

# FEDERAL MARITIME COMMISSION

IN THE MATTER OF ATTORNEY  
MARCUS NUSSBAUM

Docket No. 24-03

Served: January 10, 2024

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**BY THE COMMISSION:** Daniel B. MAFFEI, *Chairman*,  
Rebecca F. DYE, Louis E. SOLA, Carl W. BENTZEL, Max  
VEKICH, *Commissioners*.

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## **Order Directing Marcus Nussbaum to Show Cause**

Marcus Nussbaum is an attorney who has appeared in five Federal Maritime Commission (FMC) matters over the past decade and engaged in alleged conduct that may violate FMC practice rules in at least three of those matters: *Crocus Investments v. Marine Transport Logistics, Inc.*, FMC Docket No. 15-04; *Ovchinnikov v. Hitrinov*, FMC Docket Nos. 15-11 & 1953(I); and *Andrew v. Marine Transport Logistics, Inc.*, FMC Docket No. 20-12. These allegations were discussed or otherwise referenced in the Order Affirming the Initial Decision on Different Grounds, *Ovchinnikov*, FMC Docket Nos. 15-11 & 1953(I), Doc. 220, 2023 WL 1963462, at \*2, \*10-12 (FMC Feb. 8, 2023) (Order in *Ovchinnikov*). In that Order, the Commission stated it elected not to proceed as to the alleged misconduct as part of the case before it, but it discussed the allegations in detail and emphasized that the

agency had the option to return to them later. *Id.* The Commission now does so.

The Commission hereby initiates a proceeding through the issuance of this Order to Show Cause, pursuant to 46 C.F.R. § 502.91, directing Mr. Nussbaum to show cause why the Commission should not impose a sanction of revocation or at least suspension of his permission to practice before the agency, on the basis of potential violations of the certification requirements of 46 C.F.R. § 502.6 and the professional conduct requirements of 46 C.F.R. § 502.26.

Mr. Nussbaum will have 30 days from the service of this Order to file a response. In this response, he may rely on evidence previously submitted in the three FMC matters noted above and need not re-submit it. He may also submit additional evidence, including affidavits and documentary evidence. If Mr. Nussbaum requests oral argument, that request should be made in accordance with 46 C.F.R. § 502.241 as part of his main submission.

## **I. BACKGROUND**

The FMC's final Order in *Ovchinnikov* specifically addressed Mr. Nussbaum's alleged misconduct in all three FMC matters at issue here. *See* 2023 WL 1963462, at \*2, \*10-12. In that Order, the Commission rejected respondents' filing of purported exceptions to the Administrative Law Judge's (ALJ) denial of their motion for an order to show cause why Mr. Nussbaum should not have his privilege of practicing before the Commission revoked. *Id.* at \*2, \*10-11. Respondents' motion had alleged specific violations of the American Bar Association's (ABA) Model Rules of Professional Conduct, with supporting evidence. *See* FMC Docket Nos. 15-11 & 1953(I), Doc. 112. Although the Commission found respondents' exceptions to the ALJ's denial to be procedurally defective, it emphasized that it did have "the authority to act on the serious allegations of misconduct" by Mr. Nussbaum, for example by starting a new proceeding to address the conduct,

“about which the Commission has repeatedly warned him.” Order in *Ovchinnikov*, 2023 WL 1963462, at \*2. In particular, the Commission explained that its regulations authorize it to institute a proceeding by order to show cause and that attorneys practicing before it are expected to conform to the ABA’s Model Rules. *Id.* at \*12 (citing 46 C.F.R. § 502.91, 502.26). The Order noted that the agency was choosing not to take such action at that time, “but may do so in the future.” *Id.* at \*2.

In its Order, the Commission described the alleged misconduct. Order in *Ovchinnikov*, 2023 WL 1963462, at \*11. It noted that the allegations in the *Ovchinnikov* matter included that Mr. Nussbaum falsified evidence that he submitted to the FMC; that he misrepresented facts, arguments, and actions of the ALJ; that he misused confidential information from a former client and acted to the detriment of that client; that he “acted extremely uncivilly;” and that he failed to deny allegations of forgery and other misconduct. *Id.* (citing opposing party filings from 2016 and 2017).

The Order also described allegations that Mr. Nussbaum had engaged in misconduct in two other FMC matters. In one case, “Mr. Nussbaum, among other things, repeatedly misquoted the record to support his client’s claims and attacked the ALJ as advocating for the opposing side.” Order in *Ovchinnikov*, 2023 WL 1963462, at \*11 (citing *Andrew v. Marine Transp. Logistics, Inc.*, FMC Docket No. 20-12, Docs. 31, 38 (opposing party filings from 2021 and 2022); *see also* Docket No. 20-12, Doc. 41 (order affirming initial decision)). In the other case, the Commission directed Mr. Nussbaum not to file documents that did not meet the verification requirements of 46 C.F.R. § 502.6 or that did not comply with the ABA Model Rules, after finding that he had come “close to admitting” that his own claims that opposing attorneys had altered evidence were baseless. Order in *Ovchinnikov*, 2023 WL 1963462, at \*11 (quoting *Crocus Investments v. Marine Transp. Logistics, Inc.*, FMC Docket No. 15-04, 2018 WL 2113084, at \*1, 8 (FMC May 2, 2018)). The Commission also

noted that such conduct ““bears the unmistakable hallmarks of other pleadings filed by Mr. Nussbaum in this case and other proceedings before the Commission,” and warned him that, “[f]urther violation of these rules may result in sanctions by the Commission.”” *Id.* (quoting *Crocus*, 2018 WL 2113084, at \*1, 8, FMC Docket No. 15-04, Doc. 62 (order denying motion to suspend counsel)).

