



[REDACTED]  
[REDACTED]  
[REDACTED]

16780  
MAR 16 2007

RE: Case No. [REDACTED]  
[REDACTED]  
[REDACTED]  
\$1,000.00

Dear Mr. Maulden:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. [REDACTED], which includes your appeal as owner/operator of the [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$1,000.00 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 under the influence of alcohol or a dangerous drug.	\$1,000.00

The violation was observed on September 25, 2005, when Coast Guard personnel commenced a boarding of the [REDACTED] while it was underway on the Inter Coastal Waterway, near Juno Beach, Florida.

On appeal, you deny the charge and question the Coast Guard's jurisdiction to initiate civil penalty action against you. To that end, you assert that because you have not yet been found guilty of boating under the influence by a Florida State court in a related state case, it would be "unjust and reflective of admitting guilt in the matter" if you paid the penalty assessed by the Hearing Officer in this case. With respect to the evidence contained in the case file, you further assert that the Coast Guard's observations of you during the boarding of your vessel "should not be proof enough to impose the fine of BUI." Your appeal is denied for the reasons discussed below.

I will begin by addressing your assertion that it is inappropriate for the Coast Guard to assess a civil penalty against you in this case because you have not yet been found guilty of the offense in a related state court action. Contrary to your assertion, the actions of the Coast Guard in this case are in no way barred by any of the proceedings in the related state action. The waters of the Inter Coastal Waterway are subject to concurrent Federal and state jurisdiction. As such, the Coast Guard has jurisdiction to assess a civil penalty against you without regard to any action taken by the State of Florida. Neither the applicable statute nor any known theory regarding the enforcement authority of the Federal and state governments precludes the Coast Guard from

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assessing a civil penalty in this case. In fact, the Federal government is not precluded from imposing both criminal and civil sanctions for the same conduct. See, *One Lot Emerald Cut Stones and One Ring v. United States*, 409 U.S. 232, 93 S.Ct. 489 (1972).

Furthermore, the standard of proof necessary to impose a civil penalty at an administrative proceeding is less than what is necessary for a finding of guilt at a state or federal criminal proceeding. Because of the more serious consequences associated with a criminal trial, due process requires that an individual can only be convicted by proof beyond a reasonable doubt of every element which constitutes the offense. This has generally been described as proof of such convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his own affairs. This is the highest standard of proof in the American judicial system. However, at administrative proceedings, the burden of proof is not as strict. At Coast Guard administrative proceedings, the Coast Guard must prove its case only by a preponderance of the evidence. Preponderance of the evidence means the trier of fact, here the Hearing Officer, is persuaded that the points to be proved are more probably so than not. Stated another way, the trier of fact must believe that what is sought to be proved is more likely true than not true. For the reasons set forth below, I am convinced that the Coast Guard proved its case against you by a preponderance of the evidence.

Pursuant to 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.” A careful review of the evidence contained within the case file shows that, at the time of the boarding, your speech was slurred, your eyes were red and you had a strong odor of alcoholic beverage on your breath. In addition, Coast Guard boarding officers observed two open bottles of beer in cup holders near the helm of your vessel and, when asked, you stated that you had consumed five beers prior to the boarding. Shortly thereafter, Coast Guard personnel contacted police officer’s from the Palm Beach County Sheriff’s Office and informed them that you were suspected of operating your vessel while under the influence of alcohol and, as a result, you were taken into police custody. During that time, although you refused to submit to Field Sobriety testing, you did submit to a breathalyzer test which revealed that you had a blood alcohol concentration of between .137% and .146%. Based upon the totality of the circumstances of the boarding, including the personal observations of the Coast Guard boarding officer regarding your manner, disposition, speech, muscular movement, and your breathalyzer test results, I find that the Hearing Officer was not arbitrary or capricious in determining that there was sufficient evidence in the record to support a conclusion that you operated your vessel under the influence of alcohol under 33 CFR 95.030.

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. For the reasons discussed above, I find the \$1,000.00 penalty assessed by the Hearing Officer, rather than the \$5,500.00 maximum permitted by statute to be appropriate in light of the circumstances of the violation.

CIVIL PENALTY CASE NO. 2516050

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Payment of **\$1000.00** 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. Payment should be directed to:

U.S. Coast Guard - Civil Penalties  
P.O. Box 70945  
Charlotte, NC 28272

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 1.00% 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, Coast Guard Hearing Office  
Commanding Officer, Coast Guard Finance Center