

ORIGINAL

S	E	R	V	E	D
October 20, 2011					
FEDERAL MARITIME COMMISSION					

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

DOCKET NO. 11-06

**INDIGO LOGISTICS, LLC; LILIYA IVANENKO; AND LEONID IVANENKO –
POSSIBLE VIOLATIONS OF SECTION 19 OF THE SHIPPING ACT OF 1984 AND
THE COMMISSION’S REGULATIONS AT 46 C.F.R. PART 515**

INITIAL DECISION APPROVING PROPOSED SETTLEMENT AGREEMENT¹

I.

On October 14, 2011, the Bureau of Enforcement (“BOE”) and respondents Indigo Logistics, LLC (“Indigo Logistics”), Liliya Ivanenko, and Leonid Ivanenko filed a Proposed Settlement Agreement (“Agreement”) and a Joint Memorandum in Support of Proposed Settlement (“Memorandum”) requesting approval of the Agreement. For the reasons set forth below, the request for approval of the Agreement is granted and the proceeding against Indigo Logistics, Liliya Ivanenko, and Leonid Ivanenko is dismissed with prejudice.

II.

By Order of Investigation and Hearing dated April 7, 2011, the Commission commenced this proceeding to determine: 1) whether Respondents violated section 19 of the Shipping Act, 46 U.S.C. §§ 40901, 40902, and the Commission’s regulations at 46 C.F.R. Part 515, by acting as an ocean transportation intermediary (“OTI”) without a license or evidence of financial responsibility; 2) whether, in the event violations of the Shipping Act are found, civil penalties should be assessed against Respondents and, if so, the amount of penalties to be assessed; and 3) whether, in the event violations are found, appropriate cease and desist orders should be issued. Order of Investigation and Hearing at 3.

¹ This Initial Decision will become the decision of the Commission in the absence of review by the Commission. 46 C.F.R. § 502.227.

BOE states that in conjunction with this proceeding, the Commission sought and obtained a preliminary injunction against Respondents prohibiting them from acting as an ocean transportation intermediary without a license and evidence of financial responsibility. BOE indicates that the injunction, which is in effect until the conclusion of the Commission's proceeding, was issued on April 15, 2011, by the United States District Court for the Northern District of Georgia in *Federal Maritime Commission v. Indigo Logistics, LLC, Liliya Ivanenko and Leonid Ivanenko* (Case No. 1:11 - Civ. 1134 TCB). Memorandum at 2.

The parties indicate that the settlement agreement "is the result of good faith negotiations between the parties." Memorandum at 2. The procedural steps remaining in this proceeding include: completing discovery, submitting pre-hearing statements, and briefing the parties' respective cases. Memorandum at 2. The parties explain:

The settlement agreement admits the violations which formed the basis of the Commission's investigation and the Court's preliminary injunction and reflects what the parties believe to be an appropriate resolution of the matter. The Agreement includes Respondents' consent to entry of a cease and desist order that will bar Respondents from acting as an OTI or as an agent of an OTI for a period of five (5) years. The ban effectively continues the court injunction. Respondents have also agreed to dissolve Indigo Logistics, LLC, close all websites maintained by the company or affiliated entities, remove any links to such websites, and relinquish all domain names associated with that company.

The Agreement also includes payment of a significant civil penalty. The parties have agreed to a mechanism whereby payment of the penalty shall be made to an escrow account and, subsequently, payment from the escrow agent to the Commission within 5 days of final approval of the settlement agreement. Payment of the penalty into escrow by November 14, 2011, is a condition precedent to the effectiveness of all other provisions in the Agreement. Upon receiving notice of compliance with this condition, BOE would immediately advise the Administrative Law Judge (ALJ) that the condition has been met. In the event that Respondents fail to deposit the funds into the escrow account by the prescribed deadline, BOE would immediately notify the ALJ, and the Agreement would be without force or effect and deemed withdrawn.

Memorandum at 2-3 (footnote excluded).

The specific terms of the Agreement are:

- 1) No later than November 15, 2011, Respondents shall provide written verification to the Commission that the total monetary payment of \$50,000 was placed in the escrow account. Compliance with the requirements of this paragraph is a condition precedent to the effectiveness of all other provisions of this Agreement. Should Respondents fail to comply with the requirements of this

paragraph in its entirety as of November 15, 2011, the Agreement shall be deemed withdrawn by Respondents as of that date.

2) BOE and Respondents shall jointly submit to the Administrative Law Judge a motion seeking approval of this Agreement.

3) Upon the Commission's approval of the Agreement, the \$50,000 shall be paid to the Commission within five business days of the approval becoming administratively final.

4) Respondents Indigo Logistics, LLC, Liliya Ivanenko, and Leonid Ivanenko shall not engage in business as an OTI or as an agent of an OTI for a period of 5 years and hereby consent to entry of an Order prohibiting each of them from acting as an OTI as defined in Section 19 of the Act, 46 U.S.C. §§ 40901, 40902, and the Commission's regulations at 46 C.F.R. §515.2, or as an agent of an OTI for a period of five (5) years from the service date of an administratively final order discontinuing this proceeding.

