

Houston Maritime Arbitrators Association Newsletter

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Summer 2006

MINUTES OF THE HMAA ANNUAL MEETING ON JUNE 20, 2006

On Tuesday, June 20, 2006 the annual meeting of the Houston Maritime Arbitrators Association was held at Crapitto's Restaurant in Houston, Texas. There was a quorum present and a number of proxies for voting had been received.

The meeting was called to order by the President Capt. Ed Knutsen. The first order of business was an introduction of the officers and directors of the Association

The following officers and directors were recognized as present: Chairman of the Board of Directors: Robert J. Ryniker, President & Vice Chairman of the Board of Directors: Ed Knutsen, Vice President at Large: Steve Stapleton, Vice President Marketing and Director: George McCarthy, Vice President Membership: Tom Donovan, Secretary and Director: William H. Seele. Treasurer: William Warnement and Director Gus Elmer were not present due to business commitments.

The President also took time to recognize the two honorary life members of the Association, Winn Wyman and Ed Bluestein and expressed our appreciation for their past and continuing efforts on behalf of the Association.

The next order of business was the election of the board of directors of the Association. The President advised that the terms of three of the members of the board expired as of the annual meeting; those being Robert J. Ryniker, Ed Knutsen and Gus Elmer. The President advised, that because of the term limits set out in the By-Laws of the Association, he could not stand for re-election to the board and also advised that Gus Elmer, although eligible to

serve a second term, had expressed his desire to not do so.

The President then called upon Chris Hart who served as Chairman of the Nominating Committee, to present the nominations for the board and to conduct the election of the directors.

Mr. Hart advised that the committee had five nominees to propose: Robert J. Ryniker, Michael Clann, Dave Scruton, John Britton and William Warnement. Mr. Hart did advise that originally Steve Stapleton was considered for nomination but he had asked that his name be withdrawn and in his place John Britton was nominated.. No further nominations were made from the floor and the election proceeded. After counting the ballots cast by those present as well as the valid and lawful proxies held by members present, and after the presentation of the various reports of the Association, Mr. Hart announced that Robert J. Ryniker was reelected and that Dave Scruton and John Britton were elected as Directors of the Association. The President thanked Mr. Hart and his fellow committee members Mick Grant and Mickey Watzak for their work.

The President then called upon the Chairman of the Board, Mr. Ryniker, to give a report on the preceding year. Among items discussed were the progress and future of the HMAA, in general, and specifically, efforts taken to increase the knowledge and exposure of HMAA to the maritime and other communities including presentations made by the Board to Citgo and other efforts. The Chairman also discussed the 2006 annual workshop and the videotaping of the presentation. During the report the Chairman entertained discussion from the floor as to the progress and future of the HMAA. The Chairman also took a moment to recognize Ed Knutsen, the outgoing President and Vice Chairman of the Board of Directors and the membership responded by applauding his efforts.

Upon completion of the Chairman's report, the President thanked him and called upon William Seele to present both his report as Secretary and that of the Treasurer who could not be present.

The Secretary advised that the minutes of the last annual meeting of the Association has been published in the HMAA newsletter and that printed copies were available. He proposed that reading of the minutes be waived. Upon motion duly made, seconded and unanimously approved, the reading of the minutes was waived and the minutes were approved.

The report of the Treasurer was then read by the Secretary. Upon motion made, seconded and unanimous vote, the report was accepted. The President thanked the Secretary for giving the Treasurer's report.

The President called upon George McCarthy to give his report on the Marketing Committee. Mr. McCarthy gave his report which lead to further discussion and input from the membership. Upon acceptance of the report, the President thanked Mr. McCarthy for same.

The President then called upon Tom Donovan, Vice President Membership to give his report. Mr. Donovan advised that eight new members had joined the Association during the last year. Mr. Donovan's report was accepted and the President thanked him for same.

The President also noted that special thanks should be given to Vice President at Large Steve Stapleton as he had been in charge of arranging the venue for the annual meeting and dinner. The membership expressed their gratitude to Mr. Stapleton by their applause.

The floor was opened for any further old or new business. Members briefly discussed several issues but none which required any action on behalf of the Membership.

There being no further business, the meeting, upon motion made, seconded and approved, was adjourned.

William H. Seele
Secretary

MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS

On Wednesday, June 28, 2006 the regular meeting of the Board of Directors of Houston Maritime Arbitrators Association was held at the Saltgrass Restaurant on the Katy Freeway in Houston, Texas.

All members of the board were present that being Robert J. Ryniker, George McCarthy, John Britton, Dave Scruton and William H. Seele.

The meeting was called to order at 11:45 a.m. by the Chairman of the Board Robert J. Ryniker. The first order of business was the approval of the minutes of the annual general meeting of HMAA held on June 20, 2006. Copies of the minutes were circulated to the Board members and after review, were upon motion made and seconded, unanimously approved. The Secretary was instructed to send a copy of the minutes in PDF format to the Membership Chairman for inclusion in the next newsletter of the HMAA.

