

FEDERAL MARITIME COMMISSION

Port Elizabeth Terminal & Warehouse
Corp.,

Complainant,

v.

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY,

Respondent.

Docket No. 17-07

Served: December 19, 2019

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

Order Granting Motion to Dismiss

On November 20, 2019, Respondent the Port Authority of New York and New Jersey (Port Authority) filed an unopposed motion to dismiss this case due to a settlement under 46 C.F.R. § 502.72(a)(3). For the reasons set forth below, the Commission grants the motion.

I. BACKGROUND

In July 2017, Complainant Port Elizabeth Terminal & Warehouse Corp. (PETW) filed a complaint against the Port Authority alleging violations of 46 U.S.C. §§ 41102(c), 41106(2), 41106(3), 41104(8), and 41104(9). The Port Authority moved partially to dismiss the complaint, and, in April 2018, the ALJ found that the Shipping Act's statute of limitations bars reparations as to all claims. The ALJ also found that PETW's § 41102(c) and § 41106(3) allegations failed to state a claim. The ALJ permitted the case to proceed as to cease-and-desist relief for PETW's allegations of unreasonable preference or prejudice under §§ 41106(2), 41104(8), and 41104(9). PETW appealed. While the appeal was pending, the ALJ dismissed the remaining claims on the merits in March 2019. PETW excepted to this decision as well.

On November 20, 2019, the Port Authority filed a motion requesting dismissal of this case with prejudice under 46 C.F.R. § 502.72(a)(3). PETW did not oppose this motion.

II. DISCUSSION

The Commission's regulations allow parties to settle their disputes. 46 C.F.R. § 502.75(a), (b). When parties seek dismissal of a case pursuant to a settlement agreement, the Commission reviews the settlement to determine whether it "appears to violate any law or policy and to ensure the settlement is free of fraud, duress, undue influence, mistake, or other defects which might make it unapprovable." 46 C.F.R. § 502.72(a)(3). As part of this analysis, "the Commission looks to see if the settlement has a reasonable basis and reflects the careful consideration by the parties of such factors as the relative strengths of their positions weighted against the risks and costs of continued litigation." *APM Terminals N. Am., Inc. v. Port Auth. of N.Y. & N.J.*, 31 S.R.R. 623, 626 (FMC 2009) (quoting *Delhi Petroleum Pty. Ltd. v. U.S. Atl. & Gulf/Australia – New Zealand Conference & Columbus Line, Inc.*, 24 S.R.R. 1129, 1134 (ALJ 1988)).

Here, the Mutual General Release attached to the motion reflects a considered decision of sophisticated parties to settle this case and related disputes. It does not appear to violate any law or policy and there is no evidence of fraud, duress, undue influence, mistake, or other defects that might make the settlement unapprovable.

III. CONCLUSION

The Commission therefore **GRANTS** the Port Authority's motion, **APPROVES** the settlement, **DISMISSES** the above captioned action with prejudice, and **DISCONTINUES** this proceeding.

By the Commission.

Rachel E. Dickon
Secretary