

( S E R V E D )  
( January 28, 2004 )  
( FEDERAL MARITIME COMMISSION )

**FEDERAL MARITIME COMMISSION**

**WASHINGTON, D. C.**

January 28, 2004

**DOCKET NO. 03-11**

**DEANS OVERSEAS SHIPPERS, INC. AND SHARON STEPHENSON  
DEANS-POSSIBLE VIOLATIONS OF SECTIONS 8(a), 10(a)(1)  
AND 19 OF THE SHIPPING ACT OF 1984, AS AMENDED, AND THE  
COMMISSION'S REGULATIONS AT 46 C.F.R. PARTS 515 AND 520**

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**DEANS INTERNATIONAL SHIPPING CO., LTD.-APPLICATION  
FOR LICENSE AS AN OCEAN TRANSPORTATION INTERMEDIARY**

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**SETTLEMENT APPROVED;  
PROCEEDING DISCONTINUED**

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The Federal Maritime Commission's ("Commission") Bureau of Enforcement ("BOE") and the Respondents, Deans Overseas Shippers, Inc. ("Deans Overseas"), Deans International Shipping Co., Ltd. ("Deans International") and Sharon Stephenson Deans ("Ms. Deans"), have filed a Joint Motion to Approve Proposed Settlement Agreement asking for a dismissal of the case on the basis of a Joint Settlement Agreement for which they seek approval.

The parties believe that the proposed settlement meets the Federal Maritime Commission's ("Commission") criteria for approval of agreements resolving administrative enforcement claims and, therefore, should be approved.

### Introduction

By Order of Investigation dated October 8, 2003, the Commission commenced an investigation to determine whether:

1. Deans Overseas and/or Ms. Dean violated sections 8(a) and 19 of the Shipping Act of 1984, as amended, ("1984"), 46 U.S.C. app. Secs. 1707(a) and 1718, and the Commission's regulations at 46 C.F.R. pts. 515 and 520, by knowingly and willfully performing a non-vessel-operating common carrier ("NVOCC") services without having obtained an ocean transportation intermediary ("OTI") license from the FMC, without having filed a bond or other evidence of financial responsibility, and without having published a tariff;
2. Deans Overseas Shippers, Inc. and Ms. Deans violated section 10(a)(1) of the 1984 Act by knowingly and willfully obtaining transportation for property at less than the rates or charges that otherwise would be applicable by the unjust or unfair device or means of unlawfully entering into service contracts;
3. The application of Deans International for a license to operate as an ocean freight forwarder should be granted or denied;
4. In the event that violations of sections 8(a), 10(a)(1) and 19 of the Shipping Act of 1984, as amended, ("1984"), 46 U.S.C. app. Secs. 1707(a) and 1718, and the Commission's regulations at 46 C.F.R. pts. 515 and 520, are found, should civil penalties be assessed against Deans Overseas and Ms. Deans, and, if so the amount of penalties to be assessed; and
5. In the event such violations are found, an appropriate cease and desist order should be issued against Deans Overseas and/or Ms Deans.

BOE asserts that at an evidentiary hearing, it would introduce evidence in support of the allegations set forth in the Order of Investigation. Specifically, BOE would demonstrate Deans Overseas and Ms. Deans entered into at least three service contracts with ocean common carriers through the stratagem of Ms. Deans falsely certifying Deans Overseas as the "cargo owner."

BOE would also introduce evidence that on at least 370 occasions since October 2000, Deans Overseas wrongfully tendered cargo to ocean common carriers as an NVOCC and appeared on the ocean carrier's bill of lading as "shipper," and on at least 74 occasions, Deans Overseas issued bills of lading to the actual shipper and undertook responsibility to transport cargo in the U.S. foreign commerce.

Additionally, BOE would introduce evidence to demonstrate that Deans International's application for an OTI license should be denied based on (1) the materially false and misleading statements contained therein and (2) the unlawful actions of Ms. Deans, the applicant's proposed qualifying individual.

Deans Overseas and Ms. Deans have ceased all NVOCC operations, have closed their warehouse, and have agreed not to offer or provide OTI services of any nature unless and until an appropriate license is obtained from the Commission. As part of the proposed settlement, Deans International has withdrawn its application for an OTI license as an ocean freight forwarder.

The Respondents, Deans Overseas, Deans International and Ms. Deans do not admit to any violations of the 1984 Act or the Commission's regulations. However, the Respondents and BOE believe it is in the best interest of the parties and the shipping public to resolve this proceeding rather than engage in further litigation.

The proposed settlement agreement which accompanied this motion is the result of negotiations between the Respondents and BOE and reflects each party's view of the case and its fair resolution. Upon approval of the proposed settlement by the presiding Administrative Law Judge and the Commission, the parties seek dismissal of Docket No. 03-11.