The next order of business was the election of officers as required by the By-Laws. After full discussion, the officers of the Association were elected as follows:

Chairman of the Board of Directors: Robert J. Ryniker
President & Vice Chairman of the Board of Directors: John Britton
Vice President at Large: Steve Stapleton
Vice President Marketing: George McCarthy
Vice President Membership: Tom Donovan
Secretary: William H. Seele
Treasurer: William Warnement

The Board then discussed the reports from the recent annual meeting, the meeting location and comments regarding same as well as issues related to the HMAA training session and marketing efforts. No decisions were reached or motions proposed as to any item.

The Board then discussed a proposal that Captain Ed Knutsen be selected as an Honorary Life Member of HMAA due to his many years of valuable service to the Association. Upon motion

made and seconded, the Board unanimously approved the proposal and Captain Knutsen was selected as an Honorary Life Member of HMAA.

There being no further business, the meeting, upon motion made, seconded and approved, was adjourned.

William H. Seele
Secretary

THE FUTURE OF MARINE ARBITRATION IN HOUSTON

- By Captain Edward W. Knutsen

Having had the privilege of being closely involved with the Houston Maritime Arbitrators Association since its founding, and now that I've served as a Director and Officer for a number of years, at the Annual Meeting in June 2006, I handed over the reins of directorship in our fine organization to very capable hands.

It is my firm opinion that HMAA has a glowing future as a prime means of alternative dispute resolution. We have formed, and grown, a commercially oriented group with a most practical approach to ADR. In just the short time HMAA has been in existence, we have held very practical, informative workshops for the training of arbitrators. These sessions have grown in expertise communicated to the trainees, and for the last two years we've had the opportunity to have as Chief Instructor one of the most well-versed attorneys in the field of arbitration. He has developed an extremely comprehensive reference manual for students (and others) which should stand our arbitrators in very good stead in approach to and expeditious management of arbitrations.

The Port of Houston continues to grow and prosper, and with it the total maritime community in Houston and environs continues to expand. This growth was foreseen at the time HMAA was founded. Thus, it becomes increasingly sensible to endeavor to find means of resolving maritime disputes locally, expeditiously, and in a commercially-oriented manner. The effective marketing done by the officers and directors of HMAA, and some of the arbitrations handled under HMAA Rules, have attracted the attention of others in the worldwide maritime community,

and even the envy of other venues handling ADR around the world.

In my judgment, if we continue to steer the same course we've established, and expand upon our efforts to spread the good word about HMAA far and wide, we have a very bright future, indeed, as we go forward.

ANNUAL MEETING IN REVIEW

-By Steve Stapleton

This year the HMAA move the venue and improved the menu for its Annual meeting and elections. The June 20th 2006 meeting and elections were held in the private upstairs dining room at Crapitto's restaurant just inside the loop in the River Oaks area.

It set a relaxed but elegant atmosphere and the room was conducive to good discussions both personally and for the matters of business at hand.

The evening's event featured a cocktail hour for socializing prior to sitting down to a delicious meal with salad, breads, choice of either seafood pasta, veal, lasagna or salmon, wine and finished off with homemade cheesecake and coffees.

We look forward to utilizing Crappito's again and other venues in the future. The HMAA board would like to add 1 or 2 additional social events apart from the annual meeting for getting better acquainted with one another and introducing clients to the HMAA. We look forward to more members participating actively in the coming year.

HMAA Training Spring 2007

Subject to the number of attendees, a training session in the spring of 07 is being taken under advisement. If anyone is interested in attending would they be so kind as to drop us an email. There is no firm commitment by giving us an indication

Law Committee on Maritime Arbitration

Editors: William A. Durham
John M. Elsley
William H. Seele

The Law Committee brings before the Membership two recent cases from the U.S. Court of Appeals for the Second and Eleventh Circuits. Although Texas is not within either circuit, it is believed these would be of interest.

Dynegy Midstream Services, LP v. Trammochem

Docket No. 05-3544 Second Circuit

This decision addressed the issue of the enforcement of a subpoena issued to a non-party who is not located in the district in which the arbitration is being conducted. That is does the Federal Arbitration Act ("FAA") authorize nationwide service of process.

The arbitration involved a dispute between charterers Trammochem and owners regarding a shipment from Houston to Antwerp. Dynegy Midstream Services (DMS) were retained to provide facilities and services in Houston but were not a party to the arbitration and attempts to vouch DMS into the proceeding were opposed and as of the time of the opinion that had not occurred.

