

ORIGINAL

(S E R V E D)
(July 21, 1999)
{FEDERAL MARITIME COMMISSION}

FEDERAL MARITIME COMMISSION

DOCKET NO. 99 - 11

Expeditors International of Washington, Inc.
Possible Violations of Sections 10 (a)(1) and 10 (b)(1)
of the Shipping Act of 1984

ORDER OF INVESTIGATION AND HEARING

Respondent Expeditors International of Washington, Inc. is a licensed, tariffed and bonded non-vessel-operating common carrier ("NVOCC") located at 1015 Third Ave., Seattle, Washington 98104. Through April 1999, Expeditors International maintained an NVOCC bond, No. 102251, with the Intercargo Insurance Company, in the amount of \$50,000. Peter J. Ross is the chief executive officer of Expeditors International, Kevin Walsh is President and Chief Operating Officer, and James L. K. Wang is Executive Vice President and a Director of the firm,

Expeditors International operates as an NVOCC, ocean freight forwarder (FMC No. 2268), air freight forwarder and customs house broker, with 128 offices and agents worldwide. In the U.S. alone, Expeditors International maintains 33 offices including Chicago, Illinois; New York; Cincinnati and Cleveland, Ohio; Dallas and Houston, Texas; El Segundo, California; Portland, Oregon and Seattle. In all, Expeditors International employs 4500 people.

It appears that Expeditors International, acting as shipper in relation to an ocean common carrier, misdescribed the commodity on numerous shipments transported by ocean common carriers between January 1, 1997 through December 1, 1998.' The shipments primarily originated in Hong Kong, and were destined for Los Angeles and other U.S. ports and points. In each of these instances, Expeditors International was listed as shipper and consignee on the ocean carrier's bill of lading. Each shipment generally reflects that an Expeditors International bill of lading or "forwarder's cargo receipt" was issued for tender by the ultimate consignee to Expeditors International upon arrival of the cargo at destination, which correctly describes the commodity shipped.

'Based on import data available from the PIERS subsidiary of the *Journal of Commerce*, Expeditors International has acted as shipper and consignee on over 3000 inbound shipments during the twelve-month period ending December 1998, accounting for over 7000 TEUs of cargo. Hanjin served as carrier for approximately 39% of these shipments.

It further appears that the ocean common carrier rated the commodities in accordance with the inaccurate description furnished by Expeditors International, while the U.S. offices of Expeditors International accepted delivery of the cargo and made payment to the ocean common carrier on the basis of the lower rate attributable to the inaccurate commodity description.² Contemporaneous with the payment of any freight due to the ocean common carrier, Expeditors International also would obtain payment of the NVOCC's freight charges from the U.S. importer and make entry of the goods with U.S. Customs, in each case correctly describing the commodity based on actual contents shipped.

In addition, during this same time period, Expeditors International appears as a carrier issuing its own NVOCC bill of lading or "forwarder's cargo receipt" with respect to the commodity being shipped. The rates assessed and collected by Expeditors International for these shipments, however, appear to bear no relation to the specified commodity rates set forth in Expeditors International's ATFI tariff then on file with the Commission.³ It would appear that

²For example, Expeditors International and Hanjin Shipping are signatories to Hanjin service contract No. 5 110, originally effective April 18, 1996 upon its filing in Hanjin's Essential Terms Publication ET No. FMC-29, and most recently extended through May 31, 1998. Amended numerous times since its inception, that service contract provides a series of tiered rates under which cargo described to the carrier as auto parts, promotional items and other commodities could be transported from Hong Kong, Taiwan, the People's Republic of China and other origins, subject to a minimum volume commitment by Expeditors International of 35,000 FEU of cargo in the eastbound Trans-Pacific Trades.

