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**BEFORE THE
FEDERAL MARITIME COMMISSION**

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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

Docket No. 06-

07-01



APM TERMINALS NORTH AMERICA, INC.

COMPLAINANT

v.

PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPONDENT

COMPLAINT

I. Complainant

A. Complainant APM Terminals North America, Inc., formerly known as Maersk Container Service Company, Inc., ("APMT"), is a corporation organized and existing under the laws of the State of Delaware. APMT is a marine terminal operator that is engaged in the business of furnishing marine terminal services to ocean common carriers at facilities throughout the United States, including the Port Elizabeth Marine Terminal in Elizabeth, New Jersey.

B. APMT's mailing address is 6000 Carnegie Boulevard, Charlotte, NC 28209.

II. Respondent

A. Respondent, Port Authority of New York and New Jersey (“PANYNJ” or “Port Authority”) is a bi-state port district, established in 1921 through an interstate compact between New York and New Jersey. PANYNJ is a marine terminal operator that owns marine terminal facilities in the New York and New Jersey area, including the Port Elizabeth Marine Terminal in Elizabeth, New Jersey.

B. The PANYNJ’s mailing address is 225 Park Avenue South, 18th Floor, New York, NY 10003.

III. Jurisdiction

APMT and the PANYNJ are both marine terminal operators within the meaning of Section 3(14) of the Shipping Act of 1984, 46 U.S.C. § 40102(14)¹. This Complaint is being filed pursuant to Section 11(a) of the Shipping Act, 46 U.S.C. § 41301. APMT is seeking reparations for injuries caused to it by PANYNJ’s violations of Sections 10(a)(3), 10(d)(1), 10(d)(3) and 10(d)(4) of the Shipping Act, 46 U.S.C. §§ 41102(b)(2), 41102(c), 41106(3), and 41106(2). As more particularly alleged below, PANYNJ has failed to operate in accordance with FMC Agreement No. 201106, dated January 6, 2000 (the “Agreement”), has failed to establish, observe, and enforce just and reasonable regulations

¹ This Complaint includes for convenience citations to the provisions of the Shipping Act of 1984, which was repealed and codified by Public Law 109-304, 120 Stat. 1485 (2006). The corresponding new provisions of the U.S. Code are also cited. Citations to a Shipping Act section should be understood to include reference to the corresponding U.S. Code section(s).

and practices relating to or connected with receiving, handling, storing or delivering property, has unreasonably refused to deal or negotiate with APMT, and has imposed unjust and unreasonable prejudice or disadvantage with respect to APMT.

IV. Statement of Facts

A. APMT under its prior name Maersk Container Service Company, Inc. and PANYNJ entered into an Agreement of Lease dated January 6, 2000, relating to terminal facilities at the Port of Elizabeth, New Jersey. The Agreement was filed with the Commission and became effective under the Shipping Act of 1984 on August 2, 2000, FMC Agreement No. 201106.

B. Pursuant to Section 1(a) of the Agreement PANYNJ was to lease to APMT certain land and facilities at the Elizabeth-Port Authority Marine Terminal as described in Exhibit A to the Agreement (referred to as the "Premises" or the "Initial Premises").

C. Pursuant to Section 1(b) of the Agreement, PANYNJ was also required to lease to APMT an additional 84 acres referred to as the "Added Premises" and as described in Exhibit A-1 to the Agreement. The Added Premises were to be delivered to APMT in whole or in contiguous portions thereof during the period between January 6, 2000 and December 31, 2003.

D. The Added Premises were an integral part of APMT's business plan and were necessary, among other things, to relieve congestion and space constraints in the Premises. In this respect, the Added Premises were required

by APMT to avoid the loss of operating space in the short term if APMT was displaced by construction projects on the Premises.

E. By the summer of 2003, APMT became aware that PANYNJ did not intend to timely deliver the Added Premises as required by the Agreement.

