(S E R V E D)
(June 11, 2008)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

Docket No. 08-03

MAHER TERMINAL, LLC

v.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission ("Commission") by Maher Terminal, LLC. Complainant asserts that it is a limited liability company registered in the State of Delaware with corporate offices and facilities located in Elizabeth, New Jersey. Complainant asserts that Respondent, The Port Authority of New York and New Jersey ("PANYNJ"), is a body corporate and politic created by Compact between the States of New York and New Jersey and with the consent of the Congress; has offices located in New York, New York; owns marine terminal facilities in the New York New Jersey area, including in Elizabeth, New Jersey; and is a marine terminal operator within the meaning of the Shipping Act of 1984, as

amended ("The Shipping Act"). *See* 46 U.S.C. § 40102(14). Complainant contends that Respondent violated Sections 41102(c) and 41106(2) and (3) of The Shipping Act, respectively, by: (1) failing to establish, observe and enforce just and reasonable practices with respect to Complainant; (2) giving undue or unreasonable preference or advantage to APMT and imposing undue or unreasonable prejudice or disadvantage with respect to Complainant; and (3) unreasonably refusing to deal or negotiate with Complainant. 46 U.S.C. §§ 41102(c), 41106(2)-(3).

Specifically, Complainant alleges that Respondent's lease agreement EP-248 with APM Terminals North America, Inc., formerly known as Maersk Container Service Company, Inc. ("APMT"), grants to APMT unduly and unreasonably more favorable lease terms than Respondent provides to Complainant in lease agreement EP-249. These agreements, Complainant avers, are filed with the Commission as FMC Agreement Nos. 201106 and 201131, respectively. Complainant contends that the lease terms which disadvantage Complainant include, but are not limited to, the annual rental rate per acre, investment requirements, throughput requirements, a first point of rest requirement for automobiles, and the security deposit requirement.

Complainant asserts that it has sustained injuries and damages, as a result of Respondent's actions, including but not limited to higher rents, costs, and other undue and unreasonable payments and obligations amounting to a sum of millions of dollars. Complainant requests that the Commission require Respondent to: (1) answer the charges in the subject complaint; (2) cease and desist from the aforementioned

violations of the Shipping Act; (3) provide to Complainant the preferences provided to APMT; (4) put in force such practices and as the Commission determines to be lawful and reasonable; and (5) pay to Complainant by way of reparations the amount of the actual injury, plus interest, cost and attorneys fees, and any other damages to be determined. Additionally, Complainant requests that the Commission order any such other relief as it determines appropriate.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 C.F.R. 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon 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 matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 C.F.R. 502.61, the initial decision of the presiding officer in this proceeding shall be issued by June 11, 2009, and the final decision of the Commission shall be issued by October 9, 2009.

Karen V. Gregory
Assistant Secretary