

CAUSE NO. 09CV1729

CARNIVAL CORPORATION;
ROYAL CARIBBEAN CRUISES, LTD.;
and THE FLORIDA-CARIBBEAN
CRUISE ASSOCIATION,

Petitioners

vs.

THE BOARD OF PILOT COMMISSIONERS
FOR GALVESTON COUNTY PORTS;
VANDY ANDERSON; JAMES E. TOUPS;
SALLY H. PRILL; EDDIE JANEK; and
DIANE KERKHOVE,

Respondents.

§ IN THE DISTRICT COURTS OF

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GALVESTON COUNTY, TEXAS

§ 212th JUDICIAL DISTRICT

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CLERK OF DISTRICT COURT
GALVESTON COUNTY TEXAS

ORIGINAL PETITION FOR JUDICIAL REVIEW

Carnival Corporation; Royal Caribbean Cruises, Ltd.; and the Florida-Caribbean Cruise Association, for their Petition for Judicial Review of proceedings conducted before the Board of Pilot Commissioners for Galveston County Ports (the "Board"), respectfully state as follows:

A.

DISCOVERY CONTROL PLAN

1. Petitioners intend to conduct discovery in this matter under Level 3. TEX.

R. CIV. P. 190.4(a).

B.

PARTIES AND SERVICE OF PROCESS

2. Petitioner Carnival Corporation ("Carnival") is a Panamanian corporation with offices in Miami, Florida and London, England. Carnival does business in Galveston County through its member line Carnival Cruise Lines. Carnival was an

objecting party at rate proceedings concluded by the Board August 24, 2009 and is otherwise entitled to maintain this action.

3. Petitioner Royal Caribbean Cruises Ltd. ("Royal Caribbean") is a Liberian corporation with offices in Miami, Florida. Royal Caribbean does business in Galveston County through its member line Royal Caribbean International. Royal Caribbean was an objecting party at rate proceedings concluded by the Board August 24, 2009 and is otherwise entitled to maintain this action.

4. Petitioner Florida-Caribbean Cruise Association ("FCCA") is a non-profit trade organization of 15 member cruise lines with an office in Pembroke Pines, Florida. The FCCA was an objecting party at rate proceedings concluded by the Board August 24, 2009 and is otherwise entitled to maintain this action.

5. Respondent Board of Pilot Commissioners for Galveston County Ports is a body existing pursuant to Chapter 67 of the Texas Transportation Code. *See* TEX. TRANSP. CODE §67.011. The Board does not maintain a registered agent for service and, as a result, Petitioners have named the individual Commissioners as additional Respondents only in their capacities as Commissioners. A courtesy copy of this Petition will be served on the Texas Attorney General, whose office has been assisting the Board, at 300 West 15th Street, Austin, Texas 78701, Attn. Mr. James Crowson.

6. Respondent Vandy Anderson was at all times relevant to this matter the acting Chairman of the Board. Mr. Anderson is being sued in his representative capacity only. Mr. Anderson may be served at 6917 Weis Drive, Galveston, Texas 77551 or wherever he may be found.

7. Respondent James E. Toups was at all times relevant to this matter serving as a Commissioner of the Board. Mr. Toups is being sued in his representative capacity only. Mr. Toups may be served at 2022 Morning Lake Drive, League City, Texas 77573 or wherever he may be found.

8. Respondent Sally H. Prill was at all relevant times serving as a Commissioner of the Board. Ms. Prill is being sued in her representative capacity only. Ms. Prill may be served at 20 Adler Circle, Galveston, Texas 77551 or wherever she may be found.

9. Respondent Eddie Janek was at all relevant times serving as a Commissioner of the Board. Mr. Janek is being sued in his representative capacity only. Mr. Janek may be served at 7908 Channelview Drive, Galveston, Texas 77554 or wherever he may be found.

10. Respondent Diane Kerkhove was at all relevant times serving as a Commissioner of the Board. Ms. Kerkhove is being sued in her representative capacity only. Ms. Kerkhove may be served at 109 Royal Drive, League City, Texas 77573 or wherever she may be found.

C.
JURISDICTION AND VENUE

11. Jurisdiction and venue are proper in this Court pursuant to Texas Transportation Code §§67.022 and 67.067.

D.
BACKGROUND FACTS

12. On or about May 1, 2009, the Galveston County Pilots, organized as the Galveston-Texas City Pilots (the "Pilots"), filed their Application for Pilotage Rate

Change with the Board seeking, among other things, an increase in charges associated with the so-called "second pilot requirement." See the Pilots' Application for Rate Change (the "Application") at Paragraph XVI, page 8, attached hereto as Exhibit A and incorporated by reference for all purposes.

13. On May 19 and 20, 2009, the Board of Trustees of the Galveston Wharves (the "Port of Galveston"), the Texas City Terminal Railway Company (the "Port of Texas City"), the West Gulf Maritime Association (the "WGMA"), the FCCA, Carnival, and Royal Caribbean all filed objections to the Pilots' Application. True and correct copies of the various objections are attached hereto as Exhibit B and incorporated by reference for all purposes.

14. The Board set a hearing on the Pilots' Application as required by Texas Transportation Code §67.063.

15. Prior to the commencement of the hearing, the Pilots conceded that the "second pilot requirement" was not necessary for cruise ships with a length overall of 1025 feet or less. The Pilots entered into Memoranda of Understanding with both Royal Caribbean and Carnival which provided, among other things, that the parties would submit an agreed tariff to the Board effectively eliminating the second pilot requirement for all cruise ships then calling in Galveston. In exchange, Royal Caribbean and Carnival would withdraw their objections once the agreed tariff was approved by the Board. True and correct copies of the relevant Memoranda of Understanding are attached hereto as Exhibit C and incorporated by reference for all purposes.