### Authority for Settlement

The Administrative Procedure Act ("APA"), 5 U.S.C. Sec. 554(c)(1), requires agencies to give interested parties an opportunity, *inter alia*, to submit offers of settlement "when time, the nature of the proceeding, and the public interest permit." As the legislative history of the APA makes clear, Congress intended this particular provision to be read broadly so as to encourage the use of settlements in proceedings such as the present one:

. . . even where formal hearing and decision procedures are available to parties, the agencies and the parties are authorized to undertake the informal settlement of cases in whole or in part before undertaking the more formal hearing procedure. Even courts through pretrial proceedings dispose of much of their business in that fashion. There is much more reason to do so in the administrative process, for informal procedures constitute the vast bulk of administrative adjudication . . . .

The statutory recognition of such informal methods should strengthen the administrative arm and serve to advise private parties that they may legitimately attempt to dispose of cases at least in part through conferences, agreements, or stipulations.<sup>1</sup>

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<sup>1</sup> Senate Committee on the Judiciary, Administrative Procedure Act, S. Doc. No. 248-79, at 24 (79<sup>th</sup> Cong., 2d Sess. 1946).

Courts have endorsed the use of the APA settlement provision "to eliminate the need for often costly and lengthy formal hearings in those cases where the parties are able to reach a result of their own which the appropriate agency finds compatible with the public interest."<sup>2</sup>

The Commission has recognized that the law strongly favors settlements for decades:

. . . the law favors the 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 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.<sup>3</sup>

Rule 91 of the Commission's Rules of Practice and Procedure, 46 C.F.R. Sec. 502.91, codifies the holding in *Old Ben Coal Company v. Sea-Land Service, Inc.*, *supra*, in language borrowed in part from the APA and 5 U.S.C. Sec. 554(c)(1). In accordance with Rule 91 and its policy favoring settlements, the Commission has frequently approved settlements of administrative and investigative proceedings.<sup>4</sup>

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<sup>2</sup>*Pennsylvania Gas and Water v. Federal Power Commission*, 463 F.2d 1242, 1247 (D.C. Cir. 1972).

<sup>3</sup>*Old Ben Coal Company v. Sea-Land Service, Inc.*, 18 S.R.R. 1085 (1978). *Old Ben Coal Company v. Sea-Land Services, Inc.*, 18 S.R.R. 1085, 1092 (1978). See also *Del Monte Corp. v. Matson Navigation Co.*, 19 S.R.R. 1037, 1039 (1979); *Behring International, Inc. - Independent Ocean Freight Forwarder License No. 910*, 20 S.R.R. 1025, 1032-33 (Initial Decision, administratively final June 30, 1981).

<sup>4</sup>See also *Eastern Forwarding International, Inc. - Independent Ocean Freight Forwarding Application - Possible Violations, Section 44, Shipping Act, 1916* ("Eastern"), 20 S.R.R. 283, 286 (Initial Decision; administratively final September 8, 1980); *Far Eastern Shipping Co. Possible Violations of Sections 16, Second Paragraph, 18(b)(3) and 18(c), Shipping Act, 1916* ("FESCO"), 21 S.R.R. 743, 764 (Initial Decision; administratively final, May 7, 1982); *Armada Great Lakes/East Africa Service, Ltd.; Great Lakes Transcaribbean Line* ("Armada"), 23 S.R.R. 946, 949 (Initial Decision; administratively final, April 25, 1986); *Member Lines of the Transpacific Westbound Rate Agreement - Possible Violations of the Shipping Act of 1984* ("TWRA"), 23 S.R.R. 1329, 1340 (Initial Decision; administratively final Oct. 9, 1986); *Royal Caribbean Cruises Ltd. Possible Violations of Certification Requirements* ("Royal Caribbean"), 26 S.R.R. 64 (Order Approving Settlement and Discontinuing Proceeding, Dec. 4, 1991).

The Commission's regulations reflect its policy of encouraging settlements. 46 C.F.R. Sec. 502.91. They also recognize the designated role of the Bureau of Enforcement in formal proceedings and, necessarily, in the settlement of those proceedings. 46 C.F.R. Secs. 502.42 and 502.61. The regulations also require that settlement agreements in formal proceedings be submitted to the Presiding Judge for approval. 46 C.F.R. Sec. 502.603(a).

### Criteria for Approval of Settlement

To discharge the duty imposed by 46 C.F.R. Sec. 502.603(a), the Presiding Judge must determine whether the proposed settlement satisfies the appropriate criteria for approval. Among the criteria to be considered in evaluating settlement offers is the Commission's enforcement policy, litigative probabilities and litigative and administrative costs.

