FEDERAL MARITIME COMMISSION

Office of Administrative Law Judges

REVOCATION OF OCEAN TRANSPORTATION INTERMEDIARY LICENSE OF DIP SHIPPING COMPANY, LLC.	**DOCKET NO. 20-04**

Served: July 29, 2020

ORDER OF: Erin M. WIRTH, *Chief Administrative Law Judge*.

INITIAL DECISION REVOKING OCEAN TRANSPORTATION LICENSE[1]

I. INTRODUCTION

A. Background and Summary

Respondent Dip Shipping Company, LLC ("Dip Shipping") is licensed as an ocean transportation intermediary ("OTI") by the Federal Maritime Commission ("FMC" or "Commission"). On February 19, 2020, the Commission's Bureau of Certification and Licensing ("BCL") notified Dip Shipping that the Commission intended to revoke Dip Shipping's ocean transportation license.

Dip Shipping requested a hearing on the proposed revocation of its license pursuant to the Commission's Rules at 46 C.F.R. § 515.17 and 46 C.F.R. Part 502, Subpart X. The Secretary then assigned this proceeding to the Office of Administrative Law Judges for adjudication in accordance with the provisions of Subpart X's Rule 702(a). 46 C.F.R. § 502.702(a).

As required under Subpart X, BCL and the Commission's Bureau of Enforcement ("BOE") were notified of Dip Shipping's hearing request and BOE was ordered to serve a copy of the revocation notice and materials supporting the revocation notice. In addition, Dip Shipping was informed that it had the right to file a response within 30 days of BOE's submission. All required submissions have been received and this proceeding is now ripe for decision.

Respondent Dip Shipping is a Louisiana limited liability company incorporated in 2004. It has been licensed with the Commission as an OTI since 2004. Roberto Dip was Dip Shipping's president, qualifying individual ("QI"), and owner from 2004 to 2018. Ex. 1, FMC115-128; Ex. 6, FMC191; Ex. 7, FMC194.

[1] This initial decision will become final within 22 days of service in the absence of exceptions filed by either party or review by the Commission. 46 C.F.R. § 502.708(c).

In November 2018, Roberto Dip and Jason Handal, a Dip Shipping manager, pleaded guilty and were convicted of conspiracy to fix ocean transportation intermediary prices, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1, in a proceeding brought by the United States Department of Justice, Antitrust Division ("DOJ"). Following his guilty plea, Roberto Dip resigned his position with Dip Shipping and divested his shares to part owners, Margie Guadalupe Dip ("Margie Dip") and Maria D. Dip. In July 2019, Margie Dip replaced Roberto Dip as QI for Dip Shipping. Dip Shipping, which had also been charged with engaging in the price fixing conspiracy, pleaded guilty in October 2019. After learning of Dip Shipping's guilty plea, BCL notified Dip Shipping that the Commission intended to revoke its OTI license. Dip Shipping requested a hearing on the proposed revocation.

As discussed below in greater detail, the evidence supports a finding that Dip Shipping is not qualified to provide intermediary services and Dip Shipping's ocean transportation license is revoked.

B. Procedural History

On March 16, 2020, the Secretary issued a Notice of Hearing Request and Assignment noting that on February 19, 2020, BCL had notified Dip Shipping by letter that the Commission intended to revoke Dip Shipping's OTl license. The Secretary also noted that on March 5, 2020, Dip Shipping had requested a hearing on the proposed revocation pursuant to the Commission's Rules at 46 C.F.R. § 515.17 and 46 C.F.R. Part 502, Subpart X.

On March 18, 2020, in keeping with Rule 702(b), a Notice and Initial Order ("initial order") was issued, notifying BCL and BOE of Dip Shipping's hearing request and instructing BOE to file a copy of the notice given to Dip Shipping and BCL's materials supporting the notice of revocation by April 20, 2020. 46 C.F.R. § 502.702(b). The initial order also stated that "BOE may file a brief with legal arguments, proposed findings of fact, or additional information, and any requests for confidential treatment as well as an appendix with supporting documents." Initial Order at 1. In addition, the initial order stated:

> Dip Shipping requests an oral hearing on this matter under 46 C.F.R. § 502.706. Pursuant to Rule 706, "[i]n the usual course of disposition of matters filed under this subpart, no oral hearing or argument will be held, but the administrative law judge, in their discretion, may order such hearing or argument." 46 C.F.R. § 502.706(a). At this point in the proceeding, it is not clear that there is reason to alter the usual course of proceeding. However, in their briefs, the parties may address whether an oral hearing is necessary for the adjudication of this proceeding. Accordingly, Dip Shipping's request for oral hearing is **DENIED WITHOUT PREJUDICE**.

Initial Order at 1-2.

On April 2020, BOE filed its submissions titled "Bureau of Enforcement Submission of Materials Supporting Notice of Revocation," comprising the Notice of Revocation issued to Dip Shipping by BCL and an appendix of materials supporting the Notice of Revocation. On

April 21, 2020, a Notice of Right to Respond was issued pursuant to Rule 703. 46 C.F.R. § 502.703. The Notice of Right to Respond stated:

> Pursuant to Rule 703, Dip Shipping is hereby notified of its right to file a response to the April 20, 2020, filing. 46 C.F.R. § 502.703. Dip Shipping may file a brief with legal arguments, proposed findings of fact, additional information, and any requests for confidential treatment as well as an appendix with supporting documents. Dip Shipping's response is due on May 21, 2020. 46 C.F.R. § 502.703(a).
>
> Pursuant to Rule 704, BOE may file a reply brief within twenty days of Dip Shipping's filing. 46 C.F.R. 502.704. This notice serves as notice of BOE's right to file a reply.

Notice of Right to Respond at 1.

On May 21, 2020, Dip Shipping filed its response. In the response, Dip Shipping argued that its license should not be suspended, urged that an oral hearing be granted for the proceeding, and requested "limited discovery" on individuals at the FMC and DOJ. Response by Dip Shipping ("Dip Shipping Response") at 4.[2]

Also, on May 21, 2020, the United States Department of Justice, Antitrust Division filed a Motion to File a Submission as *Amicus Curiae*, accompanied by an *amicus curiae* letter brief. On May 22, 2020, an Order on Motion to File a Submission as *Amicus Curiae* and Request for Hearing ("*Amicus Curiae* Order") was issued, stating:

> On May 21, 2020, a motion to file a submission as *amicus curiae* was received from the United States Department of Justice, Antitrust Division. Subpart X, which governs this proceeding, does not include a rule regarding *amicus curiae* submissions. 46 C.F.R. §§ 502.701-502.709. In addition, Subpart X lists Commission rules that are applicable to this Subpart but does not include the rule regarding *amicus curiae* briefs, Commission Rule 73, in the list. 46 C.F.R. §§ 502.709, 502.73.
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> The deadline for parties to respond to a motion to file an *amicus curiae* submission is not specified in the Commission's rules. The Final Rule in Docket 19-04, which created Subpart X, noted that "the Commission has encountered issues with regards to expediency and clarity of process" and that the "new procedure will provide additional structure while ensuring a low-burden and efficient process." Hearing Procedures Governing the Denial, Revocation, or Suspension of an OTI License, 85 Fed. Reg. 5581 (Jan. 31, 2020) ["Hearing Procedures"].
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> To provide structure and ensure an efficient process, it is requested that the Bureau of Enforcement ("BOE") incorporate any arguments regarding the *amicus*

[2] Dip Shipping did not number the pages in its briefs. For ease of reference, each page is treated as numbered chronologically, starting from the first page, through the attached exhibits.

> *curiae* submission, including what standard it thinks would be appropriate to review such motions in Subpart X proceedings, in BOE's reply brief, due on June 10, 2020.
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> Also on May 21, 2020, Dip Shipping Company, LLC ("Dip Shipping") filed its response which included a request for discovery and another request for oral hearing. Both requests are denied at this time. However, Dip Shipping may file a sur-reply on or before June 22, 2020, addressing the motion to file an *amicus curiae* submission, the appropriate standard for reviewing such motions, the need for additional discovery or a hearing, and any other arguments raised by BOE in their reply brief.

