

U.S. Department
of Transportation

United States
Coast Guard



COMMANDANT
U. S. Coast Guard

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16780

November 18, 2002

Mr. [REDACTED]
[REDACTED]
[REDACTED]

RE: MV00003578
Mr. [REDACTED]
[REDACTED]
\$500.00

Dear Mr. [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00003578, which includes your appeal as the owner/operator of the unnamed recreation vessel ([REDACTED]). The appeal is from the action of the Hearing Officer in assessing a \$500.00 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	\$500.00

The violation was observed on August 1, 2000, when the Hollywood Police Department brought your recreational vessel ([REDACTED]) to Coast Guard Station Ft. Lauderdale following an initial boarding in the Intracoastal Waterway near Hollywood, Florida.

On appeal, you deny the violation and contend that "no preponderance of the evidence [has been] proven." You enclosed a copy of the Broward County Court Disposition Order, which indicates that, at that proceeding, the intoxicated operation charge was "orally amended to Reckless Boating." In so doing, you seem to conclude that this finding proves that you were not intoxicated during the relevant boarding. You reiterate that you were not intoxicated and mention that you "do not wish to have this statement against your name." Your appeal is denied for the reasons described below.

As a preliminary matter, I believe a brief recitation of the facts is in order. At approximately 10:15 p.m. on August 1, 2000, officers from the Hollywood, Florida, Police Department and the Coast Guard observed you operating your vessel southbound in the Intracoastal Waterway, near Hollywood, Florida. When the officers approached your vessel, they observed several empty Bud Light bottles and subsequently instructed you to pull your vessel into the Coast Guard station where a full boarding would be conducted. During the boarding, while you exhibited symptoms of intoxication, you nonetheless asserted that you had "only had three beers" and were

not “drunk.” You refused to take all Field Sobriety Tests (FST’s) and were subsequently arrested by the Hollywood Police Department for operating a vessel while impaired. A cursory search of the vessel revealed 10 empty beer bottles and a hand-rolled marijuana cigarette. When a narcotic detecting dog was brought to the vessel, two additional marijuana cigarettes were found.

I will now address the violation in issue. Under 33 CFR 95.030, “[a]cceptable evidence of intoxication includes, but is not limited to: (a) Personal observation of an individual’s manner, disposition, speech, muscular movement, general appearance, or behavior; or (b) A chemical test.” 33 CFR 95.020(c) further provides that an individual is considered intoxicated when, “[t]he individual is operating any vessel and the effect of the intoxicant(s) consumed by the individual on the person’s manner, disposition, speech, muscular movement, general appearance or behavior is apparent by observation.” The record clearly indicates that there is substantial evidence to support the Hearing Officer’s determination that you were intoxicated. The Boarding report shows that you had a “strong” odor of alcoholic beverage on your breath and that your speech was “slurred” and “stuttered.” The record further indicates that your eyes were “bloodshot” and that you were both “combative” and “insulting” during the boarding. In addition, the record shows that you used “profanity” and were generally uncooperative during the boarding. The statements of the boarding officers further indicate that although you were given at least two opportunities to voluntarily submit to the Coast Guard’s FST’s, you consistently refused to be tested. While I agree that each of these factors, alone, might not have been sufficient cause for a conclusion of intoxication, taken together, I am persuaded that the personal observations of the Coast Guard boarding officers regarding your manner, disposition, speech, muscular movement, and behavior constituted substantial evidence for the Hearing Officer to conclude that you were intoxicated.

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 \$500.00 rather than the \$5,000.00 maximum permitted by statute appropriate under the circumstances of this case.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$500.00** 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 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

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