³See, e.g. rates for electronic goods as published by Expeditors International in its ATFI tariff No. 13, TLI #0485-29-0470-0062, effective August 15, 1995 and not subsequently revised.

such shipments by Expeditors International may constitute violations of section 10 (b)(1) of the 1984 Act, 46 U.S.C. app. § 1709 (b)(1), (1998).⁴

Section 10 (a)(1) of the 1984 Act, 46 U.S.C. app. § 1709 (a)(1) (1998), prohibits any person by means of false billings, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means, to obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. Section 10 (b)(1) of the 1984 Act prohibits a common carrier from charging, collecting or receiving greater, less or different compensation for the transportation of property than the rates and charges set forth in its tariff. Under section 13 of the 1984 Act, 46 U.S.C. app. § 1712, a person is subject to a civil penalty of not more than \$25,000 for each violation knowingly and willfully committed, and not more than \$5,000 for other violations.⁵ Section 13 and section 23 of the 1984 Act, 46 U.S.C. app. § 1721 (1998), further provide that a common carrier's tariffs may be suspended for violations of sections 10 (a)(1) or 10 (b)(1) for a period not to exceed one year. Finally, section 19 (b) of the 1984 Act, 46 U.S.C. app. § 1718 (b)

⁴P.L.No. 105-258, the Ocean Shipping Reform Act of 1998 ("OSRA"), restated section 10 (b)(1) as new section 10 (b)(2), barring carriers from providing service other than in accordance with the rates contained in their published tariffs. This change took effect on May 1, 1999. During the time period covered by this Order, OSRA had not yet taken effect. Section 10 (b)(1), in its pre-OSRA format, applies in determining whether violations occurred.

⁵These penalties are increased 10 percent for any violations occurring after November 7, 1996. See, Inflation Adjustment of Civil Penalties, 61 Fed. Reg. 52704 (October 8, 1996).

(1998),⁶ provides in the event that violations of the 1984 Act are found, the license of Expeditors International may be suspended or revoked.

NOW THEREFORE, IT IS ORDERED, That pursuant to sections 10, 11, 13, 19, and 23 of the 1984 Act, 46 U.S.C. §§ 1709, 1710, 1712, 1718 and 1721, an investigation is instituted to determine:

1) whether Expeditors International violated section 10 (a)(1) of the 1984 Act by obtaining or attempting to obtain transportation at less than the rates and charges otherwise applicable by an unjust or unfair device or means;

2) whether Expeditors International violated section 10 (b)(1) of the 1984 Act by charging, demanding, collecting or receiving greater, less or different compensation for the transportation of property than the rates and charges shown in its tariff;

3) whether, in the event violations of sections 10 (a)(1) and 10 (b)(1) of the 1984 Act are found, civil penalties should be assessed against Expeditors International and, if so, the amount of penalties to be assessed;

4) whether the tariff of Expeditors International should be suspended;

5) whether the Ocean Transportation Intermediary license of Expeditors International should be suspended or revoked pursuant to section 19 of the 1984 Act; and,

6) whether, in the event violations are found, an appropriate cease and desist order should be issued.

⁶Renumbered as section 19 (c) under OSRA, and made applicable to all licensed Ocean Transportation Intermediaries.

IT IS FURTHER ORDERED, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 C.F.R. §502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a 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 matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

IT IS FURTHER ORDERED, That Expeditors International of Washington, Inc. is designated a Respondent in this proceeding;

IT IS FURTHER ORDERED, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

IT IS FURTHER ORDERED, That notice of this Order be published in the Federal Register, and a copy be served on parties of record;

IT IS FURTHER ORDERED, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.72;

IT IS FURTHER ORDERED, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

IT IS FURTHER ORDERED, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.118, and shall be served on parties of record; and

IT IS FURTHER ORDERED, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by July 21, 2000 and the final decision of the Commission shall be issued by November 20, 2000.

By the Commission.


