

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD,
Complainant,
vs.

License Number 791405

ISSUED TO:
KEITH SANDESON
Respondent

Docket Number: 00-0007

DECISION AND ORDER

PETER A. FITZPATRICK
United States Administrative Law Judge

APPEARANCES:

FOR THE COAST GUARD

LT Mark Hammond
CPO Darren Boyd
United States Coast Guard
Marine Safety Office
100 Macarthur Causeway
Miami Beach, Florida 33139

FOR THE RESPONDENT

Keith Sandeson, Pro Se

I.
STATEMENT OF THE CASE

On January 3, 2000 the Coast Guard Investigating Officer filed a Complaint against the Respondent containing the following pertinent Jurisdictional and Factual Allegations:

JURISDICTIONAL ALLEGATIONS

The Coast Guard alleges that:

1. Respondent's address is as follows:



2. Respondent holds the following Coast Guard-issued credential(s):
License Number 791405.
3. Respondent acted under the authority of that license, certificate or document, on November 22, 1999 by: serving as Master aboard the vessel EL DORADO, O.N. D994192, as required by law or regulation.

FACTUAL ALLEGATIONS

Negligence

1. The Coast Guard alleges that on November 22, 1999, in the vicinity of N 27-10.00 and W 080-09.10, St. Lucie Inlet, FL, a U.S. Navigable Waterway, the Respondent:
2. Negligently failed to safely navigate said vessel to wit: did not adequately fix the vessel's position resulting in the vessel going aground.

Violation of Law or Regulation

3. The Coast Guard alleges that on November 22, 1999, in vicinity of N 27-10.00 and W 080-09.10, St. Lucie Inlet, FL, a U.S. Navigable Waterway, the Respondent:
4. Violated Title 46 Code of Federal Regulation 122.304 by failing to operate the vessel in a manner consistent with keeping the safety of

the passengers and crew foremost in mind by failing to direct the vessel in order to prevent a casualty; resulting in the EL DORADO running aground.

5. Violated Title 46 Code of Federal Regulations 122.202 by failing to provide immediate notification to the nearest Marine Safety Office, Marine Inspection, or Coast Guard Group Office of a Marine Casualty.
6. This regulation was intended to promote marine safety.

The proposed order sought was two months Outright Suspension of Mr. Sandeson's Coast Guard License. Additionally, the license was sought to be suspended for another four months remanded on a 12 month probationary period.

Mr. Sandeson's Answer was filed on January 21, 2000 in which he admitted all Jurisdictional Allegations and Denied Factual Allegations 2, 4 and 5. See also Transcript (Tr.) 9-10.

The case was assigned to this Judge on January 21, 2000. It was scheduled for hearing at Miami on April 4, 2000. See Orders dated January 21 and February 17, 2000.

The hearing convened as scheduled and the Respondent and the Investigating Officers were present. The Coast Guard presented eight witnesses (including the Respondent, Keith Sandeson) and sponsored nine exhibits. The list of witnesses and exhibits is set out in Attachment One.

The Respondent testified on his own behalf but did not sponsor any other exhibits or witnesses.

At the conclusion of the hearing I announced (1) that the allegation of negligence was PROVED; (2) that the Respondent failed to notify the Coast Guard as required by the applicable regulation; and (3) that I would examine the evidence and the regulations

to determine if the Respondent's failure to put the safety of his passengers first constitutes a separate violation beyond the allegation of negligence. (Tr. 156-160).

At the conclusion of the case I announced that Coast Guard's recommendation regarding the Order was reasonable and would be adopted. (Tr. 170).

