

ORIGINAL

(S E R V E D)
(August 19, 1999)
(FEDERAL MARITIME COMMISSION)

FEDERAL, MARITIME COMMISSION

DOCKET NO. 99- 17

IMEX SHIPPING INC. - POSSIBLE VIOLATIONS OF
SECTIONS 10(a)(1) AND 10(b)(1) OF THE SHIPPING ACT OF 1984

ORDER OF INVESTIGATION AND HEARING

Imex Shipping Inc. ("Imex"), a tariffed and bonded non-vessel-operating common carrier ("NVOCC") located at 2 15 Wilson Avenue in Newark, New Jersey, offers transportation services between various ports and points in the United States and South America. Prior to the enactment of the Ocean Shipping Reform Act of 1998, Imex held itself out as an NVOCC pursuant to its tariff, FMC No. 009608-001, filed on August 3 1, 1993 in the Federal Maritime Commission's ("Commission") Automated Tariff Filing and Information System ("ATFI"). Imex continues to hold itself out as an NVOCC pursuant to a tariff currently published by World Tariff Services, Inc.

Through April 1999, Imex maintained an NVOCC bond, No. 900087, in the amount of \$50,000 with the Frontier Insurance company located in Monticello, New York.' Imex is operated by Frank Morales, whose signature and title as President appear on Imex's original anti-rebate certification.

Based on evidence available to the Commission, it appears that from September, 1996 through April, 1998, Imex received rebates from a vessel-operating common carrier ("VOCC") in the trade between the United States and South America. The rebate arrangement allowed Imex to be charged rates lower than the applicable service contract rates² for Imex's shipments transported between various ports and points in the United States and South America. Imex initially paid the applicable service contract rates, but later received a refund for the difference between the service contract rates and the agreed upon rates. Documents provided to the Commission indicate that Imex's malfeasance extends to the movement of over 100 shipments.

It further appears that, in at least nineteen (19) instances involving shipments transported by Imex under its own NVOCC bills of lading between June 19, 1997 and March 10, 1998, Imex assessed and collected rates which appear to bear no relation to the rates set forth in Imex's ATFI tariff then on file with the Commission.³

Section 10(a)(1) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1709(a)(1)

¹ As of May 1, 1999, and pursuant to the Commission's regulations at 46 C.F.R. § 5 15.21, Imex has increased its bond to the required amount of \$75,000.

² During the period at issue, Imex had an active service contract, SC. No. A-472, with the Inter-American Freight Conference ("IAFC").

³ Since the filing of its tariff on August 31, 1993 and until April 20, 1998, Imex has maintained only one rate, that of Cargo, N.O.S.

(1998), prohibits any person from knowingly and willfully, directly or indirectly, 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, obtaining or attempting to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. Section 1 O(b)(1), 46 U.S.C. app. 1709(b)(1) (1998),⁴ 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 \$27,500 for each violation knowingly and willfully committed, and not more than \$5,500 for other violations.⁵ Section 13 further provides that a common carrier's tariff may be suspended for violations of section 1 O(b)(1) for a period not to exceed one year, while section 23 of the 1984 Act, 46 U.S.C. app. 1721 (1998), provides for a similar suspension in the case of violations of section 10(a)(1) of the 1984 Act. Finally, section 19(b) of the 1984 Act, 46 U.S.C. app. 1718(b) (1998),⁶ provides that, in the event violations of the 1984 Act are found, the license of Imex 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. app. 1709, 1710, 1712, 1718, and 1721, an investigation is instituted to

⁴ P.L. No. 105-258, the Ocean Shipping Reform Act of 1998 ("OSRA"), restated section 1 O(b)(1) as new section 1 O(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 have occurred.

⁵ These penalty amounts reflect an adjustment for inflation pursuant to the Commission's regulations at 46 CFR pt. 506.

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

determine:

1) whether Imex Shipping Inc. violated section 10(a)(1) of the 1984 Act by knowingly and willfully obtaining transportation from the ocean common carrier at less than the rates and charges otherwise applicable through the receipt of unlawful rebates;

2) whether Imex Shipping Inc. violated section 10(b)(1) of the 1984 Act by charging, demanding, collecting or receiving less or different compensation for the transportation of property than the rates and charges shown in its NVOCC 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 Imex Shipping Inc. and, if so, the amount of the penalties to be assessed;

4) whether, in the event violations of sections 10(a)(1) and 10(b)(1) of the 1984 Act are found, the tariff of Imex Shipping Inc. should be suspended;

5) whether the Ocean Transportation Intermediary license of Imex Shipping Inc. 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.

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 6 I of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. This 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 as an oral hearing and cross-examination are necessary for the development of an adequate record;

IT IS FURTHER ORDERED, That Imex Shipping Inc. is designated 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 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 CFR 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 the 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 CFR 502.118, and shall be served on the 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 August 21, 2000 and the final decision of the Commission shall be issued by December 21, 2000.
By the Commission.



Bryant L. VanBrakle
Secretary