

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

UNITED STATES OF AMERICA	:	DECISION OF THE
UNITED STATES COAST GUARD	:	
	:	VICE COMMANDANT
vs.	:	
	:	ON APPEAL
	:	
	:	NO. 2684
MERCHANT MARINER LICENSE	:	
	:	
	:	
<u>Issued to: JAMES C. SCARBOUGH</u>	:	

This appeal is taken in accordance with 46 U.S.C. § 7701 *et seq.*, 46 C.F.R. Part 5, and the procedures set forth in 33 C.F.R. Part 20.

By an Order Approving Settlement Agreement and Denying Respondent's Request to Set Aside Settlement Agreement dated October 25, 2007, an Administrative Law Judge (hereinafter "ALJ") of the United States Coast Guard approved a Settlement Agreement between the Respondent and the Coast Guard in which Respondent's Merchant Mariner License was suspended for one month following his admission of all jurisdictional and factual allegations in the Complaint alleging *violation of law or regulation*. Respondent subsequently perfected an appeal of the Settlement Agreement on December 21, 2007, claiming he was coerced to enter into the Settlement Agreement. I have learned that subsequent to the filing of his appeal, based on information from Coast Guard Sector Guam and Respondent's counsel of record, that Respondent is deceased.

After a review of the applicable case law, I will vacate the ALJ's order and dismiss the Coast Guard's complaint against Respondent. Doing so is both warranted and appropriate under the doctrine articulated in Commandant Decision on Appeal No. 2134 (JOHNSON). In the *Johnson* case, after noting that "The Federal practice in such instances [when the appealing party dies], even in criminal procedure, is to abate proceedings, *ab initio*," the Commandant made clear that, "[t]he only fair and reasonable disposition, then, of a litigation solely involved with Appellant's license and his privilege of using it, is to wipe the slate clean; otherwise Appellant's record would be marked with an adverse finding as to which all his rights under the law had not been allowed." Seeing no error in the rationale articulated in the *Johnson* case, this appeal is moot.

ORDER

The order of the ALJ, dated at Alameda, CA, on October 25, 2007, is **VACATED** and the Complaint against Respondent is **DISMISSED**.

Signed at Washington, D.C. this 6th day of December, 2009.



D. Pekoske

Vice Admiral, U.S. Coast Guard
Vice Commandant