

(S E R V E D)
(APRIL 22, 1996)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

WASHINGTON, D. C.

April 22, 1996

NO. 95-18

**UNITED VAN LINES, INC. AND UNITED
VAN LINES INTERNATIONAL, INC.**

v.

UNITED SHIPPING USA, INC.

MOTION TO DISMISS COMPLAINT WITH PREJUDICE GRANTED

Complainants and respondent have moved to dismiss the complaint with prejudice because they have entered into a settlement agreement. For the reasons discussed below, the motion is granted.

The proceeding began with the filing of a complaint by complainants United Van Lines, Inc., a motor carrier of household goods and property licensed by the former I.C.C., and its subsidiary, United Van Lines International, Inc., an ocean freight forwarder licensed by the F.M.C. The complaint, served on October 25, 1995, alleged that respondent United

Shipping USA, Inc., had been illegally using the name "United" in respondent's business dealings, which name had been registered as a service mark under the U.S. Trademark Act (Lanham Act), 15 U.S.C. secs. 1051 *et seq.*, and that respondent United Shipping had been deliberately deceiving the shipping public into believing that they were obtaining United Van services, to the detriment of the shipping public. Complainants also alleged that respondent United Shipping had been appropriating complainants' name and goodwill and had been acting as an ocean freight forwarder without having an F.M.C. license and until June 1995, had been doing business as a non-vessel operating common carrier (NVOCC) without having filed a tariff or surety bond with the F.M.C. Complainants alleged that United Shipping had violated sections 8(a)(1), 10(d)(1), 19, and 23 of the Shipping Act of 1984, governing licensing and tariff filing and surety bonding and requiring forwarders and ocean carriers to observe just and reasonable practices relating to the receiving, handling, and delivery of property. Complainants asked the Commission to cancel all United Shipping NVOCC tariffs bearing the name "United" and to order United Shipping to cease and desist from acting and holding out as a freight forwarder or NVOCC while using the name "United."

After some delay occasioned by government shutdowns and other reasons, respondent United Shipping filed its answer to the complaint, denying that it had violated shipping law and asking that the proceeding be stayed pending decision of the United States District Court in New York City involving the same parties and allegations of violations of the Trademark Act. Respondent United Shipping admitted that it had filed a bond and tariff with the Commission as an NVOCC effective in July and June 1995, respectively.

It was noted early in this proceeding that there was a question concerning the Commission's jurisdiction over the matters alleged by complainants. It appeared that the complaint involve primarily allegations that respondent had violated the U.S. Trademark Act and that complainants were seeking relief for such alleged violations in a court case that had already begun in New York City. A concern arose that the Commission might in some fashion be interfering with the court were the Commission to proceed to hear and determine the dispute and also whether the Commission could properly exercise jurisdiction under section 10(d)(1) of the 1984 Act, which involves unreasonable practices relating to the receipt and delivery of property when the practices involved alleged misuse of a registered trade name. (See discussion in my rulings served December 5, 1995, 27 SRR 425, ordering complainants to furnish clarifications; and rulings served January 29, 1996, 27 SRR 440, regarding the future course of the proceeding.) However, shortly after service of the latter ruling, counsel advised that the parties had reached settlement. It was therefore unnecessary to resolve these problems or to determine the precise extent of the Commission's jurisdiction under section 10(d)(1).

The Motion and Settlement Agreement

The parties have submitted a memorandum of law in support of their motion together with the text of a Stipulation and Order of Settlement which they have filed with the U.S. District Court for the Southern District of New York. As they explain, their Stipulation and Order of Settlement filed with the court "would end the dispute between the parties hereto and would resolve the issues now before the FMC." In submitting their

settlement, however, the parties assert that respondent has not admitted that the FMC has jurisdiction over the matters alleged in the complaint nor that those matters are actionable under the Shipping Act of 1984. As they further stated, however, neither the court nor the Commission has so found.

The settlement agreement is summarized in these rulings. The full text is attached to these rulings as an appendix. Briefly, respondent United Shipping has agreed to change its name to "I.C.S. Israel United Shipping, Inc." and to use the name "United" only as part of its entire new corporate name. Respondent agrees to use the name "United" only for respondent's operations as a freight forwarder or NVOCC of household-goods shipments between the United States and Israel and will not expand its business under any name which includes the "United" name. Respondent agrees not to emphasize the word "United" in its new corporate name and, if it shortens its corporate name, agrees not to use the word "United" in the changed name. Complainants agree to give respondent a limited license to operate in the above fashion without consideration from respondent but prohibit respondent from selling or assigning the license to any other party. The parties agree that the court will retain jurisdiction over their agreement in case of breach or violation thereof.

