

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

In the Matter of:

Ethan Levander
1 Glacier Drive
Smithtown, NY 11787

Respondent

ORDER RELATING TO
ETHAN LEVANDER

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified Ethan Levander, of Smithtown, New York (“Levander”), of its intention to initiate an administrative proceeding against Levander pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”),¹ and Section 13(c) of the Export Administration Act of 1979, as amended (the “Act”),² through the issuance of a Proposed Charging Letter to Levander that alleges that Levander committed one violation of the Regulations. Specifically, the charge is:

Charge 1 15 C.F.R. § 764.2(g) - False Statements to BIS in the Course of an Investigation

Between on or about November 21, 2008, and on or about December 2, 2008, Levander made false or misleading statements to BIS in the course of an investigation. Levander is the president of Temrex Corporation (“Temrex”). On or about November 21, 2008, Levander was interviewed by Special Agents of BIS’s Office of Export Enforcement (“BIS Special Agents”) concerning Tofflemire matrix bands, items subject to the

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2012). The charged violation occurred in 2008. The Regulations governing the violation at issue are found in the 2008 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2012 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). 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, 2012 (77 Fed. Reg. 49699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

Regulations³ and the Iranian Transactions Regulations (“ITR”),⁴ that Temrex had attempted to export from the United States to Iran via the United Arab Emirate (“UAE”) in October 2008. A trading company located in the United Arab Emirates (“UAE”) had been listed on the Shipper’s Export Declaration as the ultimate consignee for this export. During the interview, BIS Special Agents informed Levander that there were indications that the shipment was being diverted to Iran. Levander stated that he had “no indications whatsoever” the shipment was destined to Iran and that to the best of his knowledge the shipment was destined for the UAE only. These statements were false.

During the November 21, 2008 interview, Levander also stated that he was aware that a license from the Treasury Department’s Office of Foreign Assets Control (“OFAC”) would be required if the items were destined for Iran, and had known of the license requirement for shipping items to Iran for about ten years. He stated that to the best of his knowledge no license had been applied for in connection with the export at issue.

On or about December 2, 2008, Levander was interviewed about this export along with Temrex’s Vice President of Sales and Marketing, Jackie Prather (“Prather”), by BIS Special Agents. Despite the time he had to reflect on and reconsider his false and misleading statements during the prior interview, Levander did not correct those statements, but falsely stated, again, that he had no indication or idea that the export was destined for Iran. He did so even after the BIS Special Agents showed him a number of documents obtained from the U.S.-based freight forwarder indicating that the export had in fact been destined for a company located at Mehrabad Airport in Iran. Only after being confronted by BIS Special Agents with an August 21, 2008 email from Ms. Prather to the Iranian purchaser, on which Levander had been copied, did Levander admit to the BIS Special Agents that he knew that the export in question had been destined for Iran. The email not only was sent to the Iranian purchaser in connection with a sale and export to Iran, but also discussed a partially drafted OFAC license application. This application was not completed or filed before the attempted export to Iran described herein. Levander was aware that the items had been destined for Iran and required an OFAC license, and also was aware that notwithstanding this requirement, OFAC authorization had not been sought or obtained.

In so doing, Levander committed one violation of Section 764.2(g) of the Regulations.

WHEREAS, BIS and Levander 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

³ The items were valued at \$12,950, and were designated “EAR99” under the Regulations, which is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2008).

⁴ 31 C.F.R. § 560 (2008).

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

IT IS THEREFORE ORDERED:

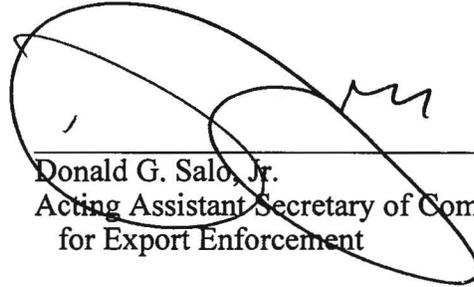
FIRST, Levander shall be assessed a civil penalty in the amount of \$5,250, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order.

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, Levander 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 full and timely payment of the civil penalty in accordance with the payment schedule 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 Levander. Accordingly, if Levander should fail to pay the civil penalty in a full and timely manner, the undersigned may issue an order denying all of Levander's export privileges under the Regulations for a period of one year from the date of failure to make such payment.

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.



Donald G. Salo, Jr.
Acting Assistant Secretary of Commerce
for Export Enforcement

Issued this 20th day of December, 2012.

