

FEDERAL MARITIME COMMISSION

WESTERN HOLDING GROUP, INC.,
et al.,

v.

HOLLAND GROUP PORT
INVESTMENT (MAYAGÜEZ), INC.

Docket No. 08-06

Served: March 8, 2011

BY THE COMMISSION: Richard A. LIDINSKY, JR.,
Chairman, Joseph E. BRENNAN, Rebecca F. DYE, and
Michael A. KHOURI, *Commissioners*.

**MEMORANDUM AND ORDER VACATING INITIAL
DECISION AND GRANTING JOINT MOTION TO
DISMISS**

This matter is before the Federal Maritime Commission
(Commission) upon the Joint Request for Modification of Order
Granting Motion to Dismiss by Western Holding Group, Inc., et al.
(Complainants) and Holland Group Port Investment (Mayagüez),

Inc. (Respondent). The Joint Request asks the Commission to modify the Administrative Law Judge's (ALJ's) Initial Decision dated September 20, 2010 granting the Parties' Joint Motion to Dismiss. For the reasons discussed below, the Commission vacates the ALJ's Initial Decision and grants the Parties' Joint Motion to Dismiss.

BACKGROUND

On July 27, 2010, the Parties sent a letter to the ALJ requesting that the proceedings be held in abeyance. ALJ's Order Denying the Parties' Request to Hold Proceedings in Abeyance, July 29, 2010. The letter, which was treated as a motion by the ALJ, stated that the parties had agreed to a voluntary dismissal without prejudice, and the bankruptcy court must approve the filing of the motion to dismiss with the Commission. Id. However, as the copy of the motion had not been submitted to and approved by the bankruptcy court, the ALJ denied the motion to stay the proceedings. Id.

On August 24, 2010, the U.S. Bankruptcy Court for the District of Puerto Rico granted Complainant's request for an order

approving the Joint Motion for Voluntary Dismissal Without Prejudice of the Complaint and Counter Complaint pending before the Commission. Joint Motion to Dismiss, September 7, 2010, Attachment B. On September 7, 2010, based upon the bankruptcy court's approval, the Parties filed with the Commission a Joint Motion to Dismiss (Joint Motion to Dismiss). The Parties stated that they desired to dismiss this proceeding voluntarily on the terms and conditions approved by the bankruptcy court, and urged the ALJ to grant the Joint Motion to Dismiss. Joint Motion to Dismiss at 2.

On September 20, 2010, the ALJ issued an Initial Decision granting the Parties' Joint Motion to Dismiss and dismissing the proceeding without prejudice. Initial Decision at 4.

On October 12, 2010, the Parties filed a Joint Request for Modification of Order Granting Motion to Dismiss (Joint Request). The Parties requested that the Commission modify the ALJ's Initial Decision by limiting the outcome to approval of a voluntary motion to dismiss under the terms of the motion approved by the bankruptcy court and the Parties' Joint Motion to Dismiss dated

September 7, 2010. Joint Request at 2.

DISCUSSION

The Initial Decision discussed the Commission’s “strong and consistent policy of ‘encourag[ing] settlements and engage[ing] in every presumption which favors a finding that they are fair, correct, and valid.’” Initial Decision at 3 (internal citations omitted). The Initial Decision also discussed the Commission’s general principles with respect to settlement. See id. The ALJ stated that “[t]he non-monetary settlement agreement essentially returns the parties to the position they were in prior to initiating the litigation and does not impact the rights of others” and approved the “settlement agreement.” Id. at 4. Accordingly, the ALJ ordered that the “[m]otion settling the matter” between the Parties be approved and this proceeding dismissed. Id.

The Initial Decision is well-reasoned in discussing the Commission’s policy and principles with respect to settlement. However, as the Parties indicated, “[t]he Parties have not reached or entered into a settlement of any issue raised in this proceeding; and no basis is in the record for concluding that the Parties have

done so and that ‘approval’ is warranted.” Joint Request at 1. The Parties’ sole purpose in their motion was “to avoid prosecution of the complaint and counter-complaint at this time.” Joint Request at 2. Although the Parties’ motion approved by the bankruptcy court shows reference to “agreement of the Parties,” Joint Motion to Dismiss Attachment A, the agreement was only to stop prosecuting the complaint and counter-complaint. There was no agreement between Complainants and Respondent with respect to any of the substantive issues that were the subject of the proceeding. The Parties stated that the Initial Decision’s approval of a non-existent “settlement agreement” would be contrary to their intention and specific request, would be inconsistent with the outcome sanctioned by the bankruptcy court, and could be prejudicial to the interests of the Parties in the subsequent year during which they might re-file with the Commission or another forum without being barred by a statutory limitation period. Joint Request at 2.

ORDER

Although it appears that the ALJ understood the nature of the Parties' agreement, the Commission agrees with the Parties that the Initial Decision's reference to a non-existent "settlement agreement," rather than simply the agreed motion to dismiss, may lead to consequences intended by neither the Parties nor the presiding ALJ.

THEREFORE, IT IS ORDERED, That the Administrative Law Judge's Initial Decision dated September 20, 2010 is vacated;

IT IS FURTHER ORDERED, That the Parties' Joint Motion to Dismiss dated September 7, 2010 is granted; and

FINALLY, IT IS ORDERED, That this proceeding is discontinued without prejudice.

By the Commission.

Karen V. Gregory
Secretary