

FEDERAL MARITIME COMMISSION

NGOBROS AND COMPANY NIGERIA,

Complainant,

v.

OCEAN CARGO LINK, LLC AND
KINGSTON ANSAH,

Respondents.

Docket No. 14-15

Served: December 17, 2019

BY THE COMMISSION: Michael A. KHOURI, *Chairman*,
Rebecca F. DYE, Daniel B. MAFFEI, Louis E. SOLA, and Carl W.
BENTZEL *Commissioners*.

Order Vacating Initial Decision and Remanding-In-Part

I. INTRODUCTION

On November 10, 2015, the Administrative Law Judge (ALJ) issued an Initial Decision (I.D.) finding that Respondents Oceane Cargo Link, LLC (OCL), and Kingston Ansaah violated 46 U.S.C. § 41102(c). The ALJ accordingly awarded reparations to Complainant Ngobros and Company Nigeria Limited. For the reasons set forth below, the Commission vacates the Initial Decision. The Commission remands this matter as to OCL so that

the ALJ can consider whether the alleged acts or omissions occurred on a normal, customary, and continuous basis. The Commission dismisses the claims as to Mr. Ansah as moot.

II. BACKGROUND

Complainant is a Nigerian company with a principal place of business in Anambra State, Nigeria. Compl. at 1. Respondent OCL was, during the relevant time period, a licensed ocean freight forwarder and a non-vessel-operating common carrier, with a principal place of business in Forest Park, Georgia. *Id.* at 2. Respondent Kingston Ansah is the sole member of OCL and resides in Atlanta, Georgia. *Id.* Mr. Ansah is also OCL's president, secretary, and CFO. I.D. at 13. According to Complainant, Mr. Ansah "has utilized OCL as his alter egos [sic] and alter egos for one another." Compl. at 2.

On June 28, 2012, Complainant purchased three vehicles and paid Respondents to transport the vehicles from Georgia to Tincan/Lagos, Nigeria. *Id.* at 3. Complainant received bills of lading issued by an ocean common carrier, Mediterranean Shipping Company (MSC), which is not a party in this proceeding. When the container arrived in Nigeria in September 2012, Complainant discovered that the container contained "some used goods which did not belong to Complainant" and "refused to take delivery of the goods." *Id.* at 4. When Complainant contacted Respondents, they informed Complainant that the vehicles had been mistakenly shipped to Tema, Ghana. *Id.* According to Mr. Ansah, while he was traveling, an OCL employee mistakenly switched and shipped two containers to the wrong destinations at the time of loading, resulting in the vehicles going to the wrong location. Respondents' Resp. to Notice of Default at 1.

MSC emailed Respondents and Complainant on November 28, 2012, and "requested payment of \$8,108 for storage and other charges to secure the release of Complainant's container and for re-export from Tema, Ghana, to Tincan/Lagos, Nigeria." Compl. at 4.

Complainant paid the additional freight to MSC “on behalf of Mr. Ansah who was reluctant to make the payments.” *Id.* at 5.

On July 3, 2013, Mr. Ansah demanded an additional fee of \$18,000 to re-export the vehicles to Tincan/Lagos, Nigeria. Complainant agreed to pay \$5,000 “with a written agreement from Respondent that once paid, [Complainant] would receive [the vehicles].” *Id.* When Complainant followed up with Respondents on September 9, 2013, Complainant was informed that MSC had lost the vehicles to Ghana customs.

Respondents attempted to reimburse Complainant by issuing it a check for \$20,000, but the check bounced. Respondents also gave Complainant two other checks for \$20,000 and \$25,000, respectively. Complainant did not deposit the checks, however, because it discovered that Respondents had closed their bank account. Complainant subsequently recovered \$37,681.14 against OCL’s surety bond, and Respondents made payments of \$12,508.00 to Complainant. *I.D.* at 8, 12.

