

U.S. Department of
Homeland Security

United States
Coast Guard



Administrative Law Judge – Alameda

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June 29, 2011

FAX COVER SHEET

(5 pages, including cover sheet)

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United States Coast Guard
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FAX: (410) 962-1746

Subj: Scheduling Order for EAJA Claim of Lobsters, Inc./Yacubian (NE980310M/V)

Please see the attached Order from Judge McKenna.

Thank you.

Curtis E. Renoe
Attorney-Advisor to the
Hon. Parlen L. McKenna

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**UNITED STATES DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION**

<u>IN THE MATTER OF:</u>)	Docket Number
)	
Lobsters, Inc.)	NE980310M/V
Lawrence M. Yacubian)	
)	Hon. Parlen L. McKenna
)	
<u>Respondents</u>)	

**BRIEFING AND SCHEDULING ORDER REGARDING
APPLICANTS' EAJA CLAIM**

On June 27, 2011, the United States Coast Guard ALJ Docketing Center received Lobsters, Inc. and Lawrence M. Yacubian's (hereinafter Applicants) application for attorney's fees and expenses against the National Oceanic and Atmospheric Administration (NOAA or Agency) pursuant to 5 U.S.C. § 504 (the Equal Access to Justice Act or EAJA). NOAA EAJA proceedings are governed by the Department of Commerce's implementing regulations found at 15 C.F.R. Part 18.¹

On June 27, 2011, the Chief Administrative Law Judge of the United States Coast Guard issued a Notice of Reassignment of this matter to the undersigned for review and disposition. Under the regulations, an EAJA claim must be assigned and decided by the "adjudicative officer" who presided at the adversary adjudication. See 15 C.F.R. § 18.2. Judge Edwin M. Bladen originally presided over the case and issued the Initial Decision and Order.² Because Judge Bladen had retired by the time this case was remanded to the Agency following proceedings in the District Court of Massachusetts, the case was

¹ NOAA is an agency within the Department of Commerce and the regulations explicitly include all of Commerce's component agencies. See 15 C.F.R. § 18.1.

² See In re Lobsters Inc., et al., 2001 WL 1632538 (NOAA 2001).

assigned to me. Therefore, since I was the presiding judge at the time the case settled, the Applicants' EAJA claim was necessarily assigned to me pursuant to Agency regulations.

On June 29, 2011, Applicants filed a Motion for Additional Discovery by way of Request for Production of Documents. Applicants filed this discovery motion pursuant to the Agency's civil enforcement regulations found at 15 C.F.R. Part 904, Subpart C. As noted above, this EAJA claim is governed by 15 C.F.R. Part 18 and not the Agency's civil enforcement regulations.

I will, therefore, treat the requested discovery as a filing brought under the applicable EAJA regulations at 15 C.F.R. Part 18. See 15 C.F.R. § 18.20(a) (party may request discovery); see also 15 C.F.R. § 18.20 (the adjudicative officer determines a claim based on the written record and may order further proceedings/filings when "necessary for a full and fair resolution of issues arising from the application" and whether or not the position of the agency was substantially justified "shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication") (emphasis added). The Agency may respond to the requested discovery according to the schedule in this Order.

Furthermore, this Order highlights for the parties the relevant timeframe by which briefing on the EAJA claim is due under the applicable regulations.

ORDER

WHEREFORE:

IT IS HEREBY ORDERED that NOAA has fourteen calendar days from the date of this Order to respond to Applicants' Motion for Discovery.

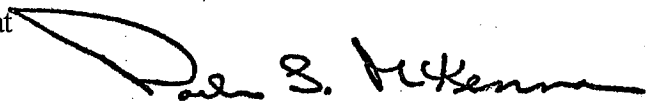
IT IS HEREBY FURTHER ORDERED that Applicants may submit a reply to any such submission within seven calendar days following the Agency's filing.

IT IS HEREBY FURTHER ORDERED that pursuant to 15 C.F.R. § 18.16, NOAA may file an Answer to Applicants' EAJA claim within thirty calendar days after service of the application. If the answer is based on any alleged facts not already in the record, agency counsel shall include with the answer either supporting documents, affidavits or a request for further proceedings under §18.20. See 15 C.F.R. § 18.16(c).

IT IS HEREBY FURTHER ORDERED that pursuant to 15 C.F.R. § 18.17, Applicants may file a reply within fifteen calendar days after service of NOAA's answer. If the reply is based on any alleged facts not already in the record of the proceeding, Applicants shall include with the reply either supporting documents, affidavits or a request for further proceedings under §18.20. See 15 C.F.R. § 18.17.

IT IS HEREBY FURTHER ORDERED that a party may request an extension of time for any of these dates by written motion establishing good cause for such extension, except for NOAA's Answer, extension of time for which is governed by 15 C.F.R. § 18.16(a).

Done and dated this 29th day of June, 2011 at Alameda, CA.



HON. PARLEN L. MCKENNA
Administrative Law Judge
United States Coast Guard

CERTIFICATE OF SERVICE

I hereby certify that I served the attached **BRIEFING AND SCHEDULING ORDER REGARDING APPLICANTS' EAJA CLAIM** upon the following parties (or designated representatives) and entities in this proceeding in the manner indicated as follows:

VIA FACSIMILE

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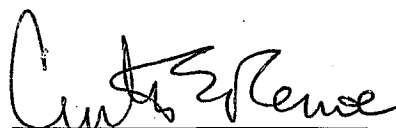
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HON. PARLEN L. MCKENNA