

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

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 Complainant

vs

JOHN SMELLEY
 Respondent

Docket Number CG S&R 03-0055
 CG Case No. PA 1682308

ORDER DISAPPROVING SETTLEMENT

Issued: February 13, 2003

Issued by: Edwin M. Bladen, Administrative Law Judge

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 ALJ PROCKETING CENTER
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Respondent has been charged in a single count complaint with having been convicted within the preceding 10 years of violating a dangerous drug law of the State of Louisiana¹. The filing of the complaint commences the suspension and revocation hearing process. See 33 CFR § 20.401.

The Coast Guard has now submitted for approval under 33 CFR § 20.50a proposed settlement of the hearing process which provides that the Respondent will undertake a "cure."

A cure settlement is only available where the respondent has been charged with being a user of dangerous drugs. See 46 USC § 7704(c) and *Appeal Decision 2535* (Sweeney). Respondent has not been so charged.

The complaint here very specifically alleges a conviction of a dangerous drug law as contemplated by 46 USC § 7704(b). That provision mandates under such circumstances that the mariner's license, document or credential be revoked.

Consequently, I am unable to find that this proposed settlement is lawful and thus must deny its approval.

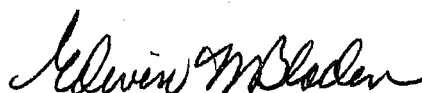
¹ The complaint recites as statutory authority for the violation both 46 USC § 7704(b) [conviction of a drug related offense] and 46 USC § 7704(c) [licensee or document holder is a user of dangerous drugs unless cured].

The proposed cure settlement in this matter is disapproved and denied.

As a result, this matter will be set for hearing.

IT IS SO ORDERED.

Dated: February 13, 2003



Edwin M Bladen
Edwin M Bladen
Administrative Law Judge