Amicus Curiae Order at 1.

On June 10, 2020, BOE filed a reply brief, including its response to the motion by the DOJ to file an *amicus curiae* submission. On June 19, 2020, Dip Shipping filed a sur-reply on the issue of the DOJ's motion to file an *amicus curiae* submission.

C. Arguments of the Parties

1. Dip Shipping's Arguments

Dip Shipping asserts that it did not violate any provisions of the Shipping Act or the Commission's regulations and did not make any materially false or misleading statements. Dip Shipping Response at 1. Dip Shipping opines that BCL's conclusion that Dip Shipping is no longer qualified to render OTI services "is self-serving, vague, and not supported by the submissions of the Bureau of Enforcement, and not supported by the history of the Bureau of Enforcement in other cases regarding licensees which have maintained their licenses after a Federal guilty plea to a felony." Dip Shipping Response at 1.

Dip Shipping notes that BCL investigated Margie Dip prior to approving her as replacement QI and argues that because the illegal activities by Dip Shipping occurred from 2010 to 2015, whereas the FMC's approval of Margie Dip as the new QI of Dip Shipping did not occur until September 3, 2019, the illegal activities of Roberto Dip and Dip Shipping under his ownership "should in no way be connected to the activities of Dip Shipping Company LLC under the new ownership and management." Dip Shipping Response at 1. Dip Shipping observes that there are no allegations that it committed any other illegal acts after transfer of its ownership to Margie Dip and Maria D. Dip, and contends that a revocation based on acts five years prior to the current ownership and management of the company "is not supported by any legal precedent cited by the Bureau of Enforcement." Dip Shipping Response at 1.

Dip Shipping states that it disagrees with the contention in paragraphs 21, 22, and 23 of BOE's "Attachment A" (materials supporting the notice of intent to revoke), which states as part of the basis for the intent to revoke, that Dip Shipping failed to notify the Commission that the company was charged with a felony, failed to notify the Commission that it pleaded guilty to that felony, and failed to notify the Commission that a criminal monetary penalty had been imposed against it. Dip Shipping Response at 2. Dip Shipping asserts that the declarations it submitted from its criminal defense counsel and from Margie Dip state that BOE "was advised through

regular and constant communications regarding the criminal investigation and prosecution including the guilty plea and sentencing, of both Roberto Dip and Dip Shipping Company LLC, by representatives of the U.S. Department of Justice (DOJ)." Dip Shipping Response at 2.

Dip Shipping maintains that BOE has not revoked a license in similar situations and maintains that a revocation of its license would constitute a "death sentence" for it as it cannot legally operate without an OTI license and would have to lay off its employees, who would not be able to find new employment. Dip Shipping Response at 3-4. Dip Shipping contends that BOE has "failed to allege that any actions less severe than revocation (temporary suspension or warning) would be [in]sufficient." Dip Shipping Response at 4. Citing press releases from the FMC website, Dip Shipping contends that BOE and the FMC generally have been inconsistent in responding to similar offences and have not sought to revoke a license in the case of other companies that committed identical illegal acts. Dip Shipping Response at 4. Dip Shipping asserts that a revocation is unwarranted. Dip Shipping Response at 4.

2. BOE's Arguments

BOE contends that the "Commission has a strong policy interest in revoking an OTI license to protect the shipping public from those who choose not to comply with the Shipping Act's requirements and to underscore the ongoing and continuous obligation to demonstrate the necessary character to obtain, and retain, an OTI license." BOE Reply at 7-8. BOE asserts that longstanding Commission precedence supports denial or revocation of a license when the entity has been found guilty of federal crimes or conduct implicating moral turpitude, and that "perpetration of federal offenses rises to the level of the most egregious circumstances warranting revocation." BOE Reply at 8 (citing *G.R. Minon – Freight Forwarder License*, 12 F.M.C. 75, 82 (FMC 1968); *In the Matter of Ocean Transportation License in the Name of Apparel Logistics, Inc., Petition for Appeal from Staff Action or in the Alternative for Initiation of an Investigation*, 30 S.R.R. 567, 570 (FMC 2004)). BOE posits that in recent cases the Commission has found that revocation is appropriate when the Commission can no longer rely on the honesty and integrity of the licensee or its principals to the extent necessary to ensure future conduct complies with the Shipping Act and the Commission's regulations. BOE Reply at 9.

BOE argues that the Commission has revoked an OTI license for conduct less egregious than the felony violation of a federal statute, pointing to cases where the Commission revoked an OTI license for failure to maintain an active QI and for failure to report the resignation of its QI and to file an application to replace the QI. BOE Reply at 10. BOE asserts:

> Most of the relevant facts in this case are not in dispute and the governing law is settled. In view of the magnitude of Commission precedent on the issue, it is clear that Dip Shipping's guilty plea in federal court to the crime of participating in a price fixing conspiracy constitutes violations of a statute related to carrying on OTI business, and therefore, establishes that Dip Shipping is no longer qualified to provide intermediary services within the meaning of § 40903 of the Shipping Act and 46 C.F.R. § 515.16(a)(4).

BOE Reply at 10.

Responding to Dip Shipping's argument that the conduct leading to its plea agreement occurred five years ago, BOE states that the Notice of Intent to Revoke was triggered by Dip Shipping's guilty plea on October 25, 2019, admission of guilt, and criminal sentencing on December 8, 2019. BOE Reply at 10-11. BOE posits that "[t]he impact of Dip Shipping's illegal activity is very serious," noting that Dip Shipping's sales of freight forwarding services to the United States customers impacted by the price fixing scheme totaled $6,497,487. BOE Reply at 11 (citing BOE Ex. 12, FMC214-215).

BOE points to paragraph 16(a) of Dip Shipping's plea agreement with the DOJ which grants immunity from prosecution to Margie Dip and Maria D. Dip for Dip Shipping's price fixing conspiracy. BOE opines that "[i]f Ms. Margie Dip and Ms. Maria Dip were indeed uninvolved in the prior illegal acts of Mr. Roberto Dip and Dip Shipping as is contended in Respondent's filing, then presumably there would likewise be no need to immunize them from criminal prosecution." BOE Reply at 11-12.

Addressing Dip Shipping's allegation that the Commission has been inconsistent in its treatment of entities that similarly violated federal statutes and did not revoke their licenses, BOE notes that the Commission entered into plea agreements with K-Line and CSAV but asserts that those violations "are irrelevant to this proceeding because neither K-Line nor CSAV is an OTI or subject to licensing." BOE Reply at 12-13. BOE notes in addition, that "both VOCCs paid substantial sums in criminal fines including one instance of CSAV paying $625,000 in civil penalties to the Commission for violations of the Shipping Act," while this proceeding seeks to revoke Dip Shipping's license, not to impose civil penalties. BOE Reply at 13.

Citing the Commission's regulations at 46 C.F.R. § 515.16(a), BOE asserts that a license may be revoked for violation of any provision of a Commission order or regulation. BOE Reply at 15. BOE states that Dip Shipping and its QI, Margie Dip, failed to notify the Commission of Dip Shipping's guilty plea to the price fixing charge and subsequent judgment imposing a criminal monetary penalty against it. BOE Reply at 15. BOE asserts that the failure to notify the Commission violates the Commission's regulation at 46 C.F.R. § 515.12(e), which requires an applicant for an OTI license to notify the Commission within 30 days of any changes in material facts submitted in the application, and 46 C.F.R. § 515.20(e), which requires licensees to notify the Commission within 30 days of any changes in material facts, including a criminal indictment or conviction of a licensee. BOE Reply at 15. BOE dismisses as an "exercise in finger pointing," the statement by Margie Dip that based on discussions with Dip Shipping's criminal defense counsel she was not aware that she had to personally notify the Commission, as well as Dip Shipping's criminal defense counsel's statement that he believed the DOJ had relayed the information to the Commission. BOE Reply at 15-16. BOE opines that Margie Dip's claim is "disingenuous" as she was aware of the requirements. BOE Reply at 16. BOE maintains that because of Dip Shipping's failure to provide the required notification the Commission only learned about Dip Shipping's plea deal and conviction months later through the DOJ press releases. BOE Reply at 17.

