

(S E R V E D)
(OCTOBER 16, 1995)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

October 16, 1995

DOCKET NO. 94-10

ALL MARINE MOORINGS, INC.

v.

**ITO CORPORATION OF BALTIMORE
AND
THE MARYLAND PORT ADMINISTRATION**

ERRATA

The following changes are hereby made to the Initial Decision which was served on October 6, 1995:

1. The title of the proceeding is changed to reflect the names of both respondents named in the amended complaint, as shown above.

2. The following text for Additional Findings of Facts, paragraphs 39, 40, 41, and 42, is hereby substituted for the original text of these paragraphs. The changes to the original text delete unnecessary names of persons and companies but do not change the substance

or meaning of the original language. Also, it should be noted that footnote no. 3 in paragraph 41 does not appear in the revised language of that paragraph. Accordingly, all subsequent footnotes are renumbered so that the last footnote on page 70 of the Initial Decision is now numbered as "8."

39. Another of All Marine's biggest customers is Kerr Steamship Company, a ship's agent. Tim Kany is the Operations Manager for Kerr Steamship, and he handles "K" Line ships and the ships of United Arab Line. In addition to the discounts outlined in Paragraph 31 above, on June 23, 1992, All Marine sent a fax letter to Tim Kany, enclosing a rate proposal for line handling and instructing Mr. Kany to deduct 10% for all straight time and 20% for all overtime work, although Mr. Ciociola later claimed that this discount was never implemented.

40. Mr. Ciociola has denied that it is a practice of All Marine to make any payments to its customers in exchange for business. However, in 1993 and 1994, All Marine made 12 payments by company check to the spouse of an individual employed by a company that provides line handling business to All Marine for alleged "commissions" for line handling business provided by the company to All Marine. The checks were made payable to the spouse rather than the company or the employees because "That's the way it was wanted." However, the spouse did not personally render any service to All Marine in exchange for these "commissions." The payments to the spouse, which represented 5% of the value of the work given to All Marine by the company, also were not based upon any agreement between All Marine and the employee; rather, they were allegedly the result of a "handshake deal" between the spouse and Mr. Ciociola on behalf of All Marine. Mr. Ciociola did not know whether the monies he paid to the spouse ever made their way back to the company.

41. Similarly, from 1992 to 1994, All Marine was invoiced for and paid "commissions" to another company, which is an apparent "front" for a shipping company. These "commissions" were for 20% of the value of the line handling work that the shipping company gave to All Marine. These "commissions" were paid after the Vice-President of the shipping company met with Mr. Ciociola three times and, at the last meeting, said, "for all the [line handling] work, give me 20%."

42. According to Mr. Ciociola's deposition testimony, the only "commissions" paid by All Marine from 1992 to 1994 were in the

two foregoing instances. However, All Marine's profit and loss statements and tax returns for the same period show a total expense in a larger amount in "commissions." All Marine claims the discrepancy is due to different accounting methodologies with All Marine's books being kept on an accrual basis rather than a cash basis. (All Marine's Reply Brief at 11-12). All Marine asserts on brief that all commissions paid by All Marine were duly reflected in information provided to the Internal Revenue Service. (*Id.* at 12, apparently incorrectly referring to commissions paid by "ITO" rather than by All Marine). All Marine is not aware of any other line handling business in Baltimore that pay "commissions" to customers for business.

Norman D. Kline

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Administrative Law Judge