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

In the Matter of:

Ethan Levander
1 Glacier Drive
Smithtown, NY 11787

Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Ethan Levander of Smithtown, New York (“Levander”), and the Bureau of Industry and Security, U.S. Department of Commerce (“BIS”) (collectively, the “Parties”), pursuant to Section 766.18(a) of the Export Administration Regulations (the “Regulations”),¹ issued pursuant to the Export Administration Act of 1979, as amended (the “Act”).²

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

WHEREAS, BIS has issued a Proposed Charging Letter to Levander that alleges that Levander committed one violation of the Regulations, specifically:

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2012). The charged violation occurred in 2008. The Regulations governing the violation at issue are found in the 2008 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2012 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. app. §§ 2401-2420 (2000). 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, 2012 (77 Fed. Reg. 49699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

Charge 1 15 C.F.R. § 764.2(g) - False Statements to BIS in the Course of an Investigation

Between on or about November 21, 2008, and on or about December 2, 2008, Levander made false or misleading statements to BIS in the course of an investigation. Levander is the president of Temrex Corporation (“Temrex”). On or about November 21, 2008, Levander was interviewed by Special Agents of BIS’s Office of Export Enforcement (“BIS Special Agents”) concerning Tofflemire matrix bands, items subject to the Regulations³ and the Iranian Transactions Regulations (“ITR”),⁴ that Temrex had attempted to export from the United States to Iran via the United Arab Emirate (“UAE”) in October 2008. A trading company located in the United Arab Emirates (“UAE”) had been listed on the Shipper’s Export Declaration as the ultimate consignee for this export. During the interview, BIS Special Agents informed Levander that there were indications that the shipment was being diverted to Iran. Levander stated that he had “no indications whatsoever” the shipment was destined to Iran and that to the best of his knowledge the shipment was destined for the UAE only. These statements were false.

During the November 21, 2008 interview, Levander also stated that he was aware that a license from the Treasury Department’s Office of Foreign Assets Control (“OFAC”) would be required if the items were destined for Iran, and had known of the license requirement for shipping items to Iran for about ten years. He stated that to the best of his knowledge no license had been applied for in connection with the export at issue.

On or about December 2, 2008, Levander was interviewed about this export along with Temrex’s Vice President of Sales and Marketing, Jackie Prather (“Prather”), by BIS Special Agents. Despite the time he had to reflect on and reconsider his false and misleading statements during the prior interview, Levander did not correct those statements, but falsely stated, again, that he had no indication or idea that the export was destined for Iran. He did so even after the BIS Special Agents showed him a number of documents obtained from the U.S.-based freight forwarder indicating that the export had in fact been destined for a company located at Mehrabad Airport in Iran. Only after being confronted by BIS Special Agents with an August 21, 2008 email from Ms. Prather to the Iranian purchaser, on which Levander had been copied, did Levander admit to the BIS Special Agents that he knew that the export in question had been destined for Iran. The email not only was sent to the Iranian purchaser in connection with a sale and export to Iran, but also discussed a partially drafted OFAC license application. This application was not completed or filed before the attempted export to Iran described herein. Levander was aware that the items had been destined for Iran and required an OFAC

³ The items were valued at \$12,950, and were designated “EAR99” under the Regulations, which is a designation for items subject to the Regulations but not listed on the Commerce Control List. 15 C.F.R. § 734.3(c) (2008).

⁴ 31 C.F.R. § 560 (2008).

license, and also was aware that notwithstanding this requirement, OFAC authorization had not been sought or obtained.

In so doing, Levander committed one violation of Section 764.2(g) of the Regulations.

WHEREAS, Levander has reviewed the Proposed Charging Letter and is aware of the allegation made against him and the administrative sanctions that could be imposed against him if the allegation is found to be true;

WHEREAS, Levander 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, Levander enters into this Agreement voluntarily and with full knowledge of his rights;

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

WHEREAS, Levander neither admits nor denies the allegation contained in the Proposed Charging Letter;

WHEREAS, Levander wishes to settle and dispose of all matters alleged in the Proposed Charging Letter by entering into this Agreement; and

WHEREAS, Levander agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

1. BIS has jurisdiction over Levander, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.

2. The following sanction shall be imposed against Levander in complete settlement of the alleged violation of the Regulations relating to the transaction specifically detailed in the Proposed Charging Letter:

a. Levander shall be assessed a civil penalty in the amount of \$5,250, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of the Order. Payment shall be made in the manner specified in the attached instructions.

b. The full and 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, license exception, permission, or privilege granted, or to be granted, to Levander. Failure to make full and timely payment of the civil penalty may result in the denial of all of Levander's export privileges under the Regulations for one year from the date of the failure to make such payment.

