

U.S. Department
of Transportation

United States
Coast Guard



COMMANDANT
U. S. Coast Guard

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16780

January 24, 2003

Mr. [REDACTED]
[REDACTED]
[REDACTED]

RE: MV00002934
Mr. [REDACTED]
UNNAMED ([REDACTED])
\$750.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00002934, which includes your appeal as owner/operator of the UNNAMED recreational vessel currently registered as [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$750.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 USC 2302(c)	Operation of a vessel while intoxicated.	\$750.00

The violation was observed on July 2, 2000, when Coast Guard boarding officers boarded the unnamed recreational vessel ([REDACTED]) in the Intra-Coastal Waterway near Swansboro, North Carolina.

In your letter dated March 7, 2001, treated as your appeal, you do not deny that you operated your vessel while intoxicated or that you did not have a fire extinguisher on board, however, you "strongly disagree with charge #126 'Unsafe conditions creating especially hazardous conditions,' charge # 119 'Negligent/Gross Negligent Operation' and...to the description used against...[you]... according to the officer in charge at the scene." You further contend that your repeated attempts to contact the Hearing Officer with regard to this matter were to no avail. You contend that you offered a written response to the Hearing Officer's preliminary assessment letter, although that response was not received by the Hearing Office, and assert that the assessed penalty should be reduced because you have operated a vessel for "28 years and have never had a citation." Your appeal is denied for the reasons described below.

Your correspondence of March 7, 2001 indicates that you are, as the Hearing Officer noted in his letter to you dated June 21, 2001, confused about the charges in issue in the instant civil penalty

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case. The record evidences that there are two Coast Guard Form 4100 Boarding reports contained in the file for the incident in issue. The first Form 4100 indicates that, during the boarding, four violations were observed. The second Form 4100 Boarding Report, labeled the "corrected copy" indicates that only two violations were observed. The two violations were 1) operation of a vessel while intoxicated and 2) unsafe conditions creating especially hazardous conditions. The Hearing Officer's Preliminary Assessment Letter, dated November 17, 2000, contained with it a Marine Violation Charge sheet that clearly indicated the charge against you. I note that that charge sheet only referenced the intoxicated operation charge, and nothing else. As the Commanding Officer of the Fifth Coast Guard District noted in his letter regarding the case in issue, only the intoxicated operation charge was considered in this action. Since the Coast Guard has discretion to bring or not bring charges against a party, I see no error in this. However, during this appeal, I will only consider the intoxicated operation charge that has been brought against you.

Since you do not deny operating your recreational vessel under the influence of alcohol, I consider the violation proved. After a thorough reading of the record, I am not persuaded to mitigate the penalty assessed by the Hearing Officer. When you operated your vessel under the influence of alcohol, you put not only yourself, but also your passengers and those around you in a position of great peril. Regardless of whether you have ever been cited by the Coast Guard for a violation, under the facts of this case, the civil penalty assessed by the Hearing Officer is appropriate.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violations occurred and that you are the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. I find the penalty of \$750.00 rather than the \$5,000.00 maximum permitted by statute to be appropriate in light of the seriousness of the violation.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$750.00** 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 4.25% 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, Coast Guard Hearing Office
Commanding Officer, Coast Guard Finance Center