D. Controlling Authority

1. New Subpart X Procedures

This proceeding is being adjudicated under the procedures set forth at Subpart X of the Commission's Rules of Practice and Procedure, 46 C.F.R. part 502. On January 31, 2020, the Commission issued a Final Rule "modifying the hearing procedures governing the denial, revocation, or suspension of an ocean transportation intermediary (OTI) license" in order to "ensure a more streamlined process, and fulfill the need for more detailed procedural requirements." Hearing Procedures, 85 Fed. Reg. 5579. Previously, the hearing procedures for denial, revocation, or suspension of an OTI license were conducted under the procedures at 46 C.F.R. § 515.17. The new hearing procedures under the Final Rule were incorporated into part 502 as Subpart X and are intended to "provide additional structure while ensuring a low-burden and efficient process." 85 Fed. Reg. at 5581.

2. Authority Governing OTI Activities

> A person in the United States may not advertise, hold oneself out, or act as an ocean transportation intermediary unless the person holds an ocean transportation intermediary's license issued by the Federal Maritime Commission. The Commission shall issue a license to a person that the Commission determines to be qualified by experience and character to act as an ocean transportation intermediary.

46 U.S.C. § 40901(a). *See also* 46 C.F.R. § 515.14 ("The Commission will issue a license if it determines, as a result of its investigation, that the applicant possesses the necessary experience and character to render ocean transportation intermediary services . . . ."). An applicant seeking an OTI license must demonstrate through its qualifying individual that it has the necessary experience by showing that "its qualifying individual has a minimum of three years' experience in ocean transportation intermediary activities in the United States, and the necessary character to render ocean transportation intermediary services." 46 C.F.R. § 515.11(a)(1).

The Commission specifies requirements for an application for a license, including:

> (c) *Failure to provide necessary information and documents.* In the event an applicant fails to provide documents or information necessary to complete processing of its application, notice will be sent to the applicant identifying the necessary information and documents and establishing a date for submission by the applicant. Failure of the applicant to submit the identified materials by the established date will result in the closing of its application without further processing. In the event an application is closed as a result of the applicant's failure to provide information or documents necessary to complete processing, the filing fee will not be returned. Persons who have had their applications closed under this section may reapply at any time by submitting a new application with the required filing fee.

(d) *Investigation.* Each applicant shall be investigated in accordance with § 515.13.

(e) *Changes in fact.* Each applicant shall promptly advise the Commission of any material changes in the facts submitted in the application. Any unreported change may delay the processing and investigation of the application and result in rejection, closing, or denial of the application.

46 C.F.R. § 515.12(c)-515.12(e).

The Commission shall conduct an investigation of the applicant's qualifications for a license. Such investigations may address:

(a) The accuracy of the information submitted in the application;

(b) The integrity and financial responsibility of the applicant;

(c) The character of the applicant and its qualifying individual; and

(d) The length and nature of the qualifying individual's experience in handling ocean transportation intermediary duties.

46 C.F.R. § 515.13.

The Shipping Act grants authority to revoke an OTI's license under certain conditions.

The Federal Maritime Commission, after notice and opportunity for a hearing, shall suspend or revoke an ocean transportation intermediary's license if the Commission finds that the ocean transportation intermediary –

(1) is not qualified to provide intermediary services; or

(2) willfully failed to comply with a provision of this part or with an order or regulation of the Commission.

46 U.S.C. § 40903(a).

A license may be revoked or suspended for any of the following reasons:

(1) Violation of any provision of the Act, or any other statute or Commission order or regulation related to carrying on the business of an ocean transportation intermediary;

(2) Failure to respond to any lawful order or inquiry by the Commission;

(3) Making a materially false or misleading statement to the Commission in connection with an application for a license or an amendment to an existing license;

(4) A Commission determination that the licensee is not qualified to render intermediary services; or

(5) Failure to honor the licensee's financial obligations to the Commission.

46 C.F.R. § 515.16(a).

Licensees are required to notify the Commission of changes in an existing licensee's organization; death of a sole proprietor; retirement, resignation, or death of a QI; or acquisition of one or more additional licensees. 46 C.F.R. § 515.20(a)-515.20(d). In addition:

> (e) *Other changes.* Other changes in material fact of a licensee shall be reported within thirty (30) days of such changes, in writing by mail or email (*bcl@fmc.gov*) to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573. Material changes include, but are not limited to: Changes in business address; any criminal indictment or conviction of a licensee, QI, or officer; any voluntary or involuntary bankruptcy filed by or naming a licensee, QI, or officer; changes of five (5) percent or more of the common equity ownership or voting securities of the OTI; or, the addition or reduction of one or more partners of a licensed partnership, one or more members or managers of a Limited Liability Company, or one or more branch offices. No fee shall be charged for reporting such changes.

46 C.F.R. § 515.20(e).

The Commission recently affirmed the revocation of the ocean transportation license of Washington Movers, finding that Washington Movers violated Commission regulations when its president and QI used the OTI in an attempt to smuggle weapons outside the United States. *Revocation of Ocean Transportation Intermediary License No. 017843 – Washington Movers, Inc.*, 1 F.M.C. 2d 5, 21 (FMC 2018) ("*Washington Movers*"). Washington Movers' QI was convicted of unlawful export and smuggling and sentenced to 18 months in prison, probation, and a fine. *Washington Movers*, 1 F.M.C. 2d at 6. Before starting his sentence, Washington Movers' QI transferred ownership and control of the company to his wife. *Washington Movers*, 1 F.M.C. 2d at 6. There was no indication that the wife was involved in her husband's criminal activity and she used life insurance, children's tuition money, and proceeds from selling personal property to ensure that cargo *en route* was released. *Washington Movers*, 1 F.M.C. 2d at 6. The Commission found that because the original QI "was acting within the scope of his employment with the intent to benefit Washington Movers when he violated 18 U.S. C. § 554 and 22 U.S.C. § 2778, Washington Movers is liable for violating these statutes as well." *Washington Movers*, 1 F.M.C. 2d at 15. Although mitigating circumstances existed, including that the wife and replacement QI was not involved in the criminal activity, the Commission found that license revocation was the appropriate remedy. *Washington Movers*, 1 F.M.C. 2d at 22.

II. FINDINGS OF FACT

1. Dip Shipping is a limited liability company domiciled in Kenner, Louisiana. BOE Ex. 6, FMC150.

2. In 2003, Roberto Dip was the 100% owner and Margie Dip was a manager of Dip Shipping. BOE Ex. 2, FMC125.

3. Dip Shipping filed its charter and qualified to do business in the State of Louisiana on February 4, 2004. BOE Ex. 6, FMC150.

4. Dip Shipping has been licensed to operate as an OTI pursuant to FMC license number 018752 since March 9, 2004. BOE Ex. 7, FMC194.

5. Dip Shipping also operates in Miami, Florida; Houston, Texas; and Atlanta, Georgia. BOE Ex. 6, FMC159.

6. Roberto Dip was the president and QI of Dip Shipping from November 17, 2003, through July 16, 2019. BOE Ex. 2, FMC115-128.

7. Margie Dip has been involved with Dip Shipping since 2003 and has served as a manager, vice president, and part owner. BOE Ex. 2, FMC125; BOE Ex. 4, FMC133-134; BOE Ex. 6, FMC152.

8. As part of the duties she performed for Dip Shipping from 2005 to 2017, Margie Dip reported directly to Roberto Dip and "[c]oordinated logistics and documentation for containers shipped from the USA to Honduras and other Central American countries, and from Honduras to the USA. Issued masters for bills of lading, prepared loading manifests, completed Shipper's Export Declarations (SEDs), prepared vehicle export forms for Customs, made bookings, provided customer service, financing and administration, hazmat certified, submitted IMOs to the vessel lines for validation." BOE Ex. 6, FMC142.