In the initial decision of *Armada*, is a summary of the Commission's view of the relationship between the criteria for assessment of penalties and the criteria for approving settlements:

As seen, Section 13(c) of the Act and § 505.3 of the Commission's regulations, which implements both Section 13 of the Act and Section 32 of the 1916 Act, explicitly set forth criteria for assessment of penalties, and while they do not directly address the criteria for settlement of penalties, ... the latter are subsumed by the former. This is manifest from the history of the settlement process at the Commission. . . . The rules and regulations implementing Section 32(e) were promulgated and published by the Commission in a predecessor version of 46 CFR § 505, in 1979. Under those rules the "criteria for compromise, settlement or assessment" might "include but need not be limited to those which are set forth in 46 CFR Parts 101-105." . . . Those standards, particularly, the standards enumerated in 46 CFR Sec. 103, were a part of the Commission's program for settlement and collection of civil penalties even before the authority to assess penalties was given to the Commission pursuant to Section 32(e). . . . [I]t was held that those standards provided criteria for both settlements and assessments. "They continue to provide valuable assistance to the Commission as an aid in determining the amount of penalty

in assessment proceedings and in determining whether to approve proposed settlements in assessment proceedings."<sup>5</sup>

The appropriate standards for approving proposed settlements in assessment proceedings are summarized in *FESCO*, as follows:

. . . settlement may be based upon a determination that the agency's "enforcement policy in terms of deference and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon"; that "the amount accepted in compromise . . . may reflect an appropriate discount for the administrative and litigative costs of collection having regard for the time it will take to effect collection"; the value of settling claims on the basis of pragmatic litigative probabilities, *i.e.*, the ability to prove a case for the full amount claimed either because of legal issues involved or a bona fide dispute as to facts; and that penalties may be settled "for one or for more than one of the reasons authorized in this part."<sup>6</sup>

The Commission has reaffirmed that potential cost and uncertainties of success are valid factors to be considered both in negotiation of settlement and in view of settlement agreement.<sup>7</sup>

In line with the Commission's analysis as enunciated in *FESCO*, *Eastern*, *Armada*, *Yangming*, and *Royal Caribbean*, *supra*, proposed settlements are to be evaluated on the basis of balancing agency enforcement policy of deterrence by respondents, the industry and the general public with the litigative probabilities, litigative and administrative costs and such other matters as justice may require. That balance clearly favors approval of this proposed settlement.

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<sup>5</sup>*Armada*, *supra*, 23 S.R.R. at 956 (Citing *Eastern* and *Behring International*, *supra*). See *Marcella Shipping Co. Ltd.*, 23 S.R.R. 857, 866 (Initial Decision; administratively final Mar. 26, 1986).

<sup>6</sup>*FESCO*, *supra*, 21 S.R.R. 743 at 759.

<sup>7</sup>*Investigation of Unfiled Agreements - Yangming Marine Transport, Evergreen Marine Corporation and Orient Overseas Container Line, Inc. (Yangming)*, 24 S.R.R. 910 (Order Adopting Initial Decision, March 30, 1988). See also *Royal Caribbean*, *supra*. 26 S.R.R. 64.

Litigation cost savings include: the costs of discovery, witness preparation, document preparation and possible oral hearing, as well as briefing and exceptions, among others. In a factually oriented proceeding, such as this, these expenses are often significant. The costs of litigation also include the administrative time and costs expended by the Commission's other bureaus, the Office of Administrative Law Judges, and the Commission itself.

With respect to the policy of enforcement, the BOE stresses both the importance of promoting compliance by all regulated entities with the Shipping Act of 1984 and Commission's regulations. Respondents support the Commission's objective and have agreed to take appropriate measures in order to eliminate the practices by respondents which are the basis for the alleged violations described earlier. Accordingly, the parties submit that the proposed settlement agreement will further the Commission's enforcement policy.

As noted above, there are bona fide disagreements between Respondents and BOE as to certain facts and legal issues pertaining to this matter. Although each party is confident it would prevail, the outcome of any litigation is uncertain. In view of the litigative probabilities, the parties seek a settlement of this proceeding. Inasmuch as this proceeding could be complicated, time consuming, and costly, the proposed settlement would save all parties time and expense. Therefore, it is abundantly clear that the litigative probabilities and potential litigative and administrative costs of this proceeding favor approval of this proposed settlement agreement.

Conclusion

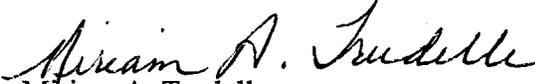
The proposed settlement agreement comprehensively addresses the issues relating to the above referenced proceeding and meets the Commission's well established criteria for approval of agreements settling administrative enforcement claims and, therefore, will be approved and Docket No. 03-11 will be discontinued in its entirety.

