

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

UNITED STATES COAST GUARD
Complainant

vs.

BRANDON SCOTT CORSE

Respondent

Docket Number 2010-0084
Enforcement Activity No. 3675024

DEFAULT ORDER

Date Issued: October 15, 2010

**Issued By: Honorable Bruce Tucker Smith
Administrative Law Judge**

Appearances:

For the Complainant

LT Barbra Wilk
U.S. Coast Guard Marine Safety Unit Morgan City

For the Respondent

Brandon Scott Corse, pro se

On September 23, 2010, the United States Coast Guard Marine Safety Unit Morgan City (Coast Guard), through Investigating Officer (IO) LT Barabra Wilk, filed a Motion for Default Order (Motion) seeking Revocation of Respondent Brandon Scott Corse's (Respondent) Merchant Mariner's License for his failure to file an Answer to the Complaint issued by the Coast Guard on February 12, 2010. As a result of the Motion, a complete review of the record in this case was made.

On April 27, 2010, the present proceeding was assigned to the undersigned for adjudication. Accordingly, a thorough review of the record file reflects that the Complaint was served upon Respondent, via U.S. Postal Service (USPS) Certified Mail, Return Receipt, on March 8, 2010.¹ On April 12, 2010, the Coast Guard subsequently filed a Motion for Default Order (Initial Motion) averring that Respondent's failure to timely file an Answer to the Complaint constituted an admission of the factual allegations and a waiver of Respondent's right to a hearing on the matter. On May 6, 2010, the court denied the Coast Guard's Motion for Default on the grounds that the Coast Guard failed to comply with 33 C.F.R. §20.310(b). On June 2, 2010, the Coast Guard filed another Motion for Default Order (Second Motion) again averring that Respondent's failure to timely file an Answer to the Complaint constituted an admission of the factual allegations and a waiver of Respondent's right to a hearing on the matter.²

On August 5, 2010, in an abundance of caution and concern for Respondent's due process rights, the court ordered a telephonic pre-hearing conference for purposes of determining why Respondent failed to file responsive pleadings in the instant matter. Notice of the telephonic conference was transmitted to Respondent on August 5, 2010, via FedEx. On August 19, 2010,

¹ The Coast Guard established that service was effected upon Respondent by filing a Return of Service and a Proof of Service on March 12, 2010.

² "Each motion must include . . . proof of service under section 20.304(d)." 33 C.F.R. §20.310(b).

the court convened a telephonic pre-hearing conference. LT Wilk appeared on behalf of the Coast Guard; Respondent appeared on his own behalf. Respondent indicated he wished to defend the allegations set forth in the Coast Guard's Complaint but was unclear how to complete the Answer form. The court, in the presence of LT Wilk, explained each portion of the Answer form to Respondent. Given Respondent's desire to participate in the proceedings and the Coast Guard's failure to file a Return and Proof of Service of the Second Motion,³ the court instructed Respondent to file his Answer not later than September 3, 2010. The court also set a hearing date, as well as initial and further discovery deadlines. (Pre-Hearing Conference Memorandum and Order issued August 23, 2010).

On September 23, 2010, the Coast Guard filed a third Motion for Default Order (Third Motion) again averring that Respondent's failure to timely file an Answer to the Complaint constituted an admission of the factual allegations and a waiver of Respondent's right to a hearing on the matter. On October 6, 2010, the Coast Guard properly filed a Return of Service along with Proof of Service indicating service via USPS Certified Mail, Return Receipt was attempted on Respondent. The Return Receipt indicates the postal service attempted delivery on September 27, 2010 and October 5, 2010. The postal service left a notice each time delivery was attempted. Also on On October 6, 2010, the court scheduled a second pre-hearing telephonic conference with the parties. Notice of the telephonic conference was transmitted to Respondent on October 6, 2010, via FedEx. On October 15, 2010, the court convened the scheduled pre-hearing telephonic conference with the parties. LT Wilk appeared on behalf of the Coast Guard; Respondent appeared on his own behalf.

The court inquired why Respondent failed to file an Answer. Respondent informed the court that he "hadn't had time." Respondent later advised the court that he "never received an Answer form" and later, advised the court that he "had lost the Answer form." Respondent's

³ Id.

reasons, particularly his decided lack of candor, fail to persuade the court that a denial should be entered against the Coast Guard's Third Motion. Therefore, the pending third Motion for Default Order is hereby **GRANTED**. The court finds Respondent in **DEFAULT**; the sanction of default is appropriate herein under the provisions of 46 C.F.R. §5.569. Respondent's default in the instant matter shall constitute an admission of all facts alleged in the Complaint and a waiver of his right to a hearing on those facts. 33 C.F.R. §20.310.

WHEREFORE,

ORDER

IT IS HEREBY ORDERED, that the allegations set forth in the Complaint are deemed **PROVED**. Accordingly, the court finds that the proposed sanction is appropriate under the provisions of 46 C.F.R. §5.569.

IT IS FURTHER ORDERED, that Respondent Brandon Scott Corse's Merchant Mariner License is **REVOKED**.

IT IS FURTHER ORDERED, that Respondent Brandon Scott Corse must immediately surrender his Merchant Mariner License issued to him by the U.S. Coast Guard to the nearest Coast Guard Marine Safety Office or mail those documents to the following Coast Guard office: United States Coast Guard, Marine Safety Unit Morgan City, Investigations Division, ATTN: LT Wilk, 800 David Drive, Room 232, Morgan City, Louisiana 70380-1304.

PLEASE TAKE NOTICE, that if Respondent Brandon Scott Corse continues to use his Coast Guard-issued Merchant Mariner License, he may be subject to criminal prosecution.

PLEASE TAKE FURTHER NOTICE, that under 33 C.F.R. § 20.310(e), for good cause shown, an Administrative Law Judge may set aside this finding of Default. Respondent may file a motion to set aside the finding with the ALJ Docketing Center, Baltimore, Maryland. Service of this Order of Revocation upon Respondent serves as notification of appeal rights as set forth in 33 C.F.R. Subpart J, § 20.1001. (Attachment A).

Bruce T. Smith

**HON. BRUCE TUCKER SMITH
US COAST GUARD ADMINISTRATIVE LAW JUDGE**

Date:

ATTACHMENT A

SUBPART J, APPEALS

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.