

FEDERAL MARITIME COMMISSION
Office of Administrative Law Judges

TIR AUTO TRANSPORT LLC, *Complainant*

v.

V&S BROTHERS INC. AND V&S CARGO INC., *Respondents.*

DOCKET NO. 23-07

Served: September 6, 2023

ORDER OF: Linda S. Harris CROVELLA, *Administrative Law Judge.*

ORDER ON MOTIONS

On August 23, 2023, Respondents V&S Brothers Inc., and V&S Cargo Inc. (collectively, “Respondents” or “V&S”), filed a motion for enlargement of time (“Motion for Enlargement”) citing 46 C.F.R. § 502.67, but asserted that the parties had resolved some of the claims identified in the complaint filed by TIR Auto Transport LLC (“Complainant”). On September 1, 2023, Respondents filed a notice (“Consent Notice”) indicating that Complainant consents to the “brief enlargement of time.” Consent Notice at 1. On September 5, 2023, the parties filed a Joint Request for a Stay of Proceedings (“Joint Request for Stay”). A matter of hours after filing the Joint Request for Stay, also on September 5, 2023, Respondents filed an Answer, Affirmative Defenses and Counterclaim (“Answer and Counterclaim”). As discussed more fully below, the Motion for Enlargement is **DENIED** as moot, and the Joint Request for Stay is **DENIED**, without prejudice.

46 C.F.R. § 502.67 provides for a party to move for a more definite statement after receiving a pleading that it believes is “so vague or ambiguous that a party cannot reasonably prepare a response....” In addition, the “motion must be filed within 15 days of the pleading and must point out the defects complained of and the details desired.” It does not appear that Respondents intended to move for a more definite statement, but instead sought a “21 day extension of each of the following deadlines: (1) the August 23, 2023 deadline for Motions for a More Definite Statement (until September 13); and (2) the September 5, 2023 deadline for Motions to Dismiss/Answers to the Complaint (until September 26).” Motion at 2. At the time Respondents filed the Motion, Complainant did not “consent” to the motion. No response to the Motion was filed by Complainant.

The later filed Consent Notice states that, “After conferring with undersigned counsel and upon further consideration of V&S’s Motion, TIR has stated that it consents to a short extension of time for V&S to file its response to the Complaint.” Consent notice at 1. To be clear, counsel for Complainant did not sign the Consent Notice.

With the filing of the Answer and Counterclaim, the Motion for Enlargement is moot.¹ Accordingly, the remainder of this Order focuses on the Joint Request for Stay.

The parties Joint Request for Stay seeks an indefinite stay of proceedings and asserts that it is filed “pursuant to Section 502.64 and the Commission’s inherent authority...” Joint Request for Stay at 1. 46 C.F.R. § 502.64(c) states: “*Proceeding not stayed during dispute resolution process.* Unless otherwise ordered by the presiding officer, a mediation proceeding does not stay or delay the procedural time requirements set forth by rule or order of the presiding officer.”

The Commission has a strong and consistent policy of encouraging settlements. “The resolution of controversies by means of compromise and settlement is generally faster and less expensive than litigation; it results in saving 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.” *Old Ben Coal Co. v. Sea-Land Ser., Inc.*, 18 S.R.R. 1085, 1092 (ALJ 1978) (quoting 15A AM. JUR. 2D *Compromise and Settlement* § 3 (1976)). While engaging in settlement discussions is encouraged, requesting an indefinite period in which to engage in informal discussions could significantly delay this case.

The Joint Request for Stay does not include a timeline and indicates that the parties are not engaged in mediation of the dispute but are engaged in “ongoing discussions” with each other. Request for Stay at 1, 3. The cases cited by the parties in support of their Joint Request for Stay are those where mediation is scheduled or in progress and the stays were limited to defined periods. Given that the Federal Maritime Commission (“FMC”) rules do not provide for a stay even when parties are engaged in mediation, good cause must be established to warrant delaying progress in the case, and an end to that delay must be contemplated. *See* 46 C.F.R. § 502.64(c). Here, the parties allege that they are willing to work with the FMC’s Office of Consumer Affairs and Dispute Resolution Services (CADRS), but there is no indication that they have scheduled a meeting to advance that idea. As noted in the Initial Order, the parties are now required within 15 days of the service of Respondents’ answer to participate in a mandatory preliminary conference with CADRS. Initial Order at 1. In addition, the Joint Request for Stay does not indicate that the parties are near resolution of the issues between them or that there is an imminent plan to submit a settlement agreement for approval. Good cause has not been established to delay this proceeding indefinitely.

Accordingly, it is hereby:

ORDERED that Respondents V&S’s Motion for Enlargement of Time is **DENIED**, as moot. It is

FURTHER ORDERED that the parties’ Joint Motion for Stay is **DENIED**, without prejudice. It is

¹ The filing of the Answer means that Respondents did not find the Complaint “so vague and ambiguous” that it could not respond, so that portion of the Motion for Enlargement is similarly moot. 46 C.F.R. § 502.67.

FURTHER ORDERED that absent a settlement, Complainant's answer to the Counterclaim is due 25 days from the date of service of the Answer and Counterclaim. It is

FURTHER ORDERED that the parties must submit a joint status report on September 20, 2023, stating whether they have contacted CADRS and whether they have agreed to mediation, but they are not to state their respective positions on whether they agree to mediation or their respective positions on settlement. A second joint status report and proposed schedule of discovery must be submitted by October 3, 2023.

If a settlement is reached, the parties must file a motion requesting approval of it along with a copy of the settlement. *See* 46 C.F.R. § 502.72(a)(3).

If the parties resolve some, but not all the issues raised in the Complaint, the parties may file a motion under 46 C.F.R. § 502.69(g), moving to dismiss part of the proceeding. If the parties have procedural questions after reviewing the FMC rules, they may direct them to Secretary@FMC.gov.



Linda S. Harris Crovella
Administrative Law Judge