



16731

[REDACTED]
Attn: [REDACTED]
[REDACTED]
[REDACTED]

September 27, 2002

RE: MV01000089
F/V [REDACTED]
[REDACTED]
\$1,000.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV01000089, which includes your appeal on behalf of the owners of the F/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$4,000.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 USC 12110(d)	Command of documented vessel under a person who is not a citizen of the United States	\$4,000.00

The violation was observed on July 17, 2000, when Coast Guard boarding officers observed the F/V [REDACTED] while it was underway approximately 4.5 nautical miles offshore in the Gulf of Mexico.

On appeal, you request that the penalty in the case be dismissed. You contend that "[t]he master of the vessel was a citizen of the United States at the time of the boarding" and insist that he informed the boarding officers that he was the Master of the vessel. You conclude that the violation "did not happen" and add that you "have always had a US Citizen employed as master of...[the]...vessel." Your appeal is granted, in part, and denied, in part, for the reasons described below.

The Boarding Report shows that when the Coast Guard boarding officers boarded the F/V [REDACTED] on July 17, 2000, there were four adults on board the vessel. Of the four people on board the vessel, three were Vietnamese citizens and one was a citizen of the United States. The boarding report further indicates that each person aboard the vessel was asked his name, address, phone number, and for some form of identification. The report indicates that, at that time, [REDACTED], a resident alien, indicated that he was the master of the vessel and had been acting in that capacity for 10 days. The boarding report further evidences that the only U.S. citizen on board the vessel, [REDACTED], did not indicate that he was the master of the vessel and was subsequently identified as a crewmember of the vessel. Given what is contained in the

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boarding report, it is evident that the boarding officers questioned each person on board the vessel and requested that they provide some form of identification or verification of citizenship. Their investigation of the vessel and its crew revealed that [REDACTED] had command of the vessel.

In your initial letter dated June 12, 2001, you seem to admit the violation and contend that “[a]s soon as the vessel returned to Fish House...a United States citizen [was placed] aboard to operate the vessel.” However, in your letter dated July 17, 2001, you contend that the violation did not occur and argue that [REDACTED] was acting as the Master of the F/V [REDACTED] during the relevant boarding. Although you acknowledge that [REDACTED] was at the vessel’s helm when the Coast Guard boarded the vessel, you assert that [REDACTED] had stepped away from the helm to supervise the crew as they hauled in the vessel’s nets and argue that this led to a “misunderstanding” on the part of the Coast Guard. In your letter of appeal dated November 13, 2001, you continue to contend that the master of the vessel was a U.S. citizen at the time of the boarding and add that “[h]e was interviewed by the [b]oarding [o]fficer and made the statement to the [b]oarding officer that he was the master of the vessel.” You seem to conclude that, even though [REDACTED] had told the boarding officers that he was the master of the vessel, they did not believe him because he was not at the helm during the boarding.

It is evident that you and the Coast Guard have different views of the incident. Although you contend that [REDACTED], a U.S. citizen, was in command of the F/V [REDACTED] during the relevant boarding, the Coast Guard report of the incident indicates that [REDACTED], a Vietnamese citizen claimed to be the master of the vessel during the Coast Guard boarding. Although you and the Coast Guard offer conflicting views of the factual occurrences that transpired during the boarding, it is the Hearing Officer's role is to evaluate the weight of the factual claims and make a determination as to what happened during the incident in question. Upon a review of the record, I do not find the Hearing Officer’s determination that [REDACTED] was in command of the vessel to be an abuse of this discretionary authority. The record clearly evidences that your view of the incident has evolved in your favor with the passage of time. While you first seemed to admit the violation, you now contend that the Coast Guard’s conclusions as to who was operating the vessel were based upon a “misunderstanding.” I note, however, that you have not addressed [REDACTED]’s assertion that he had been the master of the vessel for 10 days prior to the boarding. I further note that you have not provided statements from either [REDACTED] or [REDACTED] as to their respective positions during the boarding. Given these omissions, the evolution of your arguments during the civil penalty process, and the Coast Guard reports contained in the record, I find the violation proved and will not mitigate the penalty assessed by the Hearing Officer.

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] the responsible party. The Hearing Officer’s decision was neither arbitrary nor capricious and is hereby affirmed. However, I find a penalty of \$1,000.00 to be appropriate in light of the circumstances of the violation.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$1,000.00** by check or money order payable

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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 3% 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.

Should you still believe that you are financially unable to pay these penalties, you may request establishment of a payment plan. Requests for relief should be directed to the Chief, Claims Branch, Maintenance and Logistics Command Pacific, Coast Guard Island, Alameda, California 94501-5100.

Sincerely,

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DAVID J. KANTOR
Deputy Chief,
Office of Maritime and International Law
By direction of the Commandant

Copy: Commander, U.S. Coast Guard Atlantic Area
Commander, Finance Center