Discussion and Conclusions

The parties cite two Commission decisions as support for their agreement, namely, *Old Ben Coal Co. v. Sea-Land Service, Inc.*, 21 F.M.C. 505 (18 SRR 1085) (1978); and *American President Lines v. Cyprus Mines Corporation*, 27 SRR 126 (1995). In *Old Ben*, the Commission stated (21 F.M.C. at 512):

It is well settled that the law and Commission policy encourage settlements and engage in every presumption which favors a finding that they are fair, correct, and valid. (Case citations omitted.)

The Commission further explained the reason for the above policy in *Old Ben* as follows (*Id.*):

The law favors resolution of controversies and uncertainties through compromise and settlement rather than through litigation, and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy. . . . The courts have considered it their duty to encourage rather than to discourage parties in resorting to compromise as a mode of adjusting conflicting claims. . . . The desire to uphold compromises and settlements is based upon various advantages which they have over litigation. The resolution of controversies by means of compromise and settlement is generally faster and less expensive than litigation; it results in a saving of time for the parties, the lawyers, and the courts, and it is thus advantageous to judicial administration, and, in turn, to government as a whole. Moreover, the use of compromise and settlement is conducive to amicable and peaceful relations between the parties to a controversy. (Citations omitted.)

Settlements are presumed to be fair but the Commission does not merely rubber stamp them. Rather the Commission described its role as follows (*Id.* at 513):

If a proffered settlement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake or other defects which might make it unapprovable despite the strong policy of the law encouraging approval of settlements, the settlement will probably pass muster and receive approval.

The Commission further described its role in approving settlements in *Delhi Petroleum Pty. Ltd. v. U.S. Atlantic & Gulf/Australia-New Zealand Conference and Columbus Line, Inc.*, 24 SRR 1129, 1134 (ALJ), F.M.C. notice of finality, September 19, 1988.

The Commission's policy favoring settlements is consistent with the Administrative Procedure Act (APA), 5 U.S.C. sec. 554(c)(1), and with a modern statute encouraging alternative means of resolving disputes, and the Commission has amended its rule of procedure to facilitate these policies. See discussion in *Great White Fleet, Ltd. v. Southeastern Paper Products Export, Inc.*, 26 SRR 1487, 1488 (ALJ, F.M.C. notice of finality, September 21, 1994). As noted in the case cited, the Commission has over the years approved countless settlements in a variety of contexts under various provisions of the 1916 and 1984 Shipping Acts. (*Id.*) In some instances the Commission has approved settlements which dispose of complaint cases brought before it even when there were unanswered jurisdictional questions and when collateral proceedings were also being settled by the parties before courts involving the same disputes. (*Id.* at 1489 n. 4, and cases cited therein.)

The instant settlement agreement qualifies for approval under the principles and standards discussed above. Not only does it terminate expensive litigation while giving complainants the relief they sought but it also terminates the litigation before the federal court in New York City. The settlement of other claims that arise out of those before the Commission has been recognized as a benefit of settlements and as a justification for their approval. See Docket No. 95-10, *Puerto Rico Shipping Association v. Puerto Rico Ports Authority*, slip opinion, at 10, and cases cited therein (ALJ, March 20, 1996).

To summarize, the parties' settlement agreement comports with the strong policy in the law favoring amicable resolutions rather than continued expensive litigation. The fact that the parties have agreed that the complaint should be dismissed with prejudice is no bar

to its approval. See Docket No. 95-10, cited above, slip opinion at 11-12, and cases cited. As noted earlier, this dismissal does not mean that the question of Commission jurisdiction over the subject matter of the complaint has been decided. It only means that the respondent wishes to be free of future litigation concerning the subject matter of the settlement agreement if it complies with the terms of that agreement.

Accordingly, as requested the complaint is dismissed with prejudice.



Norman D. Kline
Administrative Law Judge

Appendix

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
UNITED VAN LINES, INC. and UNITED
VAN LINES INTERNATIONAL, INC.,

Plaintiffs,

94 Civ. 5575 (MGC)

vs.

STIPULATION AND ORDER
OF SETTLEMENT

UNITED SHIPPING, INC. and UNITED
SHIPPING, INC.,

Defendants.
-----x

WHEREAS, a Verified Complaint was filed by plaintiffs in this action on July 28, 1994, demanding damages and injunctive relief in favor of plaintiffs against the remaining defendant UNITED SHIPPING, INC. ("UNITED SHIPPING") with respect to defendant's alleged infringement on plaintiffs' registered service mark "UNITED" and

WHEREAS, defendant UNITED SHIPPING has denied and continues to deny any allegation of wrongdoing or infringement on plaintiffs' registered service mark "United," and

WHEREAS, the parties have agreed to resolve this action by means of this Stipulation and Order of Settlement to avoid further litigation,

