

UNITED STATES OF AMERICA  
DEPARTMENT OF HOMELAND SECURITY  
**UNITED STATES COAST GUARD**

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UNITED STATES COAST GUARD  
Complainant

vs.

HOWARD LYNCH III  
Respondent.

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Docket Number: CG S& R 02-0634  
CG Case No. 1691275

**DECISION AND ORDER**

**Issued: January 12, 2005**

**Issued by: Honorable Peter A. Fitzpatrick, Administrative Law Judge**

**APPEARANCES:**

LTJG Trevor C. Cowan  
LT Scott Baranowski  
U.S. Coast Guard Activities Baltimore  
2401 Hawkins Point Road  
Building 70  
Baltimore, MD 21226  
**For the Coast Guard**

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**For the Respondent**

## **I. STATEMENT OF THE CASE**

This case involves a dispute between the Coast Guard and the Respondent Howard Lynch III about whether the Respondent complied with the terms of the Settlement Agreement entered into between the parties on October 30, 2002. That “Agreement” was approved by Order of Administrative Law Judge McKenna on December 12, 2002. The Coast Guard asserts that the Respondent failed to meet the requirements of the Settlement Agreement in two respects. First, he failed to participate in a random, unannounced drug testing program which included 6 random drug tests during the 12 months period following completion of the drug rehabilitation program. (Section 1(d) of the Agreement). Second, that he also violated Section 1(i) of the Agreement when he served as Captain of the TUNA BITE on August 20, 2004, a position requiring a Coast Guard License. At that time his license was suspended and in the possession of the Coast Guard. In the Agreement he agreed not to serve in any capacity requiring Coast Guard credentials. The Respondent asserts that he did comply with Section 1(d) of the Agreement and met the drug testing requirements of that provision. Further, that another appropriately licensed crew member was serving as Captain of the TUNA BITE on August 20, 2004 and thus he did not violate Section 1(i). The Coast Guard seeks an order permanently revoking Mr. Lynch’s license. The Respondent moves that the license be returned to him. The case is now ripe for decision.

## **II. FACTUAL BACKGROUND**

1. On November 1, 2002 the Coast Guard filed a Complaint against Respondent alleging that Howard Lynch III violated 46 USC 7704(c) and 46 CFR 5.35 in that he failed a chemical test for dangerous drugs on October 3, 2002. Specifically, it was alleged that: (1) Mr. Lynch took a random drug test collected by Ruth Paugh of Labcorp; (2) Lynch signed the Federal Drug

Testing Custody and Control Form; (3) that sample was tested by Labcorp Occupational Service of Research Triangle Park, NC; and (4) the specimen tested positive for marijuana metabolite.

2. Concurrently, the Coast Guard and Mr. Lynch filed a joint Motion for Approval of Settlement Agreement and Entry of Consent Order. That Motion requested the Administrative Law Judge to approve the Settlement Agreement which, as pertinent here, required Mr. Lynch to enroll in and complete a drug rehabilitative program. Upon successful completion he was to attend a substance abuse monitoring program (such as AA/NA) for a minimum period of one year. (See Investigating Officer (IO) Exhibit 7). Importantly Section 1(d) also required the Respondent to:

“d. participate in a random, unannounced drug-testing program for a minimum period of one-year following successful completion of the drug rehabilitation program. During the drug-testing program, the Respondent must take at least 6 random drug tests conducted in accordance with Department of Transportation procedures found in Title 49, Code of Federal Regulations (CFR), Part 40;”

Finally, as pertinent here, he was to deposit his Coast Guard license with the Investigating Officer until he successfully completed the terms of the Agreement. During that period he agreed to:

“1(i) not perform any function that requires a Coast Guard issued Credential.”

There is no issue raised here that Mr. Lynch completed the initial drug rehabilitation program and met the follow up monitoring requirements at least as to his attendance at AA meetings.<sup>1</sup> When Lynch submitted his documents to the Investigating Officer which also included the results of 6 drug tests, he was advised on September 1, 2004 that he “. . . failed to

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<sup>1</sup> The letter of Mr. Ralph Malatesta, dated October 15, 2004, states that the Respondent attended Alcoholics Anonymous meetings and participated in the program. (Respondent substituted Exhibit C has not been objected to by the Investigating Officer and is Admitted. (Transcript, hereinafter TR 126-129).

supply adequate evidence of successful completion of the terms of the agreement” (Notice of Failure to Complete Settlement Agreement). Thereafter, on August 31, 2004 the Respondent requested a hearing on this issue as provided for in Section 2(c) of the Settlement Agreement.

