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

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DECISION OF THE

UNITED STATES COAST GUARD

VICE COMMANDANT

v.

ON APPEAL

NO.

2713

MERCHANT MARINER LICENSE

Issued to: OLYMPIO BORGES SCOTO Jr.:

APPEARANCES

For the Government:

Mr. Gary F. Ball, Esq.

Mr. James P. Fink

Suspension and Revocation National Center of Expertise

For Respondent:
Mr. Terrence S. Cox, Esq.
Courtney M. Crawford, Esq.
Cox, Wooten, Griffen, Hanson & Poulos, LLP

Administrative Law Judge: Parlen L. McKenna

This appeal is taken in accordance with 46 U.S.C. Chapter 77, 46 C.F.R. Part 5, and 33 C.F.R. Part 20.

By a Decision and Order (hereinafter "D&O") dated November 7, 2011, an Administrative Law Judge (hereinafter "ALJ") of the United States Coast Guard ordered the suspension of Respondent's Coast Guard-issued Merchant Mariner License for one month upon finding proved one allegation of misconduct. The Coast Guard properly appealed. I have learned that Respondent passed away following the filing of the Coast Guard's appeal.

Past Commandant's Decisions on Appeal have held that when a Respondent dies during the pendency of his appeal, the ALJ's order should be vacated and the Coast Guard's Complaint against his mariner credential should be dismissed. *Appeal Decision 2684 (SCARBOUGH)* (2009); *Appeal Decision 2134 (JOHNSON)* (1978) (citing *Melrose Distillers, Inc. v. United States*, 359 U.S. 271, 272 (1959)). This result mirrors the custom in Federal practice to abate the proceeding *ab initio* when the defendant dies. "The only fair and reasonable disposition [of the pending litigation when a Respondent dies] is to wipe the slate clean" by dismissing the matter. *JOHNSON* at 3.

This case is distinguishable from the two precedents cited in that the Government rather than the Respondent has lodged the appeal. The result should, nonetheless, remain the same. *See DiOrio v. Nicholson*, 216 Fed.Appx. 974 (2007) (when the Government appealed a veteran's benefit decision and the veteran died during the pendency of that appeal, the decision was vacated).

Accordingly, the Coast Guard's appeal is DISMISSED.

ORDER

The ALJ's Order dated November 7, 2011, is **VACATED** and the Complaint against Respondent is **DISMISSED**.

Charles D. Michel

Vice Admiral, U.S. Coast Guard

Vice Commandant

Signed at Washington, D.C. this 5th day of Javant, 2015.

Com 1/5/16