II. FINDINGS OF FACT

1. The Respondent is the holder of License No. 791405 which authorizes him to serve as Master of Near Coastal Steam, Motor or Auxiliary Sail Vessels of Not More Than 100 Gross Tons. The license was issued on July 2, 1996 and is valid for 5 years.
2. The EL DORADOO is a U.S. Inspected Passenger vessel owned by Entertainment Cruises, Inc. of Naples, Florida. It is 128.5 feet in length and displaces 98 Gross Tons. (IO-1). The vessel is authorized to carry 275 passengers. When carrying less than 149 passengers the manning requirements are one Licensed Master and three Deckhands. (Id). As pertinent here, the vessel is restricted to routes off the Florida coast in the Atlantic Ocean not more than 20 miles from a harbor of safe refuge. (Id).
3. On November 23, 1999 the EL DORADO departed Fort Pierce, Florida for Stuart, Florida under the command of Mr. Sandeson who was serving as Master under the authority of his Coast Guard License. (Tr. 10). Mr. Sandeson was serving in that capacity aboard that vessel during all pertinent times here. Also, Thomas Gladle was aboard and serving as a Deckhand. (Tr. 34-35). Additionally, Dane Clemmer was a passenger on the EL DORADO that evening and night. (Tr. 27-28).
4. The EL DORADO entered the St. Lucie Inlet and transited the St. Lucie River to Stuart. The vessel moored at Wahoo's Restaurant at approximately 1635. (Tr. 50).

Later that same day, at approximately 1940, the vessel departed for a gambling cruise with 90 passengers aboard. (Tr. 50). The vessel transited the River without incident and casino operations were commenced once the vessel reached the three mile limit off shore. (Tr. 51).

After several hours of gambling the casino operations were shut down at 2330 and the vessel headed back for the restaurant facility at Stuart. (Tr. 51). At midnight to 0030 the vessel was in the St. Lucie River in the Inlet when it struck bottom. (Tr. 28-29, 35-36, 98-99). It was aground for 30-45 minutes. (Tr. 29, 35-36). The EL DORADO was able to free itself under its own power. (Tr. 40)

5. Thereafter, the Respondent decided to head for Ft. Pierce, FL rather than continue to Stuart. (Tr. 124). He called the Coast Guard Station at Fort Pierce at 0030 on November 23, 1999 and spoke with Seaman Ramon Feliciano. (Tr. 42). The Respondent asked for the Duty Officer and Feliciano inquired "if there was anything important." (Tr. 43). Sandeson replied, "No," there was nothing to "worry about" and told the watch stander that he was going to dock at Ft. Pierce rather than Stuart "because the seas were too rough." (Tr. 43). No notice was provided to the Coast Guard of the grounding. (Id.). See also (IO-2). The vessel arrived at Indian River Terminal, Fort Pierce at 0350 and the passengers disembarked to buses for the return to Stuart.
6. The Coast Guard was notified of the EL DORADO grounding by an unidentified individual that morning but the informant could not recall the name of the vessel. (Tr. 48). After the local newspaper advised the Coast Guard it was the EL DORADO, LT Gary Todd from the Coast Guard Marine Safety Detachment Fort

Pierce boarded the vessel at 2100. (Tr. 48). At that time the officer ordered, among other things, that an underwater survey be conducted to determine whether the hull sustained damage. (Tr. 52). That report reveals that the hull was not damaged except for paint scrapings. (IO-3).

7. The St. Lucie Inlet is described in the Coast Pilot, No. 4 (Cape Henry to Key West), pp 273-274, as an area subject to shoaling as follows:

(135) **Charts 11474, 11472, 11428.** --**St. Lucie Inlet**, forming the mouth of the St. Lucie River and the south end of the Indian River, lies 20 miles south of Fort Pierce Inlet and 13.5 miles north of Jupiter Inlet Light. The entrance to the Inlet is protected by jetties and a detached breakwater. The inner part of the north jetty is in ruins. A rock ledge across the Inlet extends south for over 1 mile from the east end of the north jetty ruins. Extensive sandbars are on the north side of the Inlet channel from the north jetty to the Intracoastal Waterway. It is reported that shoaling builds up across the channel from both the north and south sides. Depths in the channel vary.

