

U.S. Department
of Transportation

United States
Coast Guard



COMMANDANT
U. S. Coast Guard

2100 Second Street, SW
Washington, DC 20593-0001
Staff Symbol: G-LMI
Phone: (202) 267-1527
FAX: (202) 267-4496

16731
January 25, 2002

[REDACTED]
[REDACTED]
[REDACTED]

RE: MV00003259
[REDACTED]
UNNAMED ([REDACTED])
\$75.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Alameda, California, has forwarded the file in Civil Penalty Case MV00003259, which includes your appeal on behalf of your son and as the owner of the UNNAMED recreational vessel currently registered as [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$75.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 173.21	Failure to produce a Certificate of Number for Inspection for a vessel in use.	\$25.00
33 CFR 175.15(a) 33 CFR 175.15(b) 33 CFR 175.110(a)	Use of a boat without proper personal and or vessel equipment on board.	\$50.00
33 USC 1602	Failure to adhere to the International Regulations for Preventing Collisions at Sea, 1972.	WARNING

The violations were observed on August 11, 2000, when Coast Guard boarding officers boarded your vessel, which, at the time, was displaying the numbers [REDACTED], while it was underway in the Zimouia Strait near Wrangell, Alaska.

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On appeal, you do not deny the violations but seek to mitigate the penalties assessed by providing evidence that you have taken the necessary steps to bring the vessel into compliance with Coast Guard regulation. Because your appeal does not address the violation of 33 USC 1602, I consider it proved. With regard to the remaining violations, your appeal is denied for the reasons described below.

As the owner of the vessel, it is your responsibility to ensure that the vessel complies with all applicable Federal laws and regulations during its operation. The Coast Guard's vessel registration and number requirements are set forth in 33 CFR Part 173. The regulations require vessel operators to register their vessels and have on board a valid Certificate of Numbers. You do not deny that the vessel was not registered when it was boarded on August 11, 2000. The record clearly shows that you first applied for a certificate of registration on October 17, 2000, nearly two months after the boarding of the vessel and that the required certificate was not issued until three days later. While I commend you for obtaining the required certificate, that action does not negate the fact that a violation occurred on August 11, 2000. It is apparent that the Hearing Officer did consider the fact that you subsequently obtained a certificate of registration for the vessel, when he mitigated the penalty from \$100.00 to \$25.00. Because a \$25.00 penalty is nominal when compared with the \$1100.00 maximum penalty allowed by statute, I will not mitigate the penalty any further.

I will now address your concerns regarding the alleged violation of 33 CFR 175. The Coast Guard Boarding Report shows that, on August 11, 2000, there were five persons on board the vessel and only four personal flotation devices (PFD). The Report further shows that, at that time, the vessel was operated without a type IV PFD, sound producing device, and visual distress signals. Operation of a vessel without these safety devices is a serious safety violation that could have resulted in dire consequences in the event of an emergency. Given these facts, I find the violations proved. It is apparent that the Hearing Officer considered your assertion that "the flare kit and throw device were on the boat" at the time of the boarding but that your son was unaware of their location. As a result, the Hearing Officer mitigated the penalties assessed for those violations (33 CFR 175.15(b) and 33 CFR 175.110(a)) to warnings. Because of the serious nature of the remaining violation, I will not mitigate the penalty any further.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violations occurred and that your son is the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. I find the penalty of \$75.00 rather than the \$400.00 preliminarily assessed or \$11,300.00 maximum permitted by statute appropriate in light of the seriousness of the violations.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$75.00** 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

RE: CIVIL PENALTY

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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