

U.S. Department
of Transportation

United States
Coast Guard



COMMANDANT
U. S. Coast Guard

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Washington, DC 20593-0001
Staff Symbol: G-LMI
Phone: (202) 267-1527
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16731
March 26, 2002

[REDACTED]
[REDACTED]
[REDACTED]

RE: MV00003619
[REDACTED]
UNNAMED ([REDACTED])
\$100.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00003619, which includes your appeal as owner of the unnamed recreational vessel ([REDACTED]). The appeal is from the action of the Hearing Officer in assessing a \$100.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 USC 2302(c)	Operating a vessel while intoxicated.	\$100.00

The violation was observed on June 29, 2000, when Coast Guard boarding officers boarded your vessel while you were operating it in Fox Lake, Illinois.

On appeal, you do not deny the violation of 46 USC 2302(c). You contend, however, that because the matter was resolved by a judge in [REDACTED], "paying a fine on a dismissed ticket would be inappropriate." Your appeal is denied for the reasons described below.

I will begin by addressing your contention that the matter has been resolved. You contend that the violation was dismissed on October 23, 2001, by an Illinois Circuit Court Judge. According to the case file, the violation was not dismissed. You were found guilty, assessed a fine of \$650.00 and placed under court supervision for one year. You also contend that because no one from the Coast Guard appeared at the hearing to appeal the Judge's decision, further action now, is inappropriate. It is not customary policy for the Coast Guard to send boarding officers to cases being tried in a Criminal Court unless there was gross negligence involved. As there was no gross negligence involved in this case, the Coast Guard appropriately declined to attend the hearing.

Your contention that the violation of 46 USC 2303(c) should be rescinded due to the order of the Circuit Court of the [REDACTED], Lake County, Illinois is likewise without merit. In essence, you are raising the defense of double jeopardy. The Coast Guard's action in this case is in no way barred by any of the

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proceedings in the related state action. The waters of Fox Lake are subject to concurrent Federal and state jurisdiction. As such, the Coast Guard has jurisdiction to assess an administrative civil penalty against the operator of the vessel without regard to any action by the state of Illinois. Neither the applicable statute nor any known theory regarding the enforcement authority of the Federal and state governments precludes the Coast Guard from assessing a civil penalty. Indeed, the Federal government is not precluded from imposing both criminal and civil sanctions for the same conduct. See, *One Lot Emerald Cut Stones and One Ring v. United States*, 409 U. S. 232, 93 S. Ct. 489 (1972). Therefore, because you do not deny the violation, I consider it proved.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violation occurred and that you are the responsible party. I believe that the Hearing Officer took into consideration that you were fined and placed under court supervision for a period of one year when he reduced the penalty from \$1,000.00 to \$100.00. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$100.00** 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 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
Commander, Coast Guard Ninth District
Commanding Officer, Coast Guard Station Kenosha