

UNITED STATES OF AMERICA  
U.S. DEPARTMENT OF HOMELAND SECURITY  
**UNITED STATES COAST GUARD**

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UNITED STATES COAST GUARD  
Complainant

vs.

JAMES NEIL RYERSE

Respondent

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Docket Number 2009-0429  
Enforcement Activity No. 3601363

**DECISION AND ORDER**

**Issued: March 05, 2010**

**By Administrative Law Judge: Honorable Walter J. Brudzinski**

**Appearances:**

**For the Coast Guard:**

**LT Patrick A. Drayer  
Sector Sault Ste Marie**

**LCDR Ted Fowles  
Coast Guard District 9 (Legal)**

**For the Respondent:**

**JAMES NEIL RYERSE, *Pro se***

## **DECISION AND ORDER**

At the close of a suspension and revocation hearing held on February 18, 2010 in Sault Ste. Marie, Michigan, the parties waived submission of post hearing proposed findings and moved for a bench decision. Pursuant to 33 C.F.R. §§ 20.710 and 20.902(c) this Order memorializes that bench decision.

The Coast Guard issued its Complaint on October 10, 2009 alleging Respondent was convicted of an offense that would preclude issuance or renewal of his Merchant Mariner's Credential (MMC), to wit: "On January 23, 2009, Respondent was convicted by the 11<sup>th</sup> Circuit Court of Mackinac County, Michigan of Attempted Felony Criminal Sexual Conduct. This is a conviction that would prevent the renewal of respondent's Merchant Mariners Document."<sup>1</sup> The Coast Guard proposed Revocation of Respondent's Merchant Mariner's Document. The legal authority for the allegations in the Complaint is derived from 46 U.S.C. § 7703 (2) which states, "a license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if the holder – (2) is convicted of an offense that would prevent the issuance or renewal of a license, certificate of registry, or merchant mariner's document."

In his timely Answer to the Complaint, Respondent admitted to all jurisdictional and factual allegations but that he wished to be heard on the proposed order. Respondent is self-represented.

On November 23, 2009, the Investigating Officer Motioned for Summary Decision. On December 15, 2009, the undersigned issued an Order Granting Partial Summary Decision finding that at all times relevant to these proceedings Respondent was a holder of a Merchant Mariner's Document and was convicted of the above offense. The undersigned concluded that under 46 C.F.R. Table 211(g), the above-described conviction would prevent the issuance or renewal of

Respondent's Merchant Mariner's Document. However, in viewing the evidence in the light most favorable to the non-moving party - the Respondent in this case - a genuine issue of material fact remained because reasonable minds could differ as to the import of the evidence Respondent submitted. Put another way, "[n]o genuine issue exists unless there is sufficient evidence favoring nonmoving party for jury to return verdict for that party, and if evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Sala v. Gates Const. Corp., 868 F. Supp. 474, 476 (E.D.N.Y 1994). In this case, Respondent presented more than colorable evidence that could persuade a reasonable fact finder to enter a sanction less than Revocation. Therefore, the undersigned determined that only partial summary decision was appropriate and that the matter of sanction would be determined at hearing.

At the hearing, the Coast Guard presented the testimony of one witness and entered three (3) exhibits. The Respondent testified in his own behalf and entered five (5) exhibits. At the conclusion of the proceedings, the undersigned issued findings and conclusions and recited the mitigating and aggravating factors considered in entering an appropriate sanction order.

WHEREFORE,

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<sup>1</sup> The Judgment of Conviction reflects "Criminal Sexual Conduct 3<sup>rd</sup> Degree Person 13-15" but the plea agreement reflects "Attempted." Also, both parties agreed that the actual conviction was for "Attempted Criminal Sexual Conduct."

**ORDER**

**IT IS HEREBY ORDERED** that Respondent Merchant Mariner's Credential is **SUSPENDED** outright for a period of **six (6) months**.

**IT IS FURTHER ORDERED** that the suspension started on the day of hearing, February 18, 2009, when the Coast Guard Investigating Officer took custody of Respondent's Merchant Mariner's Credential.

**PLEASE TAKE NOTICE** that service of this Order on the parties and/or parties' representative(s) serves as notice of appeal rights set forth in 33 CFR 20.1001 – 20.1004. (**Attachment B**). The time period within which the parties may file a notice of appeal shall commence the day following receipt of the transcript.

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**Walter J. Brudzinski**  
**Administrative Law Judge**  
**United States Coast Guard**

Date: March 05, 2010

## **ATTACHMENT A**

### **COAST GUARD EXHIBITS**

CG-01 - 11<sup>th</sup> Judicial Circuit, Mackinac County, Judgment of Sentence - Admitted

CG-02 - USCG National Maritime Center Security Background results – Admitted

CG-03 - Michigan Department of Corrections Presentence Investigation – Admitted

### **RESPONDENT EXHIBIT**

RESP A – Character letter from LCDR Mark Teale, USN – Admitted

RESP B – Character letter from Timothy R. Alfson, First Officer, M/V Roger Blough – Admitted

RESP C – Character Letter from Peter P. Walton, Master Near Coastal Unlimited and 1<sup>st</sup> Class Pilot, Greak Lakes Unlimited - Admitted

RESP D – Letter from Kristin M. Mansfield, Mackinac County Probation/Parole Agent, Michigan Department of Corrections – Admitted

RESP E – Character letter from Mark W. Blatnik, Master, M/V Roger Blough, Key Lakes, Inc. – Admitted

### **ALJ EXHIBITS**

ALJ – I – Title 46 CFR 10.211 Criminal record review – Official Notice Taken