

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

UNITED STATES COAST GUARD
Complainant

vs.

ALAN WADE TYLER

Respondent

Docket Number 2009-0473
Enforcement Activity No. 3627741

DECISION AND ORDER

Issued: November 16, 2010

By Administrative Law Judge: Honorable Michael J Devine

Appearances:

**LCDR Jason M. Krajewski
Sector Baltimore**

For the Coast Guard

Geoffrey S Tobias, Esq.

For the Respondent

This written order is issued in accordance with 33 CFR 20.902(c), which authorizes the issuance of an initial decision from the bench (orally) followed by a written order. The United States Coast Guard initiated this administrative action seeking revocation of the Merchant Mariner's License ("MML") issued to Alan W. Tyler, the respondent in this case. The Complaint, dated November 5, 2009, alleges Respondent is the holder of a Coast Guard issued MML and that he violated 46 U.S.C. 7703(1)(A) and 46 CFR 5.33 (violation of law or

regulation) while acting under the authority of said license. The Complaint alleges that on November 4, 2009 Respondent operated the passenger ferry CHELSEA LANE TYLER (O.N. 1037426). The Complaint further alleges after Respondent moored that vessel at the town dock in Ewell, Smith Island Maryland he failed a field sobriety test with a reading of .267 indicating that he was in violation of 33 CFR Part 95, operating while intoxicated.

On November 17, 2009, the parties submitted a motion for approval of a settlement agreement in this matter. In the agreement Respondent admitted all jurisdictional allegations and agreed to complete all of the requirements stated in the agreement. On November 18, 2009, a Consent Order was issued approving the settlement agreement and incorporating that agreement by reference into the Consent Order.

On October 10, 2010, the Coast Guard served Respondent with a Notice of Failure to Complete Settlement Agreement informing Respondent the agreed sanction of revocation would be enforced unless Respondent requested a hearing under the terms of the agreement. On October 21, 2010, Respondent through counsel requested a hearing on this matter.

On October 27, 2010, Mr. Geoffrey Tobias, Esq. submitted a notice of appearance to the Coast Guard to serve as Respondent's attorney in this case and Respondent's previous attorney withdrew.

An evidentiary hearing was held in Baltimore, Maryland on November 16, 2010. The hearing was conducted in accordance with Administrative Procedure Act, amended and codified at 5 U.S.C. 551-59, Coast Guard Administrative Procedure statute codified at 46 U.S.C. 7702, and the procedural regulations codified at 33 CFR Part 20.

At the hearing, CWO Galen Wetzal, investigating officer and LCDR Jason Krajewski appeared for the Coast Guard. Respondent also appeared at the hearing and was represented by attorney Geoffrey Tobias. Respondent admitted to jurisdiction in the settlement agreement.

The Coast Guard presented ten (10) exhibits which were admitted¹ into evidence. Respondent presented four (4) exhibits which were admitted into evidence. The witness and exhibit lists are contained in Attachment A.

At the conclusion of the hearing, both parties waived post-hearing briefs in keeping with 33 CFR 20.710 and a bench decision was issued orally finding the jurisdictional and factual allegations in this case proved by a preponderance of reliable, probative, and credible evidence. An order directing revocation of Respondent's MML was issued. The findings of fact and conclusions of law may be summarized as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent Alan Wade Tyler and the subject matter of this proceeding are within the jurisdiction of the Coast Guard under the authority of 46 U.S.C. Chapter 77 and as an individual operating a passenger vessel under the authority of a merchant marine credential under 46 CFR 5.57.
2. At all relevant times, Respondent Alan Wade Tyler was the holder of the Merchant Mariner's License 1517244 at issue in this case.
3. On November 18, 2009, a Consent Order was issued approving the settlement agreement agreed to by Respondent and the Coast Guard on November 17, 2009.
4. Paragraph 3 of the agreement includes requirements that Respondent will not perform any function that requires a Coast Guard issued credential during the period when his credentials were deposited with the Coast Guard.
5. On or about September 22, 2010, Respondent operated the passenger vessel CHELSEA LANE TYLER.
6. The actions of Respondent on September 22, 2010, in operating the CHELSEA LANE TYLER, included performing functions that required a Coast Guard issued credential.
7. On October 8, 2010, Respondent operated the passenger vessel CHELSEA LANE TYLER.