9. On October 2, 2018, Roberto Dip entered into an agreement with the DOJ to plead guilty to a charge of participating in a conspiracy with other ocean transportation intermediaries to fix prices for international freight forwarding services. BOE Ex. 15, FMC238-251.

10. The illegal acts connected to the DOJ charges and guilty pleas by Roberto Dip and Dip Shipping occurred from at least September 2010 until at least March 2015. BOE Ex. 9, FMC198-199.

11. On November 30, 2018, the DOJ issued a press release stating that Roberto Dip and Jason Handal, a manager at Dip Shipping at the time, had pleaded guilty that day to orchestrating a nationwide conspiracy to fix prices for international freight forwarding services. Verified Statement of Clifford Johnson ¶¶ 6-7.

12. BCL learned of Roberto Dip's guilty plea in the price fixing scheme through a DOJ press release issued November 30, 2018. Verified Statement of Clifford Johnson ¶ 7.

13. On December 13, 2018, BCL sent a letter to Roberto Dip requesting that he provide the Commission with information and documents relating to the price fixing scheme. Verified Statement of Clifford Johnson ¶ 7.

14. On January 7, 2019, BCL received an email from Roberto Dip acknowledging the December 13, 2018, letter from BCL and inquiring whether a change in the presidency of Dip Shipping would prevent the revocation of the company's OTI license. Verified Statement of Clifford Johnson ¶ 7; BOE Ex. 4, FMC133-134.

15. Roberto Dip proposed replacing himself as president of Dip Shipping with Margie Dip, the vice president of Dip Shipping. BOE Ex. 4, FMC133-134.

16. On January 29, 2019, Representatives of the Commission had a telephone conference with Roberto Dip and his counsel to discuss responsive documents and the potential for revocation of Dip Shipping's OTI license. Verified Statement of Clifford Johnson ¶ 9.

17. On or about February 26, 2019, Clifford Johnson participated in a telephone conference between representatives of the Commission and an attorney with DOJ's Antitrust Division, "regarding Dip Shipping" in which Mr. Johnson explained that licensing is based on character and experience of the applicant and the DOJ attorney confirmed that Roberto Dip had pleaded guilty to price fixing and sentencing would follow later in the year. Verified Statement of Clifford Johnson ¶ 10.

18. During this discussion, in response to the DOJ attorney's inquiry as to the criteria for OTI licensing, Mr. Johnson provided an explanation that licensing was based on character and experience of the applicant. Verified Statement of Clifford Johnson ¶ 10.

19. On April 2, 2019, counsel for Roberto Dip and Dip Shipping sent an email to BCL and Mr. Johnson providing the documents requested by BCL, including documentation showing Roberto Dip was no longer an officer of Dip Shipping and that Margie Dip and Maria D. Dip were the sole managers. Verified Statement of Clifford Johnson ¶ 7; BOE Ex. 5, FMC136-137.

20. The April 2, 2019, communication to BCL and Mr. Johnson by Roberto Dip and Dip Shipping's counsel stated in pertinent part:

> Greetings. By letter date[d] December 13, 2018, the BCL of the FMC advised my client, Dip Shipping Company, LLC, that it was aware that the company and its President, Robert Dip, had been criminally charged in Federal Court, and had entered pleas of guilty to price fixing. The company is licensed as an OTI as a forwarder and NVOCC.

BOE Ex. 5, FMC136. The email advised that Roberto Dip was cooperating with DOJ in their continuing investigation and the sentencing had been deferred. BOE Ex. 5, FMC136.

21. In an April 9, 2019, meeting between Dip Shipping's counsel and representatives of the Commission, Dip Shipping's counsel "was advised that Mr. Roberto Dip's involvement with Dip Shipping, in any capacity including as an owner, was problematic for the Commission," but "that the Commission would consider an application proposing Ms. Margie Dip as the replacement QI" and such application should be submitted after the sentencing of Roberto Dip. Verified Statement of Clifford Johnson ¶ 12.

22. On June 25, 2019, the U.S. District Court for the Southern District of Florida sentenced Roberto Dip to prison for 18 months and imposed a $20,000.00 fine against him for conspiracy to restrain trade in violation of the Sherman Antitrust Act pursuant to 15 U.S.C. § 1. BOE Ex. 15, FMC198, FMC252-258.

23. On July 16, 2019, Dip Shipping submitted a Form FMC-18 application proposing Margie Dip as the replacement QI for Dip Shipping effective August 12, 2019. BOE Ex. 6, FMC139-192.

24. In 2019, Roberto Dip held an 80% share of Dip Shipping while Margie Dip and Maria D. Dip each held a 10% share of Dip Shipping. BOE Ex. 6, FMC191.

25. On August 12, 2019, Roberto Dip transferred the entirety of his interest equally between Margie Dip and Maria D. Dip, leaving each manager with 50% ownership interest in Dip Shipping. BOE Ex. 6, FMC146, 163, 187, 191-192.

26. On September 3, 2019, BCL approved Margie Dip as the QI for Dip Shipping. BOE Ex. 8, FMC196.

27. On September 17, 2019, the DOJ issued a press release announcing that Dip Shipping had agreed to plead guilty to an antitrust charge for its role in a conspiracy to fix prices of freight forwarding services sold to customers. BOE Ex. 9, FMC198-199.

28. On October 25, 2019, Margie Dip entered into an agreement on behalf of Dip Shipping with the DOJ in which Dip Shipping agreed that it would waive indictment and plead guilty to a one-count charge in the U.S. District Court for the Southern District of Florida, of participating in a conspiracy to suppress and eliminate competition by agreeing to increase, fix, stabilize, and maintain prices charged to customers for freight forwarding services provided in the U.S. and elsewhere, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1. BOE Ex. 12, FMC212-231.

29. On December 8, 2019, the U.S. District Court for the Southern District of Florida issued an amended judgment imposing a criminal monetary penalty of $488,250.00 against Dip Shipping for its role in the Sherman Act conspiracy. BOE Ex. 13, FMC233-236.

30. The illegal acts connected to the DOJ charges and guilty pleas by Roberto Dip and Dip Shipping occurred from at least September 2010 until at least March 2015. BOE Ex. 9, FMC198-199.

31. The factual basis listed in the plea agreements with Roberto Dip and Dip Shipping are the same except that

- in the plea agreement with Roberto Dip, he is listed as the "Chief Executive Officer of Company A," he "was an organizer or leader in the conspiracy, which involved at least five participants," and acts were carried out "within the Eastern District of Louisiana," BOE Ex. 14, FMC240-242, and

- in the plea agreement with Dip Shipping, it is identified as "a corporation organized and existing under the laws of Louisiana," it "employed ten or more employees," and acted "through its officers and employees," BOE Ex. 13, FMC212-216.

32. Margie Dip was never a defendant in the criminal proceedings against Roberto Dip or Dip Shipping Company. Declaration of Joel Denaro, attached to Dip Shipping Response at 29.

33. In the Antitrust Division's investigation, both Dip Shipping and its owner, Roberto Dip, promptly accepted responsibility for their conduct. DOJ *Amicus Curiae* Letter Brief at 1.

34. Dip Shipping cooperated fully with the investigation, including by providing evidence not available to the Antitrust Division through other sources. Ultimately, its cooperation significantly contributed to the Antitrust Division's efforts to bring additional co-conspirators to justice. DOJ *Amicus Curiae* Letter Brief at 1.

35. Dip Shipping is obligated under its plea agreement to continue cooperating with the DOJ antitrust investigation. DOJ *Amicus Curiae* Letter Brief at 1.

36. The plea agreement recommended "a downward departure from the [Sentencing] Guidelines" for the fine "because of the defendant's substantial assistance in the government's investigation and prosecutions of violations of federal criminal law in the freight forwarding industry." BOE Ex. 12, FMC220.