F. By letter of December 23, 2003, APMT notified PANYNJ of the substantial harms to APMT's operations that would result from a failure by PANYNJ to turn over the added premises by December 31, 2003 as required. These harms included, without limitation, additional container grounding costs and loss of operating revenue.

G. APMT further advised in its letter of December 23, 2003, that these damages might be mitigated with a partial turnover of the Added Premises and implored PANYNJ to make at least some of the Added Premises available in order to ease the burden on APMT.

H. Despite the terms of the Agreement and the knowledge of prospective harm to APMT, PANYNJ failed to provide any portion of the Added Premises on or before December 31, 2003.

I. As of August 23, 2005, PANYNJ still had not delivered any of the Added Premises. By letter of August 23, 2005, APMT notified PANYNJ of the continuing violation of the Agreement and made clear that harms that were predicted in APMT's letter of December 23, 2003, had, in fact, been suffered as a result of PANYNJ's continuing refusal to comply with the terms of the Agreement. APMT again demanded that PANYNJ comply with the terms of the Agreement, and requested that 80% of the Added Premises be delivered by

September 1, 2005, and that the remainder be provided no later than October 1, 2005.

J. PANYNJ again refused to comply with these requests and continued in its failure to deliver the Added Premises as required by the Agreement.

K. During the entire period that PANYNJ was improperly denying APMT access to the Added Premises, PANYNJ was permitting the facilities to be used and occupied by Maher Terminals.

L. PANYNJ refused to enforce Maher's obligation to turn over the Added Premises to APMT and permitted Maher Terminals to benefit from extended use of the Added Premises to the detriment of APMT.

M. The Added Premises were not delivered to APMT until on or about December 25, 2005, almost two full years beyond the agreed upon deadline.

N. As a result of PANYNJ's actions, APMT lost expected operating revenues from the Added Premises.

O. As a result of its inability to use the Added Premises, APMT further incurred substantial additional operations, labor, and construction costs at the Initial Premises. Without limitation, some examples of these additional costs include additional labor needed to stack containers higher due to the lack of space, the need for construction change orders, and additional costs for shifting containers to accommodate construction schedules.

P. In addition, the untimely delivery increased costs of construction at the Added Premises. Among other things, rapid and severe increases on the

costs of materials and oil resulted in construction costs that were substantially higher at the time the Added Premises were turned over in 2005 than they would have been had the work been performed in 2003 or early 2004 as anticipated by the Agreement.

Q. APMT has not been compensated by PANYNJ for any of these damages.

V. Matters Complained of

A. Contrary to the terms of the Agreement, PANYNJ failed to properly and timely perform its obligations regarding the Added Premises causing significant unreasonable delay, an exorbitant increase in operating costs, an increase in the costs of developing the Premises and the Added Premises, and a loss of revenues.

B. PANYNJ failed to cause Maher Terminals to timely vacate and deliver to APMT all of the Added Premises.

C. PANYNJ refused requests from APMT for the turnover of a portion of the Added Premises to alleviate the serious lack of terminal space confronted by APMT as a consequence of PANYNJ's failure to deliver the Added Premises.

D. In sharp contrast with its treatment towards APMT, PANYNJ allowed Maher Terminals, then the lessee of the Added Premises, to continue to occupy and use the Added Premises long after it should have been delivered to APMT.

E. PANYNJ further tolerated and acquiesced in other actions of Maher clearly intended to prevent APMT from utilizing the Added Premises. PANYNJ failed to take any action to require Maher to turn over the Added Premises.

F. PANYNJ has engaged in other unjust, unreasonable and unlawful practices, has unreasonably refused to deal or negotiate with APMT and has imposed undue or unreasonable prejudices and disadvantages in its dealings with APMT.

VI. Violations of the Shipping Act of 1984

A. The actions of PANYNJ set forth in Parts IV and V of this Complaint constitute failure of the PANYNJ to operate in accordance with the terms of the Agreement in violation of Section 10(a)(3) of the 1984 Act, 46 U.S.C. § 41102(b)(2), which failure has had an adverse effect on the development of the Premises and Added Premises, including, without limitation, increased construction and operating costs and loss of revenues.

