



16780

November 29, 2005

Mr. [Redacted]

RE: Case No. 641641
Mr. [Redacted]
Unnamed ([REDACTED])
\$200.00

Dear Mr. [Redacted]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case No. 641641, which includes your appeal as owner/operator of the recreational vessel [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$200.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 USC 2009(b) (Rule 9)	Vessel of less than 20 meters length or sailing vessel impeded passage of vessel that can safely navigate only within narrow channel or fairway.	\$200.00

The violation is alleged to have occurred on October 13, 2001, when you allegedly violated Inland Navigation Rule 9 by failing to remove your sailboat from the path of the [REDACTED] as it was traveling in San Francisco Bay, en route Oakland Outer Harbor Berth 35.

On appeal, you deny the violation and contend that "there are conditions that make it impossible for a craft to make sufficient headway to clear out of the path of another in a short amount of time." You assert that the Coast Guard must "make allowances for this." In addition, you suggest that the violation may have resulted from the fact that the [REDACTED] "was traveling at a speed to [sic] great for the existing conditions." You assert that this is evidenced by the fact that the [REDACTED] quickly came "into view and then...[changed]...its course, all...within a relatively short distance in space and time." While you acknowledge that you observed other vessels "being cleared at the time," you contend that those vessels were not where you were but, rather, were "somewhere between the [REDACTED] and the opening of the Oakland Estuary Inner Harbor Entrance, where...[you]...presumed she [[Redacted]] was heading." As a result, you contend that you "saw her [[Redacted]'s] position and heading and because...[you]...were not in the path at that point...[you]...maintained...[your]...course." You further contend that at

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the time of the alleged violation, you were not in either the Inner Harbor or Outer Harbor Entrance Channels and could not have committed the violation. Finally, you contend that the Hearing Officer incorrectly concluded that you put your son in a potentially life-threatening situation at the time of the alleged violation. You contend, while acknowledging that you “do not know all the rules,” that you would never intentionally do such a thing and add that you “assume as in a U.S. civilian court of law, intent is a main consideration.” Your appeal is denied for the following reasons.

Before I begin, I feel it necessary to discuss the undisputed facts surrounding the incident. On October 13, 2001, you were operating your 15-foot sailboat in San Francisco Bay in the vicinity of the Outer and Inner Harbor Entrance Channels. At the same time, [Redacted], a 680-foot freight ship with a gross tonnage of 25,361, was transiting toward the Port of Oakland. Due to its size, the [REDACTED] was required to navigate within a narrow channel, the Oakland Bar Channel, as it headed towards its berth. The record further shows that while the [REDACTED] was proceeding inbound, it was escorted by two tugs, the [REDACTED] and the [REDACTED]. The main function of the tugs was to escort the [REDACTED] and ensure that its path, the channel, was clear of all other vessels.

At this point, the record diverges and you and the Coast Guard present very different views of the remaining factual occurrences surrounding the alleged violation. The Coast Guard alleges that while the [REDACTED] was inbound to Oakland Outer Harbor Berth 35, with a San Francisco Bar pilot on board, you impeded the movement of the [REDACTED] and, in so doing, committed a violation of 33 USC 2009(b) (Rule 9) (hereinafter “Rule 9”). To that end, the record contains a statement from the Captain of the tug [REDACTED], Captain [Redacted], which states that he observed your vessel in the channel, in the path of [Redacted]. Captain [Redacted]’ statement further indicates that when he instructed you to clear the channel, you refused to do so and continued on a course which continued to put your vessel directly in the path of [Redacted]. In addition, the record contains the written statement of Captain P. [Redacted], the San Francisco Bar Pilot operating the [REDACTED] at the time of the alleged incident. Captain [Redacted] states that he observed your vessel and several others sailing southbound from the Bay Bridge towards Oakland Inner Harbor. Captain [Redacted] further stated that because he was aware that the sailing vessels were sailing against the current and because he would have to crab the [REDACTED] across the channel to make the entrance, he ordered the tug [REDACTED] to clear the sailing vessels from the channel. Captain [Redacted] further states that he observed the [REDACTED] immediately contact the sailing vessels and although a large sailing vessel immediately cleared the area, your vessel did not do so. His statement further indicates that you stated to Captain [Redacted] that you would not clear the path and planned to continue your course. As a result, shortly thereafter, Captain [Redacted] sounded [Redacted]’s danger signal. Captain [Redacted] further stated that, in the interim, the Captain of the tug told him that although he had instructed you to clear the channel four times, you continued to refuse to do so. As a result, Captain [Redacted] sounded the danger signal again and stopped his engines in an attempt to avoid colliding with you. He contends that when you were approximately one ship length away, you came about and began sailing north and in so doing cleared the channel. Thereafter, Captain [Redacted] started [Redacted]’s engines and proceeded to berth without any further incidents.