(136) St. Lucie Inlet is dangerous and particularly hazardous to small boats not designed to the open seas. Persons using the Inlet should be experienced boatmen and have local knowledge.

(137) It is reported that tidal currents reach a velocity of 7 knots. Currents continue to flow 2 hours after high and low tides. Entrance is easiest just on the flood side of slack water.

(138) The approach is marked by a lighted whistle buoy. The entrance buoys are not charted, as they are frequently moved to mark the best water. It is reported that after heavy storms, buoys may be off station due to dragging or to shifting channels.

(139) It is further reported that ground swells can make Inlet passage impossible for all craft. Breakers occur throughout the entire channel as seas, ground swells, and winds increase, particularly on an ebb tide.

(140) While the Inlet conditions are generally reported to be worse during winter, hazardous conditions develop rapidly during summer squalls.

(141) Additional information on local existing conditions can be obtained by calling the Fort Pierce Coast Guard Station

(telephone: 407-464-6100) and asking for the Coast Guard
Auxiliary telephone number.

8. Cautions regarding this hazardous Inlet are also set out in the charts of the area. See IO-4,5.
9. The Respondent had not navigated the EL DORADO nor any other vessel that size in the St. Lucie Inlet prior to the trip described here. (Tr. 93, 97). He was not aware of the latest changes in the Inlet as described in the Notice to Mariners. (Tr. 97-98). Nor did he attempt to ascertain current local conditions from the Coast Guard or any other service. (Tr. 95).
10. At all pertinent times it was rainy, but no unusual weather conditions prevailed. (Tr. 28).

III.

ULTIMATE FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent, Keith Sandeson and the subject matter of this hearing are properly within the jurisdiction of the United States Coast Guard in accordance with 46 U.S.C. § 7703 (West Supp. 1999).
2. On November 23, 1999 the EL DORADO was owned by Entertainment Cruises Inc., Naples, Florida. The vessel was issued a Certificate of Inspection and was authorized to carry passengers. The vessel displaces 98 Gross Tons.
3. Keith Sandeson was required to hold a Coast Guard License to serve as Master aboard the EL DORADO. He was serving in that capacity at all pertinent times here.
4. While he was serving as Master of the EL DORADO on that date, Keith Sandeson negligently failed to adequately fix the vessel's position resulting in the grounding of the vessel in St. Lucie Inlet, Florida.

5. While serving as Master aboard that vessel on that date, the Respondent failed to notify the Coast Guard of the grounding in violation of 46 C.F.R. 122.202.
6. Finally, the Respondent failed to operate the EL DORADO on November 23, 1999 in a manner consistent with the safety of the passengers and crew resulting in the grounding in violation of 46 C.F.R. § 122.304.
7. All Jurisdictional and Factual Allegations asserted against Keith Sandeson in the Complaint filed on January 3, 2000 are **PROVED** by a Preponderance of the Evidence.

IV. OPINION

1. The Coast Guard has jurisdiction of Respondent and this matter pursuant to 46 U.S.C. § 7703, which states that a Merchant Mariner's license or document may be suspended or revoked for Misconduct or Negligence. The Coast Guard has the burden of proving the allegations of the Complaint by a preponderance of the evidence or "by substantial, reliable and probative evidence." See 33 C.F.R. § 20.701, 702; Appeal Decisions No. 2468 (LEWIN), 2477 (TOMBARI), 2603 (supra); See also, Dept. of Labor v. Greenwich Collieries, 512 U.S. 267 (1994); Steadman v. SEC, 450 U.S. 91, 100-103 (1981). The proceeding is conducted under the Coast Guard Rules of Practice at 33 C.F.R. Part 20 and the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*
2. Turning first to the Negligence allegation, there is no serious doubt that the EL DORADO went aground in St. Lucie Inlet at approximately 0030 on November 23, 1999. Mr. Clemmer, a passenger aboard the vessel, described the grounding as follows (Tr. 28-29):

Q. Okay. Did the vessel run aground that night?

A. On the return trip it ran aground in the Inlet.

Q. What Inlet was that?

A. Oh, the St. Lucie Inlet.

Q. How do you know it went aground?

A. I was on the stern of the ship watching the screws turn up the bottom.

Q. Do you know where exactly the vessel was located when it went aground?

A. We were on the north portion of the Inlet near the jetties, and I saw it ran aground. I saw when this thing hit the bottom – hit something, hit the bottom, passengers were knocked off their feet and out of their chairs.