37. The plea agreement requires that Dip Shipping pay a criminal fine of $488,250 over the course of five years and that amount and pay plan were "premised on the parties' efforts to ensure that the criminal case would not put Dip Shipping out of business, as contemplated by the criminal sentencing guidelines and accepted by the District Court in imposing sentence." DOJ *Amicus Curiae* Letter Brief at 2.

38. Dip Shipping has only paid one of the six payments required under the sentence and may be unable to pay the criminal fine if the Commission were to revoke its license. DOJ *Amicus Curiae* Letter Brief at 2.

39. As part of the plea agreement Margie Dip entered into on October 25, 2019, with the DOJ on behalf of Dip Shipping, the DOJ agreed that it would "not bring criminal charges against any current director, officer, or employees of the defendant for any act or offense committed before the date of signature of this Plea Agreement and while that person was acting as a director, officer, or employee of the defendant that was undertaken in furtherance of an antitrust conspiracy in the United States and elsewhere [except for Robert Dip and Jason Handal]." BOE Ex. 12, FMC225.

40. Margie Dip and Dip Shipping sought legal advice regarding their obligations to the FMC and followed that advice, which was provided with the knowledge that the DOJ attorneys were in contact with the FMC attorneys. Declaration of Joel Denaro ¶¶ 18-20, attached to Dip Shipping Response at 29.

III. ANALYSIS

A. Pending Motions

1. The DOJ Antitrust Division's *Amicus Curiae* Submission

The DOJ Antitrust Division filed a motion seeking leave to submit an *amicus curiae* submission in this proceeding. In the motion, the DOJ states in pertinent part:

> The Division, through the undersigned attorneys, both conducted the investigation of, and negotiated the criminal plea agreements with, Mr. Dip and Dip Shipping.
>
> Pursuant to its plea agreement with Dip Shipping . . . the Division committed to "advise the appropriate officials of any governmental agency considering [suspension or debarment] of the fact, manner, and extent of the cooperation of the defendant and its related entities as a matter for that agency to consider before determining what action, if any to take." Because OTI licensure revocation would have the same effect as suspension or debarment, to adhere to its commitments pursuant to the plea agreement, the Division in part seeks to apprise the Commission of Dip Shipping's cooperation with its investigation.
>
> Beyond this, however, the proposed submission is desirable to the Commission because it provides information uniquely in the Antitrust Division's possession regarding the underlying criminal investigation and resolution with Dip Shipping. Additionally, the Commission's action in this matter may impact the plea agreement as accepted by the federal district court, and interfere with Dip Shipping's ability to pay the criminal fine that has been imposed on it. It is desirable that the Commission understand fully these legal and policy issues before rendering its decision.
>
> In the alternative, should the Commission receive this submission as a motion for permissive intervention, the Division submits that the basis for the Bureau of Enforcement's proposed revocation flows directly from the Division's investigation, rendering its expertise relevant to an issue involved in the proceeding and likely to assist the Commission in its consideration of this matter. 46 C.F.R. 502.68(c)(ii). Further the Division's limited intervention will not unduly delay or expand the scope of the proceeding, but it will assist the Commission in compiling a more complete – and therefore more sound – record on which to base its decision. The Division's submission is limited to issues that are neither on the record in this matter nor in dispute.

Amicus Curiae Motion at 2-3.

The DOJ states that both Dip Shipping and Roberto Dip promptly accepted responsibility for their conduct and cooperated fully with the investigation, including providing evidence that could not be obtained from other sources, which "significantly contributed" to the DOJ's efforts to bring additional co-conspirators to justice. DOJ *Amicus Curiae* Letter Brief at 1. According to the DOJ, the plea agreement between Dip Shipping and the DOJ requires that Dip Shipping pay a criminal fine of $488,250 over the course of five years and that amount and pay plan were "premised on the parties' efforts to ensure that the criminal case would not put Dip Shipping out of business, as contemplated by the criminal sentencing guidelines and accepted by the District Court in imposing sentence." DOJ *Amicus Curiae* Letter Brief at 2. The DOJ asserts that Dip Shipping has only paid one of the six payments required under the sentence and may be unable to pay the criminal fine if the Commission were to revoke its license. DOJ *Amicus Curiae* Letter Brief at 2.

Addressing the *amicus curiae* submissions by the DOJ, Dip Shipping contends that the "Rules of the FMC would seem to encourage such an amicus curiae submission." Dip Shipping Sur-Reply at 2 (citing 46 C.F.R. §§ 502.1 and 502.12). Dip Shipping asserts that "[a]lthough the Federal Rules of Civil Procedure do not address amicu[s] curiae participation in district courts, district courts possess the inherent authority to accept amicus briefs" and that "Rule 29 of the Federal Rules of Appellate Procedure explicitly allow for the submission of briefs of an amicus curiae . . . ." Dip Shipping Sur-Reply at 1 (citing *Bayshore Ford Truck Sales, Inc. v. Ford Motor Co.*, 471 F.3d, 1233, 1249 n.34 (11th Cir. 2006)).

BOE notes that Subpart X does not contain a provision for consideration of *amicus curiae* filings. BOE Reply at 14. "BOE contends that the Division's *amicus* filing should be given no weight inasmuch as DOJ's support for Dip Shipping is equivocal and the result of a deal made by DOJ with the criminal respondent, to which the Commission was not a party." BOE Reply at 14. Should the DOJ's *amicus* filing be accepted, BOE urges that the filing be "viewed in the context it was presented, as a fulfillment of a term in the plea agreement to primarily provide information regarding Dip Shipping's level of cooperation and criminal fine." BOE Reply at 14. BOE avers that licensing falls strictly within the Commission's purview and its interest in protecting the shipping public and that "[t]he *amicus* filing by the Division does not supersede that oversight and regulatory responsibility." BOE Reply at 14.

Subpart X does not specifically include the *amicus curiae* rule in the list of rules applicable to Subpart X proceedings, although there is no indication in the Final Rule as to why. 46 C.F.R. § 502.709. Commission Rule 73 provides in pertinent part that a motion for leave to file an *amicus curiae* brief must identify the interest of the applicant and must state the reasons why such a brief is desirable. 46 C.F.R. § 502.73. Although not binding, this rule provides guidance about how to review *amicus curiae* requests in Subpart X proceedings.

The Commission recently discussed why leave to file an *amicus* brief was granted in a proceeding, stating that the "amicus motion identifies the Amici's interest in filing and meets the Commission's for amicus filing spelled out in Commission Rule 73. Further, the Amici are uniquely situated to offer a broader perspective" on the issue in question. *In re: Vehicle Carrier Services,* 1 F.M.C. 2d 175 (Order Granting Motion for Leave to File Amicus Brief) (FMC 2019). In addition, the "Commission has broad discretion in deciding whether to grant leave for an amicus brief." *In re: Vehicle Carrier Services,* 1 F.M.C. 2d at 17 (citing *Cobell v. Norton,* 246 F.

Supp. 2d 59, 62 (D.D.C. 2003) (control over amicus curiae filings is committed to the court's "sole discretion")).

The DOJ motion for leave to file an *amicus curiae* submission satisfies the Rule 73 criteria and Commission caselaw. DOJ has an interest in the proceeding as this determination will impact Dip Shipping's ability to pay their fine. DOJ is uniquely situated to provide information about the antitrust violations, investigation, and plea agreement of Dip Shipping and its officers as well as the cooperation provided by Dip Shipping. Indeed, Dip Shipping's cooperation with the DOJ may be the most significant difference between this case and the facts in *Washington Movers*. The *amicus curiae* submission provides a more complete and therefore more sound record for this decision. The *amicus curiae* submission is therefore accepted.

2. DIP Shipping's Request for Discovery and Oral Hearing

Dip Shipping requests that it be allowed to conduct discovery of FMC and DOJ personnel. Dip Shipping argues that discovery in this case is necessary "as it goes to the essence of the defense of the Licensee that the FMC was well aware of the nature and scope of the illegal activity to which Dip Shipping pleaded guilty and was sentenced" and that the cross-examination under oath of FMC and DOJ officials would help bring to light the extent of communications between the DOJ and FMC regarding Dip Shipping. Dip Shipping Response at 3.

