ORIGINAL

(S E R V E D)
(JUNE 23, 2010)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

Fact Finding Investigation No. 27

Potentially Unlawful, Unfair or Deceptive Ocean Transportation Practices
Related to the Movement of Household Goods or Personal Property
in U.S.-Foreign Oceanborne Trades

ORDER OF INVESTIGATION

Pursuant to the Shipping Act of 1984, 46 U.S.C. §§ 40101 *et seq.* ("Shipping Act"), the Federal Maritime Commission ("FMC" or "Commission") is charged with regulating the common carriage of goods by water in the foreign commerce of the United States ("liner service"). In doing so, the Commission must be mindful of the purpose of its regulation, which includes protecting the public from unlawful, unfair or deceptive ocean transportation practices and resolving shipping disputes in the movement of cargo in U.S.-foreign oceanborne trades.

Each year, the Commission receives a substantial number of complaints from individuals that have experienced various problems with their international household goods or personal property shipments. Between 2005 and 2009, the Commission received over 2,500 consumer complaints related to household goods moving companies transporting household goods or personal property between various locations in the United States and foreign destinations. Many of those complaints are filed by individuals who are first-time or very occasional users of international shipping services. This issue is a serious and substantial consumer protection problem within the Commission's area of responsibility.

Typical complaints allege failure to deliver the cargo and refusal to return the pre-paid ocean freight; loss of the cargo; significant delay in delivery; charges to the shipper for marine insurance that was never obtained; misinformation as to the whereabouts of the cargo; significantly inflated charges after the cargo was tendered and threats to withhold the shipment unless the increased freight was paid; or failure to pay the common carrier engaged by the company as another intermediary. In many cases, a shipper has been forced to pay another carrier or warehouse a second time in order to have the cargo released.

Individuals and companies have held themselves out to perform ocean transportation to the public and accepted responsibility for the transportation of these shipments without obtaining an Ocean Transportation Intermediary ("OTI") license and providing required proof of financial responsibility to the FMC. In many cases, these individuals and corporations operate without publishing a tariff showing its rates and charges, and do not observe just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property.

Section 19 of the Shipping Act of 1984 ("the Act"), 46 U.S.C. § 40901(a), prohibits any person from providing OTI services prior to being issued a license from the Commission and obtaining a bond, proof of insurance or other surety in a form and amount determined by the Commission to ensure financial responsibility. An OTI is defined as either a freight forwarder or a non-vessel-operating common carrier ("NVOCC"). 46 U.S.C. § 40102(19). Any person operating as an NVOCC in the United States must provide evidence of financial responsibility in the amount of $75,000. 46 C.F.R § 515.21(a)(2).

Furthermore, section 8(a) of the Act, 46 U.S.C. § 40501(a), requires NVOCCs to maintain tariffs showing their rates, charges, classifications and practices. These tariffs must be open to the public for inspection in an automated tariff system. The Commission's regulations at 46 C.F.R. § 520.3 affirm this statutory requirement by directing each NVOCC to notify the Commission, prior to providing transportation services, of the location of its tariffs, as well as the publisher used to maintain those tariffs by filing a Form FMC-1. Section 10(b)(11) of the Act, 46 U.S.C. § 41104(11), prohibits a common carrier from knowingly and willfully accepting cargo from or transporting cargo for the account of an OTI that does not have a tariff or a bond (an NVOCC). Finally, under section 10(d)(1), no common carrier or ocean transportation intermediary may fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property. 46 U.S.C. § 41102(c).

Therefore, consistent with its statutory duty, the Commission hereby **ORDERS** a non-adjudicatory investigation to develop a record of the nature, scope and frequency of potentially unlawful, unfair or deceptive ocean transportation practices by household goods movers in the movement of cargo in U.S.-foreign oceanborne trades.

The Commission will use the information obtained in this investigation and recommendations of the Fact-Finding Officer ("FFO") to determine its policies with respect to compliance, consumer protection, and enforcement issues.

Specifically, the FFO named herein is to develop a record on the following:

The nature and scope of the problem presented by potentially unfair, unlawful or deceptive practices in the shipping of household goods or personal property in U.S.-foreign oceanborne trades.

The FFO is to report to the Commission within the time specified herein, with recommendations for any further Commission action, including any policies, rulemaking proceedings, or other actions warranted by the factual record developed in this proceeding.

Interested persons are invited and encouraged to contact the FFO named herein, at (202) 523-5712 (telephone), (202) 275-0522 (facsimile), or by e-mail at factfinding27@fmc.gov, should they wish to provide testimony or evidence, or to contribute in any other manner to the development of a complete factual record in this proceeding.

THEREFORE, IT IS ORDERED, That, pursuant to 46 U.S.C. §§ 41302, 40502 to 40503, 41101 to 41109, 41301 to 41309, and 40104, and 46 C.F.R. §§ 502.281 to 502.291, a non-adjudicatory investigation is hereby instituted into the nature, scope and frequency of potentially unlawful, unfair or deceptive ocean transportation practices related to the carriage of household goods or personal property in the oceanborne foreign commerce of the United States, in order to gather facts and establish a record related to the issues set forth above and to provide a basis for any subsequent action by the Commission;

IT IS FURTHER ORDERED, That, pursuant to 46 C.F.R. §§ 502.284 and 502.25, Commissioner Michael A. Khouri is designated as the FFO. The FFO shall have, pursuant to 46 C.F.R. §§ 502.281 to 502.291, full authority to hold public or non-public sessions, to resort to all compulsory process authorized by law (including the issuance of subpoenas *ad testifacandum* and *duces tecum*), to administer oaths, to require reports, and to perform such other duties as may be necessary in accordance with the laws of the United States and the regulations of the Commission. The FFO shall be assisted by staff members as may be assigned by the Commission's Managing Director, and the FFO is authorized to delegate any authority enumerated herein to any assigned staff member as the FFO determines to be necessary.

IT IS FURTHER ORDERED, That the FFO shall issue an interim report of findings and recommendations no later than November 15, 2010, a final report of findings and recommendations no later than February 15, 2011, and provide further interim reports if it appears that more immediate Commission action is necessary, such reports to remain confidential unless and until the Commission provides otherwise;

IT IS FURTHER ORDERED, That this proceeding shall be discontinued upon acceptance of the final report of findings and recommendations by the Commission, unless otherwise ordered by the Commission; and

IT IS FUTHER ORDERED, That notice of this Order be published in the Federal Register.

By the Commission.

Karen V. Gregory
Secretary