A Pre-Hearing conference was held by telephone on September 14, 2004 and an agreed upon date for the hearing was set for October 8, 2004 at Baltimore, MD. It was conducted as scheduled and the Coast Guard Investigating Officers, Mr. Lynch, and his counsel, were present. The Coast Guard presented 2 witnesses: Coast Guard Petty Officer Jason A. Abramoski and Coast Guard Seaman Scott Gray. Thirteen exhibits were offered into evidence. Those documents are identified on Attachment B. The Respondent testified and sponsored one other witnesses, Christopher Michael Hornung. He also offered four exhibits which are identified in Attachment B.<sup>2</sup>

At the conclusion of the hearing both sides presented closing oral statements. Later, written pleadings were submitted. The Coast Guard’s Post-Hearing Brief was received on October 22, 2004. Mr. Parker’s letters of October 15 and October 25, 2004 set out the Respondent’s position. The transcript in this case was received two months after the hearing on December 8, 2004.

### **III. FINDINGS OF FACT**

#### **A. The Section 1(d) Issue**

1. On October 3, 2002 Howard Lynch III was the holder of Coast Guard License No. 943383 authorizing him to serve as Master of Inland Steam or Motor vessels of not more than 50 gross registered tons. (TR 9).

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<sup>2</sup> A signed copy of the Federal Fisheries Permit issued the TUNA BITE (Resp. Exhibit D) was submitted by counsel after the hearing. It is admitted without further objection. See TR 129-130.

2. On that date, Mr. Lynch took a random chemical test for dangerous drugs. The result showed that he tested positive for marijuana metabolite.

3. On October 17, 2002 the Coast Guard filed a Complaint against Mr. Lynch under 46 USC 7704(c) seeking the revocation of his license. On October 30, 2002 the Coast Guard and Mr. Lynch filed a joint Motion for Approval of Settlement Agreement and Entry of Consent Order seeking the Judge's approval of a detailed drug rehabilitation program which Mr. Lynch agreed to undertake. The requirements, as pertinent here, included participation in an approved rehabilitation program, follow-up involvement in a drug abuse monitoring program, participation in a random, unannounced drug testing program for one year, and the taking of six random DOT sanctioned drug tests. (See IO-7).

4. On August 25, 2004 the Coast Guard issued a Notice of Failure to Complete Settlement.

5. Mr. Lynch completed a "traditional outpatient" drug rehabilitation program at White Flint Recovery Eastern Shore, Inc. on July 22, 2003. (TR 88-89, Respondent (RESP. Exhibit B,)). He participated in an Alcoholics Anonymous program through July 28, 2004. (TR 90, RESP C). During that 12 month period too he was involved in an unannounced random drug testing program administered by the National Safety Alliance (NSA), a drug testing consortium. (TR 9, 99, 112). Also, during the 12 month follow-up period he took six DOT sanctioned drug tests on August 27, 2003, October 17, 2003, December 31, 2003, January 30, 2004, March 31, 2004, and May 25, 2004. All tests were administered by Choice Point Medical Review Services. (IO-8-13). All test results were negative. (*Id.*) Mr. Lynch selected the date of each collection. (TR 108-110).

B. The Section 1(i) Issue

1. On August 20, 2004 Mr. Lynch was the owner and sole shareholder of the charter fishing vessel TUNA BITE. (TR 91). Prior to the deposit of his Coast Guard license with the Investigating Officer on October 30, 2002, Captain Lynch operated the vessel as a fishing charter in day excursions for up to six passengers. After the deposit of his license, he continued to operate the six passenger charter service but employed Donny Long, an appropriately Coast Guard licensed Master to operate the vessel. (TR 97-98). Mr. Long is enrolled in a random unannounced drug testing program with The Maritime Consortium. (TR 97-98).

2. Captain Long was not available for a scheduled charter leaving in early morning on August 20, 2004 so Mr. Lynch called Christopher Hornung at approximately 2000-2100 on August 19, 2004. Lynch hired Hornung to work aboard the TUNA BITE for the planned fishing charter the following morning. (TR 77-78). Usually Mr. Hornung operates a private fishing boat out of Ocean City, MD and was not familiar with Indian River Inlet where the TUNA BITE was moored. (TR 79-80). Moreover, he had never operated the TUNA BITE. (TR 78).

