



[REDACTED]
[REDACTED]
[REDACTED]

16780
March 19, 2003

RE: MV00003500
[REDACTED]
Unnamed ([REDACTED])
\$600.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00003500, which includes your appeal as the alleged operator of the recreational vessel [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$600.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 CFR 173.21(a)(1)	Use of a vessel without a valid Certificate of Number or temporary certificate on board.	\$25.00
46 CFR 25.30-20(a)(1)	Required number of Coast Guard approved fire extinguishers were not on board.	\$25.00
33 CFR 175.110(a)	No visual distress signals on board the vessel suitable for day use and for night use, or suitable for both day and night use.	\$25.00
46 USC 2302(c)	Operating a vessel while intoxicated.	\$500.00
33 USC 1602 (Rule 33)	Failure to have required equipment for making sound signals.	\$25.00

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The violations were first observed on August 5, 2000, when Coast Guard boarding officers boarded the recreational vessel [REDACTED] after it became disabled in the Gulf of Mexico.

On appeal, although you do not deny that the violations occurred, you submit additional evidence to support your assertion that you were neither the owner nor the operator of the [REDACTED] on the day of the incident. To that end, you “apologize for the inability to properly convince others involved to see the seriousness of this case and act accordingly, until now.” Your appeal is denied for the reasons described below.

Before I address the violations at issue, I feel it necessary to discuss the standard of proof applicable to Coast Guard civil penalty procedures. As indicated in the correspondence contained within the case file, the procedures governing the informal adjudicative process used by the Coast Guard are set forth in 33 CFR Subpart 1.07. 33 CFR 1.07-65 states that any decision to assess a civil penalty must be based upon substantial evidence in the record. Conversely, if the Hearing Officer does not find substantial evidence to support the alleged violation, the case must be dismissed and returned to the appropriate District Commander. While the Administrative Procedures Act, 5 U.S.C. 551 *et seq.*, does not specifically address the appropriate standard of proof in administrative adjudicative proceedings, both case law and administrative practice clearly show that the standard of proof in such proceedings is a preponderance of the evidence standard. Under this test, Coast Guard Hearing Officers must be convinced that the weight or majority of the evidence supports their conclusion. *See Steadman v. SEC*, 450 U.S. 91 (1981). For purposes of this review, I must determine if the Hearing Officer’s actions were arbitrary and capricious.

Given that you deny neither the violations observed nor being intoxicated, the sole issue remaining is whether you were the operator of the vessel at the time of the boarding. In your initial letter to the Hearing Officer, dated March 20, 2001, you asserted that you were “on a fishing trip with a friend” in a vessel that your friend (at that time unnamed) had borrowed. You further asserted that, during the Coast Guard boarding, neither you nor your friend informed the Coast Guard that you were the operator of the vessel. On appeal, you attempt to bolster these contentions by providing the statements of Mr. [REDACTED]. and Mr. [REDACTED]. Mr. [REDACTED]’ statement indicates that he was the “friend” alluded to in your initial correspondence and that he “was the person responsible for the operation and maintenance of the boat.” Mr. [REDACTED]’s statement, on the other hand, indicates that he is the owner of the recreational vessel [REDACTED] and that he lent that vessel to Mr. [REDACTED] on July 15, 2000, nearly one month before the boarding in issue.

The record indicates that the Coast Guard presents a different view of the incident. In addition to the Coast Guard Form 4100 Boarding Report that indicates that you were the operator of the vessel at the time of the boarding, the record contains the statements of three Coast Guard boarding officers. All three statements indicate that an unnamed passenger indicated that you were the operator of the vessel, while two of the three statements indicate that you, yourself, admitted to being the operator of the vessel.

In view of the evidence contained in the case file, I conclude, as did the Hearing Officer, that you were the operator of the vessel during the incident at issue. The additional statements that you provided on appeal are simply insufficient to persuade me that the Coast Guard’s view of the

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incident is incorrect. Although Mr. [REDACTED] acknowledges that he is the owner of the vessel and that he lent that vessel to Mr. [REDACTED], his assertions do little to resolve the conflicting evidence contained in the record. While I acknowledge that Mr. [REDACTED]'s statement is supported by that of Mr. [REDACTED], I nonetheless note that all of the violations may appropriately be applied to the person operating the vessel. Therefore, regardless of whether Mr. [REDACTED] lent his vessel to you, if you were operating that vessel at the time of the boarding, you may appropriately be charged with the violations. Furthermore, although Mr. [REDACTED] claims to have been operating the vessel during the boarding, his assertion that he "was under the impression that the officer knew...[that he]...was the operator" does nothing to explain why all of the boarding officers indicated that he expressly informed them that you were operating the vessel. In addition, I find it troubling that Mr. [REDACTED] was not specifically identified as the operator of the vessel prior to your letter of appeal, written nearly one year after the incident. Finally, other than implying that the boarding officers statements were written to conclusively prove that you were the operator of the vessel, you, yourself, have provided no indication why the boarding officers' statements all indicate that either you or Mr. [REDACTED] stated that you were the operator of the vessel.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violations 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 \$600.00 penalty assessed by the Hearing Officer, rather than the \$1050.00 initially assessed or \$18,200.00 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 **\$600.00** 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 4.25% 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

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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, Coast Guard Hearing Office
Commanding Officer, Coast Guard Finance Center