Q. When you say it ran aground in the north side of the Inlet, do you mean west of the jetties inside the Inlet?

A. Well, as were coming in the Inlet, the jetty was on the right, my right side. So that's where we ran aground.

Q. Did you already pass the jetties after –

A. Yes, we were inside the jetty.

Q. About what time did this occur?

A. Approximately, 11:30 P.M. on Monday night, the 22nd of November.

Q. How long was the vessel aground; can you recall?

A. Thirty to forty-five minutes before we were able to get off this sand.

Q. What was the vessel doing during this time?

A. Forward and reversing trying to extricate itself from the sand bar. Even the PA asked all passengers to go to the stern of the vessel. So quite frankly, I thought we were going to wait for high tide, the next tide, get off this thing, and we would be there that night.

Although Mr. Clemmer thought the grounding occurred at approximately 2330 on November 22, 1999, Mr. Gladle, the Senior Deckhand on the EL DORADO, stated it occurred at 0030 on November 23, 1999. (Tr. 29). The exact time of the grounding is not important since notification to the Coast Guard was not made by the Respondent at any time. Indeed, the fact that the vessel grounded was confirmed by the Respondent himself. (Tr. 99).

Mr. Gladle testified that at “. . . approximately 12:00, 12:30 we were coming in the Inlet and the vessel went aground.” (Tr. 35). When asked where it happened he responded that it occurred about 100 yards inside the Inlet. (Tr. 36). The vessel came to a complete stop and it took approximately 45 minutes to get off. (Id).

The Respondent claims that the grounding occurred inside the channel on a sand bar. That assertion is contrary to the testimony of Mr. Clemmer that the sand bar on which the ship was aground was not very far from the jetties and it seemed as if the ship was out of the channel. (Tr. 31).

Moreover, MK2 Lawrence Damon, an Aids to Navigation Officer at Coast Guard Station Fort Pierce testified that the day following the incident (November 24, 1999), a Coast Guard team inspected the buoys in St. Lucie Inlet and found all of them to be working properly. (Tr. 79) (IO-6). Also, the ATON Team surveyed the channel depth in the area near where the grounding occurred and found the channel depth to be no less than 10 feet. (Tr. 82) (IO-6).

It is relevant to note here that the hazardous shoaling conditions in the St. Lucie Inlet are well known to mariners. Indeed one of the charts of the area ST. LUCIE INLET

TO FORT MEYERS AND LAKE OKEECHOBEE (No. 11418) (30th Ed., Oct. 18, 97),
cautions mariners as follows (IO-5):

ST. LUCIE INLET
CAUTION

Channel buoys are not charted because of constant shifting of the channel. Passage through the Inlet is not recommended without local knowledge of all hazardous conditions affecting this area.

XXX

CAUTION

Temporary changes or defects in aids to navigation are not indicated on this chart. See Notice to Mariners.

Another NOAA Chart No. 11472, INTRACOASTAL WATERWAY, PALM SHORES TO WEST PALM BEACH, (29th Ed., Sept. 13, 97) also cautions mariners as follows (IO-4):

ST. LUCIE INLET
CAUTION

Channel buoys are not charted because of constant shifting of the channel. Passage through the Inlet is not recommended without local knowledge of all hazardous conditions affecting this area.