3. The TUNA BITE left Indian River Inlet on August 20, 2004 with 5 passengers and 2 crew members (Lynch and Hornung). (TR 78-80, 84). The charter lasted until approximately 1900 when the vessel was seen transiting Indian River Inlet enroute to the dock. (IO-1). The catch included legal size Atlantic Yellow Fin Tuna, Atlantic Blue Fin Tuna, and Dolphin fish. (IO-1, TR 36, 53). The TUNA BITE holds a Federal Fisheries Permit (No. 10012120) for the species of the fish aboard the vessel. (TR 53).

4. Officials at the Coast Guard Station Indian River Inlet had information from Coast Guard Activities Baltimore the Mr. Lynch was operating his vessel without a license. (TR 22). When the TUNA BITE passed the Coast Guard station, boarding officers were dispatched

to perform an inspection of the vessel. (TR 26). Two Coast Guard officials met the TUNA BITE at its slip at North Shore Marina. They observed Mr. Lynch at the controls operating the vessel and the other crew member, Hornung, manning the lines. (IO-1, TR 26). When Petty Officer Abramowski approached the Respondent, Mr. Lynch stated that he was the owner of the vessel and the Captain. (TR 28). That observation was confirmed by Seaman Scott Gray, another member of the boarding party. (TR 46-47). Also, Mr. Hornung confirmed that Mr. Lynch described himself as the Captain of the vessel. (TR 84).

5. When asked to produce his credentials, Lynch responded that he didn't have the license aboard but could get it. (TR 47). It was not produced.

6. Next, Mr. Hornung was interviewed and he indicated that he did not have his license aboard. (TR 48). He appeared to be a crew member, working the lines, stowing gear, and cleaning the boat. (TR 25, 48).

7. When it became apparent that neither Lynch or Hornung had their licenses aboard, the Coast Guard seized the catch for the reason that Lynch “. . . was in violation for possession of highly migratory species under an invalid permit due to the fact that he was operating a charter without proper credentials.” (TR 29).

8. At the time of this incident, Mr. Hornung was the holder of a Coast Guard issued license (No. 995161), authorizing him to serve as

“. . . operator of uninspected passenger vessels as defined in 46 U.S.C. 2101 (42) upon near coast waters not more than 100 miles offshore. For domestic voyages only, the holder of this license meets the STCS 1995 regulations without further endorsement.”<sup>3</sup>

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<sup>3</sup> Mr. Hornung's Coast Guard license is set out in Resp. Exhibit A.

9. Mr. Hornung was not enrolled by Mr. Lynch or any other employer in a Drug Testing program when Hornung served about the TUNA BITE on August 20, 2004. (TR 84).

#### **IV. DISCUSSION**

1. There are two issues to be decided in this case. The first is whether Mr. Lynch complied with the language of the Settlement Agreement requiring him to participate in a random, unannounced drug testing program during the one year period following successful completion of the initial drug rehabilitation program. Also, during that time he was required to take six random drug tests. The second is whether Mr. Lynch violated the Settlement Agreement when he served aboard the TUNA BITE on August 20, 2004.

Turning first to the drug testing issue, I hold that Mr. Lynch did not violate Section 1(d) of that Agreement. That section which is set out in full *infra* requires him to do two things. First, he must “participate in a random, unannounced drug testing program for a minimum period of one year following successful completion of the drug rehabilitation program.” (IO-7). Mr. Lynch was enrolled in that very type of program at National Security Alliance during the entire period. (TR 99). Moreover, his enrollment for that one year period has not been challenged here. Clearly therefore, Mr. Lynch complied with the first sentence of section 1(d).

The second sentence of 1(d) requires that the Respondent “. . . take at least 6 random drug tests conducted in accordance with Department of Transportation procedures found in Title 49, Code of Federal Regulations (CFR), Part 40.” The six tests are set out at IO Exhibits 8-13. There is no question that the testing facility Choice Point Medical Review Services meets the DOT testing requirement. The Coast Guard challenges these tests however on the basis that Lynch himself picked the dates and even if he randomly selected them, there were not “unannounced.” It is asserted that he could have selected the dates to avoid any traces of illicit



drugs in his system. Therefore it cannot be determined whether he actually used drugs during the period involved. (Post Hearing Brief).

