

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD**

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Complainant

vs.

ROBERT V. GERENSER

Respondent

**Docket Number: 00-0433
Case Number: PA00001190**

ORDER

BEFORE:

Hon. Joseph N. Ingolia
Chief Administrative Law Judge
United States Coast Guard

This order is issued in accordance with 33 C.F.R. § 20.902(c) which relates to oral decisions. The United States Coast Guard brought this administrative action against Respondent Robert V. Gerenser under the legal authority codified in 46 U.S.C. § 7703 and the underlying regulations. In an amended complaint dated July 14, 2000, respondent was charged with committing Negligence under 46 C.F.R. § 5.29 and Violation of Law or Regulation under 46 C.F.R. § 5.33 while operating a vessel under the authority of his Coast Guard license. The factual allegations in support of the complaint states that on June 28, 2000 at New Hope, PA:

1. Respondent negligently operated the M/V H.M.S. SURPRISE without the required child size life jackets.

2. Respondent negligently operated the M/V H.M.S. SURPRISE in violation of a CG-835 that prohibited him from sailing without first notifying the Coast Guard of repairs to the port forward canopy extension;
3. Respondent violated 46 U.S.C. § 3313 by operating the H.M.S. SURPRISE without the required number of child size lifejackets and by exceeding the permitted number of passengers; and
4. Respondent violated 46 C.F.R. § 185.506 by failing to provide the required passenger safety orientation prior to carrying passengers for hire.¹

Respondent filed an answer admitting the jurisdictional allegations, and partially denied the factual allegations.

A hearing was conducted in the above captioned matter on October 17, 2000 in Philadelphia, PA in accordance with the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and Coast Guard procedural regulations located at 33 C.F.R. Part 20. Chief Warrant Officer Patrick C. Glenn and Lieutenant Mike Kaszuba represented the Coast Guard at the hearing. Respondent also appeared at the hearing represented by professional counsel Jeffrey S. Moller, Esq.

After opening statements by both sides, the Coast Guard presented the sworn testimony of three witnesses and submitted seven exhibits into evidence. Respondent also testified at the hearing, but did not offer any exhibits into evidence. At the conclusion of the hearing, the undersigned rendered the oral decision and order.

¹ The original complaint dated June 29, 2000 did not charge respondent with failing to provide a safety briefing in violation of 46 C.F.R. § 185.506.

Respondent was not found to have operated the H.M.S. SURPRISE in violation of the CG-835. The evidence indicated that respondent repaired the defect that was the subject of the CG-835, but failed to properly notify the Coast Guard of the repair.² Although negligence for operating the vessel in violation of CG-835 had not been established, the undersigned found that the remaining allegations under the charges of Negligence and Violation of Law or Regulation had been established by a preponderance of the evidence. More specifically, it was found that respondent had negligently, and in violation of 46 C.F.R. § 3313, operated the H.M.S. SURPRISE with an insufficient number of child size life jackets. Respondent was also found to have violated 46 C.F.R. § 3313 by not properly conducting a head count of passengers and thereby exceeded the number of passengers permitted to be aboard the vessel as established in the vessel's Certificate of Inspection and Stability Letter. In addition, the evidence adduced at the hearing established that respondent violated 46 C.F.R. § 185.506 by not properly providing a passenger safety briefing prior to getting underway.

Wherefore,

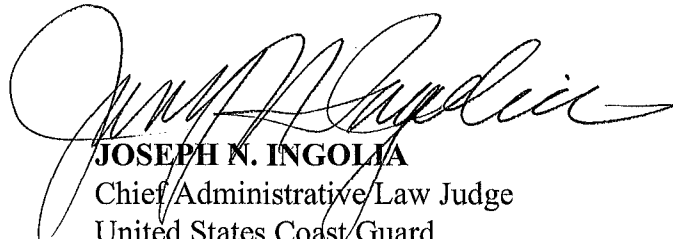
SANCTION

IT IS HEREBY ORDERED THAT Merchant Mariner's License Number 858051 issued to Robert V. Gerenser, and all other Coast Guard licenses, documents, certificates and authorization whatsoever, are subject to **3 MONTHS OUTRIGHT SUSPENSION** commencing on October 17, 2000, and a period of **12 MONTHS**

² The testimony at the hearing established that on the morning of 28JUN00, prior to the voyage at issue, respondent notified the Coast Guard of repairs to the vessel by leaving a message with the operator or telephone attendant at the Marine Safety Office.

PROBATION beginning at the end of the 3 months suspension period. If the Respondent is charged with any violations under 46 U.S.C. §§ 7703 or 7704, and those charges are found proved during the probationary period, the Respondent's Merchant Mariner's License shall be immediately revoked.

IT IS HEREBY FURTHER ORDERED THAT service of this Order on the Respondent or designative representative serves as notice to the Respondent of his right to appeal. A copy of the Rights on Appeal is attached to this decision.



JOSEPH N. INGOLIA
Chief Administrative Law Judge
United States Coast Guard

Done and dated this 20th day of October 2000.
Baltimore, Maryland