

. UNITED STATES OF AMERICA

U.S. DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES COAST GUARD

Complainant

vs

HECTOR W. PAGAN

Respondent.

Docket Number CG S&R 02-0319
CG Case No. 1621630

**ORDER DENYING MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT AND
ENTRY OF CONSENT ORDER**

Issued: September 10, 2002

Issued by: Edwin M. Bladen, Administrative Law Judge

This case is now before this administrative law judge (ALJ) on a joint Motion for Approval of a Settlement Agreement and Entry of a Consent Order to be approved as a settlement of the case under 33 CFR § 20.502 (2002). For reasons below, the parties' joint motion is **DENIED**.

The Coast Guard initiated this administrative action seeking revocation of Merchant Mariner credentials (License Number 919993 and Document Number 584-07-4745) issued to respondent Hector W. Pagan by filing a complaint dated May 30, 2002. The complaint alleges respondent violated 46 USC 7703 and 46 CFR Part 5 by committing acts of negligence, misconduct, violation of law or regulation and incompetence. The charges of negligence, misconduct, and violation of law or regulation all stem from a collision that occurred on

February 5, 2002 between the vessel Indutech Environmental Service and the R/V Chapman. The Coast Guard alleges that the respondent, while serving as master aboard the R/V Chapman, was negligent by committing an act or failing to perform an act that contributed to the aforementioned collision. The Coast Guard also alleges that the Respondent committed misconduct and violation of law or regulation by failing to notify the Coast Guard as soon as possible of the marine casualty. The incompetence charge relates to the Respondent's alleged failure to satisfy the requirements for the issuance of an Able Seaman-Unlimited Merchant Mariner's Document and failure to satisfy the qualifications for issuance of a Merchant Mariner's License as a Master of 1600 Gross Tons.

On August 30, 2002, the parties entered into a written settlement agreement in states in pertinent part:

- (1) Respondent agreed to execute a Voluntary Surrender of Merchant Mariner's License License No. 919993 and retain the issued Merchant Mariner's Document as an Ordinary Seaman, which has already been revalidated by the Regional Exam Center in Miami;
- (2) The Coast Guard agreed to revalidate the Respondent's Merchant Mariner Document for an Ordinary Seaman [Wiper/Steward Dept (FH)];
- (3) The Coast Guard agreed to waive the one (1) year waiting period required for voluntary surrenders and afford the Respondent the opportunity to immediately re-apply for the issuance of any merchant mariner's license for which the appropriate qualifications and credentials have been obtained;
- (4) The Coast Guard agreed not to seek a suspension period against the respondent, but the parties agreed to a one (1) year probation imposed against the Respondent following acceptance of the Settlement Agreement; and
- (5) The Coast Guard agreed to withdraw, with prejudice, all remain charges against the respondent, except the Negligence, which would be subject to adjudication on the merits.

The settlement agreement was accompanied by an amended complaint dated August 30, 2002 retaining only the Negligence charge.

In these proceedings, settlement agreements are subject to the approval of the presiding ALJ. See generally 33 CFR 20.502. Although there exists a strong judicial policy favoring settlement of disputes, an ALJ should not approve a settlement agreement that is not in accordance with law. See Appeal Decision 2623 (LOVE).

In this case, the parties proposed settlement agreement is defective because the settlement agreement calls for a “voluntary surrender.” A “voluntary surrender” is a device available to a respondent in order to completely avoid going to a hearing. See generally 46 CFR § 5.203. A voluntary surrender involves the permanent relinquishment of all rights to a license/document in lieu of a hearing. *Id.* A voluntary surrender is equivalent to a revocation. 46 CFR § 5.205(d). The only means for a mariner to have a license/document restored following voluntary surrender is through the administrative clemency process. 46 CFR § 5.901. See also COMDTINST M16000, Marine Safety Manual (MSM), Vol. 2. The right to return merchant mariner credentials following a voluntary surrender is solely reserved by the Commandant. *Id.* Accordingly, a Marine Safety Office is without authority to waive the waiting period for issuance for a new license following a voluntary surrender.

ORDER

IT IS HEREBY ORDERED that the parties joint Motion for Approval of a Settlement Agreement and Entry of a Consent Order is **DENIED**.

DATED: September 10, 2002.



EDWIN M. BLADEN
Administrative Law Judge
Seattle, Washington