The arbitrators issued a subpoena required DMS to produce documents which was served on DMS's registered agent in Houston. DMS refused to comply. A motion was then filed in the United States District Court for the Southern District of New York. DMS had no contacts with the district and fought enforcement on the issue of a lack of personal jurisdiction. The district court disagreed and ordered DMS to comply with the subpoena, which lead to the appeal.

After first addressing and finding that the order was final and appealable, the Court analyzed the personal jurisdiction issue. The thrust of the Appellees argument was that Section 7 of the FAA authorizes nationwide service of process. Appellant argued that it did not and that since the court lacked personal

jurisdiction over it and the subpoena could not be enforced. The Court of Appeals agreed with the Appellant holding the order must be set aside.

For HMAA members, the court did make some interesting comments:

"The parties to the arbitration here chose to arbitrate in New York even though the underlying contract and all of the activities giving rise to the arbitration had nothing to do with New York; they could easily have chosen to arbitrate in Texas, where DMS would have been subject to an arbitration subpoena and a Texas district court's enforcement of it. Having made one choice for their own convenience, the parties should not be permitted to stretch the law beyond the text of Section 7 and Rule 45 to inconvenience witnesses... DMS is not a party to the contract, and not even the strong federal policy favoring arbitration can lead to jurisdiction over a non-party without some basis in federal law."

Halbert International, LLC v. Hercules Steel Company

441 F. 3d. 905 (11th Cir. 2006)

Decided February 28, 2006

This non-maritime case involved the vexing problem of challenges to arbitration awards made by losing parties which the court describes as the "poor loser problem." The court in what one might readily call strong language took the appellant to task for its actions in attempting to overturn the award.

The case involved a dispute between Harbert, the general contractor, and Hercules, the steel fabrication and erection subcontractor, regarding the construction of an office complex for the Army's Special Operations Forces at Fort Bragg, North Carolina. The contract called for binding arbitration under the auspices of the American Arbitration Association using what are known as the Construction Industry Arbitration Rules. The case focused on which "Progress Schedule" was applicable to the project as two schedules were created by Harbert. Harbert was dissatisfied with Hercules progress, stopped payments and made claims for delay damages. Herbert initiated the arbitration to collect the

balance due on the subcontract, other damages, interest and attorney's fees. Harbert then counterclaimed for damages for delay and other items as well as interest and attorney's fees. At the end of the day, the sole arbitrator, who not only had served as general counsel to a large construction company but also had been a United States District Judge including nine years as Chief Judge of his district, agreed with Hercules and against Harbert.

Dissatisfied Harbert filed suit in the district court to vacate the award contending that the arbitrator's decision was a manifest disregard of the law. The district court denied the relief sought finding no evidence of manifest disregard. Still unhappy, Harbert filed its appeal.

In the opening paragraph of its opinion the Court, even before discussing the case before it, set out the goals of the FAA to endorse and encourage arbitration as an alternative to litigation and its use in the business world, and in its opening comments further stated:

"The laudatory goals of the FAA will be achieved only to the extent that courts ensure arbitration is an alternative to litigation, not an additional layer in a protracted contest. If we permit parties who lose in arbitration to freely relitigate their cases in court, arbitration will do nothing to reduce congestion in the judicial system; dispute resolution will be slower instead of faster; and reaching a final decision will cost more instead of less. This is a good example of the poor loser problem and it provides us with an opportunity to discuss a potential solution."

The Court of Appeals discussed the limited basis for an appeal and overturning same. Harbert's arguments centered on "manifest disregard of the law." A discussion of what constitutes manifest disregard is contained in the opinion and the committee refers the reader to such. The bottom line was that the Court of Appeals agreed with the district court and found no manifest disregard of the law by the arbitrator but did then state:

"The only manifest disregard of the law evident in this case is Harbert's refusal to accept the law of this circuit which narrowly circumscribes judicial review of arbitration awards. By attacking the arbitration award in this case Harbert has shown at best an indifference to the law of our circuit governing the subject.

Harbert's refusal to accept that there is no basis in the law for attacking the award has come at a cost to the party with whom Harbert entered into the arbitration agreement and to the judicial system."

The Court went on to further castigate Harbert and formulate a rule that in future cases, the Eleventh Circuit would order monetary sanctions against a party who acts as Harbert did. Harbert was spared sanctions in this case greatly in part because it had no notice sanctions could be imposed but as the opinion concludes in referring to the opinion:

"The notice it provides, hopefully to even the least astute reader, is that this Court is exasperated by those who attempt to salvage arbitration losses through litigation that has no sound basis in the law applicable to arbitration awards. The warning this opinion provides is that in order to further the purposes of the FAA and to protect arbitration as a remedy we are ready, willing, and able to consider imposing sanctions in appropriate cases. While Harbert and its counsel did not have the benefit of this notice and warning, those who pursue similar litigations positions in the future will."

It will be interesting to see if other Courts of Appeal, including the Fifth Circuit, which encompasses Texas, will take a similar approach.