(FEDERAL MARITIME COMMISSION)
(SERVED AUGUST 6, 1996)
(EXCEPTIONS DUE 8-28-96)
(REPLIES TO EXCEPTIONS DUE 9-19-96)

FEDERAL MARITIME COMMISSION

DOCKET NO. 95-09

AAEL AMERICA AFRICA EUROPE LINE GMBH

v.

VIRGINIA INTERNATIONAL TRADE & INVESTMENT GROUP LLC AND WILLIAM W. JOYCE III

This proceeding presently relates only to one of the two respondents, that is, only to William H. Joyce III; found that there is insufficient evidence of record to hold Mr. Joyce personally responsible for the sought freight charges; Mr. Joyce's counter-complaint for attorney's fees denied; and proceeding discontinued.

Kevin J. Keelan for the complainant and counter respondent, AAEL.
William W. Joyce III for himself, the respondent and counter complainant.

INITIAL DECISION[1] ON REMAND OF CHARLES E. MORGAN, ADMINISTRATIVE LAW JUDGE

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[1]This 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 CFR 502.227).

This proceeding was remanded by the Commission for further action consistent with its order served June 5, 1996. The matter remanded concerns only one of the two respondents, that is, only the respondent William W. Joyce III.

As a precautionary procedure, both the complainant, AAEL, and Mr. Joyce were given an opportunity to brief the record on remand. In particular the parties were advised on June 13, 1996, that the issue now is whether or not there is sufficient evidence of personal deception and bad faith where an individual is charged with a section 10(a)(1) violation in his personal capacity. Section 571.2 of our Interpretive Rules, 46 CFR 571.2, provides in part that an essential element of the offense is the use of any unjust or unfair device or means. The Federal Maritime Commission will not infer an unjust or unfair device or means from the failure of a shipper to pay ocean freight.

After remand, it was prescribed that opening briefs of fact and arguments by both parties be filed on July 12, 1996, and reply briefs be filed on July 29, 1996.

An opening brief on remand was filed by AAEL dated July 3, 1996, and received July 8, 1996. AAEL adopted the previously submitted briefs and affidavits, and argued that the facts of this proceeding furnish sufficient evidence of personal deception and bad faith by Joyce. The record is said to contain correspondence and sworn statements that Mr. Joyce engaged in fraudulent conduct and made fraudulent representations that induced AAEL to relinquish its possessory lien and to transport the shipments without prepayments by VITIG and Joyce of the applicable freight charges. Joyce is said to be personally liable for his fraudulent and tortious conduct.

Mr. Joyce, representing himself at this stage of the matter, submitted his views dated July 29, 1996, and received July 30, 1996. He states that it is his position that the matters previously submitted by either his attorney or by him provide a complete record. He alleges that AAEL continues to harass him personally for debts due from the company VITIG. But, he states that at no time has he ever accepted personal responsibility for the debts of VITIG, and that he relied completely on the information and promises of his two former VITIG partners. He says that is the information which he passed on to AAEL. Mr. Joyce states that AAEL should have demanded a personal letter from him clearly showing that Mr. Joyce accepted responsibility. He further states that AAEL only has unsubstantiated claims from Mr. Kevin Shields.

Mr. Joyce has in the past counter-complained and now again asks also that the Commission require AAEL to pay his attorney's fees and expenses. Mr. Joyce states that this lawsuit has already cost him over $16,000 in attorney's fees.

CONCLUSIONS AND ULTIMATE FINDINGS

The Commission on remand has made certain findings, and the parties in general rely on the existing record. Essentially, no new facts, regarding Mr. Joyce's advice to AAEL's agent, have been offered. Therefore, it is concluded and found that Mr. Joyce did not make any specific personal promises to AAEL's agent that Mr. Joyce would pay. Nor did Mr. Joyce commit any fraudulent conduct, nor any tortious conduct. Mr. Joyce is not personally liable for the $30,559.04 of shipping charges it is concluded and found.

AAEL is said to have subjected Mr. Joyce to unreasonable prejudice and disadvantage in violation of section 10(b)(12) of the 1984 Act. AAEL also is said to have violated Rule 571.2 and wronged Mr. Joyce by instituting this action against him. Apparently the problems herein were likely to have been caused by Mr. & Mrs. Idd, the partners, or former partners, of Mr. Joyce in VITIG. Nevertheless, Mr. Joyce bears some responsibility in that he became a partner with Mr. & Mrs. Idd in VITIG. It is concluded and found that Mr. Joyce is not entitled to reparations in the circumstances, and accordingly it is concluded and found that Mr. Joyce is not entitled to attorney's fees and damages.

C. E. Morgan

Charles E. Morgan
Administrative Law Judge

Washington, D.C.
August 6, 1996