



16781
March 19, 2001

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: MV00000893
[REDACTED]
UNNAMED ([REDACTED])
\$1,500.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00000893, which includes your appeal as owner/operator of the UNNAMED vessel [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$2,000.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 U.S.C. 2302(c) 33 C.F.R. 95	Operating a vessel while intoxicated	\$1,000.00
19 U.S.C. 70	Obstruction or hindrance to any officer in lawfully boarding a vessel	\$1,000.00

The violations were observed on February 20, 2000, when Coast Guard boarding officers boarded your vessel while it was underway in the Gulf of Mexico, near Key West, Florida.

On appeal, you do not deny the violations for failure to comply with 46 USC 2302(c) and 19 USC 70. Therefore, I consider the violations proved. However, you request mitigation of the \$2,000.00 civil penalty on several grounds. First, you claim that your actions during the Coast Guard boarding were completely out of character and constituted an aberration of your normal conduct. You also request mitigation of the penalty based upon your financial condition, including establishment of a payment plan. Finally, you request that the time you spent in the Key West jail be considered by the Hearing Officer. Your appeal is granted in part, and denied in part for the reasons described below.

As indicated above, since you do not deny either allegation, I find them proved. In addition, your admission is clearly supported by the evidence contained within the case file. The boarding

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officer detected a strong odor of alcohol on your breath, your face was flushed, your eyes bloodshot and your speech was described as slurred, stuttered, and confused. Furthermore, you failed each of the Field Sobriety Tests that were administered. Finally, numerous empty beer cans were found aboard your vessel. You subsequently became belligerent and physically resisted the boarding officers during the course of the boarding.

I completely agree with the comments of the Hearing Officer regarding your conduct. For someone who claims to have served twelve years in the military, the last three of which were as a police officer, your conduct is even more egregious. Coast Guardsmen, such as Petty Officer [REDACTED], often times put their physical security at risk by working in a difficult environment. Facing a belligerent citizen while they are attempting to enforce the laws of the United States only adds to the difficulty of their work.

While I find the \$2,000.00 civil penalty entirely appropriate, I am willing to slightly mitigate the penalty to \$1,500.00. This is the amount originally proposed by the operating program. I do this for two reasons. First, I believe you have provided adequate support regarding your current financial condition. I also am talking into consideration the fact that you went to Station Key West the day following this incident to personally apologize for your actions. Therefore, I find a penalty of \$1,500.00 to be appropriate under the circumstances. Should you still believe that you are financially unable to pay this penalty, you may request establishment of a payment plan. Requests for relief should be directed to the Chief, Claims Branch, Maintenance and Logistic Command Pacific, Coast Guard Island, Alameda, California 94501-5100.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$1,500.00** by check or money order payable to the U.S. Coast Guard is due and should be remitted promptly, accompanied by a copy of this letter. Send your payment to:

U.S. Coast Guard - Civil Penalties
P.O. Box 100160
Atlanta, GA 30384

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 5 % accrues from the date of this letter if payment is not received within 30 days. Payments received after 30 days will be assessed an administrative charge of \$12.00 per month for the cost

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of collecting the debt. If the debt remains unpaid for over 90 days, a 6% per annum late payment penalty will be assessed on the balance of the debt, the accrued interest, and administrative costs.

Sincerely,

//S//

DAVID J. KANTOR
Deputy Chief,
Office of Maritime and International Law
By direction of the Commandant

Copy: Commanding Officer, U.S. Coast Guard Hearing Office
Commander, Finance Center