On November 24, 2014, Complainant filed a Shipping Act complaint against OCL and Mr. Ansah. Complainant alleged that Respondents violated 46 U.S.C. § 41102(c) with respect to the transportation of Complainant’s three vehicles from Savannah, Georgia, to Tincan/Lagos, Nigeria. Respondents did not file an answer but responded to an order to show cause. Respondents did not contest the Complainant’s factual allegations. Instead, they provided additional factual context. Mr. Ansah, “as the owner of the company,” took “full responsibility” for the problems alleged. *Resp’ts’ Resp.*, Apr. 17, 2015, at 1.

The ALJ issued an Initial Decision on November 10, 2015, finding that Respondents violated § 41102(c). *I.D.* at 9-10. In addition to finding that Respondents violated the Shipping Act, the ALJ pierced the corporate veil to find Mr. Ansah personally liable for the acts of OCL. *Id.* at 12-13. The ALJ awarded Complainant reparations of \$162,266.04. *Id.* at 12. The Commission determined

to review the Initial Decision on November 24, 2015.

While review was pending, Mr. Ansah filed for bankruptcy. As a result, the Commission stayed this case through October 3, 2017, when it learned that Mr. Ansah had received a discharge under Chapter 7 of the Bankruptcy Code. *In re: Kingston Ansah Debtor*, Case No. 16-51822-lrc (Bankr. N.D. Ga.), ECF No. 68. Meanwhile, in 2017, Mr. Ansah was charged with several federal crimes. *United States v. Ansah*, 17-cr-381 (N.D. Ga. Nov. 29, 2017), ECF No. 11. In May 2019, Mr. Ansah pleaded guilty to one count of Conspiracy to Commit Wire Fraud and one count of Aggravated Identity Theft. *Ansah*, 17-cr-381 (N.D. Ga. May 13, 2019), ECF No. 84. He was sentenced to fifty-seven months in prison on October 2, 2019. *Ansah*, 17-cr-381 (N.D. Ga. Oct. 3, 2019), ECF No. 92; *see also Ansah*, 17-cr-381 (N.D. Ga. Oct. 11, 2019), ECF No. 93; *Ansah*, 17-cr-381 (N.D. Ga. Oct. 16, 2019), ECF No. 94.¹

III. DISCUSSION

A. Standard of Review

In proceedings “[w]here exceptions are filed to, or the Commission reviews, an initial decision, the Commission, except as it may limit the issues upon notice or by rule, will have all the powers which it would have in making the initial decision.” 46 C.F.R. § 502.227(a)(6). Thus, when the Commission reviews a decision *de novo* it may enter its own findings. *Kawasaki Kisen Kaisha, Ltd. v. Port Auth. of N.Y. & N.J.*, 33 S.R.R. 746, 753 (FMC 2014) (citing *OC Int’l Freight, Inc.*, 33 S.R.R. 566, 570 (FMC 2014)).

B. Respondent OCL

The ALJ found that OCL violated 46 U.S.C. § 41102(c) by

¹ OCL’s OTI licenses were revoked for failure to maintain valid OTI bonds in May 2018.

not fulfilling its ocean transportation intermediary (OTI) obligations. I.D. at 9. Section 41102(c) prohibits a common carrier, marine terminal operator, or OTI from “fail[ing] to establish, observe, and enforce just and reasonable regulations and practices related to or connected with receiving, handling, storing, or delivering property.”

The ALJ found it undisputed that: (a) OCL is a licensed OTI; (b) “Complainant’s cargo was delivered to the wrong port and that Respondents sought additional payments, promising to deliver the cargo to the correct port;” and (c) Respondents failed to deliver the cargo, which never arrived at the destination port. I.D. at 10. The ALJ cited Commission caselaw for the proposition that § 41102(c) is violated when OTIs “fail, through single or multiple actions or omissions, to fulfill obligations.” *Id.* at 9. According to the ALJ, given this caselaw and the undisputed facts, Respondents had violated § 41102(c). The ALJ awarded Complainant reparations of \$162,266.04.