3. Subject to the approval of this Agreement pursuant to Paragraph 7 hereof, Levander 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 issued), including, without limitation, any right to: (a) an administrative hearing regarding the allegation in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if issued; and (c) seek judicial review or otherwise contest the validity of this Agreement or the Order, if issued. Levander also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, in connection with any violation of the Act or the Regulations arising out of the transaction

identified in the Proposed Charging Letter or in connection with collection of the civil penalty or enforcement of this Agreement and the Order, if issued, from the date of the Order until the date Levander pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement.

4. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a, BIS will not initiate any further administrative proceeding against Levander in connection with any violation of the Act or the Regulations arising out of the transaction specifically detailed in the Proposed Charging Letter.

5. 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.

6. 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 issued; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

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

8. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, available to the public.

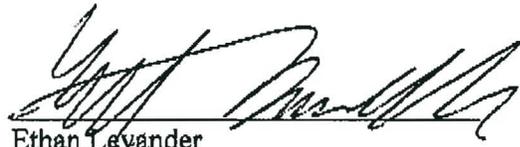
9. Each signatory affirms that he has authority to enter into this Settlement Agreement and to bind his respective party to the terms and conditions set forth herein.

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



Douglas R. Hassebrock
Director of Export Enforcement

ETHAN LEVANDER



Ethan Levander

Date:

12/17/12

Date:

11/28/2012

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Ethan Levander
1 Glacier Drive
Smithtown, NY 11787

Dear Mr. Levander:

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has reason to believe that you, Ethan Levander (“Levander”), of Smithtown, New York, committed one violation of the Export Administration Regulations (the “Regulations”),¹ which issued under the authority of the Export Administration Act of 1979, as amended (the “Act”).² Specifically, BIS alleges that Levander committed the following violation:

Charge 1 15 C.F.R. § 764.2(g) - False Statements to BIS in the Course of an Investigation

Between on or about November 21, 2008, and on or about December 2, 2008, Levander made false or misleading statements to BIS in the course of an investigation. Levander is the president of Temrex Corporation (“Temrex”). On or about November 21, 2008, Levander was interviewed by Special Agents of BIS’s Office of Export Enforcement (“BIS Special Agents”) concerning Tofflemire matrix bands, items subject to the Regulations³ and the Iranian Transactions Regulations (“ITR”),⁴ that Temrex had attempted to export from the United States to Iran via the United Arab Emirate (“UAE”) in October 2008. A trading company located in the United Arab Emirates (“UAE”) had been listed on the Shipper’s Export Declaration as the ultimate consignee for this export. During the interview, BIS Special Agents informed Levander that there were indications that the shipment was being diverted to Iran. Levander stated that he had “no indications whatsoever” the shipment was destined to Iran and that to the best of his knowledge the shipment was destined for the UAE only. These statements were false.

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² 50 U.S.C. app. §§ 2401-2420 (2000). 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, 2012 (77 Fed. Reg. 49,699 (Aug. 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. § 1701, *et seq.*).

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During the November 21, 2008 interview, Levander also stated that he was aware that a license from the Treasury Department's Office of Foreign Assets Control ("OFAC") would be required if the items were destined for Iran, and had known of the license requirement for shipping items to Iran for about ten years. He stated that to the best of his knowledge no license had been applied for in connection with the export at issue.

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In so doing, Levander committed one violation of Section 764.2(g) of the Regulations.

* * * * *

Accordingly, Levander is hereby notified that an administrative proceeding is instituted against him 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;⁵
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

⁵ See International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

If Levander 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. If Levander defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to Levander. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

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

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18. Should Levander have a proposal to settle this case, Levander should transmit it to the attorney representing BIS named below.

Levander is further notified that under the Small Business Regulatory Enforcement Flexibility Act, Levander 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 U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Levander'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
40 S. Gay Street
Baltimore, Maryland 21202-4022

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

Chief Counsel for Industry and Security
Attention: Gregory Michelsen, Esq.
Room H-3839
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Ethan Levander
Proposed Charging Letter
Page 4 of 4

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

Sincerely,

Douglas R. Hassebrock
Director
Office of Export Enforcement