

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES OF AMERICA	:	
UNITED STATES COAST GUARD	:	
	:	DECISION OF THE
vs.	:	
	:	VICE COMMANDANT
LICENSE NO. 764165	:	
	:	ON APPEAL
	:	
	:	NO. 2618
<u>Issued to: Ronald G. Sinn</u>	:	

This appeal is taken in accordance with 46 U.S.C. § 7702 and 46 C.F.R. § 5.701.

By an order dated July 18, 1997, a United States Coast Guard Administrative Law Judge at Baltimore, Maryland, suspended Appellant's Merchant Mariner's License for one month, with four additional months suspended on sixteen months probation.

Appellant was charged with *misconduct, violation of regulation and violation of law*. The *misconduct* charge was supported by one specification: Appellant wrongfully operated the M/V LRS RENAISSANCE in the vicinity of Cape May Harbor without a valid Certificate of Inspection while carrying more than six passengers for hire. The *violation of regulation* charge was supported by two specifications: first, Appellant failed to provide the required passenger safety orientation before the M/V LRS RENAISSANCE got underway with more than six passengers for hire in violation of 46 C.F.R. § 185.506; and, second, Appellant failed to provide a written report of marine casualty in violation of 46 C.F.R. § 4.05-10. The *violation of law charge* was supported by one specification: Appellant failed to have his Merchant Mariner's License posted in a conspicuous place in violation of 46 U.S.C. § 7110.

The hearing was held on June 17, 1997, at Philadelphia, Pennsylvania. Appellant represented himself and entered a response denying each charge and specification. The Coast Guard Investigating Officer introduced into evidence the testimony of nine witnesses and eight exhibits. Appellant introduced into evidence the testimony of one witness and testified under oath on his own behalf. He introduced two exhibits into

evidence. All charges and specifications were found *proved*. Appellant's License was suspended for one month, with four additional months suspended on sixteen months probation.

The Administrative Law Judge's Decision and Order was served on Appellant on July 24, 1997. Appellant filed a notice of appeal with the Administrative Law Judge on August 22, 1997. Appellant received a copy of the transcript on October 22, 1997, and requested an extension of time to submit his appeal. The Administrative Law Judge granted Appellant's request for an extension of time until December 20, 1997. Although the Appellant did not perfect this appeal until December 29, 1997, I will consider the appeal as if it were perfected in a timely manner. Therefore, the appeal is properly before me for review.

APPEARANCE: Appellant appeared *pro se*. The United States Coast Guard Investigating Officer was Lieutenant Mark R. Hindle, USCG.

FINDINGS OF FACT

Appellant served under the authority of his License as master aboard the M/V LRS RENAISSANCE at all times relevant. Appellant owns and operates the vessel and a charter business known as Captain Sinn's Dock. On May 5, 1997, Appellant operated the M/V LRS RENAISSANCE during a voyage near Cape May Harbor with approximately 150 passengers aboard. The passengers were comprised of tour groups from Atlas Travel and White Star tours. As part of their tour package, the passengers were entitled to a cruise aboard the M/V LRS RENAISSANCE with dinner and music.

Prior to the actual voyage, Atlas Travel had arranged the trip for twenty passengers through Atlas Inn Beach Resort. Atlas Travel charged twenty travelers under a tour package and paid Atlas Inn Beach Resort \$438.90 for the tour package. In turn, Atlas Inn Beach Resort arranged the trip with Appellant's company, Captain Sinn's Dock, and agreed to pay \$20.00 for each passenger. Under their normal arrangement, Atlas Inn Beach Resort would pay Captain Sinn's Dock at the completion of the voyage. Prior to the vessel getting underway on May 5, 1997, none of the passengers were told that the trip would be free.

On May 5, 1997, after the M/V LRS RENAISSANCE commenced its voyage, the Coast Guard learned that the vessel was being operated without a valid Certificate of Inspection. The Coast Guard also discovered that a passenger on board the vessel had been injured during the transit. The Coast Guard contacted the vessel and offered assistance but the Appellant stated that the vessel was returning to its dock and already called ahead for medical assistance. Subsequently, the Coast Guard met the vessel at its dock and went aboard to conduct a law enforcement boarding. The Coast Guard interviewed the Appellant and several passengers. Based on the boarding, the Coast Guard discovered the following: that the injured passenger had broken her hip and required more than first aid; Appellant operated the vessel without a valid Certificate of Inspection; Appellant failed to make a public safety announcement at anytime prior to or during the voyage; Appellant failed to maintain his License on board the vessel in a conspicuous location; and, passengers stated that when the Coast Guard arrived on scene, members of the crew told passengers that the cruise was free. Subsequent to the actual Coast Guard boarding, Appellant failed to submit a written report of the marine casualty that involved the injured passenger.