¹ CG Exhibits begin with number 9 because eight (8) exhibits were entered in the record including the (MISLE) electronic system used by the Coast Guard before the settlement agreement was entered.

8. The actions of Respondent on October 8, 2010, in operating the CHELSEA LANE TYLER, included performing functions that required a Coast Guard issued credential.
9. The actions of Respondent on September 22, 2010 and October 8, 2010 violated the terms of the Settlement Agreement.
10. Paragraph 6 of the settlement agreement provides that if Respondent fails to complete the conditions of the agreement his license shall be revoked.
11. In keeping with the stipulation and materials submitted in this case Respondent's record showed no prior incidents or violations.
12. The Coast Guard has proven by a preponderance of reliable, probative, and credible evidence that the Respondent violated the terms of the settlement agreement by performing actions on board the vessel CHELSEA LANE TYLER that required holding a valid Coast Guard credential.

SANCTION

Prior to issuing the bench decision, I carefully reviewed the record and considered all of the evidence presented in this matter beginning with the Complaint and including the settlement agreement and all of its terms. The proposed sanction of revocation is permitted within the suggested range of sanctions contained in Table 5.569 of 46 CFR 5.569. There was no evidence of Respondent having any other violations or incidents and there was considerable evidence that Respondent has a good reputation in the community. This evidence was considered in Respondent's favor and served as mitigating evidence.

On the other hand, the disregard for compliance with the terms of the settlement agreement is clear. Respondent's actions in violating the terms of the settlement agreement were clearly demonstrated and enforcement of the agreement is consistent with the intent of the law and regulations to promote safety at sea. Reliance on settlement agreements would be undermined if merchant mariners could violate the terms of such agreements without consequences. The purpose of the regulations for suspension and revocation proceedings is remedial and intended to maintain standards for competence and conduct essential to the promotion of safety at sea. 46 CFR 5.5. Based on the evidence of record as a whole, I find that

ATTACHMENT A
WITNESS AND EXHIBIT LIST

Coast Guard Witnesses

None

Respondent Witnesses

None

Coast Guard Exhibits

9. Picture of the respondent operating the M/V CHELSEA LANE TYLER on 22 September 2010
10. Picture of the respondent operating the M/V CHELSEA LANE TYLER on 22 September 2010
11. Picture of Mr. Laird handling lines on the M/V CHELSEA LANE TYLER on 22 September 2010
12. Picture of Mr. Laird handling lines on the M/V CHELSEA LANE TYLER on 22 September 2010
13. Picture of Mr. Laird handling lines on the M/V CHELSEA LANE TYLER on 22 September 2010
14. Picture of Mr. Laird handling lines on the M/V CHELSEA LANE TYLER on 22 September 2010
15. Picture of the respondent walking on board the M/V CHELSEA LANE TYLER on 22 September 2010
16. Video of the M/V CHELSEA LANE TYLER operating on 08 October 2010 (wmv. file and avi. file format provided)
17. Redacted version of an affidavit from Mr. Laird taken by Coast Guard Investigative Service on 13 October
18. Stipulations drafted by the Coast Guard and signed by both parties

Respondent Exhibits

A. Statements in Support of Respondent from:

- a. Mildred Marsh
- b. Janice Kitching
- c. Donna Evans
- d. Leonard and Peggy Evans
- e. Jesse and Mitzi Beimer
- f. Maxine London
- g. Marlene E. Marsh
- h. Darlene M. Parks
- i. Geneva F. and family
- j. Mildred Tyler
- k. Michelle R. Bradshaw
- l. John Tyler
- m. Arbutus Marsh
- n. Sheila Bradshaw
- o. Ethel Evans
- p. Morris and Brenda Marsh
- q. Missy Tyler

B. Report from Somerset County Health Department, May 11, 2010

C. Stipulations drafted by Respondent and signed by both parties

D. Proposed Administrative Clemency Plan signed by both parties

ATTACHMENT B
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;
 - (j) Reasons supporting the appeal; and
 - (k) 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.