16. Pursuant to their agreements, the Pilots, Carnival and Royal Caribbean submitted an agreed tariff to the Board on July 16, 2009, which was unanimously

accepted by the Board without objection. A true and correct copy of the “Agreed Tariff” modifying the second pilot requirement is attached hereto as Exhibit D and incorporated by reference for all purposes.

17. Based upon the Board’s unanimous approval of the Agreed Tariff, Carnival and Royal Caribbean withdrew their objections to the Pilots’ Application. The FCCA did not withdraw its objection as it was not a party to the Memoranda and its member lines remained in opposition to the Pilots’ requested rate increase.

18. The Board continued the hearing for several days, during which the Pilots and other objectors presented their evidence. In addition to approving the Agreed Tariff, the Board ultimately voted to grant the Pilots a 5% increase in their tariff rates. However, unbeknownst to the objectors, the tariff rates were adjusted after the fact in an effort to achieve a desired “target revenue” increase, an approach not provided for by the Transportation Code.

19. The Board posted its order, which included the Agreed Tariff eliminating the second pilot requirement. True and correct copies of the Board’s Notice and Order are attached hereto as Exhibit E and incorporated by reference for all purposes.

19. The Port of Galveston, Port of Texas City, and WGMA objected to the Board’s Order, except with respect to the Agreed Tariff on the second pilot requirement. True and correct copies of the relevant objections are attached hereto as Exhibit F and incorporated by reference for all purposes.

20. After considering the objections and after further hearing, the Board issued yet another order, which again included the Agreed Tariff eliminating the second

pilot requirement. A true and correct copy of the Board's second Notice and Order are attached hereto as Exhibit G and incorporated by reference for all purposes.

21. Again, numerous parties objected to the proposed order, except with respect to the second pilot concession. True and correct copies of the relevant objections are attached hereto as Exhibit H and incorporated by reference for all purposes.

22. Apparently not content with the course of the proceedings, on August 24, 2009, the Pilots withdrew their Application.

23. Based upon the withdrawal, the Chairman of the Board, without calling for a vote or discussion, indicated that the Agreed Tariff eliminating the second pilot requirement would have no effect, notwithstanding the fact that the Agreed Tariff had been unanimously approved by the Board and the Board had taken absolutely no action whatsoever to vacate its prior order approving the Agreed Tariff.

E.
GROUND FOR JUDICIAL REVIEW

24. Petitioners file this Petition for Judicial Review asking that the District Court render judgment that the Agreed Tariff eliminating the second pilot requirement is valid and enforceable and that the second pilot requirement should be eliminated for cruise ships with LOA of 1025 feet or less. The Agreed Tariff eliminating the second pilot requirement was the sole item of agreement between the parties and the Board unanimously approved it without objection. The Board has prejudiced the rights of the Petitioners by its failure to act in a manner consistent with its own ruling and by its failure to comply with the Texas Transportation Code.

25. Additionally, evidence exists that the Board violated the Texas Open Meetings Act after the Agreed Tariff was unanimously approved by secretly meeting

with the Pilots in an apparent effort to craft tariff increases to account for revenues lost as a result of the Agreed Tariff. The Board sets rates, not revenues. Furthermore, the Board cannot delegate its rule making authority to third parties, particularly the Pilots over whom it is supposed to preside. The Board's actions in this regard violate Texas law and greatly undermine the public trust.

26. Additionally, the Board's actions are not reasonably supported by substantial evidence. Although the Pilots have maintained until quite recently that the second pilot requirement is necessary for safety, it is not a safety issue and is instead a simple money grab emboldened by a state-sanctioned monopoly. The Pilots' concession in the context of rate hearings, which are purely financial, confirms that safety is not a factor on this issue. Furthermore, vessel owners and operators are primarily responsible for the safety of their equipment, the environment, their personnel, and their passengers whereas, in contrast, the Pilots are insulated from liability by statute and are largely unaccountable for safety issues.

27. The Board's actions are also arbitrary, capricious and constitute an abuse of discretion. The Board cannot effectively vacate its order approving the Agreed Tariff without proper reconsideration, which was entirely lacking here. The Board's actions were undertaken without any appropriate guiding principles and were instead simply deferential to the dictates of the Pilots.

F. **CONCLUSION**

For the foregoing reasons, Petitioners Carnival Corporation, Royal Caribbean Cruises Ltd. and the Florida-Caribbean Cruise Association respectfully request that the Court, after review, enter an order that the Agreed Tariff is valid and enforceable, that the

second pilot requirement should be eliminated for cruise ships of 1025 feet LOA and less, and that the Board's inaction after the Pilots withdrew their Application constituted an abuse of discretion in violation of Texas law, wholly unsupported in the face of substantial evidence to the contrary. Petitioners further request such other relief, at law or in equity, to which they may be entitled.

Respectfully submitted,

FOWLER RODRIGUEZ VALDES-FAULI


Justin W. R. Renshaw
Texas Bar No. 24013392
1331 Lamar, Suite 1560
Houston, Texas 77010
Phone: 713-654-1560
Fax: 713-654-7930
jrenshaw@frvf-law.com

*Attorneys for Carnival Corporation,
Royal Caribbean Cruises, Ltd. and
The Florida-Caribbean Cruise Assoc.*