B. The actions of PANYNJ set forth in Parts IV and V of this Complaint constitute unjust, unreasonable, and unlawful practices in violation of Section 10(d)(1) of the 1984 Act, 46 U.S.C. § 41102(c), including without limitation: the failure to turn over the Added Premises to APMT; allowing Maher to use the Added Premises; and misinforming APMT as to the timing of the turnover of the Added Premises.

C. The actions of PANYNJ set forth in Parts IV and V of this Complaint constitute an unreasonable refusal to deal or negotiate with APMT

in violation of Sections 10(d)(3) and 10(b)(10) of the 1984 Act, 46 U.S.C. §§ 41106(3) and 41104(10), including without limitation: refusing to turn over any portion of the Added Premises or find suitable alternatives.

D. The actions of the PANYNJ set forth in Parts IV and V of this Complaint constitute impositions of undue or unreasonable prejudices or disadvantages with respect to APMT in violation of Section 10(d)(4) of the 1984 Act, 46 U.S.C. § 41106(2), including without limitation: allowing Maher to interfere with APMT's operations at the Added Premises, and allowing Maher to benefit from extended occupation of the Added Premises to the detriment of APMT.

VII. INJURY TO APMT

As a direct result of the violations of the 1984 Act by the PANYNJ, APMT has suffered substantial economic damages and injury, in an amount to be determined, consisting of foregone profits, increased capital, labor, and operating expenditures and other expenditures, including interest.

VIII. Prayer for Relief

Statement Regarding ADR Procedures

As reflected above, there have been extensive discussions of the issues raised in the Complaint between Complainant and Respondent. In light of these discussions, informal dispute resolution procedures have not been used prior to filing the Complaint. Nor has the Complainant consulted with the Commission's Dispute Resolution Specialist about utilizing alternative dispute resolution with the Commission's ADR program.

WHEREFORE, APMT prays that PANYNJ be required to answer the charges in this Complaint; that after due hearing and investigation an order be made commanding PANYNJ to cease and desist from the aforementioned violations of the 1984 Act and to establish and put in force such practices as the Commission determines to be lawful and reasonable; that an order be made commanding the PANYNJ to pay APMT reparations for violations of the 1984 Act (which include up to twice the amount of actual injury caused by the PANYNJ's violations of Section 10(a)(3) of the 1984 Act (as authorized by Section 11(g) of the 1984 Act, 46 U.S.C. § 41305(c)), plus interest, costs, and attorney's fees, and any other damages to be determined; that an order be made commanding the PANYNJ to comply with all applicable provisions of the Agreement that the Commission finds as having been violated contrary to the 1984 Act; and that such other and further relief be granted as the Commission determines to be proper, fair, and just in the circumstances.

APMT requests a hearing on this matter, and further requests that the hearing be held in Washington, D.C.

Respectfully submitted,



By: John N. Loepprich

Title: SR. V.P. & CFO

APM Terminals North America, Inc.

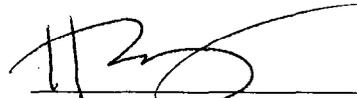
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Attorneys for APM Terminals North
America, Inc.

December 29, 2006

VERIFICATION

State of North Carolina)
County of Mecklenburg) ss:

John Laepprich, being first duly sworn on oath, deposes and says that he is the Secretary of Complainant and is the person who signed the foregoing Complaint in his capacity as Secretary of Complainant; that he has read the Complaint and that the facts stated therein, upon information personally known to him and received from others, he believes to be true.

John A. Jaeger

Subscribed and sworn to before me by John Laepprich who is known personally to me, in Charlotte, NC this 29 day of December, 2006.

Cynthia L. Slade
NOTARY PUBLIC
For the State of NC
County of Mecklenburg

My Commission expires: MY COMMISSION EXPIRES 11-01-2009