(S E R V E D)
(APRIL 6, 2012)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

DOCKET NO. 12-02

MAHER TERMINAL, LLC

V.

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

NOTICE OF FILING OF COMPLAINT AND ASSIGNMENT

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission" by Maher Terminal, LLC, hereinafter "Complainant" against the Port Authority of New York and New Jersey (PANYNJ), hereinafter "Respondent". Complainant asserts that it is a limited liability company registered in the State of Delaware with corporate offices and facilities located in Elizabeth, New Jersey. Complainant asserts that Respondent, PANYNJ, is a body corporate and politic created by Compact between the States of New York and New Jersey and with the consent of the Congress; has offices located in New York, New York; owns marine terminal facilities in the New York New Jersey area, including in Elizabeth, New Jersey; and is a marine terminal operator.

Complainant contends that Respondent violated 46 U.S.C. §§ 41102(c), 41106(2), 41106(3) and 41106(1) respectively, because Respondent:

"(a) has and continues to fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivery property; (b) gave and continues to give an undue or unreasonable prejudice or disadvantage with respect to Maher and gave and continues to give an undue or unreasonable preference or advantage with respect to Maersk, APM, MSC, PNCT, NYCT, and Global, and other marine container terminal operators and ocean carriers; (c) has and continues to unreasonably refuse to deal or negotiate with Maher; and (d) has and continues to agree with another marine terminal operator or common carrier to boycott and/or unreasonably discriminate in the provision of terminal services to a common carrier."

Complainant asserts that it has sustained injuries and damages, as a result of Respondent's actions, "including but not limited to higher costs and other undue and unreasonable payments, economic considerations, restrictions on transfers and/or changes in ownership or control interests, lost business, forgone business, and additional obligations not required of … other marine terminals and other damages amounting to a sum of millions of dollars. . ." The full text of the complaint can be found in the Commission's Electronic Reading Room at www.fmc.gov.

Complainant requests that the Commission require Respondent to: (1) answer he charges in the subject complaint; (2) cease and desist from the aforementioned violations of the Shipping Act; (3) provide to Complainant the preferences provided to other marine terminal operators; (4) put in force such practices and as the Commission determines to be lawful and reasonable; and (5) pay to Complainant by way of reparations the amount of the actual injury, plus interest, cost and attorneys fees, and any other damages to be determined. Additionally, Complainant requests that the Commission order any such other relief as it determines appropriate.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 C.F.R. 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 C.F.R. 502.61, the initial decision of the presiding officer in this proceeding shall be issued by April 8, 2013, and the final decision of the Commission shall be issued by August 6, 2013.

Karen V. Gregory
Secretary