Although many of the ALJ’s findings are supported, the § 41102(c) standard it applied, which permits finding a violation based on a single act or omission, is inconsistent with the original intent of Congress, the rules of statutory construction, and Commission precedent. *See, e.g.*, Final Rule: Interpretive Rule, Shipping Act of 1984, 83 Fed. Reg. 64478, 64479 (Dec. 17, 2018); Notice of Proposed Rulemaking: Interpretive Rule, Shipping Act of 1984, 83 Fed. Reg. 45367, 45367-45372 (Sept. 7, 2018). Properly interpreted, § 41102(c) applies to acts or omissions that occur on a normal, customary, and continuous basis. 83 Fed. Reg. at 64479; 83 Fed. Reg. at 45369-70, 45372; *see also* 46 C.F.R. § 545.4(b).

Because the ALJ did not consider whether OCL’s conduct occurred on a normal, customary, and continuous basis, the Commission vacates the Initial Decision as to OCL and remands this matter for application of this standard. *See Hangzhou Qianwang Dress Co. v. RDD Freight Int’l, Inc.*, 1 F.M.C.2d 262-263 (FMC

2019).² On remand, and at the ALJ's direction, the parties will have the opportunity to take discovery and present evidence and argument relevant to the normal, customary, and continuous standard.³

C. Respondent Ansah

As for Mr. Ansah, the ALJ appeared to find him directly in violation of § 41102(c) and personally liable for OCL's conduct via a piercing-the-corporate veil theory. I.D. at 9-10, 12-13. The liability of Mr. Ansah, however, was discharged by bankruptcy. *In re:*

² Although the Commission revised its interpretation of § 41102(c) after the ALJ issued its Initial Decision, any retroactive effect of the Commission's interpretive rule is subsumed in the permissible retroactivity of agency adjudication. *See, e.g., Health Ins. Ass'n of Am. v. Shalala*, 23 F.3d 412, 424 (D.C. Cir. 1994); *St. Luke's Hosp. v. Sebelius*, 611 F.3d 900, 907 (D.C. Cir. 2010); *Providence Health Sys. – Washington v. Thompson*, 353 F.3d 661, 667 (9th Cir. 2003). Nor would applying the normal, customary, and continuous standard in this case work a manifest injustice. *Clark-Cowlitz Joint Operating Agency v. Fed. Energy Regulatory Comm'n*, 826 F.2d 1074, 1081 (D.C. Cir. 1987) (en banc). While this is not the first case in which the revised interpretation of § 41102(c) was announced, and the revised interpretation departs from a line of Commission caselaw, there is no indication that the parties conformed their conduct in reliance on the prior interpretation of § 41102(c), the revised standard is not imposing new liability on anyone, and applying the standard is consistent with the Commission's approach in other cases. *E.g., Hangzhou*, 1 F.M.C.2d at 262.

³ Failure to defend or prosecute this action or to otherwise comply with ALJ orders may result in default judgment, involuntary dismissal, or other sanction. 46 C.F.R. §§ 502.65(a)(2), 502.72(b), 502.150(b).

Kingston Ansah Debtor, Case No. 16-51822-lrc (Bankr. N.D. Ga. Nov. 21, 2016), ECF No. 55 (listing Complainant as creditor and reparations award as unsecured claim); *In re: Kingston Ansah Debtor*, Case No. 16-51822-lrc (Bankr. N.D. Ga. Mar. 5, 2017), ECF No. 68 (granting discharge).⁴ Consequently, the Commission vacates the Initial Decision as to Mr. Ansah and dismisses Complainant's claims against him as moot.

IV. CONCLUSION

The Commission **VACATES** the Initial Decision, **REMANDS** this matter as to OCL to the ALJ for consideration of the § 41102(c) claims in light of the Commission's revised interpretation of the statute; and **DISMISSES** the claims as to Kingston Ansah.

By the Commission.

Rachel E. Dickon
Secretary

⁴ The bankruptcy trustee filed a report of no distribution, meaning that Mr. Ansah had no non-exempt assets to liquidate for payment of creditors. *Id.*, ECF No. 68.