

**ORIGINAL**

(S E R V E D)  
( JULY 15, 1999 )  
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 99-08

Classic International, Inc. v. Young Hee Ko d/b/a  
World Transport, Young Hee Ko, Individually,  
and Chris Miller, Individually

ORDER

This proceeding was initiated by a complaint filed by Classic International, Inc. ("Classic"), operating as a non-vessel operating common carrier ("NVOCC"), against Young Hee Ko d/b/a World Transport, Young Hee Ko, individually, and Chris Miller, individually (collectively "Respondents"), operating collectively as an NVOCC. Classic alleges that Respondents violated section 10(a)(1) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. § 1709(a)(1), by means of false representation and unfair device or means, knowingly and willfully obtaining or attempting to obtain ocean transportation for property at less than the rates and charges that would otherwise be applicable, and section 10(d)(1) of the 1984 Act, 46 U.S.C. app. § 1709(d)(1), by acting as an NVOCC and failing to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, or storing property. Classic claims to have been damaged

by Respondents' booking cargo for Classic to provide ocean transportation, and by knowingly and fraudulently misrepresenting to Classic that they would remit payment for ocean freight and related charges and thereafter inducing Classic to release the cargo by presenting payment by checks which were returned for insufficient funds. Classic avers that this caused it to lose its lien on the cargo, which was seized by Respondents' client, the Ministry of Defense of Angola, for failure to pay ocean freight and other charges. Classic seeks a cease and desist order against Respondents and money damages in the amount of \$29,121.38, plus interest, costs, and reasonable attorneys' fees.

The Administrative Law Judge ("ALJ") issued a Notice of Default and Order to Show Cause for Respondents' failure to file an answer to the complaint. Respondents failed to respond to the Order to Show Cause, and on June 30, 1999, the ALJ entered a default judgment against Respondents and granted Classic reparations in the amount of \$29,121.38, plus interest and attorneys' fees. On July 1, 1999, Classic filed a Petition requesting that the Commission (1) either waive Rule 227(a)(3) of the Commission's Rules of Practice and Procedure, 46 CFR § 502.227(a)(3), which states that an initial decision becomes administratively final after 30 days or, in the alternative, shorten the time period from 30 days to 10 days; (2) either waive Rule 227(a)(1) of the Commission's Rules of Practice and Procedure,

46 CFR § 502.227(a)(1), which allows for the filing of exceptions or, in the alternative, shorten the period for filing from 22 days to 10 days; and (3) shorten the time period for filing a reply to its Petition, normally governed by Rule 74(a)(2) of the Commission's Rules of Practice and Procedure, 46 CFR §502.74(a)(2), from 15 days to 10 days.

BACKGROUND

Classic seeks a waiver of or shortened time periods under Rules 227(a)(3), 227(a)(1), and 74(a)(2) pursuant to Rules 10 and 103 of the Commission's Rules of Practice and Procedure, 46 CFR §§ 502.10<sup>1</sup> and 502.103.<sup>2</sup> The Commission, Classic contends, has granted a similar request on a motion for waiver of time to file responses to pleadings in Docket No. 98-24, Go/Dan Industries, Inc. and Atlantic Customs Brokers, Inc. v. Eastern Mediterranean Shipping Corp. d/b/a Atlantic Ocean Lines, Anil (a/k/a "Andy") K. Sharma, Individually, and Atlantic Ocean Line Corp., (December 1, 1998)

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<sup>1</sup> Section 502.10 reads:

Except to the extent that such waiver would be inconsistent with any statute, any of the rules in this part, except §§ 502.11 and 502.153, may be waived by the Commission or the presiding officer in any particular case to prevent undue hardship, manifest injustice, or if the expeditious conduct of business so requires.

<sup>2</sup> Section 502.103 reads:

Except as otherwise provided by law and for good cause, the Commission, with respect to matters pending before it, and the presiding officer, with respect to matters pending before him or her, may reduce any time limit prescribed in the rules of this part.

("Go/Dan Industries"). Classic asserts that counsel for Classic has attempted to contact Respondents by telephone and facsimile; however, the lines have been disconnected and no forwarding information was provided. It appears, Classic claims, that Respondents have ceased operations. As a result, Classic believes that Respondents will file neither exceptions to the judgment nor a reply to this Petition. Therefore, Classic avers, the "expeditious conduct of business" requires that the Commission grant the request for a waiver or shortened time period.

