



16731
January 25, 2002

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: MV00000985
[REDACTED]
F/V [REDACTED]
\$750.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00000985, 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 \$750.00 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.	\$750.00

The violation was observed on December 17, 1999, when Coast Guard boarding officers boarded the F/V [REDACTED] while it was under operation in the Gulf of Mexico, at 28°26.70 Latitude, 091°40.95 Longitude.

On appeal, you do not deny the violation but assert that, at the time of the incident, the captain of the vessel was ill and therefore, [REDACTED] was "temporarily" in charge of the vessel. Your appeal is denied for the reasons described below.

46 USC 12110 makes clear that "[a] documented vessel, other than a vessel with only a recreational endorsement, may be placed under the command only of a citizen of the United States." You have provided ample evidence of [REDACTED]'s U.S. citizenship, including a copy of his Certificate of Naturalization, Texas Identification Card, and Fishing License. However, the record indicates and you admit that at the time of the Coast Guard Boarding, [REDACTED] was operating the F/V [REDACTED]. You have presented no evidence that [REDACTED] is a citizen of the United States, and instead, the Coast Guard's investigation report indicates that he is a resident alien, identified by Resident Alien Card #A043869182. The Coast Guard's investigation report is undisputed in indicating that [REDACTED], in spite of his alien status, admitted that he was in control of the vessel for two days prior to the Coast Guard boarding. While I commend you for taking efforts to ensure that your vessel is operated by a United States citizen through the employ of [REDACTED], the record is nonetheless undisputed that the F/V [REDACTED] was operated in violation of 46 USC 12110(d) on December 17, 1999.

The maximum penalty allowed for a violation of 46 USC 12110(d) is \$11,000.00 per day that the violation occurs. Thus, given [REDACTED]'s testimony to the Coast Guard, the maximum penalty that could have been assessed against [REDACTED] is \$22,000. The Hearing Officer considered the fact that [REDACTED] has never committed a violation of the Coast Guard's regulations, as well as evidence presented by you showing the U.S. citizenship of the F/V [REDACTED]'s present master. Given the seriousness of the violations and because you have provided no additional evidence in mitigation, I cannot reduce 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 [REDACTED] is the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. I find the penalty of \$750.00 rather than the \$1000.00 preliminarily assessed or \$22,000.00 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 **\$750.00** 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