Mr. Lynch responds that the second sentence of 1(d) does not refer to unannounced, random tests or any requirement that a third party administer the selection of the test dates. The provision only requires “random” tests. Moreover, Lynch testified at the hearing that he tried to have the drug testing consortium in which he was enrolled, the National Safety Alliance, administer the tests but they refused on the basis that the program has only one random pool for its members. (TR 99, 112-113). Lynch asserts too that he asked the Investigating Officer to arrange the tests but that he refused. (TR 114). The Respondent testified that he understood that since he was a participant in the NSA unannounced, random drug testing program, he could simply select six dates at random. (TR 108).

Reviewing this issue against the specific facts of this case, I have concluded that Mr. Lynch’s reading of Section 1(d) is not unreasonable. It is true, as urged by the Investigating Officer, that dates of the six drug tests could be selected by the Respondent himself to avoid the detention of dangerous drugs in the mariner’s system. The second sentence of section 1(d) however does not include the term “unannounced” nor does it refer to a third party. Lynch was enrolled in an unannounced, random drug testing program with the National Security Alliance and that concern would not set up another pool for known drug users undergoing rehabilitation. (TR 91). Moreover, it is not clear from this record if the mariner was provided sufficient guidance during the rehabilitation process to avoid the confusion regarding the six random tests.

The Investigating Officer’s reliance on USCG v. Bradley, CG S&R 01-0487 and USCG v. Uccello,CG S&R 020208 is misplaced. In the Bradley case there was no indication that the Respondent participated in an unannounced, random drug testing program for the one year

period. Moreover, Respondent Bradley was directed specifically to contact the Marine Safety Office every three months so that he could demonstrate compliance and avoid any misunderstanding. Finally, in Bradley the Respondent was afforded the opportunity to comply by having the period of suspension extended in order to avoid losing his credentials. He refused.

With regard to the Uccello case, there are a number of distinguishing factors in that case, including the requirement that the 12 random drug tests be observed. Further, under Section 1D of that Settlement Agreement, the Respondent was required to “[p]rovide the name and address of the service agent/consortium who [would] be administering the random drug testing program for the period of suspension.” (Uccello at 11).

In sum, fair reading of Section 1(d) of the Settlement Agreement here and a review of the Respondent’s actions support the conclusion that he complied with that provision

2. The remaining issue is whether the Respondent violated Section 1(i) of the Settlement Agreement when he operated the TUNA BITE on a fishing charter in Indian River Inlet on August 20, 2004 with five passengers aboard. On board for that trip too was another member of the crew, Christopher Hornung who holds Coast Guard License No. 995161 authorizing him to operate an uninspected vessel with six or fewer passengers. At approximately 1910 on August 20, 2004 at least two Coast Guard officials saw the Respondent operating the TUNA BITE in Indian River Inlet heading inbound with five passengers. (IO-1, TR 25-26, 45-46). Petty Officer Abramoski testified at the hearing that he “got my boarding team together” and went to North Shore Marina to meet the vessel. (TR 26). There, he saw Mr. Lynch “. . . operating the vessel, mooring it to the pier and a crew member handling lines, who was later identified as Mr. Hornung.” (*Id.*) Seaman Gray, another member of the boarding team, testified that “we

witnessed Mr. Lynch operating the controls and mooring the vessel to the pier.” (TR 45). The other crew member, Mr. Hornung tied off the vessel. (TR 46).

When the Petty Officer approached the vessel, Mr. Lynch “. . . was the main person to greet me at the beginning of the boarding.” (TR 28). Lynch stated he was the licensed Captain of the vessel and he was the owner in charge of the charter trip. (*Id.*). The Petty Officer responded to the following questions at the hearing as follows:

“Q. Who identified themselves to you as captain of the vessel?

A. Mr. Howard Lynch, III.

Q. Are you certain that Mr. Lynch identified himself as captain?

A. Yes, I'm sure.

Q. How did you verify Mr. Lynch's identity?

A. We had a copy of his driver's license through the Delaware State Park Rangers, a color copy, and identified him through that document.

Q. Did you ask to see Mr. Lynch's U.S. Coast Guard credential?

A. Yes, I did.

Q. And what did he say?

A. He said he didn't have it on board, but he could get it to us the next day.

Q. Why did you need to see Mr. Lynch's U.S. Coast Guard credential?

A. In order to operate a charter six persons or less you're required to have a Coast Guard operator's license and a Federal Fisheries Permit.”