Bryant L. VanBrakle
Secretary

Terminations Department, 19 10 Pacific Avenue, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: July 23, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99-19329 Filed 7-28-99; 8:45 am]

BILLING CODE 6714-61-P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder-Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. App. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Brighten Freight, Inc., 800 S. Hindry Avenue, Suite A-1, Inglewood, CA 90301, Officer: Frank Fon-Yu Liu, President (Qualifying Individual)

Certified Express, 333 S. 6th Street, Las Vegas, NV 89 10 1, Officers: Timothy O. Hannon, Assistant Secretary (Qualifying Individual), Patrick Mak, Director

China United Transport, Inc., 2063 South Atlantic Blvd., Suite Z-B, Monterey Park, CA 91754, Officers: Xuexiang Li, President (Qualifying Individual), Jie Gu, Treasurer

Everstrong, Inc., 22 Smith Street, 2/F, Jersey City, NJ 07306, Officer: Shulin Chen, President (Qualifying Individual)

Exim Services, Inc., 13836 Bora Bora Way, Suite B112, Marina Del Rey, CA 90292, Officer: Mary Patricia Yust, President (Qualifying Individual)

a International Freight Consolidators, Inc., 1160 N.W. 21st Terrace, Miami, FL 33127, Officer: John Collins, President (Qualifying Individual)

Han Kyu Lim DBA Important Cargo Express Co., 1681 Grandview Drive, S. San Francisco, CA 94080, Officer: Han

Kyu Lim, President (Qualifying Individual)
Navigation Network, Inc., 5620 Tchoupitoulas Street, New Orleans, LA 70115, Officer: Jack Fong, President (Qualifying Individual)
NZS Worldwide, Inc., 1250 35th Avenue, San Francisco, CA 94122, Officers: Nikolay V. Snigorenko, Chief Executive Officer (Qualifying Individual), Zinaida S. Snigorenko, Chief Financial Officer

Takase Add System, Inc., 2420 W. Carson Street, Suite 200, Torrance, CA 90501, Officers: Motonubu Akiyama, Director (Qualifying Individual), Tadashi Hirashima, Chairman of the Board

TDC International Express, Inc., 2118 Sunny Ridge Place, Fullerton, CA 92833, Officers: Susan Cha, President (Qualifying Individual), Benson Mao, Vice President Sales and Marketing
Transtainer Costa Rica Corp. 3550 NW 33 Street, Miami, FL 33142, Officers: Jose M. Wolf, President (Qualifying Individual), Manuel Sola III, Secretary
Trident Transport International, Inc., 215 W. Diehl Road, Naperville, IL 60563, Officers: Richard Turek, Vice President (Qualifying Individual), Robert H. Henry, Secretary and Director

Value-Plus Express, Inc., 118 W. Hazel Street, Suite #C, Inglewood, CA 90302, Officer: Man Heup Kim, President (Qualifying Individual)

Dated: July 23, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99-19326 Filed 7-28-99; 8:45 am]

BILLING CODE 6736-61-P

FEDERAL MARITIME COMMISSION

[Docket No. 99-1 1]

Notice of Investigation

Notice is given that the Commission, on July 21, 1999, served an Order of Investigation and Hearing on Expeditors International of Washington, Inc. ("Expeditors"), a licensed, tarified and bonded non-vessel-operating common carrier. The Order institutes a formal investigation to determine whether Expeditors violated sections 10(a) (1) and (b) (1) of the Shipping Act of 1984, 46 U.S.C. App. Sections 1709(a)(1) and (b)(1), by misdescribing the commodity on numerous shipments from Hong Kong between January 1, 1997 through December 1, 1998, and assessing and collecting rates different from its applicable tariff. Moreover, should violations be found, the proceeding will determine whether to impose civil

penalties, suspend Expeditors' tariff, suspend or revoke its license, and issue a cease and desist order. The full text of the Order may be viewed on the Commission's home page at www.fmc.gov, or at the Office of the Secretary, Room 1046, 800 N. Capitol Street, NW, Washington, DC. Any person may file a petition for leave to intervene in accordance with 46 CFR 502.72.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99-19327 Filed 7-28-99; 8:45 am]

BILLING CODE 6736-61-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 12, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Marshall Truman Reynolds, Huntington, West Virginia; to acquire voting shares of FBT Bancorp, Baton Rouge, Louisiana, and thereby indirectly acquire voting shares of Fidelity Bank & Trust Company, Baton Rouge, Louisiana.

Board of Governors of the Federal Reserve System, July 23, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99-19341 Filed 7-28-99; 8:45 am]

BILLING CODE 6216-61-F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval,