

FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF PILOT COMMISSIONERS
PILOTAGE RATE REVIEW COMMITTEE

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	5/17/2016
File #	

In re: Applications for a Change in Rates
Of Pilotage, filed by the Florida
Caribbean-Cruise Association and
Alternative Application for a Change in
Rates of Pilotage for Port Miami, filed by
Biscayne Bay Pilots, Inc.

Case No.: PRC 2014-1

**FLORIDA-CARIBBEAN CRUISE ASSOCIATION'S RESPONSE TO THE BISCAYNE
BAY PILOTS' MOTION FOR STAY**

COMES NOW, pursuant to section 106.204, Florida Administrative Code, the Florida-Caribbean Cruise Association (“**FCCA**”) hereby files this Response to the Biscayne Bay Pilots’ (“**BBP**”) Motion for Stay, and in support thereof states as follows:

1. BBP’s Motion for Stay is another step in a long series of efforts to avoid, hinder, and delay any rate change proceeding from ever taking place at PortMiami. BBP’s Motion for Stay should be denied because a petition for writ of prohibition filed by BBP is not likely to succeed on the merits and because, as BBP’s own motion points out, BBP will not suffer any harm if a stay is not entered. The FCCA has been seeking a rate reduction hearing from this Committee for over three years, and should have the right to finally have the merits of its application considered and voted upon.

I. BBP’s Petitions Are Not Likely To Succeed On The Merits

2. BBP’s petition for writ of prohibition as it relates to Commissioners Sola and Assal’s denial of BBP’s motion to disqualify is not likely to succeed for the reasons set forth by the FCCA in its response to BBP’s motions. As pointed out in those responses, Commissioners Sola and Assal are not members of the FCCA, hold no membership in the FCCA, and cannot be

considered *de facto* applicants of the FCCA's rate change proceeding. The Commissioners' employers have *zero* financial interest in, and are not substantially affected by, the pilotage rates set at PortMiami. Because the Commissioners' employers are not substantially affected by the pilotage rates at PortMiami, they cannot have standing to seek a pilotage rate change, and cannot be considered *de facto* applicants to the FCCA's rate change application. Similarly, BBP previously expressed concern that former Commissioners Burke and Miguez would not vote in a manner that would be financially detrimental to their employers, two cruise line companies. Here, because Commissioner Sola and Assal's employers do not stand to gain or detriment by a pilotage rate change, the same fear on BBP's part cannot exist.

3. Simply put, none of the reasons that former Commissioners Burke and Miguez were disqualified for are present in the instant case. Florida Statutes §310.011 and 310.151 require two individuals who are actively involved in a business or professional capacity in the maritime, marine shipping, or cruise line industry to sit on the Rate Review Committee. Commissioners Sola and Assal are both actively involved professionals in the industry, and thus – not surprisingly – have business relationships with pilotage rate payers. If the statutory language is to be given any meaning, these business relationships cannot also form the basis for disqualification when there are absolutely no specific facts alleged demonstrating any sort of bias or prejudice. If doing business with a cruise, cargo or other shipping line requires an individual to be disqualified from participating on the Committee, then no maritime professional could ever sit on the Committee, which would be in clear contravention of the statute.

4. BBP is also not likely to succeed on its appeal of Commissioner Trueba's anticipated denial of BBP's motion to disqualify. As also set forth in the FCCA's response to BBP's motion, Commissioner Trueba's statements at the January 21st legislative committee meeting cannot

form the basis for disqualification. Commissioner Trueba's statements were focused on the Florida Harbor Pilot Association's proposal to the Board that the piloting statutes be changed to include automatic, annual CPI adjustments to the rates. Commissioner Trueba made no statements regarding any pending rate change application, or any applicant. He merely stated that he could not support a *CPI legislative proposal* until rates are charged in a more equitable manner. To the extent that Commissioner Trueba mentioned PortMiami, he simply pointed out statistics from that port showing a disparity in workloads and revenues between cruise and non-cruise line vessels. This was not a statement of bias or prejudice, but a statement of fact. Moreover, Commissioner Trueba's statements not only show that he is seeking equity, but also cannot reasonably be interpreted to mean he supports the FCCA's rate decrease or BBP's rate increase. Equity in the rates could be achieved in any variety of manners, and does not indicate any support for, or against, a particular application or applicant.¹

5. Regarding Commissioner Trueba's purported absences from the Board, BBP's appeal is not likely to succeed because its motion based Commissioner Trueba's absences on a period of 12 months and 1 day, not 12 months as required by section 455.207(3), Florida Statutes. ("Three consecutive unexcused absences or absences constituting 50 percent or more of the board's meetings *within any 12-month period* shall cause the board membership of the member in question to become void, and the position shall be considered vacant."). Based on the facts as alleged in BBP's motion, Commissioner Trueba did not miss 50 percent of meetings from October 2, 2014 to October 1, 2015. BBP's appeal also must fail because BBP has no right to move to disqualify Board members from the Board by bringing a cause of action. Unlike other

¹ It is perplexing that BBP seeks disqualification of Commissioner Trueba for his comments on the CPI legislative proposal, when Commissioners Kurtz spoke out *in favor of* the CPI proposal, which – according to BBP's theory of disqualification – would also require Commissioner Kurtz to disqualify herself. Yet, BBP opposed the FCCA's motion to disqualify Commissioner Kurtz.

statutory remedies, such as section 120.665, section 455.207 does not provide BBP with an independent remedy to seek disqualification of a Board member, and its motion should be denied by Commissioner Trueba.

6. Thus, BBP is not likely to succeed on the merits of its appeal of Commissioner Sola, Assal, and Trueba's denial of BBP's motions to disqualify.

II. BBP Will Not Suffer Any Harm If The Hearing Moves Forward.

7. BBP's Motion for Stay also should be denied because BBP will not suffer harm from the final hearing taking place on June 2-3. As BBP pointed out in its own motion to stay, should the Committee move forward with the hearing and ultimately decide to lower rates as a result, any administrative appeal of that decision automatically requires the pilots to place in an interest bearing account the difference between the previous rates and the proposed pilotage rates. Fla. Stat. §310.151(4)(b).

8. The escrow provision in section 310.151(4)(b) prevents the pilots from suffering any potential harm should the final hearing go forward. If the Committee votes to reduce rates and BBP administratively appeals that decision, the difference between the reduced rate and current rates must be placed in escrow pending the outcome of the administrative proceeding. In the interim timeframe, BBP's petitions for writ of prohibition will be resolved by the First DCA. If BBP prevails on appeal, and the rate reduction is nullified, then BBP can retain the funds placed in escrow. If BBP does not prevail on appeal, and the Committee's decision to reduce rates is upheld, then BBP can return the money placed in escrow to the appropriate rate payers. Under either scenario, BBP faces no harm.

9. Because BBP is not likely to succeed on the merits of its appeal, and because BBP cannot demonstrate any likelihood that it will suffer harm, its motion for stay should be denied.

WHEREFORE, the Florida-Caribbean Cruise Association respectfully requests that the Pilotage Rate Review Committee **DENY** the Biscayne Bay Pilots' Motion for Stay.

Respectfully Submitted,

PANZA, MAURER & MAYNARD, P.A.
2400 E Commercial Boulevard, Suite 905
Fort Lauderdale, FL 33308
Tel: (954) 390-0100
Fax: (954) 390-7991

By: s/Thomas F. Panza
THOMAS F. PANZA
FL. BAR NO. 138551

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail on this 16th day of May, 2016, upon the following:

Donna E. Blanton
Radey Law Firm
301 South Bronough, Suite 200
Tallahassee, Florida 32301
dblanton@radeylaw.com
Telephone: 850-425-6654
Counsel for Biscayne Bay Pilots, Inc

Robert Peltz
The Peltz Law Firm
10220 SW 141st Street
Miami, FL 33176
rpeltzlaw@gmail.com
Telephone: 786-732-7219
Counsel for Biscayne Bay Pilots, Inc

Carolyn Kurtz
Tampa Bay Pilot Association
1825 Sahlman Drive
Tampa, FL 33605
pilotmom42@aol.com

James Winegeart
St. John's Bar Pilot Association
4910 Ocean Street
Atlantic Beach, FL 32233
winegeart@jaxpilots.com

Cheryl Phipps
Port Everglades Pilot Association
P.O. Box 13017
Port Everglades, FL 33316
anjinsanpe@aol.com

Michael Jaccoma
Biscayne Bay Port Pilots Association
2911 Port Boulevard
Miami, FL 33132
4mpilot@gmail.com

Bruce Cumings
Port Everglades Pilot Association
P.O. Box 13017
Port Everglades, FL 33316
brucecumings@yahoo.com

Clark Jennings
Board of Pilot Commissioners
1940 North Monroe Street
Tallahassee, Florida 32399-0783
Clark.jennings@myfloridalegal.com

Thomas Campbell
Board of Pilot Commissioners
1940 North Monroe Street
Tallahassee, Florida 32399-0783
Thomas.Campbell@myfloridalicense.com

By: s/Thomas F. Panza
THOMAS F. PANZA
FLA. BAR NO. 138551