BASIS OF APPEAL

Appellant, acting *pro se*, filed a notice of appeal and brief. Appellant asserts that the Coast Guard had a duty under the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121, 11 Stat. 847) to advise him of the procedures and processes necessary to remain within the laws and regulations. Furthermore, Appellant contends that the one-month suspension ordered by the Administrative Law Judge was excessive because of the financial hardship imposed on the Appellant.

OPINION

I.

Appellant asserts that the Coast Guard had a duty under the Small Business Regulatory Enforcement Fairness Act of 1996 (hereinafter referred to as the Act) to

advise him of the procedures and processes necessary to remain within the laws and regulations. See 5 U.S.C. § 601 note. The primary purpose of the Act is to make federal agencies more open and accessible to small businesses and to encourage participation of small businesses in the regulatory process. Id. The Act does not relieve a small business or an individual of their responsibility to comply with federal laws and regulations. Id. Appellant's reliance on the Act to relieve himself of his duties as a licensed mariner is misplaced.

In the present case, Appellant asserts that the Coast Guard had a duty under the Act to advise Appellant of the procedures and processes for an uninspected vessel operation to remain within the laws and regulations. In particular, Appellant asserts that the Coast Guard failed to provide him guidance outlining the procedures for operating a free cruise so he could remain within the law. It is clear from the record that the Appellant was aware of the procedures for operating a free cruise prior to May 5, 1997. [Trial Record at 172, 187-188] Furthermore, the passengers who traveled aboard the M/V LRS RENAISSANCE on May 5, 1997 had previously paid for the cruise through their tour group and they did not receive notification prior to getting underway that the cruise would be free. [TR 38-40, 83, 116-118, 123-124, 132, 151] Based on the record, it is clear that Appellant had no intention of operating a free cruise until the Coast Guard arrived on scene. [TR 38-40, 57-58, 81-82, 116-118, 123-124]

Appellant also asserts that the Coast Guard should have used discretionary, non-punitive corrective procedures to enforce compliance in accordance with the Act. The proceedings in this case were initiated against Appellant's Merchant Mariner's License in accordance with 46 C.F.R. Part 5 and not against a small business. The Act does not afford the Appellant any additional protection or relieve him of his responsibility as a licensed mariner. Appellant has been in the maritime industry since 1962 and he is an experienced mariner. [TR at 173] Furthermore, Appellant understood passenger vessel operations and the purpose of a certificate of inspection. He should have known that he was not in compliance with federal laws or regulations. [TR at 174, 179-181] Appellant is clearly accountable for his actions on May 5, 1997. As previously stated, the purpose of the Act is to assist small businesses meet their regulatory obligations and allow such

entities to participate in the process. The Act does not relieve licensed mariners of their responsibility to comply with federal laws and regulations.

II.

Appellant asserts that the one-month suspension ordered by the Administrative Law Judge is excessive. Appellant further asserts that the order imposed an undue financial hardship on him due to lost revenue and bankruptcy. I disagree. The selection of an appropriate order is the responsibility of an Administrative Law Judge. See 46 C.F.R. § 5.569(a). The Administrative Law Judge has wide discretion as to the choice of an appropriate sanction. See Appeal Decisions 2543 (SHORT), 2609 (DOMANGUE). The Administrative Law Judge may look to the Suggested Range of an Appropriate Order found at Table 5.569 for information and guidance. An order imposed at the conclusion of a case will only be modified on appeal if that order is clearly excessive or an abuse of discretion. See Appeal Decisions 2245 (MATHISON), 2256 (BURKE), 2422 (GIBBONS), 2391 (STUMES), 2362 (ARNOLD), 2313 (STAPLES).

In the present case, the record reflects no abuse of discretion and the order is clearly not excessive. The Administrative Law Judge considered all the matters raised at the hearing in his selection of an appropriate order. [Decision and Order (D&O) at 17-18] In particular, he considered that Appellant has no prior record; Appellant has been in the maritime industry since 1962; and the operation of passenger vessels is the Appellant's livelihood. [D&O at 17-18] The sanction imposed by the Administrative Law Judge is more lenient than the Table of Average Orders suggests. See 46 C.F.R. § 5.569 (Table). Furthermore, financial hardship is considered subservient to the remedial purpose of these proceedings to promote safety at sea. See Appeal Decisions 1515 (ALFONSO), 2524 (TAYLOR). In light of the serious nature of the charges and specifications relating to vessel safety, any contention that the sanction is excessive is clearly without merit.

CONCLUSION

The findings of the Administrative Law Judge are supported on the record by substantial, reliable, and probative evidence. The hearing was conducted in accordance with applicable laws and regulations.

ORDER

The Decision and Order of the Administrative Law Judge dated July 17, 1997, is AFFIRMED.

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J. C. CARD
Vice Admiral, U. S. Coast Guard
Vice Commandant

Signed at Washington, D.C. this 27th day of April, 2000.