(TR 28-29)

Seaman Gray also testified that Mr. Lynch identified himself as the Captain of the vessel. Gray is certain of that fact. (TR 46-47). Moreover, Mr. Hornung also testified at the hearing that Lynch told the Coast Guard he (Lynch) was Captain of the vessel. (TR 84). With regard to Lynch's statement that he didn't have his license on board but could get it, Mr. Lynch's license was in the possession of the Coast Guard on the day of the incident here. (TR 47). See IO-7 (Settlement Agreement, Section 1(h)).

At the hearing, Mr. Lynch denied that he ever operated the TUNA BITE on a fishing charter as Captain during his suspension and that he always had a licensed captain on board and in command. (TR 94). Mr. Lynch testified that his admission to the Coast Guard boarding officers that he was the Captain of the TUNA BITE was due to the fact he was attempting to hide his suspension from the passengers. (TR 95). He continued that later, after the customers left, he told the boarding team that “Chris is the licensed Captain on board.” (*Id.*) Lynch conceded that he operated the vessel in the inlet because Hornung was not familiar with the area or the boat. Hornung testified that August 20, 2004 was the only time he had operated the TUNA BITE but that it was “under his direction and control when it was out at sea.” (TR 85).

With regard to Mr. Hornung’s status as the potential Captain of the vessel, it is relevant to note that he did not have his license aboard. The applicable statute and Coast Guard regulations make it clear that an uninspected small passenger vessel like the TUNA BITE here must be operated by an appropriately licensed individual. See 46 USC § 8903 and 46 CFR § 15.605. Moreover, that individual must have the license in his or her possession “. . . and must produce it immediately upon the request of a Coast Guard boarding officer.” 46 CFR § 26.20-1.

Additionally, the Coast Guard regulations require that a licensed individual employed as a crewmember aboard a vessel for which position a license is required, as here, must pass a chemical test for dangerous drugs. Mr. Hornung did not take any drug test before joining the crew of the TUNA BITE. (TR 82-83). Moreover, Mr. Lynch, as owner of the TUNA BITE, was required to establish a program involving random testing for dangerous drugs for all crewmembers on the company’s vessels who are required by law or regulation to hold a license issued by the Coast Guard in order to perform their duties on the vessel. See 46 CFR § 16.230. See also 46 USC § 7702(c)(2). Mr. Hornung was not enrolled in any random drug testing

program either by Mr. Lynch or any other employer on the day of the trip involved here. (TR 82-83). Clearly, Mr. Hornung was not qualified to serve as Captain of the TUNA BITE on August 20, 2004. He did not have a license in his possession, he had not taken a pre-employment drug test, and he was not enrolled in the company's random drug testing program.

Beyond these considerations however, Mr. Lynch himself candidly acknowledged that he, not Mr. Hornung was the captain of the vessel when he was approached by the Coast Guard boarding team. Also, he was observed operating the TUNA BITE as the vessel transited Indian River Inlet. It was only later in the interview process when it must have become apparent that the Coast Guard officials were concerned with the legitimacy of the trip that Lynch reversed himself and pointed out that Hornung was captain. At the hearing the Respondent claimed that he did this to hide his license suspension from the passengers. Thus, Lynch must have acted as captain throughout the trip.

Reviewing all the evidence here, I have concluded that the Respondent was the captain of the TUNA BITE on August 20, 2004. In view of the fact that Section 1(i) barred the Respondent from performing any function that requires a Coast Guard issued credential, I find that he failed to comply with that Section. Thus, Section 5 of the Settlement Agreement states, in pertinent part, that if Respondent "fails to satisfactorily comply with the conditions of 1.c through 1.k at any time. . . the Respondent's License will be . . . REVOKED." Accordingly, it is so ordered below.

#### **V. ULTIMATE FINDINGS OF FACT**

1. The Coast Guard has jurisdiction over this proceeding pursuant to 46 USC §§ 7702 and 7704.

2. Howard Lynch was the holder of License No. 943383 on October 3, 2002 when he failed a chemical test for dangerous drugs.

3. Mr. Lynch executed a Settlement Agreement on October 30, 2002 agreeing not to perform any functions during the pendency of his drug rehabilitation which required a Coast Guard issued credential (Section 1(i)).

