

ORIGINAL

(FEDERAL MARITIME COMMISSION)
(SERVED OCTOBER 1, 1999)
(EXCEPTIONS DUE 10-25-99)
(REPLIES TO EXCEPTIONS DUE 11-16-99)

FEDERAL MARITIME COMMISSION

DOCKET NO. 99-14

GLOBAL TRANSPORTE OCEANICO S.A.

v.

COLER OCEAN INDEPENDENT LINES CO.

Complainant, a vessel operating common carrier, alleges that respondent, an NVOCC (non-vessel operating common carrier), booked a shipment with complainant, misrepresenting that it would pay the ocean freight, but failed to pay the freight in full by an unjust means, specifically, by issuing a bad check and thereafter, by breaching an agreement to pay the balance due. Respondent failed to answer the complaint and a subsequent order requiring it to explain its failure to answer. It is held:

Respondent has violated section 10(a)(1) of the Shipping Act of 1984, as amended, and is ordered to pay complainant the \$15,000 freight due, plus interest, and complainant may petition for an award of reasonable attorneys' fees at the appropriate time.

Michael K. Bell and Douglas J. Shoemaker for complainant.
No appearance for respondent.

**INITIAL DECISION' OF NORMAN D. KLINE,
ADMINISTRATIVE LAW JUDGE**

This Initial Decision is a Default Judgment against respondent which is being issued for the reasons explained below.

On August 3, 1999, the Commission's Secretary served the complaint that began this proceeding. In the complaint, complainant Global Transporte Oceanico S.A. (Global), a Brazilian ocean common carrier, alleges that respondent Coler Ocean Independent Lines Co. (Coler), a non-vessel operating common carrier (NVOCC) located in Miami, Florida, booked a shipment that Global carried from Miami to Buenos Aires, Argentina under a bill of lading dated March 19, 1999, for which shipment Global was owed \$30,783 as full payment of ocean Seight and related charges. However, according to the complaint, respondent first issued a bank draft for the full amount, which draft was returned because of insufficient funds, and thereafter issued a cashier's check for \$15,783, leaving a balance of \$15,000 in unpaid freight and charges. Complainant and respondent then entered into a written agreement calling for payment of this balance in three installments but respondent failed to live up to this agreement. Consequently, complainant is still seeking payment of this \$15,000 balance, plus interest and attorneys' fees. Complainant alleges that respondent has violated section 10(a)(1) of the Shipping Act of 1984, by "knowingly and fraudulently misrepresenting to Complainant that it would pay for the ocean freight and related charges in full and then refusing to remit full payment for same. . . ." (Complaint, par-a. 9.)

Respondent was supposed to file its answer to the complaint by August 23, 1999, pursuant to the Commission's rules (46 C.F.R. 502.64(a)), but failed to file anything. Accordingly, as is

⁴This decision will become the decision of the Commission in the absence of review thereof by the Commission (Rule 227, Rules of Practice and Procedure, 46 C.F.R. 502.227).

customary in such cases, respondent was notified that it was in default and was ordered to file its answer and explain its earlier failure to do so and provide a reason why default judgment should not be issued against it on account of such failure. See Notice of Default and Order to Show Cause Why Default Judgment Should not be Issued, and cases cited on page 3, served September 7, 1999. Respondent was ordered to reply to the Order cited by September 24, 1999, but, as with the answer to the complaint, failed to comply. Accordingly, the matter is ripe for a decision in the nature of a default judgment.

Discussion and Conclusions

Section 10(a)(1) of the Shipping Act of 1984, as amended, provides that:

No person may-(1) knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable; (Emphasis added.)

It is well established that a defaulting party is held to have admitted the well-pleaded allegations in a complaint and to have admitted the amount of liquidated damages alleged. See, e.g., *Shipco Transport, Inc. v. Saturn Air Cargo*, 27 S.R.R. 437,438 (1995); *Hugh Symington v. Euro Car Transport, Inc.*, 26 S.R.R. 871,872 (1993), and cases and authorities cited therein, *Safbank Line Ltd. v. Royale Transport, Inc.*, 25 S.R.R. 951, 953 (1990); *Panalpina Inc. v. Eastern Mediterranean Shipping Corp.*, 28 S.R.R. 525,526 (1998). Consequently, in the instant case respondent Coler, by defaulting, has admitted that it has failed to pay the full amount of freight and charges owed to complainant, has issued a check without sufficient funds, has made partial payment, but has broken

its agreement to pay the balance, thereby deceiving complainant by falsely representing that it would pay the freight due. In several previous cases under section 10(a)(1) of the 1984 Act respondents have been found liable for payment of freight under similar circumstances. See *Shipco Transport, Inc. v. Saturn Air Cargo*, cited above, 27 S.R.R. 437 (respondent NVOCC induced complainant to extend it credit and release cargo but stopped payment of its check and failed to pay the freight owed despite demands); *Waterman Steamship Corporation v. General Foundries, Inc.*, 26 S.R.R. 1173 (I.D., adopted in relevant part, 26 S.R.R. 1424 (1994) (respondent shipper induced complainant carrier to deliver cargo but stopped payment of check, causing carrier to lose its cargo lien); Docket No. 93-05 - *Tropical Shipping and Construction Co., Ltd. v. Valley Wide Produce, Inc.*, Default Judgment, July 20, 1993, F.M.C. notice of finality, August 26, 1993 (unreported) (respondent dishonored its agreement to pay freight upon delivery and failed to honor a payment schedule to which it had agreed). As occurred in the cases cited, in the instant case respondent Coler has misled complainant into believing that the freight due would be paid, in the instant case by issuing a bad check and thereafter by breaking its agreement to pay the balance due. Of course, by such conduct complainant lost its ability to recover the freight due by asserting a cargo lien because the cargo was surrendered at destination.

For the reasons stated it is found and concluded that respondent Coler has knowingly and willfully obtained ocean transportation of property at less than the lawfully applicable rates and charges by means of an unjust or unfair means, and has consequently violated section 1 O(a)(1) of the 1984 Act, as amended. It is also found and concluded that complainant has been damaged in the amount of \$15,000, as claimed in the complaint. Respondent Coler is accordingly ordered to pay

that amount to complainant, plus interest to be determined by the Commission if the Commission makes this Initial Decision final, such interest to run from April 8, 1999.² See 46 C.F.R. 502.253. Complainant is also entitled to file a petition for reasonable attorneys' fees at the appropriate time, as provided by section 11(g) of the Act and 46 C.F.R. 502.254.

Norman D. Kline

Norman D. Kline
Administrative Law Judge

Washington, D.C.
October 1, 1999

²The Commission is authorized to award interest from "date of injury" pursuant to section 11 (g) of the Act and 46 C.F.R. 502.253. Respondent issued a bad check dated April 8, 1999, which included the \$15,000 unpaid freight now claimed by complainant. Had the check been good, the instant complaint would not have been necessary. Accordingly, I find the "date of injury" to be April 8, 1999.