

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
Brighton Equipment Corporation)
140 East Ridgewood Avenue, Suite 3)
Paramus, New Jersey 07652)
)
Respondent)
_____)

ORDER

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) has notified Brighton Equipment Corporation (“Brighton”) of Paramus, New Jersey, of its intention to initiate an administrative proceeding against Brighton pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2008)) (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (the “Act”),² through the issuance of a proposed charging letter to Brighton that alleged that Brighton committed one violation of the Regulations, specifically:

¹ The violation charged occurred in 2004. The Regulations governing the violation at issue are found in the 2004 version of the Code of Federal Regulations. *See* 15 C.F.R. Parts 730-774 (2004). The 2008 Regulations govern the procedural aspects of this case.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 Fed. Reg. 46,137 (Aug. 16, 2007)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”).

Charge 1 15 C.F.R. §764.2(a) – Exporting without a license

On or about July 30, 2004, Brighton exported software subject to the Regulations and classified under Export Control Classification Number (ECCN)³ 2D002, to the People's Republic of China (PRC) without the export license required by BIS. The controlled software was incorporated into a "15i-M CNC Control System" originally manufactured by GE Fanuc. Pursuant to Sections 742.3 and 742.4 of the Regulations, a license is required to export or reexport items classified under ECCN 2D002 to the PRC for nuclear nonproliferation and national security reasons. By exporting the software without the license required by Sections 742.3 and 742.4 of the Regulations, Brighton committed one violation of Section 764.2(a) of the Regulations.

WHEREAS, BIS and Brighton have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein, and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of \$17,500 is assessed against Brighton, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Brighton will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to Brighton. Accordingly, if

³ "ECCN" refers to "Export Control Classification Number." See 15 C.F.R. § 772.1.

Brighton should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of Brighton's export privileges under the Regulations for a period of one year from the date of entry of this Order.

FOURTH, that the proposed charging letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.



Darryl W. Jackson
Assistant Secretary of Commerce
for Export Enforcement

Entered this 11th day of June, 2008.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
)
Brighton Equipment Corporation)
140 East Ridgewood Avenue, Suite 3)
Paramus, New Jersey 07652)
)
Respondent)
)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Respondent, Brighton Equipment Corporation (“Brighton”) of Paramus, New Jersey and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively referred to as “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2008)) (“Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”).²

WHEREAS, BIS has notified Brighton of its intention to initiate an administrative proceeding against Brighton, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to Brighton that alleged that Brighton committed one violation of the Regulations, specifically:

¹ The violation charged occurred during 2004. The Regulations governing the violation at issue are found in the 2004 version of the Code of Federal Regulations. 15 C.F.R. Parts 730-774 (2004). The 2008 Regulations govern the procedural aspects of this case.

² Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 Fed. Reg. 46,137, Aug. 16, 2007), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (“IEEPA”).

Charge 1 15 C.F.R. §764.2(a) – Exporting without a license

On or about July 30, 2004, Brighton exported software subject to the Regulations and classified under Export Control Classification Number (ECCN)³ 2D002, to the People's Republic of China (PRC) without the export license required by BIS. The controlled software was incorporated into a "15i-M CNC Control System" originally manufactured by GE Fanuc. Pursuant to Sections 742.3 and 742.4 of the Regulations, a license is required to export or reexport items classified under ECCN 2D002 to the PRC for nuclear nonproliferation and national security reasons. By exporting the software without the license required by Sections 742.3 and 742.4 of the Regulations, Brighton committed one violation of Section 764.2(a) of the Regulations.

WHEREAS, Brighton has reviewed the proposed charging letter and is aware of the allegation made against it and the administrative sanctions which could be imposed against it if the allegation is found to be true;

WHEREAS, Brighton fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, Brighton enters into this Agreement voluntarily and with full knowledge of its rights;

WHEREAS, Brighton states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, Brighton neither admits nor denies the allegation contained in the proposed charging letter;

WHEREAS, Brighton wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, Brighton agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

³ "ECCN" refers to "Export Control Classification Number." See 15 C.F.R. § 772.1.

1. BIS has jurisdiction over Brighton, under the Regulations, in connection with the matters alleged in the proposed charging letter.