Petty Officer Ellen Davis from that same ATON Team testified that buoys on the NOAA charts of the St. Lucie Inlet are not marked because of constant shifting of the channel. Moreover, passage through the channel is not recommended without local knowledge of all hazardous conditions. (Tr. 101).

Petty Officer Davis also testified that the latest changes for the Inlet before this incident were published in the Notice to Mariners October 1999 and that such changes come out on a monthly basis. (Tr. 102). The Petty Officer testified that the state of the

tide was an important factor in navigating the Inlet and that it was easiest on the flood side of slack water. (Tr. 105-108) (IO-8). She also stated that the difference between high and low tide is approximately one foot. (Tr. 105). On the night of November 22-23, the best time to navigate the Inlet was flood slack water at 2000. Slack low water was at 0300 on the 23rd. See also IO-9 (Tides – Sewall Point).

Petty Officer Davis concluded that because of the hazardous shoaling conditions and the seven knot current in the Inlet most large vessels avoid the Inlet. (Tr. 111). It is “absolutely” the worst Inlet in that section of the Florida coast. (Tr. 114-115).

The Respondent attempted to navigate this hazardous Inlet at night with 90 passengers on a 128 foot casino boat. Despite the clear cautions on the two charts of the Inlet and the warning in the Coast Pilot, the Respondent did not make any effort to ascertain current local operating conditions. He made no inquiries in this regard from the Coast Guard station. (Tr. 95). He had not been through the channel in a vessel the size of the EL DORADO before the evolution here. (Tr. 97). Nor was he aware of the latest changes in the Notice to Mariners. (Tr. 97-98).

It seems it is clear that the Respondent grounded the EL DORADO in the St. Lucie Inlet as alleged and that act constitutes negligence under these circumstances. I am aware that a long line of decisions holds that a presumption of negligence arises against the Master of a vessel which is driven aground. [See Appeal Decisions Nos. 2597 (TIMMEL) (1998); 2272 (PITTS), rev'd on other grounds *sub. nom.*, NTSB Order No. EM-98 (1983); 2173 (PIERCE), aff'd NTSB Order No. EM-81 (1979); 2177 (HOMER); 2113 (HINDS), 1131 (OUGLAND)]. Clearly, that presumption was successfully involved here.

As is now well recognized, that presumption can be overcome if the Respondent introduces evidence to reasonably explain how the grounding occurred. See (Id). That has not been done in this case. Indeed, the evidence convincingly establishes that the EL DORADO must have been outside the channel when the grounding occurred. The depth of the channel was surveyed the day after the incident and was found to be 10 feet. The EL DORADO's draft is 6 feet. (See Tr. 47).

Moreover, all buoys in the Inlet were found to be "Working Properly." (IO-6). Also, the testimony of the passengers indicates that the vessel was aground on a shoal near the jetty and appeared to be out of the channel. (Tr. 31-32).

I find the allegations of negligence well founded on this record.

3. Next, the Investigating Officer's allegation that the Respondent failed to immediately notify the nearest Coast Guard Office will be examined. The relevant regulation is 46 C.F.R. § 122.202 which reads as follows:

Subpart B – Marine Casualties and Voyage Records

§ 122.202 Notice of marine casualty.

(a) Immediately after addressing resultant safety concerns, the owner, agent, master, or person in charge of a vessel involved in a marine casualty shall notify the nearest Marine Safety Office, Marine Inspection Office, or Coast Guard Group Office whenever a vessel is involved in a marine casualty consisting of:

- (1) An unintended grounding, or an unintended strike of (allision with) a bridge.

There is no doubt that the EL DORADO was driven aground on the night of November 22-23 in the St. Lucie Inlet as asserted in the Factual Allegations as described

above. The Coast Guard radio watch USCG Seaman R. Feliciano testified that he received a call from the EL DORADO at 0030 on November 23, 1999 and that the caller advised him that the vessel would proceed to Fort Pierce instead of Stuart "because the seas were too rough." (Tr. 42-43). The caller did not mention the grounding. (Id).