4. Section 5 of the Settlement Agreement states that if he failed to meet that condition, among others, his license would be Revoked.

5. On August 20, 2004 while Mr. Lynch was undergoing his drug rehabilitation and while his license was deposited with the Coast Guard, he acted as operator of the uninspected passenger vessel TUNA BITE with five passengers aboard. That function required a valid Coast Guard license.

6. Mr. Lynch violated Section 1(i) of the Settlement Agreement and his license must be Revoked.

## **VI. ORDER**

It is **HEREBY ORDERED** that License No. 943383 and all other licenses, documents and credentials issued by the United States Coast Guard to Howard Lynch III are **REVOKED**.

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Peter A. Fitzpatrick  
Administrative Law Judge

Done and dated on this January     , 2005  
Norfolk, Virginia

## ATTACHMENT A

### Notice of Appeal Rights

#### **33 CFR 20.1001 General.**

- (a) Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.
- (b) No party may appeal except on the following issues:
  - (1) Whether each finding of fact is supported by substantial evidence.
  - (2) Whether each conclusion of law accords with applicable law, precedent, and public policy.
  - (3) Whether the ALJ abused his or her discretion.
  - (4) The ALJ's denial of a motion for disqualification.
- (c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.
- (d) The appeal must follow the procedural requirements of this subpart.

#### **33 CFR 20.1002 Records on appeal.**

- (a) The record of the proceeding constitutes the record for decision on appeal.
- (b) If the respondent requests a copy of the transcript of the hearing as part of the record of proceeding, then, --
  - (1) If the hearing was recorded at Federal expense, the Coast Guard will provide the transcript on payment of the fees prescribed in 49 CFR 7.45; but,
  - (2) If the hearing was recorded by a Federal contractor, the contractor will provide the transcript on the terms prescribed in 49 CFR 7.45.

#### **33 CFR 20.1003 Procedures for appeal.**

- (a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.
  - (1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the --
    - (i) Basis for the appeal;

- (ii) Reasons supporting the appeal; and
  - (iii) Relief requested in the appeal.
- (2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.
  - (3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or within another time period authorized in writing by the Docketing Center, the brief will be untimely.
- (b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.
  - (c) No party may file more than one appellate brief or reply brief, unless --
    - (1) The party has petitioned the Commandant in writing; and
    - (2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.
  - (d) The Commandant may accept an *amicus curiae* brief from any person in an appeal of an ALJ's decision.

**33 CFR 20.1004 Decisions on appeal.**

- (a) The Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings.
- (b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.



**ATTACHMENT B**

**Witness and Exhibit Lists**

**WITNESS LIST**

**Investigating Officers' witnesses:**

1. Seaman Scott Gray
2. MK3 Jason A. Abramski

**Respondent's witnesses:**

1. Howard Lynch
2. Captain Christopher Hornung

**EXHIBIT LIST**

Exhibits                      Description

**Investigating Officers' exhibits:**

- |       |   |
|-------|---|
| IO-1  | Offense Investigation Report                                    |
| IO-2  | Statement of PO Jason Abramski                                  |
| IO-3  | Statement of passenger Charles Wolfenberger                     |
| IO-4  | Statement of passenger Dan Fedorkowicz                          |
| IO-5  | Maritime Consortium, Inc. 2001 Enrollment Application           |
| IO-6  | Maritime Consortium, Inc.'s notification of positive drug test  |
| IO-7  | Lynch Settlement Agreement issued December 12, 2002             |
| IO-8  | ChoicePoint Medical Review Services test results for 8/27/2003  |
| IO-9  | ChoicePoint Medical Review Services test results for 10/17/2003 |
| IO-10 | ChoicePoint Medical Review Services test results for 12/31/2003 |
| IO-11 | ChoicePoint Medical Review Services test results for 1/30/2004  |
| IO-12 | ChoicePoint Medical Review Services test results for 3/31/2004  |

IO-13            ChoicePoint Medical Review Services test results for 5/25/2004

**Respondent's exhibits:**

Resp. A            License of Christopher Michael Hornung

Resp. B            White Flint Recovery Eastern Shore, Inc. – Discharge Summary

Resp. C            Letter dated July 28, 2004 from AA Program Director, Ralph Maleatesta

Resp. D            Federal Fisheries Permit for TUNA BITE