2. The following sanction shall be imposed against Brighton in complete settlement of the alleged violation of the Regulations relating to the transaction specifically detailed in the proposed charging letter:

- a. Brighton shall be assessed a civil penalty in the amount of \$17,500, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.
- b. The timely payment of the civil penalty agreed to in paragraph 2.a is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to Brighton. Failure to make timely payment of the civil penalty set forth above may result in the denial of all of Brighton's export privileges for a period of one year from the date of imposition of the penalty.

3. Subject to the approval of this Agreement pursuant to paragraph 8 hereof, Brighton hereby waives all rights to further procedural steps in this matter (except with respect to any alleged violations of this Agreement or the Order, if entered), including, without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if entered; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if entered.

4. Upon entry of the Order, BIS will not initiate any further administrative proceeding against Brighton in connection with any violation of the Act or the Regulations arising out of the transaction identified in the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

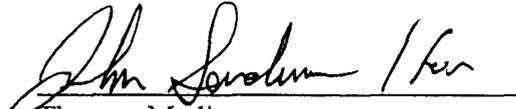
7. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by entering the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

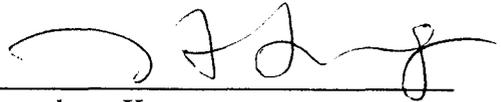
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE

BRIGHTON EQUIPMENT
CORPORATION



Thomas Madigan
Acting Director
Office of Export Enforcement



Humphrey Kung
General Manager

Date: 6/5/2008

Date: 6/2/08

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Brighton Equipment Corporation
3NT, Mack-Cali Center III
140 East Ridgewood Ave.,
Paramus, NJ 07652

Attn: Mr. Humphrey Kung, General Manager

Dear Mr. Kung:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that Brighton Equipment Corporation, of Paramus, NJ (“Brighton”), has committed one violation of the Export Administration Regulations (the “Regulations”),¹ which are issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS charges that Brighton committed the following violation:

Charge 1 15 C.F.R. §764.2(a) – Exporting without a license

On or about July 30, 2004, Brighton exported software subject to the Regulations and classified under Export Control Classification Number (ECCN)³ 2D002, to the People’s Republic of China (PRC) without the export license required by BIS. The controlled software was incorporated into a “15i-M CNC Control System” originally manufactured by GE Fanuc. Pursuant to Sections 742.3 and 742.4 of the Regulations, a license is required to export or reexport items classified under ECCN 2D002 to the PRC for nuclear nonproliferation and national security reasons. By exporting the software without the license required by Sections 742.3 and 742.4 of the Regulations, Brighton committed one

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2008). The violation charged occurred in 2004. The Regulations governing the violation at issue are found in the 2004 version of the Code of Federal Regulations. *See* 15 C.F.R. Parts 730-774 (2004). The 2008 Regulations govern the procedural aspects of this case.

² 50 U.S.C. app. §§ 2401- 2420 (2000). Since August 21, 2001 the Act has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 Fed. Reg. 46,137, Aug. 16, 2007), has continued the Regulations in effect under International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (“IEEPA”). The Act and the Regulations are available on the Government Printing Office website at: <http://www.access.gpo.gov/bis/>.

³ “ECCN” refers to “Export Control Classification Number.” *See* 15 C.F.R. § 772.1.

violation of Section 764.2(a) of the Regulations.

* * * * *

Accordingly, Brighton is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of \$250,000 per violation, or twice the value of the transaction that is the basis of the violation;⁴
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

If Brighton fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7 (2007). If Brighton defaults, the Administrative Law Judge may find the charges alleged in this letter to be true without a hearing or further notice to Brighton. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty based on the charges in this letter.

Brighton is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. *See* 15 C.F.R. § 766.6 (2007). Brighton is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. 15 C.F.R. §§ 766.3(a) and 766.4 (2007). 1

Brighton is additionally notified that under the Small Business Regulatory Enforcement Flexibility Act, it may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: <http://www.sba.gov/ombudsman/>.

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18 (2007). Should Brighton have a proposal to settle this case, Brighton's representative should transmit it through the attorney representing BIS, who is named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Brighton's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center

⁴ *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

Brighton Equipment Corporation
Proposed Charging Letter
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40 S. Gay Street
Baltimore, Maryland 21202-4022

In addition, a copy of Brighton's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Glenn H. Kaminsky, Esq.
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Glenn Kaminsky is the attorney representing BIS in this case; any communications that Brighton may wish to have concerning this matter should occur through him. Mr. Kaminsky may be contacted by telephone at (202) 482-5301.

Sincerely,

Thomas Madigan
Acting Director
Office of Export Enforcement