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
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16731

[REDACTED]
[REDACTED]
[REDACTED]

May 17, 2001

RE: MV99003440
[REDACTED].
UNNAMED ([REDACTED])
$200.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV99003440, which includes your appeal as owner of a fishing vessel numbered [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a $200.00 penalty for the following violations:

LAW/REGULATION	NATURE OF VIOLATION	ASSESSED PENALTY
33 CFR 173.21(a)(1)	Use of a vessel without a valid Certificate of Number or temporary certificate on board	Warning
46 CFR 28.135	Failure to properly mark lifesaving equipment as required	$ 75.00
46 CFR 28.145	Failure to equip vessel with proper types and amounts of required distress signals	$125.00

The violations were observed on February 7, 1999, when Coast Guard boarding officers boarded your fishing vessel while it was underway in the Atlantic Ocean, exiting St. Lucie Inlet, near Lake Worth, Florida.

On appeal, you contend that your vessel is now in compliance and that you forwarded a receipt to the Hearing Officer that shows a Type I PFD with retroreflective tape was purchased. You further contend that the vessel numbers are marked on the PFD but that the vessel is in North Carolina while you are in Florida, and that, as a result, you cannot take a picture of the PFD to show this. You note, however, that you sent the Hearing Officer a sworn affidavit that indicates the PFD was properly marked. The sworn affidavit also indicates that you purchased new flares. Additionally, you assert that you scheduled an appointment with "[REDACTED]" to inspect your vessel for the safety gear so that the violations would be dismissed, but that he later

cancelled the appointment. You contend that had he inspected your vessel, he would have found it to be in compliance and that the violations would have been "dropped." Your appeal is denied for the reasons described below.

The Boarding Report shows that on February 7, 1999, when the Coast Guard boarded the vessel, your son, [REDACTED] was operating it with two other persons on board. It was initially determined that the vessel was being operated without a valid Certificate of Number onboard. While it appears the Coast Guard also alleged a violation of 46 CFR 25.25, it does not appear the Hearing Officer pursued this alleged violation. However, you were charged with having a PFD that did not have the retroflective markings required by 46 CFR 28.135. The Boarding Report further shows that the vessel had visual distress signals (VDS) on board, but they were all "out of date." Therefore, the vessel essentially was operating without VDS as required by § 28.145. I find that the case file contains sufficient evidence to substantiate these three violations.

Given the information and documentation that you have provided, I will accept your assertions that you have corrected the deficiencies described above and that the vessel is now in compliance. Nevertheless, I am not persuaded to further mitigate the penalty. The letter you sent to the Hearing Officer in response to his December 13, 1999, preliminary letter shows that you purchased a Type I PFD for the vessel. However, the receipt indicates the purchase was not until April 28, 1999, nearly three months after the boarding and more than 30 days from the date of the March 25, 1999 Letter of Inquiry. Thus, I am not persuaded to further mitigate the penalty for this violation. Furthermore, the copy of the Commercial Fishing Vessel Registration indicates the registration was not issued for the [REDACTED] until July 1, 1999, five months after the boarding. As this, too, is well after the February 7, 1999, boarding, I will not dismiss the penalty for failure to comply with 33 CFR 173.21(a)(1). In fact, I find the Warning assessed by the Hearing Officer rather lenient considering the fact that you waited so long to actually register your vessel. As to the Visual Distress Signals, you were never able to provide the Hearing Officer with evidence sufficient to satisfy him that this violation was corrected. I do not find this decision to be arbitrary or capricious. As a result, I cannot accept your contention that had [REDACTED] inspected the vessel when he was scheduled to do so, he would have found the vessel in compliance.

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 penalty of $200.00 rather than the $450.00 preliminarily assessed or $11,000.00 maximum permitted by statute appropriate in light of the nature of the violations.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **$200.00** 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,
Office of Maritime and International Law
By direction of the Commandant

Copy: Commanding Officer, U.S. Coast Guard Hearing Office
Commander, Finance Center
Commanding Officer 4100 Processing Center