Dip Shipping also requests an oral hearing. Dip Shipping contends that only through an oral hearing "where the information can be elicited from the only persons who have relevant and material information can the extent of the communications to the FMC by the Licensee through its criminal defense counsel to the DOJ attorneys and by the DOJ attorneys to the FMC be known." Dip Shipping Response at 3.

BOE opposes Dip Shipping's request for oral hearing and to conduct discovery on FMC and DOJ Antitrust Division staff. Noting that Subpart J of the Commission's regulations governing discovery is not applicable to Subpart X, BOE posits that this is consistent with the Commission's stated intent to make Subpart X proceedings more streamlined than typical part 502 hearings. BOE Reply at 17.

The evidence of record contains all information necessary to adjudicate this matter and there does not appear to be any need for discovery or an oral hearing. Moreover, as BOE notes, discovery is generally not applicable to Subpart X proceedings and Dip Shipping's arguments that discovery or an oral hearing is necessary are not persuasive given the written evidence in the record. Dip Shipping's requests for discovery and for oral hearing are, therefore, denied.

B. Burden of Proof

Under the Administrative Procedure Act ("APA"), an Administrative Law Judge may not issue an order "except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence." 5 U.S.C. § 556(d); *see also Steadman v. SEC*, 450 U.S. 91, 102 (1981). "In order-to-show-cause revocation proceedings, the burden of proof is on BOE" and the "standard of proof is preponderance of the evidence." *Washington Movers*, 1 F.M.C. 2d at 8. This decision is based on

the briefs, exhibits, proposed findings of fact and conclusions of law, and replies thereto, filed by the parties.

In addition, this initial decision addresses only material issues of fact and law. BOE submitted proposed findings of fact in its reply brief. Proposed findings of fact not included in this decision were rejected, either because they were not supported by the evidence or because they were not dispositive or material to the determination of the allegations of the complaint or the defenses thereto. Administrative adjudicators are "not required to make subordinate findings on every collateral contention advanced, but only upon those issues of fact, law, or discretion which are 'material.'" *Minneapolis & St. Louis R.R. Co. v. United States*, 361 U.S. 173, 193-94 (1959). To the extent individual findings of fact may be deemed conclusions of law, they shall also be considered conclusions of law. Similarly, to the extent individual conclusions of law may be deemed findings of fact, they shall also be considered findings of fact.

The evidence of record includes the notice of intent to revoke and the materials supporting the notice, Dip Shipping's Response and supporting evidence, DOJ's *amicus curiae* letter brief, BOE's Reply, including its proposed findings of fact, and Dip Shipping's sur-reply.

C. Discussion

1. Notice under 46 C.F.R. §§ 515.12(e) and 515.20(e)

BOE alleges that Dip Shipping and its QI, Margie Dip, failed to notify the Commission of the felony charge against the company, the company's guilty plea, and the company's subsequent criminal conviction, in violation of sections 515.12(e) and 515.20(e) of the Commission's regulations. BOE Reply at 15.

Dip Shipping denies these allegations and avers that:

> [a]s stated in the attached Declaration by criminal defense attorney Joel Denaro, on behalf of both Mr. Roberto Dip and Dip Shipping Company LLC, and the attached Declaration of Ms. Margie Guadalupe Dip, the Bureau of Enforcement was advised through regular and constant communications regarding the criminal investigation and prosecution including the guilty plea and sentencing, of both Roberto Dip and Dip Shipping Company LLC, by representatives of the U.S. Department of Justice (DOJ).

Dip Shipping Response at 2. Margie Dip states in relevant part as follows:

> 8. I was unaware that I, personally, as the Manager of Dip Shipping Company LLC, had to advice the FMC that Dip Shipping Company LLC had [pleaded] guilty to a criminal charge.
>
> 9. I was under the assumption that the FMC was fully informed of the status of the plea negotiations and criminal resolution of the case through the United States Department of Justice attorneys who were prosecuting the criminal case against both Roberto Dip and Dip Shipping Company LLC.

> 11. My belief was based in part upon Joel Denaro advising me that the DOJ attorneys advised him that they were in contact with the appropriate representatives from the FMC regarding the FMC OTI License of Dip Shipping Company LLC.

Declaration of Margie Guadalupe Dip, attached to Dip Shipping Response at 23.

In addition, Respondent's criminal attorney, Joel Denaro, Esq., filed an affidavit stating:

> 22. I was under the assumption that the FMC was fully informed of the status of the plea negotiations and criminal resolution of the case through the United States Department of Justice attorneys who were prosecuting the criminal case against both Roberto Dip and Dip Shipping Company LLC.

Declaration of Joel Denaro, attached to Dip Shipping Response at 28.

Section 515.12(e)[3] provides that "[e]ach applicant shall promptly advise the Commission of any material changes in the facts submitted in the application. Any unreported change may delay the processing and investigation of the application and result in rejection, closing, or denial of the application." 46 C.F.R. § 515.12(e). Section 515.20(e) states that "changes in material fact of a licensee shall be reported within thirty (30) days of such changes, in writing by mail or email (bcl@fmc.gov) to the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, DC 20573" and that "[m]aterial changes include, but are not limited to: . . . any criminal indictment or conviction of a licensee, QI, or officer." 46 C.F.R. § 515.20(e).

BCL's concern about notification of the case against Dip Shipping raises the question of whether the proceedings against Dip Shipping and Roberto Dip constituted different cases. On the surface, they have different case names and docket numbers, although the same judge. BOE Ex. 13, FMC233; BOE Ex. 14, FMC253. The plea agreement with Dip Shipping was signed almost a year after the plea agreement with Roberto Dip, possibly to ensure continued cooperation with the ongoing investigation. However, the substance of the factual allegations is essentially the same and it appears that they arose out of the same DOJ investigation. Margie Dip was never a defendant in the criminal proceedings against Roberto Dip or Dip Shipping Company. Declaration of Joel Denaro, attached to Dip Shipping Response at 29. Certainly, BCL could have inquired further if it had any concerns.

Dip Shipping's contention that the Commission was aware of the criminal case against Dip Shipping is supported by correspondence between Dip Shipping and Commission staff, included in BOE's submission. On April 2, 2019, in an email to BCL staff, Dip Shipping's counsel states in pertinent part:

> Greetings. By letter date[d] December 13, 2018, the BCL of the FMC advised my client, Dip Shipping Company, LLC, that it was aware **that the company and its President**, Robert Dip, had been criminally charged in Federal Court, and had

[3] It is not clear that section 515.12(e), which states that an unreported change may "delay the processing and investigation of an application" or result in its "rejection, closing, or denial," applies to Dip Shipping, whose application had already been approved.

> entered pleas of guilty to price fixing. The company is licensed as an OTI as a forwarder and NVOCC.

BOE Ex. 5, FMC136 (emphasis added).

By the time Dip Shipping's counsel sent this email, Commission staff were already in communication with the DOJ regarding Dip Shipping (*see* Verified Statement of Clifford Johnson ¶ 10 (stating that there was a telephone conference between representatives of the Commission and a DOJ attorney "regarding Dip Shipping")). The above email suggests that BCL was aware that Dip Shipping was being charged along with its president, Roberto Dip. If BCL was not aware that the corporation was charged, then this email from Dip Shipping's counsel disclosed that fact and put BCL on notice that the price fixing charges also included Dip Shipping.

The evidence shows that BCL had discussions with both the DOJ attorneys and with Dip Shipping's counsel in the criminal proceeding. Because Dip Shipping's request for discovery from DOJ and BCL is denied, the record contains only limited information about these conversations. However, DOJ states that the "criminal fine amount and payment plan were premised on the parties' efforts to ensure that the criminal case would not put Dip Shipping out of business." DOJ *Amicus Curiae* Letter Brief at 2.

