



16593  
March 12, 2003

[REDACTED]  
[REDACTED]  
[REDACTED]

RE: MV01001557  
M/V [REDACTED]  
[REDACTED]  
Dismissed

Dear Mrs. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV01001557, which includes your appeal as owner of the M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$500.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 117.11	Vessel owner or operator signaled a drawbridge to open for a nonstructural vessel appurtenance not essential to navigation or easily lowered.	\$500.00

The violation was observed following two requests to open drawbridges in the vicinity of Palm Beach, Florida, on August 12, 2000. The first incident occurred at approximately 2:00 p.m., when the M/V [REDACTED] allegedly signaled for an opening of the PGA Boulevard drawbridge, located near Palm Beach Gardens. The second incident occurred at approximately 2:20 p.m., when the M/V [REDACTED] allegedly signaled for an opening of the Parker drawbridge, located near North Palm Beach. It is alleged that the vessel would have had sufficient vertical clearance to clear both drawbridges if it had lowered its outriggers prior to transit.

On appeal, you deny the violation and contend that, at the time of the incidents in issue, you no longer owned the vessel in question. You further assert that you have been blind for several years and are no longer able to operate the vessel. You mention that, as a consequence, the vessel was sold for scrap before the violations at issue occurred. Your appeal is granted for the reasons described below.

33 CFR 117.11 makes clear that “[n]o vessel owner or operator shall...[s]ignal a drawbridge to open if the vertical clearance is sufficient to allow the vessel, after all lowerable non-structural vessel appurtenances have been lowered, to safely pass under the drawbridge in a closed position.” The record contains two Bridge Tender Reports of Unnecessary Openings. The first report, completed by Bridge Tender [REDACTED], indicates that the PGA Boulevard drawbridge’s “clearance gauge reading” was 23 feet and that the “estimated clearance needed for vessel’s highest fixed point” was between 16 and 18 feet. The report further indicates that the vessel’s “owner claimed outrigger would not go down.” The second report, completed by Bridge Tender [REDACTED], indicates that the Parker drawbridge’s “clearance gauge reading” was between 23 and 26 feet and that the “estimated clearance needed for vessel’s highest fixed point” was approximately 16 feet. The report further indicates that the [REDACTED] was a “very small boat...[which]...would clear easily if ‘riggers were lowered.’” Both reports make clear that the “appurtenance nonessential to navigation” was the vessel’s outrigger, which, if lowered, would have allowed for sufficient clearance of the drawbridges in their closed positions. Given the information contained in these reports, it is clear that the M/V [REDACTED] committed the violation of 33 CFR 117.11.

What is not clear, however, is whether you are an appropriate party to be charged with the violation. As I noted above, 33 CFR 117.11 is applicable to either the owner or the operator of a vessel. Both Bridge Tender Reports clearly indicate that the vessel observed was the [REDACTED]; however, neither report conclusively indicates that you were the person operating the vessel during the incident. As I have already stated, the report completed by Mr. [REDACTED] indicates that the “owner” told him that the outrigger would not go down, however, neither the name or address of the owner are contained on the report. Likewise, the report completed by Mr. [REDACTED] does not contain the name or address of the owner of the vessel and indicates that that information could not be obtained because the vessel was “non-responsive.” While I note that the record contains a copy of an undated Coast Guard Vessel Documentation Query, which indicates that you are, according to the Coast Guard, the owner of the M/V [REDACTED], the record also contains the signed statement of your son, Mr. [REDACTED], which indicates that you sold the vessel from scrap on March 26, 1999. Mr. [REDACTED]’s letter further indicates that the “bill of sale and ownership papers were mailed to the U.S. Coast Guard office in Miami, FL” and that “[t]here has not been any further renewal notice sent on this boat for over two years.”

In his final decision letter, dated October 18, 2001, the Hearing Officer found the violation proved and noted that “you...[did]...not dispute the fact that the violation occurred but offer[ed] items of mitigation and clarification into the record.” As I indicated above, 33 CFR 117.11 applies to vessel owners and operators. Since you contend that you neither owned nor operated the vessel at the time of the instant violation, the record clearly evidences, contrary to the Hearing Officer’s decision, that you denied the violation. Given the evidence contained in the record and the fact that I have no reason to doubt your contention regarding the vessel’s sale, I will dismiss the violation and associated penalty.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action.

Sincerely,

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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