

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

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UNITED STATES COAST GUARD
COMPLAINANT,

vs.

License No. 886055 (now) 887351

Issued to:
JAMES V. MILLER
Respondent

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* Docket No. 99-0235
* Case No. PA00000646
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* DECISION AND ORDER
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PRELIMINARY STATEMENT

This proceeding is brought pursuant to the authority contained in the provisions of 5 USC 552-559; 46 USC, Chapter 77; 46 CFR Part 5; and 33 CFR Part 20.

James V. Miller was served with a Complaint by a U.S. Coast Guard Investigating Officer, Jason D. Neubauer, of the Marine Safety Office, Morgan City, LA, on 4 April 2000. The factual allegations are as follows:

“(1) The Coast Guard alleges that on September 13, 1999 while serving as operator on board the Lady Nita the Respondent wrongfully violated Inland Navigation Rule #13 in that he failed to keep out of the way of a stand on vessel in an overtaking situation resulting in a collision.”

Mr. Miller filed an answer on 17 April 2000 in which he denied the jurisdictional and factual allegations of the Complaint. A hearing was proposed to be held at the

Marine Safety Office, Morgan City. However, at Mr. Miller's request the hearing was held at 1000 on 9 June 2000 at the Marine Safety Office, Mobile, AL, rather than Morgan City. Mr. Miller appeared without counsel. He represented himself at the hearing.

In support of the Complaint the Investigating Officer introduced in evidence the testimony of two (2) witnesses: (1) Bradley Leblue, who was operator of the M/V Pat Salvaggio on 13 September 1999 and who testified in person; and (2) Floyd Arthur Ward, who was operator of the M/V Sea Drift on 13 September 1999. Mr. Ward testified by telephone as authorized by 46 CFR 5.535(f).

Also, in support of the Complaint the Investigating Officer offered two (2) exhibits.

I.O. Exhibit No. 1 – is a completed Report of Marine Accident form, CG2692, which was submitted by Mr. Miller.

I.O. Exhibit No. 2 – a National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, Nautical Chart 11350, Intracoastal Waterway Wax Lake Outlet to Forked Island.

The Respondent did not call any witnesses nor did he produce any documentary evidence.

FINDINGS OF FACT

1. On 13 September 1999, at approximately 1225, the Respondent was operating the towing vessel M/V Lady Nita under authority of a Coast Guard operator's license.
2. At that time the lead barge of his tow collided with the stern of the towing vessel, Pat Salvaggio.
3. The Pat Salvaggio and the Lady Nita were both west bound in the Gulf Intracoastal Waterway with the Lady Nita following the Pat Salvaggio.

4. When the Pat Salvaggio approached a bend in the GIWW near mile marker 169 the operator of the Pat Salvaggio contacted an approaching east bound vessel the M/V Sea Drift and agreed to stop prior to reaching the bend in order to allow the Sea Drift and its tow safe passage through the turn.
5. The agreement was made over VHF Channel 13.
6. The operator of the Lady Nita, who was the captain of the vessel, also made arrangements for a port to port passage with the M/V Sea Drift.
7. The Pat Salvaggio stopped and waited for the MV Sea Drift to comply with the passing arrangements.
8. The Lady Nita did not stop in accord with the agreement. The Lady Nita under control of Mr. Miller continued on its course and speed and ultimately the lead barge of his tow collided with the stern of the M/V Pat Salvaggio

ULTIMATE FINDINGS

James V. Miller did, on 13 September 1999, while serving as the operator on board the M/V Lady Nina, fail to keep his vessel out of the way of a stand on vessel, the M/V Pat Salvaggio, in an overtaking situation resulting in a collision in violation of Inland Navigation Rule #13.

CONCLUSIONS

The United States Coast Guard and the Administrative Law Judge have jurisdiction over the subject matter of this hearing under the provisions of 5 USC 552-559; 46 USC Chapter 77; 46 CFR Part 5; and 33 CFR Part 20.

OPINION

The above preliminary statement, findings of fact, and conclusions are incorporated herein. As heretofore stated, the Respondent did not call any witnesses nor did he produce any documentary evidence. He did not testify. He made an unsworn statement to the effect that when he relieved the operator of the Lady Nita at approximately 12 noon he was not advised of any pre-arranged passing agreements with the Pat Salvaggio or the Sea Drift.

Inland Rule #13 of the Steering and Sailing Rules reads as follows:

“(a) Notwithstanding anything contained in Rules 4 through 18, any vessel overtaking any other shall keep out of the way of the vessel being overtaken.

(b) A vessel shall be deemed to be overtaking when coming up with another vessel from a direction more than 22.5 degrees abaft her beam; that is, in such a position with reference to the vessel she is overtaking, that at night she would be able to see only the sternlight of that vessel but neither of her sidelights.

(c) When a vessel is in any doubt as to whether she is overtaking another, she shall assume that this is the case and act accordingly.

(d) Any subsequent alteration of the bearing between the two vessels shall not make the overtaking vessel a crossing vessel within the meaning of these Rules or relieve her of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

It must be noted that even if the prior operator of the Lady Nita whom Mr. Miller relieved did not advise him of the passing arrangements this would not excuse him of the responsibility to steer his vessel clear of the vessel ahead of him.

The allegations of the Complaint are proved.

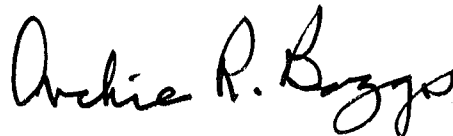
Mr. Miller has a prior record as follows: his license was suspended for two (2) months on four (4) months probation on 4 December 1981 at Mobile for allowing a tow

under his control to collide with a bridge; and on 10 June 1999 his license was suspended for two (2) months on twelve (12) months probation at New Orleans for allowing his vessel, the M/V Mr. Gene, to allide with a fleet in the Lower Mississippi River.

ORDER

That license No. 887351 and all other valid licenses, documents, or certificates of service issued to you by the United States Coast Guard, or any predecessor authority, now held by you, be and the same, are hereby Revoked. However, the revocation order shall be reduced to three (3) months outright suspension from the date on which you deposit your license with the Coast Guard, provided you complete a Coast Guard approved Rules of the Road course. You are directed to provide copies of a completion certificate of the course to the Marine Safety Office, Morgan City, as proof of the completion before the end of the three (3) month suspension period. You are directed to immediately deposit your license No. 887351 with the Marine Safety Office, 150 N. Royal Street, Mobile.

The rules governing appeals are attached hereto.



ARCHIE R. BOGGS
Administrative Law Judge
United States Coast Guard

Dated 28 June 2000
New Orleans, Louisiana.