



16731

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

August 1, 2002

RE: MV99005536  
[REDACTED]  
M/V [REDACTED]  
\$1,500.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV99005536, which includes your appeal as owner of the M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$1,500.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 176.01-1	Operation of a small passenger vessel without a valid Certificate of Inspection on board.	\$750.00
46 CFR 67.325	A vessel may not be employed in any trade other than a trade endorsed upon the Certificate of Documentation issued for that vessel.	\$750.00

The violations are alleged to have occurred between August 15, 1999 and August 21, 1999, when the M/V [REDACTED] sailed from Miami, Florida to the Bahamas with 13 passengers on board.

On appeal, you do not deny the violations but you do seek further mitigation of the penalties assessed by the Hearing Officer. You contend that the decision of the Hearing Officer incorrectly stated that you owned the M/V [REDACTED] for four years and assert that you were "not responsible for providing the requisite proof of Certificate of Inspection during that period of time." At the same time, you admit that you "did own the vessel for approximately one year, including the period of time specified in the citations at issue." With specific reference to the Certificate of Inspection, you contend that you "endeavored to comply with all state and federal regulations pertinent to operating the vessel but [were] unable to provide proof that...[you]...had obtained a certificate of inspection." You add that you "never operated a vessel in an unsafe condition and saw to it that all maintenance and repairs [were made]." You contend that your "status as a small business" necessitates further reduction of the assessed penalties and add that you "qualify for a waiver or a reduction of...[your]...fine because the alleged deficiency at issue was rectified when...[you] seized (sic) to operate...[your]...business following the citations in question." You further contend "the public

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policy considerations behind the issuance of citations have been fulfilled and that nothing further would be gained by levying a fine.” You conclude by offering to settle the matter for \$250.00. Your appeal is denied for the following reasons.

Before I begin, I believe a brief recitation of the circumstances surrounding the violations is in order. On August 25, 1999, Marine Safety Office Miami received a letter from the [REDACTED] concerning a diving trip that they had taken with [REDACTED] on board the M/V [REDACTED] from August 15-21, 1999. MSO Miami Investigations contacted the author of the letter, [REDACTED], and determined that the M/V [REDACTED] may have been operated in violation of numerous laws and regulations. After several attempts to contact [REDACTED] via telephone, investigators from MSO Miami went to the company’s business location on September 24, 1999, in an attempt to obtain further information about the M/V [REDACTED]’s voyage with the [REDACTED]. After discussions with you, a meeting was scheduled at MSO Miami on September 28, 1999. During the meeting, you provided the investigators with the number of the Captain of the M/V [REDACTED], [REDACTED]. Following further discussions with [REDACTED], the Coast Guard initiated Suspension and Revocation proceedings against the captain’s Coast Guard license. The Coast Guard’s investigation of the incident revealed that, during the voyage with the [REDACTED], the M/V [REDACTED], a small passenger vessel had been operated with 13 passengers on board without a valid Certificate of Inspection. The Coast Guard further determined that the vessel did not have a commercial endorsement on its certificate of registry and had been operated with paying passengers on board. The civil penalty case is the result of these findings.

Since you do not deny the violations, I consider them proved. The only issue remaining is whether further mitigation of the assessed penalties is appropriate. I do not believe that it is. The record indicates that you provided the Hearing Officer with ample information about [REDACTED]’ financial condition and that, in your letter dated December 18, 2000, you made clear to the Hearing Officer that the corporation is no longer operating. It is evident that the Hearing Officer considered the financial condition of your company and your status as a small business when he mitigated the assessed penalty by 70%. Therefore, I do not believe that further mitigation is appropriate.

Additionally, you contend that the Hearing Officer’s final letter of decision incorrectly concluded that you operated the vessel for 4 years without a Certificate of Registry. Your contention is without merit. While I acknowledge that the record is unclear as to the exact duration of your ownership of the M/V [REDACTED], the record, nonetheless, makes clear that you operated the vessel in violation of Coast Guard regulations. Although you contend that you “never operated a vessel in an unsafe condition and saw to it that all maintenance and repairs necessary to ensure the safety of the passengers [were undertaken],” that contention does not negate the fact that the violations occurred. Indeed, your failure to operate the M/V [REDACTED] in accordance with Coast Guard regulation could have lead to disastrous consequences for you, your vessel, your crew and your passengers.

Your contention that you qualify for a waiver because your business is no longer operational is, likewise, without merit. Whether [REDACTED] is currently operating or not, you do not deny that the company committed a violation of Federal Regulation in its operation of the M/V [REDACTED]. As a consequence, the company is responsible for any violations that occurred as a result of that operation. There is simply no “waiver” available under such circumstances. Furthermore, I believe that, contrary to your assertion, public policy would not be served by dismissing the penalty in the instant case. Whether your business is currently operating, the violations in issue are serious enough

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to necessitate the imposition of civil penalties. Therefore, I will not mitigate the penalties assessed by the Hearing Officer.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violations occurred and that [REDACTED] is the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. I find a penalty of \$1,500.00 rather than the \$5,000.00 preliminarily assessed by the Hearing Officer or \$13,000.00 maximum permitted by statute to be appropriate in light of the seriousness of the violations.

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 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