**IT IS ORDERED:**

The attached settlement agreement is approved and the proceeding is discontinued, as requested by the parties.

**IT IS FURTHER ORDERED:**

The investigation is discontinued without prejudice and without an award of costs or attorneys' fees.

  
Miriam A. Trudelle  
Administrative Law Judge

Before the  
FEDERAL MARITIME COMMISSION

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DOCKET NO. 03-11

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Deans Overseas Shippers, Inc. and Sharon Stephenson Deans - Possible  
Violations of Sections 8(a),10(a)(1) and 19 of the Shipping Act of 1984, as amended  
and the Commission's Regulations at 46 C.F.R. Pts. 515 and 520

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Deans International Shipping Co., Ltd. - Application for  
License as an Ocean Transportation Intermediary

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**SETTLEMENT AGREEMENT**

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THIS SETTLEMENT AGREEMENT (the "Agreement") is entered into by and between:

1) the Federal Maritime Commission's ("Commission") Bureau of Enforcement ("BOE"), and

2) Deans Overseas Shippers, Inc. ("Deans Overseas" or "Respondent"), Deans International Shipping Co., Ltd. ("Deans International" or "Respondent") and Sharon Stephenson Deans ("Ms. Deans" or "Respondent"), the Respondents in Docket No. 03-11.

WHEREAS, the BOE believes that:

1. Deans Overseas and Ms. Deans violated sections 8(a) and 19 of the Shipping Act of 1984, as amended, ("1984 Act"), 46 U.S.C. app. §§ 1707(a) and 1718, and the Commission's regulations at 46 C.F.R. pts. 515 and 520, by knowingly and willfully performing non-vessel-operating common carrier ("NVOCC") services without having obtained an ocean transportation intermediary ("OTI") license from the FMC, without having filed a bond or other evidence of financial responsibility, and without having published a tariff;

2. Deans Overseas Shippers, Inc. and Ms. Deans violated section 10(a)(1) of the 1984 Act by knowingly and willfully obtaining transportation for property at less

than the rates or charges that otherwise would be applicable by the unjust or unfair device or means of unlawfully entering into service contracts; and

3. the application of Deans International for a license to operate as an ocean freight forwarder should be denied.

WHEREAS, the Commission has acted on said beliefs by instituting Docket No. 03-11 entitled *Deans Overseas Shippers, Inc. and Sharon Stephenson Deans - Possible Violations of Sections 8(a), 10(a)(1) and 19 of the Shipping Act of 1984, as amended, and the Commission's Regulations at 46 C.F.R. Pts. 515 and 520; Deans International Shipping Co., Ltd. - Application for License as an Ocean Transportation Intermediary*, in which Deans Overseas, Deans International and Ms. Deans were named Respondents;

WHEREAS, Respondents Deans Overseas and Ms. Deans have terminated the practices which are the basis for the alleged violations set forth herein, and have instituted and indicated their willingness to maintain measures designed to eliminate such practices by Respondents in the future;

WHEREAS, Respondent Deans International has withdrawn its application for a license as an ocean freight forwarder; and

WHEREAS Respondents Deans Overseas, Deans International and Ms. Deans do not admit that they have violated any provision of the 1984 Act or of the Commission's regulations;

WHEREAS, the Bureau of Enforcement and Respondents believe it is in the best interests of the parties and the shipping public to resolve the above referenced proceeding rather than engage in further litigation.

NOW, THEREFORE, in consideration of the premises herein, and in compromise of all civil penalties arising from the alleged violations set forth and described herein, Respondents and the Commission's Bureau of Enforcement hereby agree upon the following terms of settlement:

1. Within five (5) days after a decision of the Administrative Law Judge or the Commission approving this Agreement becomes administratively final, Respondents shall make monetary payment to the Commission, by cashier's or certified check, in the total amount of \$50,000 (Fifty Thousand Dollars).
2. Upon a decision of the Administrative Law Judge or the Commission approving this Agreement becoming final, this instrument shall forever bar the commencement or institution by the Commission of any civil penalty assessment proceeding or other claim for recovery of civil penalties against Respondents for the alleged violations of the 1984 Act and the Commission's regulations set forth in FMC Docket No. 03-11.

3. It is expressly understood that this Agreement is not, and should not be construed as, an admission by Respondents to the alleged violations set forth above.
4. This Agreement is subject to approval by the Commission in accordance with 46 C.F.R. § 502.603.

ON BEHALF OF RESPONDENTS:

Signature: Sharon Deans  
Printed Name: SHARON DEANS  
Date: 1-8-04

ON BEHALF OF THE BUREAU OF ENFORCEMENT:

By: Vern W. Hill  
Vern W. Hill, Director  
Date: 1-13-04