

U.S. Department
of Transportation

United States
Coast Guard



COMMANDANT
U. S. Coast Guard

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16731

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

July 10, 2001

RE: MV00003675
[REDACTED]
M/V [REDACTED]
\$4000.00

Dear [REDACTED]:

The Hearing Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00003675, which includes your appeal on behalf of the owner of the M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$4000.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 164.30	Failure to have the required marine charts, publications, and or equipment on board as required by parts 164.33 through 164.41.	\$4000.00

The violation was observed on September 6, 2000, when Coast Guard boarding officers boarded the M/V [REDACTED] at Long Beach to conduct a port state control annual exam.

On appeal, you do not deny the violation, but seek mitigation of the assessed penalty. You contend that the "amount is excessive given all the circumstances of the incident" and that the vessel and its owner "had gone to extraordinary lengths well in advance of the vessel's arrival in Los Angeles to ensure that the necessary charts were aboard prior to it entering port." You conclude that "in assessing the penalty amount full consideration was not give to those efforts and the circumstances that bought this unfortunate matter about." Your appeal is denied for the reasons described below.

Although you do not deny the violation, I have reviewed the case file to ensure that the violation is supported by substantial evidence. Based upon my review, as well as your admissions, I find the violation proven. The Coast Guard's primary purpose in enforcing its regulations is to ensure maritime safety and to protect the environmental quality of the navigable waters of the United States. Compliance with Coast Guard regulations helps prevent environmental damage, loss of life, personal injury and property damage. [REDACTED]'s failure to comply with 33 CFR 164.30 could have resulted in adverse consequences for both the vessel and its crew. The marine publication requirements set forth in 33 CFR 164.30 et seq. are meant to ensure the vessel's safe navigation. Although the M/V [REDACTED] was able to safely navigate the Los Angeles/Long Beach area absent the appropriate charts, navigation in that manner was less than prudent.

Your contention that the Hearing Officer's decision is excessive is without merit. The record shows that the Hearing Officer was fully apprised of the situation surrounding the violation. The Hearing Officer's letter dated October 31, 2000 clearly indicates that all of the circumstances surrounding the violation were considered before a decision was made. The Hearing Officer noted that he "carefully considered the information you submitted including you client's acceptance of responsibility for the incident, the efforts made to obtain the required charts prior to entry to the port of Long Beach, and the actions taken to insure that violations of this nature do not occur in the future." At that time, he also considered your client's clean record.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violation occurred and that [REDACTED] is the responsible party. The Hearing Officer properly considered all appropriate mitigating factors, as evidenced by his assessment of \$4,000.00 rather than the \$10,000.00 preliminarily assessed or \$27,500.00 maximum permitted by statute. His decision was neither arbitrary nor capricious in light of the seriousness of the violation 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 **\$4000.00** 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