



REDACTED
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16731
FEB 22, 2008

RE: Case No. REDACTED
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WARNING

Dear REDACTED:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. REDACTED, which includes your appeal as owner/operator of the recreational vessel REDACTED. The appeal is from the action of the Hearing Officer in assessing two warnings for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR 28.115	Failure to comply with the requirements of ring life buoys.	Warning
33 CFR 173.27(a)(4)	Failure to have vessel's number, as required by 173.15, with spaces or hyphens equal to width of a letter between letter and number groupings.	Warning

The violations were first observed on March 14, 2005, when Coast Guard boarding officers boarded your vessel while it was underway on the Mississippi River Gulf Outlet (MRGO).

On appeal, you do not deny that the violations occurred. Instead, you assert that you were "given 30 days to correct" the deficiencies noted by the Coast Guard and insist that you did so "within 24 hours." To support your assertion, in this regard, you contend that Coast Guard boarding officers conducted a boarding of your vessel on March 15, 2005, the day after the violations at issue in this proceeding were discovered, and "found everything to be in order." At the same time, you assert that you "called in to report" that you had made the necessary corrections and, as a result, "assumed" you were "cleared of any violation." In addition, you contend that you did not receive the Hearing Officer's Preliminary Assessment Letter "due to Hurricane Katrina." With regard to the violations, you assert that you were unaware that your vessel was not equipped with a ring life buoy on March 14, 2005, because yours had, unbeknownst to you, been stolen. You add that you now check your vessel prior to leaving port to ensure that a similar

incident does not occur in the future. With regard to the alleged numbering violation, while you contend that you were “unaware of it being wrong until...[you]...were told,” you insist that it was corrected within 24 hours of observation.

The record shows that you do not deny that the violations occurred. Indeed, in your letters to the Hearing Officer and on appeal, you have admitted that, at the time of the boarding, your vessel did not have a ring life buoy and was not correctly numbered. Given the fact that you do not deny that the violations occurred, the key issue for me to determine now is whether it was appropriate for the Hearing Officer to assess warnings for the violations. Your argument on appeal centers on your assertion that you immediately achieved compliance with the applicable regulations by correcting the violations within 24 hours of the boarding.

The record shows that the violations at issue were initially observed during a Coast Guard boarding of your vessel on March 14, 2005. Thereafter, on April 6, 2005, personnel from the Coast Guard’s offices in Portsmouth, Virginia, mailed you a Preliminary Inquiry which informed you that you would have the opportunity to correct the violations, prior to the initiation of civil penalty action. To that end, the Preliminary Inquiry informed you that you would have the “opportunity to have the...penalties...reduced or even dismissed” if, within 45 days of receipt of the letter, you scheduled and successfully completed a Courtesy Dockside Examination and were issued a Commercial Vessel Safety Decal indicating that your vessel was in full compliance with all applicable safety requirements. The letter made further clear that you would be responsible for ensuring that the Coast Guard Office in Portsmouth, Virginia, received a copy of your Courtesy Dockside Examination indicating that your vessel was in compliance with the applicable regulations and had been issued a Fishing Vessel Safety Decal. There is no evidence in the file that you ever received a Fishing Vessel Safety Decal or that you informed the Coast Guard that you received the decal. As a result, your case file was forwarded to a Coast Guard Hearing Officer.

The record shows that, after you failed to respond to the Hearing Officer’s Preliminary Assessment Letter, which you claim you never received, the Hearing Officer issued his final decision in the matter and assessed a \$150.00 penalty for the violations. Thereafter, via a letter dated May 23, 2006, you appealed the Hearing Officer’s decision. In that letter, in addition to asserting that you corrected the violations the day after they were observed, you informed the Hearing Officer that you had never received his Preliminary Assessment Letter in the matter, possibly due to the onslaught of Hurricane Katrina just 7 days after the letter’s issuance. At the same time, you asserted that you believed that the matter had been “settled and satisfied” because you contacted the Coast Guard within 30 days of the violations as you were instructed. You further requested that the Coast Guard “understand” that you had, at that time, lost all of the documentation showing that you “purchased the buoy.” You submitted two photographs to support your assertion in that regard. Thereafter, the record shows that, although you did not make a request to re-open the hearing, the Hearing Officer did so and, in light of the evidence that you presented, mitigated the \$150.00 total assessed penalty to two warnings.

As I discussed above, you now appeal the warnings. On appeal, your arguments center on your assertion that, pursuant to the Coast Guard’s direction, you corrected the violations within a timely fashion and informed the Coast Guard that you had achieved compliance with the

applicable regulations. However, other than your assertions to that end, the record does not contain any evidence to show that your vessel passed a Commercial Vessel Safety Examination or that it was issued a Fishing Vessel Safety Decal in accordance with the Preliminary Inquiry letter. Absent such documentation of compliance, or even a simple assertion that your vessel passed the required Dockside Examination, I do not find that the Hearing Officer erred in assessing warnings for the violations.

In accordance with the regulations governing civil penalty proceedings, 33 C.F.R. § 1.07, this decision constitutes final agency action.

Sincerely,

//Kantor//

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