IT IS HEREBY STIPULATED AND AGREED, by and between plaintiffs and defendant UNITED SHIPPING as follows:

(1) Defendant shall not be nor will it represent or imply, directly or indirectly, to any party that it is an agent of plaintiffs or is in any way affiliated with plaintiffs;

(2) Defendant hereby acknowledges plaintiffs' ownership and federal registration of the "United" service mark and plaintiffs' right to the exclusive use of said mark in the business of interstate transportation and storage of household goods and special commodities and services related thereto;

(3) Plaintiffs hereby grant defendant a non-exclusive limited license to use the name "United" as part of defendant's new corporate name "I.C.S. Israel United Shipping, Inc." and defendant hereby agrees that it will use the "United" name only as part of its entire new corporate name;

(4) Defendant is not required to pay consideration to plaintiffs for the limited license granted pursuant to this Stipulation and Order of Settlement;

(5) Defendant's licensed use of the "United" name is and shall be limited solely to said defendant's operations as a freight forwarder and/or NVOCC of household goods shipments between the United States and Israel;

(6) Defendant will not expand its freight forwarding and/or NVOCC operations or conduct any other business, geographically or through additional kinds of transportation services, under any name which includes the "United" name;

(7) Within thirty (30) days of the filing of this Stipulation and Order of Settlement, defendant will change its corporate name to "I.C.S. Israel United Shipping, Inc." and will file a certificate of name change with the New York Secretary of

State and will furnish a copy of such certificate to plaintiffs' undersigned counsel;

(8) Defendant will not emphasize, graphically or by any other method, the word "United" in its new corporate name "I.C.S. Israel United Shipping, Inc.";

(9) Defendant will use the name "I.C.S. Israel United Shipping" in answering telephone calls to its offices;

(10) In the event defendant shortens its new corporate name "I.C.S. Israel United Shipping, Inc.," whether formally or in general usage such as correspondence, advertising, answering telephone calls, etc., the word "United" will be deleted entirely from the changed name;

(11) The license granted by plaintiffs to defendant under this Stipulation and Order of Settlement is personal to defendant and may not be sold, assigned, encumbered or in any way transferred by defendant to any other party;

(12) The license granted by plaintiffs to defendant under this Stipulation and Order of Settlement shall automatically terminate in the event of any breach or violation of the terms of this Stipulation and Order of Settlement by defendant;

(13) The Court shall retain jurisdiction over this matter for the purpose of conducting further proceedings to determine the existence of any breach or violation of this Stipulation and Order of Settlement and to enforce the terms and conditions hereof.

(14) This Stipulation and Order of Settlement shall be entered as a final order of the Court without further notice and without costs to any party.

Dated: New York, New York
April 17, 1996

GEORGE W. WRIGHT, ESQ.
Attorney for Plaintiffs

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Attorneys for Defendant

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SO ORDERED:

MIRIAM G. CEDARBAUM, U.S.D.J.

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

~~MAYER~~ ^{YARIV} BENTOV, being duly sworn, deposes and says:

I am a principal and an authorized signatory for defendant, UNITED SHIPPING, INC. I have read the foregoing Stipulation and Order of Settlement with the assistance of my attorney, Vincent M. DeOrchis, Esq., DeOrchis & Partners, One Battery Park Plaza, 2nd Floor, New York, New York 10004-1480, and fully understand its terms and provisions and I consent to the entry of the Stipulation and Order of Settlement by the Court. I warrant that I am authorized by defendant, UNITED SHIPPING, INC., to execute this Stipulation and Order of Judgment in my individual capacity.



~~MAYER~~ BENTOV
YARIV

Sworn to before me this
9 day of April, 1996


Notary Public

NICHOLAS E. PANTELIOPOULOS
Notary Public, State of New York
Qualified in Dutchess County
No. 4988309
Commission Expires Nov. 4, 1997

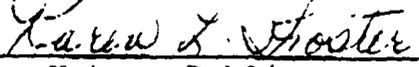
STATE OF MISSOURI)
) SS.:
COUNTY OF ST. LOUIS)

RICHARD SULLIVAN, being duly sworn, deposes and says:

I am the Vice President, International, of UNITED VAN LINES, INC. and an authorized signatory for UNITED VAN LINES, INC. and UNITED VAN LINES INTERNATIONAL, INC. I have read the foregoing Stipulation and Order of Settlement, and fully understand its terms and provisions and I consent to the entry of the Stipulation and Order of Settlement by the Court. I warrant that I am authorized by UNITED VAN LINES, INC. and UNITED VAN LINES INTERNATIONAL, INC. to execute this Stipulation and Order of Judgment on their behalf.


RICHARD SULLIVAN

Sworn to before me this
16TH day of April, 1996


Notary Public