Classic further contends that it is unlikely, even if Respondents are located, that they will have assets to satisfy the judgment. Therefore, Classic is seeking to obtain a final judgment immediately in order to make a claim against Respondents' NVOCC bond. Classic claims that the financial responsibility provider who underwrote Respondents' surety bond informed Classic that payments against the bond will be made on a first come, first serve basis, and that if multiple claims exceeding the \$50,000.00 limit of the bond are made, it will pro-rate payments accordingly. Any delay in making such a claim, Classic argues, would irreparably harm Classic because the bond may be depleted by other claimants during the intervening period. As a result, Classic asserts that it would be unable to receive full satisfaction of its claim, thus causing Classic "undue hardship" and "manifest injustice."

Therefore, Classic argues that waiting the full time period for a response "will unnecessarily delay the completion of this proceeding and jeopardize Classic's ability to seek redress from Respondents' NVOCC bond."

DISCUSSION

The Commission has the discretion to either waive or shorten the time periods of any of the Commission's Rules of Practice and Procedure. See 46 CFR §§ 502.10 and 502.103. The Commission may only waive a rule in order to "prevent undue hardship, manifest injustice, or if the expeditious conduct of business so requires," while it may shorten the time period of a rule if "good cause" is shown. Id.

Classic's request is based on the fact that Respondents have not responded to any part of this proceeding and are unreachable and appear to have ceased operations. Classic states that it needs a final judgment in order to make a claim against Respondents' NVOCC bond before it is depleted by other claimants. Classic's arguments do not justify waiving Respondents' right to file exceptions under Rule 227(a)(1) or the entire time period in which an initial decision becomes administratively final under Rule 227(a)(3). While we can understand Classic's desire to satisfy its judgment for damages as quickly as possible, it would be inappropriate for the Commission to deprive Respondents of their due process rights for the purpose of foreclosing other potentially

legitimate claimants from obtaining access to Respondents' bond. Therefore, Classic's request to waive Rules 227(a)(1) and 227(a)(3) is denied.

In the alternative, Classic requests that the Commission shorten the time periods of Rule 227(a)(1) from 22 days to 10 days, Rule 227(a)(3) from 30 days to 10 days, and Rule 74(a)(2) from 15 days to 10 days. In support of its argument Classic cites Go/Dan Industries, in which the administrative law judge granted a request to reduce the time to file an answer to a complaint and advised respondents of possible default judgment.

Classic's citation of the administrative law judge's decision in Go/Dan Industries is not on point. Part of the administrative law judge's reasoning in that case was based on the fact that it was the second proceeding brought against the respondent, who also failed to respond to the first proceeding. In addition, the time period in which to answer the complaint was shortened, which did not foreclose respondent's final opportunity to respond in the proceeding. We find that Classic has not shown good cause for shortening Respondents' time period for filing exceptions. While it appears that Respondents have ceased operations and Classic is eager to make its claim against Respondents' bond, such rationale is insufficient to deny Respondents' last chance to participate in this proceeding. Therefore, Classic's request to shorten the time period Respondents have to file exceptions is denied.

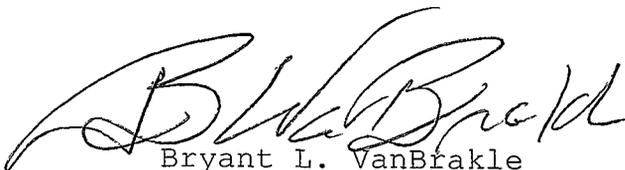
We also find that Classic has not shown good cause to shorten the time period in which the initial decision becomes administratively final. Shortening the review period from 30 days to 10 days, as Classic requests, would have the effect of shortening the 22-day period in which Respondents may file exceptions. As discussed, supra, we denied Classic's request to truncate Respondents' time to participate in this final stage of the proceeding. Moreover, Rule 502.114(c) of the Commission's Rules of Practice and Procedure, 46 CFR § 502.114(c), provides that the date of filing of any document in proceedings before the Commission shall be, inter alia, the date when the document is deposited in the United States mail. Thus, it is not feasible to allow the initial decision to become administratively final any sooner than 30 days after the decision, as exceptions mailed on the twenty-second day could take several more days to arrive at the Commission. Therefore, consistent with our decision not to shorten the time period for the filing of exceptions, Classic's request to shorten the time period in which the initial decision becomes administratively final is denied.

We also find that Classic has not shown good cause that Respondents' time to file a reply to the Petition should be shortened from 15 days to 10 days. It is unnecessary in light of the Commission's denial of Classic's request to shorten the 22-day time period for the filing of exceptions. Therefore, Classic's

request to shorten the period for filing a reply to this Petition is denied.

NOW THEREFORE, IT IS ORDERED, That the Petition of Classic International, Inc. is denied.

By the Commission.

  
Bryant L. VanBrakle  
Secretary