven years after the Complaint was filed, and four years after appeals of the judge's dismissals were argued, that CMH can indeed proceed against CIP for Shipping Act violations. However, after being evicted by SPA and RDA from its marine terminal, CMH was snuffed out of business like a candle, most of its customers either abandoning the Port of Charleston altogether (SPA closed CMH's cold storage warehouse because of a non-compete agreement SPA has with another warehouseman) or taking over CMH's customers, charging higher rates. (Yes, shippers were injured also.)

CIP now, after so many years, is out of business and has no assets, so the FMC's June 30, 2006 ruling that CMH can now proceed against CIP is hollow, offering no form of relief to CMH. CIP, in fact, was a cruel joke. The SPA, having evicted CMH from its Navy Base terminal and having installed CIP in clandestine, unpublished and secret negotiations calling for a "profit split" between themselves, later discovered that CIP never had one dime of equity and

evicted CIP.* SPA later filed a motion with the South Carolina Supreme Court that CIP's behavior was "unethical," but a week later SPA settled with CIP, paying it nearly \$5 million, basically paying off CIP's bank loans and other liabilities (negative equity) accumulated during this scam. CIP is and was a house of cards, worth nothing, with no equity, controlled by SPA, abiding by SPA's tariff, which charged higher rates than CMH. At the height of its reign, CIP stated unabashedly in a questionnaire that it employed exactly four people.

CMH's former terminal is now empty, handling little to no cargoes, and is used primarily for layberthing. Typically, no human being is in sight. It is overrun with weeds, some of which have grown into trees, and is the domain of rabbits, raccoons, snakes and seagulls. My investment in the marine terminal is wiped out; most of my employees have disappeared from the waterfront and as far as I know have returned to poverty.

As a consequence of the FMC's "slow roll" of my Complaint, justice has been denied to me, my company and my employees: dreams and careers wiped out. The wealthy insiders feeding on this terminal (CIP and others) have triumphed. The FMC should regret the delay. For other private parties with grievances against state-run port facilities, my message is that I found no justice at this federal agency.

Further words I say not!

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



H.R. Jock Stender, January 19, 2007

* See *PricewaterhouseCoopers Report*, April 15, 2003, to SPA.