LT Gary Todd, the Supervisor of the Coast Guard Marine Safety Detachment at West Palm Beach, which office is responsible for reviewing marine casualties in the St. Lucie Inlet, testified that an unidentified caller reported the grounding of an unidentified vessel in the Inlet and it took him until 2100 that night to locate and identify the EL DORADO as the vessel involved. (Tr. 47-48). The grounding was confirmed by the crew when he boarded the vessel at that time. (Id).

Indeed, the Respondent himself testified that he did not notify the Coast Guard of the grounding because "... it wasn't aground as far as my definition of aground was at that particular time." (Tr. 98-99).

Clearly, the notice required by 46 C.F.R. § 122.202 was not made by the Respondent or anyone else as specified in that regulation.

4. The remaining factual allegation is in essence that the Respondent failed to operate the EL DORADO in a manner consistent with the safety of the passengers and crew as required by 46 C.F.R. § 122.304. That regulation reads as follows:

Subpart C -- Miscellaneous Operating Requirements

§122.304 Navigation underway.

(a) The movement of a vessel shall be under the direction and control of the master or a licensed mate at all times. The master shall operate the vessel keeping the safety of the passengers and crew foremost in mind by directing the vessel in order to prevent a casualty. Special attention should be paid to:

- (1) The current(s) velocity and direction of the transmitting area;
 - (2) Tidal state;
 - (3) Prevailing visibility and weather conditions;
 - (4) Density of marine traffic;
 - (5) Potential damage caused by own wake;
 - (6) The danger of each closing visual or radar contact;
 - (7) Vessels's handling characteristics; and
 - (8) Magnetic variation and deviation errors of the compass.
- (b) [Reserved]

I am of the opinion that the Respondent's lack of preparation for the voyage here clearly violates this regulation and, as urged by the Investigating Officer, constitutes a separate violation in itself. At the hearing I expressed my view that I wanted to examine this allegation to determine whether it constituted a separate violation or was part of the negligence claim regarding the grounding. A careful examination of the transcript and exhibits now convinces me that Mr. Sandeson exhibited an abysmal lack of preparation for this voyage. That is particularly significant here since there were 90 passengers involved and the passage was at night.

The St. Lucie Inlet is a well known hazardous navigation area. That fact is brought to the attention of mariners by the cautions set out on the charts of the area described infra and by the relevant section of the Coast Pilot. Both resources are indispensable to a prudent mariner and both emphasize the need for local knowledge and updated information. Indeed, the Coast Pilot states that buoys in the Inlet are not charted since shoaling is a constant problem.

Yet the record here reveals that the Respondent did not make any attempt to determine the current conditions in the Inlet. (Tr. 95). This is despite the fact that he

knew of the trip three days in advance. (Tr. 94). Nor had he taken a vessel anywhere near the size of the EL DORADO (128 ft.) through that Inlet. (Tr. 97). Moreover, he was unaware of the latest changes in the Notice to Mariners. (Tr.97-98).

In sum, Mr. Sandeson's conduct as Master of the EL DORADO exhibited a serious disregard for the safety of his vessel and the passengers and crew aboard. This factual allegation too is PROVED.

V.
ORDER

The Coast Guard's suggested sanction in this case is Two Months Outright Suspension with an additional Four months suspension remanded on 12 months probation. That recommendation is accepted and adopted as reasonable under the circumstances.

Accordingly, It IS HEREBY ORDERED THAT License No. 791405 issued by the Coast Guard to Keith Sandeson is Suspended for approximately Six months. The first Two Months are OUTRIGHT and will end on June 19, 2000, in view of the fact that I impounded the license at the hearing.

The remaining four months suspension will not be effected provided the Respondent does not violate any law or regulation involving marine safety or alcohol or dangerous drugs.


PETER A. FITZPATRICK
United States Administrative Law Judge

Done and dated June 19, 2000 at
Norfolk, Virginia