

U.S. Department
of Transportation

United States
Coast Guard



COMMANDANT
U. S. Coast Guard

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Phone: (202) 267-1527
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16731
October 12, 2001

[REDACTED]
[REDACTED]
[REDACTED]

RE: MV00004407
[REDACTED]
Unnamed Recreational Vessel
([REDACTED])
\$750.00

Dear [REDACTED]:

The Hearing Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00004407, which includes your appeal as the operator of the unnamed recreation vessel ([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)	Operating a vessel while intoxicated	\$750.00

The violations were observed on October 15, 2000, when Coast Guard boarding officers boarded the [REDACTED] while it was disabled in Little Potato Slough, near Terminous, California.

On appeal, you contend that you were not the operator of the vessel and cannot be found to have violated 46 USC 2302(c). You contend that, at the time of the Coast Guard boarding, the vessel was and had been broken down for "over an hour." You further assert that you "never drove the vessel" because you did not own it. You conclude that you are "being unjustly accused" by the Coast Guard. Your appeal is denied for the reasons described below.

As a preliminary matter, I believe a brief recitation of the facts is in order. The vessel was first boarded at approximately 11:45 pm on October 14, 2000 when Coast Guard boarding officers witnessed the vessel severely overloaded with its navigation lights under water. At that time, the Coast Guard escorted the vessel to the nearest dock and sought to immediately correct the situation. Six people were asked to leave the vessel so that the number of life jackets would appropriately compliment the number of people aboard. At the conclusion of the boarding, the Coast Guard made clear to the owner of the vessel that no more than seven people should be on board the vessel at any time and that he should always have enough life jackets for each

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passenger. Because Coast Guard boarding officers had noticed beer aboard the vessel, the owner and operator were also reminded of the laws against boating while intoxicated.

Approximately three hours later, the Coast Guard sighted the vessel with nine people on board. The vessel was disabled and had only six life jackets on board. The Coast Guard terminated the voyage because of those deficiencies. You and several members of the crew became very agitated at the news of the termination, and began making derogatory comments towards the boarding officers. During this time, you stood up and apparently began to attack the boarding officers. You were escorted to your seat, at which time, the boarding officers noticed a strong odor of alcohol on your breath. Because of the belligerent attitudes of the people aboard the vessel, another Coast Guard unit was called to assist. The vessel was then towed to the nearest dock, whereupon, both Field Sobriety tests and a Breathalyzer test indicated that you were intoxicated (with a .104 BAC). Following the sobriety tests, you were taken into custody by the California Highway Patrol.

While you do not deny that you were intoxicated, you contend that you were not the operator of the vessel at the relevant time, because the vessel was not underway. You seem to believe that because the vessel was broken down, no one could have been operating it. Your analysis of 46 USC 2302(c) misconstrues the statutory definition of the word "operate." Contrary to your assertions, the term "operate" is applicable to a situation where a vessel is disabled. The legislative history of 46 USC 2302 indicates that the statute applies to moored or even disabled vessels. In pertinent part, "[t]he words 'operate on' . . . are used instead of. . . 'use', and are intended to cover all operations of a vessel when it is at the pier, idle in the water, or being propelled through the water." H.R. Rep. No. 338, 98th Cong., 1st Sess. 121 (1983). In the instant situation, the vessel was being "operated" and is, therefore, subject to the statutory regulation intended by 46 USC 2303(c).

There is ample evidence in the record to support the Hearing Officer's finding that you were the "operator" of the vessel. The statements of five Coast Guard boarding officers identify you as the "operator" of the vessel at the time of the incident. The statement of Coast Guard Boarding officer [REDACTED] further indicates that you were the person who informed the Coast Guard that the vessel propeller was fouled and that the engine would not run. Coxswain [REDACTED]' statement shows that you answered the Coast Guard's questions regarding the procurement of additional life jackets and that you were the first person to question the Coast Guard's termination of the voyage. Additionally, the statement of Petty Officer [REDACTED] indicates that you informed the Coast Guard that you had not gotten any additional life jackets because you "just wanted to bring everyone home." Taken together, these statements indicate that you were the "operator" of the vessel. You were aware of the vessel's condition and, in answering the Coast Guard's questions, indicated that you were responsible for the vessel. While you contend that the "other people on the boat will testify. . . [that you]. . . were not driving the boat," there is nothing in the record to support these contentions. Because you do not deny that you were intoxicated, I therefore, find the violation proved.

In the instant case, the vessel was in a potentially dangerous situation. The record indicates that the owner of the vessel admitted that there was no one aboard the vessel who was sober or capable of operating the vessel. The vessel was, at that time, both overloaded and disabled.

There were not enough life jackets on board the vessel for all of the passengers and, as has been discussed above, you were intoxicated. If an emergency had arisen, it is possible that lives could have been lost. In a situation like this, it is imperative that there is a sober person in charge of the situation. The record also indicates that you were extremely abusive and uncooperative from the time that the Coast Guard terminated the voyage. The Coast Guard boarding officers were reacting to a perceived safety violation and quite properly responded by attempting to board the vessel. Under 14 USC 89, commissioned, warrant, and petty officers of the Coast Guard may, at any time, go on board any vessel subject to the jurisdiction of the United States and make inquiries, examinations, inspections, and searches. If warranted, they may also arrest those on board and seize the vessel. Every day, people like the boarding officers involved with this incident are called upon to perform the dangerous task of boarding vessels, including those suspected of transporting illegal aliens and dangerous drugs. Their task is not easy and it is made even more difficult when they are met by uncooperative and abusive individuals who have little or no respect for the authority possessed by law enforcement personnel. Your actions set the tone for the boarding and made things difficult for all parties concerned. You incited the passengers aboard the vessel and made a dangerous situation even more volatile.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violation 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 \$2000.00 preliminarily assessed or \$5000.00 maximum permitted by statute 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 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,

RE: CIVIL PENALTY

16731

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Office of Maritime and International Law
By direction of the Commandant

Copy: Commanding Officer, U.S. Coast Guard Hearing Office
Commander, Finance Center