> To ensure that Dip Shipping is able to pay its criminal fine in full, Antitrust Division staff contacted FMC officials in the course of their investigation to inquire about licensure issues. To date, Dip Shipping has paid only one of the six payments required by its criminal judgment. Should the company cease to operate as a result of losing its ocean transportation intermediary license, the Antitrust Division anticipates that Dip Shipping will be unable to pay the fine imposed by the District Court.

DOJ *Amicus Curiae* Letter Brief at 2. DOJ's contact with the Commission regarding whether Dip Shipping could keep its license and pay a criminal fine was only necessary if DOJ intended to charge and fine Dip Shipping.

Moreover, BCL had seen Roberto Dip's plea agreement, which has the same factual basis as Dip Shipping's plea agreement except that:

- in the plea agreement with Roberto Dip, he is listed as the "Chief Executive Officer of Company A," he "was an organizer or leader in the conspiracy, which involved at least five participants," and acts were carried out "within the Eastern District of Louisiana," BOE Ex. 14, FMC240-242, and

- in the plea agreement with Dip Shipping, it is identified as "a corporation organized and existing under the laws of Louisiana," it "employed ten or more employees," and acted "through its officers and employees," BOE Ex. 13, FMC212-216.

Therefore, BCL should have been aware of the criminal allegations against Dip Shipping even if BCL may not have been aware of the final determination regarding the amount and payment plan for Dip Shipping's criminal fine.

Clearly, there was a misunderstanding. The attorneys for DOJ and Dip Shipping were well aware that Dip Shipping was being criminally charged, as well as Roberto Dip, but this information was not understood by BCL. The responsibility for this misunderstanding should not fall exclusively on the least sophisticated entity involved. Indeed, Margie Dip and Dip Shipping sought legal advice regarding their obligations to the FMC and followed that advice, which was provided with the knowledge that the DOJ attorneys were in contact with the FMC attorneys. Declaration of Joel Denaro ¶¶ 18-20, attached to Dip Shipping Response at 29. It was reasonable for Margie Dip, Dip Shipping, and their counsel to assume that BCL had asked any questions pertinent to the DOJ antitrust investigation and anticipated sentencing of Dip Shipping prior to granting Margie Dip the license to act as replacement QI.

In *Washington Movers*, the Commission stated "Washington Movers' failure to notify the Commission of [the QI's] conviction would not likely, taken alone, warrant revocation. By the time of his conviction, the Commission was well aware of [the QI's] legal troubles." *Washington Movers*, 1 F.M.C. 2d at 21. Here, as well, by the time of the plea agreement with Dip Shipping, the Commission was well aware of the criminal activity of both Roberto Dip and Dip Shipping from 2010-2015.

In his affidavit, Clifford Johnson states that "[a]t no time on or after September 17, 2019, did Dip Shipping notify the Commission that the company was charged with a felony," that the "company pleaded guilty to a felony," or that judgement was entered imposing a criminal monetary penalty. Verified Statement of Clifford Johnson ¶¶ 21-23. However, as noted above, BOE received an email dated April 2, 2019, and had conversations with relevant attorneys on January 29, 2019, February 26, 2019, and April 19, 2019. It is not clear why Dip Shipping would be required to advise BCL of the charges after the date of the DOJ press release if BCL was aware of the criminal activity prior to that date.

The cited regulation requires that changes in material fact be disclosed in writing to BCL by email or by mail, not that changes be disclosed by a specific person within the company. *See* 46 C.F.R. § 515.20(e). The April 2, 2019, email by Dip Shipping's counsel satisfies the disclosure requirement. BCL was in communication with DOJ and Respondent's criminal attorney and could have inquired further regarding any anticipated plea agreements or fine. Because additional discovery is denied, the record contains very limited information about these conversations. The evidence does not support the allegations that Dip Shipping failed to notify the Commission of the DOJ's criminal investigation and prosecution of Dip Shipping. Accordingly, BOE has not met its burden to show that Dip Shipping failed to notify the Commission as required by sections 515.12(e) and 515.20(e).

2. Character of the QI

Dip Shipping notes that BCL investigated Margie Dip in 2019, prior to approving her as QI, well after the illegal activities by Dip Shipping, which occurred from 2010 to 2015. The FMC's approval of Margie Dip as the new QI of Dip Shipping did not occur until September 3,

2019. Dip Shipping Response at 1. Dip Shipping argues that therefore, the illegal activities of Roberto Dip and Dip Shipping under his ownership "should in no way be connected to the activities of Dip Shipping Company LLC under the new ownership and management." Dip Shipping Response at 1.

BOE, on the other hand, argues that there is "longstanding Commission precedent supporting denial or revocation of a license where the entity has been found guilty of federal crimes" and notes that Dip Shipping's plea agreement with the DOJ grants immunity from prosecution to Margie Dip and Maria D. Dip for Dip Shipping's price fixing conspiracy. BOE Reply at 8-9. BOE argues that if Margie Dip had not been involved in the illegal conduct by Roberto Dip and Dip Shipping, there would have been no need to immunize her from criminal prosecution." BOE Reply at 11-12. BOE does not specifically request a finding as to whether Margie Dip's character is sufficient to meet the Commission's requirements of a QI.

Section 515.11 states that a QI must have at least three years' experience in OTI activities in the United States "and the necessary character to render ocean transportation intermediary services." 46 C.F.R. § 515.11(a)(1). "In addition to information provided by the applicant and its references, the Commission may consider all information relevant to determining whether an applicant has the necessary character to render ocean transportation intermediary services . . . ." 46 C.F.R. § 515.11(a)(2).

As Dip Shipping correctly notes, BCL investigated Margie Dip prior to approving her as QI. Dip Shipping Response at 1. The materials submitted by Margie Dip in her application to replace Roberto Dip as QI for Dip Shipping provide the following information:

- Margie Dip has been involved with Dip Shipping since 2003 and has served as a manager, vice president, and part owner. BOE Ex. 2, FMC125; BOE Ex. 4, FMC133-134.

- Prior to Roberto Dip's transfer of 40% ownership interest in Dip Shipping to Margie Dip on August 12, 2019, Margie Dip held 10% ownership interest in Dip Shipping. BOE Ex. 6, FMC191.

- As part of the duties she performed for Dip Shipping from 2005 to 2017, Margie Dip reported directly to Roberto Dip and "[c]oordinated logistics and documentation for containers shipped from the USA to Honduras and other Central American countries, and from Honduras to the USA. Issued masters for bills of lading, prepared loading manifests, completed Shipper's Export Declarations (SEDs), prepared vehicle export forms for Customs, made bookings, provided customer service, financing and administration, hazmat certified, submitted IMOs to the vessel lines for validation." BOE Ex. 6, FMC142.

In addition, the evidence of record provides the following information:

- The illegal acts connected to the DOJ charges and guilty pleas by Roberto Dip and Dip Shipping occurred from at least September 2010 until at least March 2015. BOE Ex. 9, FMC198-199.

- As part of the plea agreement Margie Dip entered into on October 25, 2019, with the DOJ on behalf of Dip Shipping, the DOJ agreed that it would "not bring criminal charges against any current director, officer, or employees of the defendant for any act or offense committed before the date of signature of this Plea Agreement and while that person was acting as a director, officer, or employee of the defendant that was undertaken in furtherance of an antitrust conspiracy in the United States and elsewhere [except for Robert Dip and Jason Handal]." BOE Ex. 12, FMC225.

The record contradicts Dip Shipping's contention that the illegal activities by Roberto Dip and Dip Shipping under Roberto Dip's ownership "should in no way be connected to the activities of Dip Shipping Company LLC under the new ownership and management." Dip Shipping Response at 1. The record shows that Margie Dip has served as a manager, vice president, and part owner of Dip Shipping. The record does not indicate, however, when Margie Dip became a part owner, vice president, or officer of Dip Shipping. Compare FMC191 with FMC125. In addition, the evidence does not indicate whether or not Margie Dip was aware of or involved in the price fixing conspiracy.

