

**(S E R V E D)**  
**( JUNE 23, 2011 )**  
**(FEDERAL MARITIME COMMISSION)**

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**DOCKET NO. 11-10**

**FALCON SHIPPING INC., ABDIEL FALCON – APPLICATION FOR A  
LICENSE AS AN OCEAN TRANSPORTATION INTERMEDIARY**

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**ORDER TO SHOW CAUSE**

Falcon Shipping Inc. (Falcon Shipping) and Mr. Abdiel Falcon submitted an application to operate as both a non-vessel-operating common carrier (NVOCC) and as a freight forwarder (FF) on March 8, 2011. Incorporated in Florida on February 18, 2008, Falcon Shipping is currently located at 4458 NW 74<sup>th</sup> Avenue, Miami, FL 33166. Abdiel Falcon is the sole owner, president and secretary of Falcon Shipping, as well as the qualifying individual identified in the license application.

In response to a question on his OTI application, Mr. Falcon answered in the affirmative that he had been arrested, charged, convicted, or forfeited collateral for any felony, misdemeanor or other violation. As documented by the Bureau of Certification and Licensing (BCL) in considering the Falcon Shipping application, on December 29, 2010, Mr. Falcon entered a plea of guilty in the United States District Court for the Southern District of Florida to one felony count of unlawful importation of goods

(smuggling), in violation of 18 U.S.C § 545.<sup>1</sup> See Case No. 1:10-20719-CR-ALTONAGA-2.

On May 18, 2011, BCL issued a letter notifying Mr. Falcon of the Commission's intent to deny Falcon's license application. As reflected in BCL's letter, that action stems from Mr. Falcon's recent felony conviction. Under 46 C.F.R. § 515.15, denial of an OTI license is appropriate when the Commission cannot rely upon the character or integrity of the applicant, or its principals, to the extent necessary to ensure future conduct within the requirements of the Shipping Act and the Commission's regulations. BCL concluded that Falcon Shipping and its qualifying individual, Abdiel Falcon, lacked the requisite character to be licensed as an OTI.

In response to BCL's letter of May 18, 2011, Mr. Falcon timely sent an e-mail to Glenda Singleton of BCL requesting a hearing on the denial of his license application. Pursuant to such request,<sup>2</sup> this Order directs Respondents Falcon Shipping, Inc. and Mr. Abdiel Falcon, its qualifying individual, to show cause, pursuant to 46 C.F.R. § 502.66, why the BCL's determination to deny the OTI license application should not be

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<sup>1</sup> 18 U.S.C. § 545 states:

Whoever knowingly and willfully, with intent to defraud the United States, smuggles, or clandestinely introduces or attempts to smuggle or clandestinely introduce into the United States any merchandise which should have been invoiced, or makes out or passes, or attempts to pass, through the customhouse any false, forged, or fraudulent invoice, or other document or paper; or Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law shall be fined under this title or imprisoned not more than 20 years, or both.

<sup>2</sup> While transmitted only to BCL, Mr. Falcon's e-mail request is deemed sufficient under 46 C.F.R. § 515.15 to entitle Falcon Shipping to a hearing with respect to his OTI application.

upheld inasmuch as Mr. Falcon was convicted of a felony charge of unlawful importation of goods in violation of 18 U.S.C. § 545 and is still serving probation on such conviction.

Section 19 of the Shipping Act of 1984, 46 U.S.C. § 40901, provides that the Commission shall issue an OTI license to a person that the Commission determines to be qualified by experience and character. The Commission's regulations at 46 C.F.R. § 515.15 implement the standards for licensing under section 19, and state that:

If the Commission determines, as a result of its investigation, that the applicant: (a) Does not possess the necessary experience or character to render intermediary services; (b) Has failed to respond to any lawful inquiry of the Commission; or (c) Has made any materially false or misleading statement to the Commission; then a letter of intent to deny the application shall be sent to the applicant . . . .

The Commission's regulations thus require denial of an application for an OTI license if the applicant does not possess the necessary character to render OTI services.

It is well established that the burden of proof in a licensing proceeding is on the applicant. *Independent Ocean Freight Forwarder Application – Lesco Packing Co. Inc.*, 19 FMC 132, 136 (FMC 1976). The Commission has previously found that commission of a federal crime rises to the level of the “most egregious circumstances” warranting revocation or suspension (and, by analogy, denial) of a license. *In the Matter of Ocean Transportation License in the Name of Apparel Logistics, Inc., Petition for Appeal from Staff Action or in the Alternative for Initiation of an Investigation*, 30 S.R.R. 567, 570 (FMC 2004) (“Prior decisions have held that revoking or suspending an OTI license should be limited to the most egregious circumstances, such as OTIs violating the Shipping Act or Commission regulations, committing other federal offenses, or materially misrepresenting information regarding their qualifications.”), citing *Stallion*

*Cargo, Inc. - Possible Violations of Sections 10(a)(1) and 10 (b) (1) of the Shipping Act of 1984, 29 S.R.R. 665, 683-84 (FMC 2001); AAA NordStar Line Inc. - Revocation of License No. 12234, 29 S.R.R. 663, 663-64 (FMC 2002); Commonwealth Shipping Ltd., Cargo Carriers Ltd., Martyn C. Merritt and Mary Anne Merritt - Submission of Materially False or Misleading Statements to the Federal Maritime Commission And False Representation of Common Carrier Vessel Operations, 29 S.R.R. 1408, 1412-1414 (FMC 2003).*

NOW THEREFORE, IT IS ORDERED That pursuant to sections 11 and 19 of the Shipping Act of 1984, Falcon Shipping, Inc. and Abdiel Falcon are hereby directed to show cause why the BCL's determination to deny the OTI license application should not be upheld.

IT IS FURTHER ORDERED That this proceeding is limited to the submission of facts and memoranda of law;

IT IS FURTHER ORDERED That Falcon Shipping, Inc. and Abdiel Falcon are named as Respondents in this proceeding. Affidavits of fact and memoranda of law shall be filed by Respondents in support of its application no later than July 13, 2011;

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

IT IS FURTHER ORDERED That reply affidavits and memoranda of law shall be filed by the Bureau of Enforcement in opposition to Respondents no later than July 28, 2011;

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 all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 2 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.2, as well as being mailed (or e-mailed) directly to all parties of record;

FINALLY, IT IS ORDERED That pursuant to the terms of Rule 61 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.61, the final decision of the Commission in this proceeding shall be issued by December 23, 2011.

By the Commission.

Karen V. Gregory  
Secretary