## II. DISCUSSION

In light of the above, the Commission now “institute[s] a proceeding by order to show cause,” 46 C.F.R. § 502.91, and directs Mr. Nussbaum to show why his permission to practice before the FMC should not be revoked or at least suspended because of his alleged conduct in the three FMC cases described above.

The alleged conduct implicates 46 C.F.R. § 502.6(a). Under that section, the signature of an attorney representing a party in an FMC matter constitutes a certificate that the filing is, “to the best of the signer’s knowledge, information and belief formed after reasonable inquiry, well grounded in fact” and warranted by the law, and not “interposed for any improper purpose, such as to harass or to cause unnecessary delay or a needless increase in the cost of litigation.” 46 C.F.R. § 502.6(a). For a “willful” violation, the Commission may take “appropriate disciplinary action.” *Id.* This section is comparable to Federal Rule of Civil Procedure 11, which provides that attorneys signing federal court pleadings are certifying that they are well-supported in fact and law along similar lines. *See* Fed. R. Civ. P. 11(b).

In addition, the alleged conduct implicates the ABA Model Rules. Order in *Ovchinnikov*, 2023 WL 1963462, at \*12. Those Rules are incorporated at 46 C.F.R. § 502.26: “An attorney practicing before the Commission is expected to conform to the standards of conduct set forth in the American Bar Association’s Model Rules of Professional Conduct in addition to the specific

requirements of this chapter.” Model Rules that are potentially implicated here are: Rule 1.8 (Conflict of Interest) (a lawyer shall not use information related to representation to disadvantage a client without consent); Rule 1.9 (Duties to Former Clients) (a lawyer shall not reveal information relating to the representation of a former client except as these Rules would permit or require); Rule 3.1 (Meritorious Claims & Contentions) (a lawyer shall not assert an issue unless there is a non-frivolous basis in law and fact for doing so); Rule 3.3 (Candor Toward the Tribunal) (a lawyer shall not knowingly make a false statement of fact or law to a tribunal or offer evidence the lawyer knows to be false); Rule 3.4 (Fairness to Opposing Party & Counsel) (a lawyer shall not falsify evidence); and Rule 8.4 (Misconduct) (a lawyer shall not engage in conduct involving dishonesty or misrepresentation or that is prejudicial to the administration of justice).

In this proceeding, the Commission will consider whether Mr. Nussbaum’s ability to practice before it should be revoked or at least suspended. Federal agencies like the FMC have the authority to police the conduct of attorneys who practice before them. *See Polydoroff v. Interstate Commerce Comm’n*, 773 F.2d 372, 374-75 (D.C. Cir. 1985) (affirming six-month suspension of attorneys from practice before the ICC and noting that “[t]here can be little doubt that the [ICC], like any other institution in which lawyers or other professionals participate, has authority to police the behavior of practitioners appearing before it.”). A revocation or suspension of permission to practice may well be an appropriate sanction for the violations of the standards of practice contained in 46 C.F.R. §§ 502.6 and 502.26 alleged here, particularly the alleged making of submissions that lack a factual basis and conduct disruptive of agency proceedings, in order to protect the integrity of the Commission’s adjudicative process.

### **III. CONCLUSION**

The Commission hereby:

- (1) **ORDERS** that a proceeding is instituted by this Order to Show Cause pursuant to 46 C.F.R. § 502.91;
- (2) **ORDERS** that Marcus Nussbaum show cause why his permission to practice before the FMC should not be revoked or at least suspended, on the basis of 46 C.F.R. §§ 502.6 and 502.26, in light of the alleged misconduct in *Crocus Investments v. Marine Transport Logistics, Inc.*, FMC Docket No. 15-04; *Ovchinnikov v. Hitrinov*, FMC Docket Nos. 15-11 & 1953(I); and *Andrew v. Marine Transport Logistics, Inc.*, FMC Docket No. 20-12, as discussed or otherwise referenced in this Order; and
- (3) **ORDERS** that Mr. Nussbaum's response to this Order, if any, is due 30 days from service of the Order. In his responsive submission, Mr. Nussbaum may rely on evidence previously submitted in FMC Docket Nos. 15-04, 15-11 & 1953(I), and 20-12, with no need to submit it again. He may also rely on any additional evidence he may provide as to those FMC matters, including affidavits and documentary evidence, as part of his responsive submission. If Mr. Nussbaum requests oral argument, that request should be made in accord with 46 C.F.R. § 502.241 as part of his responsive submission. The Commission will issue a decision based on the evidence and argument described in this Order, without the use of the additional procedures described in 46 C.F.R. Subparts I, J, and L, absent an affirmative showing by Mr. Nussbaum that any such procedures are necessary.

By the Commission.

David Eng  
Secretary