The plea agreement between DOJ and Dip Shipping immunizes Margie Dip from criminal charges by DOJ. BOE Ex. 12, FMC225. BOE's argument that this immunization is evidence of guilt is not supported by any evidence and appears to be conjecture. Margie Dip's culpability would have been an appropriate area of inquiry, however, in the Commission's conversations with the DOJ prior to approving her as QI of Dip Shipping.

DOJ has an explicit policy of seeking jail time for officers at corporations engaged in illegal conduct in addition to fines imposed against corporations. DOJ also has policies guiding when they reserve the right to prosecute a corporate officer. "A decision about who to prosecute or whether to reserve the right to prosecute a corporate official always involves a careful, individualized assessment of one's culpability based on evidence." Brent Snyder, *Individual Accountability for Antitrust Crimes*, at 14 (2016), www.justice.gov/opa/file/826721/download. Here, Margie Dip was a manager, and possibly an officer and/or owner, of Dip Shipping during the illegal activity. DOJ's decision not to charge her but rather to provide her with immunity does not support BOE's argument that she was aware of or involved in Roberto Dip's illegal activity. Of course, DOJ's burden of proof to establish a criminal antitrust violation is higher than the Commission's burden of proof to revoke a license. In addition, different legal issues are involved in establishing an antitrust conspiracy as opposed to character under the Shipping Act.

The evidence of record is not sufficient to determine whether or not Margie Dip has the "necessary character to render ocean transportation intermediary services" required at 46 C.F.R. § 515.11 for a QI. Ideally, more information would be available before finding that being a manager at a company where illegal activity occurs disqualifies someone from having sufficient character to act as a QI. The Commission's staff investigated and approved Margie Dip as QI for Dip Shipping with knowledge of the factual allegations supporting the plea agreement with Roberto Dip and may have relied on information not in the record to make that determination.

Subpart X proceedings are designed to ensure "a low-burden and efficient process." Hearing Procedures, 85 Fed. Reg. at 5581. Therefore, to avoid delay, additional information will not be ordered because a determination of this issue is not explicitly requested and is not necessary for the adjudication of whether Dip Shipping's license should be revoked.

3. DIP Shipping is Not Qualified to Render Ocean Transportation Intermediary Services

BOE argues that longstanding Commission precedence supports denial or revocation of a license when the licensee has been found guilty of federal crimes or conduct implicating moral turpitude. BOE Reply at 8. However, Dip Shipping dismisses the conclusion that it is no longer qualified to render OTI services as "self-serving, vague, and not supported by the submissions of the Bureau of Enforcement, or other cases in which licensees have maintained their licenses after a Federal guilty plea to a felony." Dip Shipping Response at 1.

Dip Shipping argues that because the illegal activities by Dip Shipping occurred from 2010 to 2015, whereas the FMC's approval of Margie Dip as the new QI of Dip Shipping did not occur until September 3, 2019, the illegal activities of Roberto Dip and Dip Shipping under his ownership "should in no way be connected to the activities of Dip Shipping Company LLC under the new ownership and management." Dip Shipping Response at 1. Dip Shipping contends that a revocation based on acts five years prior to the current ownership and management of the company "is not supported by any legal precedent cited by the Bureau of Enforcement." Dip Shipping Response at 1.

Section 515.16(a)(4) provides that an OTI license may be revoked based on a Commission determination that the licensee is not qualified to render intermediary services. It is undisputed that Dip Shipping committed a felony by engaging in a conspiracy to fix prices for ocean intermediary transportation services, and that a criminal fine was imposed against it for the felony. BOE Ex. 12, FMC212-231; BOE Ex. 13, FMC233-236.

In *Washington Movers*, the Commission found that the character of the OTI's owner and QI, who had committed crimes involving smuggling and attempted unlawful export of defense articles, was imputable to the OTI and related to OTI services, thus the OTI's conduct rendered the OTI unqualified to render OTI services under Commission precedent. *Washington Movers*, 1 F.M.C. 2d at 18 (citing *Falcon Shipping Inc. – Application for a License as an Ocean Transportation Intermediary*, 32 S.R.R. 382, 384 (FMC 2012) (the Commission found that it was appropriate to deny the OTI's application for lack of requisite character because, among other things, the owner violated the Shipping Act and was involved in an illegal scheme and deceptive practice); *Stallion Cargo, Inc. – Possible Violations of the Shipping Act of 1984*, 29 S.R.R. 665, 683-684 (FMC 2001) (the Commission found that the licensee lacked necessary character due to Shipping Act violations); *Independent Freight Forwarder License E.L. Mobley, Inc.*, 21 F.M.C. 845, 847 (FMC 1979) (the Commission found that forgery reflected on fitness); *Independent Ocean Freight Forwarder Application Lesco Packing Co.*, 19 F.M.C. 132, 137 (FMC 1976); and *Harry Kaufman – Independent Ocean Freight Forwarder License No. 35*, 16 F.M.C. 263, 271, 276-277 (Examiner 1972)). Here, Dip Shipping was specifically charged with a felony and agreed to pay a fine in the plea agreement, therefore, it is even more clear that the OTI is responsible for the illegal conduct.

The case law demonstrates that there is an adequate basis to conclude that due to Dip Shipping's guilty plea to the charge of price fixing in violation of the Sherman Antitrust Act, and subsequent plea agreement, Dip Shipping lacks the necessary character to render ocean transportation intermediary services and thus that Dip Shipping is not qualified to render intermediary services. Moreover, "a licensed OTI is 'strictly responsible' for the acts or omissions of any of its employees or agents rendered in connection with the conduct of its business" so that Dip Shipping is responsible for the criminal acts of Roberto Dip and Jason Handal. *Washington Movers*, 1 F.M.C. 2d at 13 n.12. Even if Margie Dip was not aware of or involved in Dip Shipping's criminal activity, like the replacement owner and QI of *Washington Movers*, who was not implicated in the criminal conduct, Dip Shipping's license can still be revoked.

In mitigation, Roberto Dip and Dip Shipping cooperated with the DOJ investigation and provided valuable information. This type of cooperation benefits the shipping industry and is a mitigating factor. In addition, the DOJ's concern that Dip Shipping may not be able to pay the remainder of its monetary penalty should its license be revoked is well taken. However, the Commission has revoked the licenses of other companies convicted of felonies, even where there are mitigating factors. *See, e.g., Washington Movers*, 1 F.M.C. 2d at 12. Although the Commission could choose to impose a lesser sanction such as a civil penalty, warning, or temporary suspension of the license, there is sufficient evidence to support the notice to revoke the license. Accordingly, the evidence supports a revocation of Dip Shipping's ocean transportation license.

D. Conclusion

Based on the foregoing, it is found that the evidence does not support a finding that Dip Shipping violated the Commission's regulations at 46 C.F.R. §§ 515.12(e) and 515.20(e) regarding notice of material changes. However, the evidence supports the revocation of Dip Shipping's ocean transportation license number 018752 based on Dip Shipping's conviction of conspiracy to fix ocean transportation intermediary prices in violation of the Sherman Antitrust Act, and that Dip Shipping is not qualified to render intermediary services.

IV. ORDER

Upon consideration of the evidence and arguments submitted by the parties, the findings of fact and conclusions of law, and for the reasons stated above, it is hereby

ORDERED that the Department of Justice, Antitrust Division's motion seeking leave to file an *amicus curiae* submission be **GRANTED**. It is

FURTHER ORDERED that Dip Shipping's request for discovery and an oral hearing be **DENIED**. It is

FURTHER ORDERED that Dip Shipping Company, LLC's ocean transportation license number 018752 be **REVOKED** pursuant to 46 C.F.R. § 515.16(a)(4) and 46 U.S.C. § 40903(a)(4). It is

FURTHER ORDERED that Dip Shipping Company, LLC cease and desist all ocean transportation intermediary activities.

Erin M. Wirth

Erin M. Wirth
Chief Administrative Law Judge