

UNITED STATES OF AMERICA
U.S. DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES COAST GUARD

Complainant

vs.

JOSE M. RIVERA

Respondent.

Docket Number CG S&R 02-0448
CG Case No. 1643836

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 stated below, the parties' joint motion is **DENIED**.

The Coast Guard initiated this administrative action seeking revocation of Merchant Mariner Document Number 582-15-1094 issued to respondent Jose M. Rivera by filing a complaint dated July 10, 2002. The complaint alleges respondent violated 46 USC 7703 and committed an act of misconduct in violation of 46 CFR 5.27 by submitting a license application for renewal of an Able Seaman [Unl] Merchant Mariner Document which had been previously applied for based on fraudulent information.

On August 23, 2002, the parties entered into a written settlement agreement in which, in pertinent part states:

OPTIONAL FORM 99 (7-90)

9-10-02

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To	From
NSO San Juan	AW-Seattle
Dept. Agency	Phone #
AW Docking Ctr	
Fax #	Fax #
CAW-G. Jordan	

NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

- (1) Respondent agreed to execute a Voluntary Surrender of Merchant Mariner's Document No. 582-15-1094;
- (2) The Coast Guard agreed to issue a Merchant Mariner Document for an Ordinary Seaman [OS/Wiper (FH)] to Respondent.
- (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 to a three month outright suspension of Respondent's document, accrued from the expiration of the document on April 10, 2002 thru July 10, 2002 and the parties agreed to a six (6) month probation imposed against the Respondent following acceptance of the Settlement Agreement; and
- (5) The parties contemplated the filing of an amended settlement agreement, charging Respondent with Misconduct that would remain subject to adjudication.

The settlement agreement was accompanied with the amended complaint dated August 23, 2002, which charged the Respondent with Misconduct and contained language similar to that in the original complaint, except that the amended complaint states that the submission of the fraudulent information on the license application constitutes a violation of 18 USC § 1001.

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 and which is not fair, reasonable, and in the best interests of the parties. See Appeal Decision 2623 (LOVE). The purpose of a settlement is to resolve all matters needing to be adjudicated. See 33 CFR 20.502.

In this case, the parties proposed settlement agreement is defective for two reasons. First, the parties' settlement agreement is ambiguous. The settlement agreement


purports to settle all administrative claims and causes of action alleged in the complaint. However, paragraph 4 of the settlement agreement contemplates the filing of an amended complaint that charges the Respondent with one count of misconduct, which will be subject to adjudication. The misconduct charge under the amended complaint is essentially the same allegation as contained in the original complaint regarding the fraudulent license application. Therefore, the settlement agreement fails to appropriately dispose of the only disputed issue in this case.

Second, 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