While the case was before the Hearing Officer, you denied the violation as you do now. To that end, you contend that you never refused to clear the path of [Redacted]. Rather, you contend that you attempted to tell the tug operator that you were heading towards the mouth of the estuary which you thought would remove you from the path of [Redacted]. You further state that you believed that the [REDACTED] was heading “strait into the estuary” which is the “usual destination for ships of its size.” As it turned out, your assumption regarding the intended course of the [REDACTED] was incorrect. In addition, you state that when the [REDACTED] first came to you, you could not hear what he was saying due to exhaust noise from the vessel. In addition, you state that you felt that the direction that he was pointing for you to go “didn’t seem to make any sense.” You contend that you felt you were “well clear of the [REDACTED] and making progress to be further out of its way.” You further state that you had “no indication” that the [REDACTED] was going to turn in your direction until the second time the [REDACTED] came to you. You contend that, at that time, one of the tug’s crewmen ran to the vessel’s port side, away from the exhaust noise, and told you that the vessel was turning toward you. You contend that, “without hesitation” you moved your vessel and made “every attempt to clear the way as quickly as possible.” On appeal, you further assert that you believe that the [REDACTED] may be responsible for the incident because it may have been traveling at a speed too fast for the conditions present at the time. You further add, in your defense, that the other vessels being cleared were “somewhere between the [REDACTED] and the opening of the Oakland Estuary Inner Harbor Entrance, where...[you]...presumed she [[Redacted]] was heading.” You contend that it “appeared to...[you]...at that time, before she [[Redacted]] began to change course, that she was signaling to the vessels in her path to the Oakland Estuary and not to...[you].” You reiterate that, at that time, you “saw her [[Redacted]] position and heading and because...[you]...were not in the path at that point...[you]...maintained...[your]...course.” Finally, you assert that your recollection of the incident leads you to believe that you were “well out of both the Inner Harbor and Outer Harbor Entrance Channels” when the [REDACTED] first sounded her danger signal and, as a result, you could not have committed a violation of Rule 9.

In her Final Letter of Decision, the Hearing Officer addressed the conflicting evidence as follows:

You deny the charge. You state that there was a misunderstanding between yourself and the tug [REDACTED] operator, who was clearing the way of small vessel traffic for [REDACTED]. You further state that you “took all appropriate actions” as soon as you became aware of the course of the deep-draft vessel and that “consideration must be given to an un-motorized vessel, returning to port that is making almost no headway.”

The captains of the [REDACTED] and [REDACTED] are in general agreement that you changed course to avoid collision when [REDACTED] was approximately one vessel length away. The captain of the [REDACTED] twice sounded the danger signal and was forced to stop his engines, nearly losing headway, to avoid collision. Your argument that “consideration must be given an “un-motorized sailing vessels” is nowhere supported by the Rules of the Road.

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[REDACTED] was constrained by draft and also by the rules for the existing Regulated Navigation Area. I find the charge proved.

Therefore, the Hearing Officer's Final Letter of Decision shows that she found the Coast Guard's version of the events to be more persuasive than those that you presented. Although you and the Coast Guard offer conflicting views of the factual occurrences that transpired on October 13, 2001, it is the Hearing Officer's role to evaluate the weight of the factual claims and to make a determination as to what happened during the incident in question. The record supports the Hearing Officer's conclusion that the [REDACTED] was restricted to operating in a narrow channel and that she was doing so at the time of the violation. Rule 9 states that "[a] vessel of less than 20 meters in length or a sailing vessel shall not impede the passage of a vessel that can safely navigate only within a narrow channel or fairway." The record further shows that your vessel impeded the operation of [Redacted], as is evidenced by the fact that the [REDACTED] had to sound its danger signal twice and stop its engines to avoid a collision with your vessel. Much of the problem centers on your incorrect assumption that the [REDACTED] was heading to the Inner Harbor Entrance Channel. In addition under Rule 8(f), you have an obligation to take "early action" to allow for the safe passage of the other vessel. This you did not do. Under these circumstances, I do not find the Hearing Officer's decision to be an abuse of her discretionary authority and I will not grant your appeal.

On appeal, you further contend, irrespective of whether the violation occurred, that the fact that you didn't intend to commit the violation should be considered. Whether you intended to commit the violation or not, as I discussed above, the record contains sufficient evidence to support the Hearing Officers conclusion that the violation occurred. The Coast Guard's civil penalty program is a critical element in the enforcement of numerous marine safety and environmental laws. The civil penalty process is remedial in nature and is designed to achieve compliance through either the issuance of warnings or the assessment of monetary penalties by Coast Guard Hearing Officers when violations are proved. Since the record contains sufficient evidence to support the Hearing Officer's conclusion that the violation occurred, irrespective of your intent, the Hearing Officer was correct to assess a penalty in this case. Therefore, I will not mitigate the \$200.00 penalty assessed by the Hearing Officer.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violation occurred and that you are the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. I find the penalty of \$200.00 rather than the \$750.00 preliminarily assessed or \$5,500.00 maximum permitted by statute appropriate in light of the circumstances of the violation.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$200.00** by check or money order payable to the U.S. Coast Guard is due and should be remitted promptly, accompanied by a copy of this letter. Send your payment to:

U.S. Coast Guard - Civil Penalties
P.O. Box 100160
Atlanta, GA 30384

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Payments received within 30 days will not accrue interest. However, interest at the annual rate of 1.0% accrues from the date of this letter if payment is not received within 30 days. Payments received after 30 days will be assessed an administrative charge of \$12.00 per month for the cost of collecting the debt. If the debt remains unpaid for over 90 days, a 6% per annum late payment penalty will be assessed on the balance of the debt, the accrued interest, and administrative costs.

Sincerely,

//S//

DAVID J. KANTOR
Deputy Chief,
Office of Maritime and International Law
By direction of the Commandant

Copy: Commanding Officer, Coast Guard Hearing Office
Commanding Officer, Coast Guard Finance Center