5) Within 30 days of the date that an order approving this Agreement becomes administratively final, Respondents shall effect the dissolution of Indigo Logistics, LLC, pursuant to the applicable laws of Georgia[.]

6) Within 30 days of the date that an order approving this Agreement becomes administratively final, Respondents shall arrange for the closing of all websites maintained by Indigo Logistics, LLC or by any affiliated entity advertising Indigo's services; arrange for the removal of links on any other websites to such websites maintained by Indigo; and relinquish all domain names associated with or related to Indigo Logistics, LLC.

7) Respondents hereby waive any requirement that the Commission's decision or order contain a statement of findings of fact and conclusions of law.

8) Respondents hereby waive all rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this Agreement.

9) BOE and Respondents agree that the order entered pursuant to this Agreement will have the same force and effect as Commission orders issued on a litigated or stipulated record[.]

10) Upon approval of the terms set forth in this Agreement by the Administrative Law Judge and the Commission, 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 alleged violations of the Shipping Act of 1984 and the Commission's regulations as set forth in FMC Docket

No. 11-06, including the period from January 2008 through such date when this Agreement is executed by BOE and all Respondents.

11) Respondents are represented by counsel, have reviewed the terms of the Agreement with counsel, and understand the terms and conditions stated herein.

12) This Agreement is subject to approval by the Commission in accordance with 46 C.F.R. § 502.603.

Agreement at 2-3.

The parties contend that the Agreement “avoids the uncertainties involved in any litigation and in particular the penal phase of the proceeding” and “provides certainty to individual respondents with respect to the penalty.” Memorandum at 8. In addition, the parties state that “third-party shipper complaints were not a basis for the allegations in the Order of Investigation and Hearing” and that “the shipping public will not now be harmed by the approval of this settlement agreement.” Memorandum at 7 n.4 (citation omitted).

III.

Using language borrowed in part from the Administrative Procedure Act,² Rule 91 of the Commission’s Rules of Practice and Procedure gives interested parties an opportunity, *inter alia*, to submit offers of settlement “where time, the nature of the proceeding, and the public interest permit.” 46 C.F.R. § 502.91(b).

The Commission has a strong and consistent policy of “encourag[ing] settlements and engag[ing] in every presumption which favors a finding that they are fair, correct, and valid.” *Inlet Fish Producers, Inc. v. Sea-Land Serv., Inc.*, 29 S.R.R. 975, 978 (ALJ 2002), quoting *Old Ben Coal Co. v. Sea-Land Serv., Inc.*, 18 S.R.R. 1085, 1091 (ALJ 1978) (*Old Ben Coal*). See also *Ellenville Handle Works, Inc. v. Far Eastern Shipping Co.*, 20 S.R.R. 761, 762 (ALJ 1981).

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 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

² “The agency shall give all interested parties opportunity for – (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit.” 5 U.S.C. § 554(c).

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.

Old Ben Coal, 18 S.R.R. at 1092, quoting 15A American Jurisprudence, 2d Edition, pp. 777-778 (1976).

“While following these general principles, the Commission does not merely rubber stamp any proffered settlement, no matter how anxious the parties may be to terminate their litigation.” *Id.* However, 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.” *Old Ben Coal*, 18 S.R.R. at 1093. “[I]f it is the considered judgment of the parties that whatever benefits might result from vindication of their positions would be outweighed by the costs of continued litigation and if the settlement otherwise complies with law the Commission authorizes the settlement.” *Delhi Petroleum Pty. Ltd. v. U.S. Atlantic & Gulf/Australia – New Zealand Conf. and Columbus Line, Inc.*, 24 S.R.R. 1129, 1134 (ALJ 1988) (citations omitted).

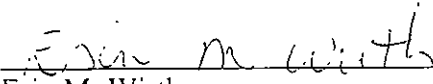
Based on the representations in the Memorandum, the Agreement, and other documents filed in this matter, the parties have established that the Agreement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake, or other defects which might make it unapprovable. In exchange for Indigo Logistic’s admission of liability, they receive a definite and certain penalty. In addition to paying a civil penalty, Indigo Logistics will not longer act as an OTI or an agent of an OTI, thereby protecting the public. The parties are represented by counsel and there is no evidence of fraud, duress, undue influence, or mistake nor harm to the public. Accordingly, the proposed settlement agreement is approved.

IV.

Upon consideration of the Memorandum, the Agreement, and the record, and good cause having been stated, it is hereby:

ORDERED that the proposed settlement agreement between BOE and Indigo Logistics, Liliya Ivanenko, and Leonid Ivanenko be **APPROVED**. It is

FURTHER ORDERED that this proceeding be **DISMISSED WITH PREJUDICE**.


Erin M. Wirth
Administrative Law Judge