

U.S. Department of  
Homeland Security

United States  
Coast Guard



\Commandant  
United States Coast Guard

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16200  
DEC 14 2020

[PARTY]  
[ADDRESS]

RE: Activity No. 5773923  
[PARTY]  
[VESSEL]  
\$1,000.00

Dear [PARTY]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Case No. 5773923, which includes your appeal as operator of the 36-foot, 15 gross ton fishing vessel [VESSEL]. The appeal is from the action of the Hearing Officer in assessing a \$1,500.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR § 67.325	Operating a vessel in any trade other than a trade endorsed upon the Certificate of Documentation (COD).	\$500.00
46 CFR § 15.610	Failure to have an uninspected towing vessel over 26 ft in length under the control of a properly licensed individual.	\$500.00
33 CFR § 161.19	Failure to make Sailing Plan Report at least 15 minutes before transiting a Vessel Traffic Services (VTS) area.	\$250.00
33 CFR § 83.24(e)	(RULE 24) Failure of vessel or object being towed to be lighted properly.	\$250.00

The alleged violations occurred on the evening of September 20, 2019, when the Coast Guard observed the [VESSEL] underway on Richardson Bay, near Sausalito, California, which is within the San Francisco VTS area. At the time, the vessel, under your command, was towing a

houseboat. That houseboat had no navigation lights. You had not reported in to the VTS with a Sailing Plan. On the date of violation, the [VESSEL]'s COD, bearing fishing and coastwise endorsements, was expired. On the date of violation, you did not hold a merchant mariner's credential.

On appeal, you object to the Hearing Officer's finding that you were paid to tow the houseboat, and that the [VESSEL] was therefore engaged in a commercial tow. You also raise various arguments in mitigation or extenuation. Your appeal is denied for the most part, but some relief is granted.

In your response to the Hearing Officer, you stated that you had received no money for the job. The Hearing Officer found that the September 20, 2019 houseboat tow was a tow for hire. He based this finding on the narrative account of the Coast Guard boarding officer, who reported: "I was advised by [the houseboat's owner] that he had paid . . . 3000 cash to have his house boat towed from Redwood City to Sausalito." The record also includes a summary of the Coast Guard's November 13, 2019, telephone interview with you. That summary reports: "When asked if he was paid by the owner of the undocumented houseboat to tow the houseboat from Redwood City, California, to Richardson Bay, California, [PARTY] stated 'yes'."

In these administrative proceedings, it is the Hearing Officer's responsibility to determine the reliability and credibility of the evidence presented and to resolve any conflicts in the evidence. Notwithstanding your statement on appeal indicating that the houseboat's owner was pressured into falsely stating that he had paid for the tow, there is substantial evidence supporting the finding that you were paid for the tow. I will not revisit or reverse that finding of fact.

The finding that you were engaged in a tow for hire is essential to the first and third charges, relating to the COD and VTS. However, there is a flaw in the first charge, operating the vessel in a trade other than a trade endorsed on the COD. To support this charge, the Coast Guard alleged that you "operated the vessel outside the scope of endorsements on the expired COD. . . . The [VESSEL] is a commercial fishing vessel, not a commercial towing vessel." The implication that a "towing endorsement" was required is false; there is no towing endorsement in the regulations governing vessel documentation. The vessel was engaged in the coastwise trade, for which it had an endorsement. The Hearing Officer found that the COD had expired, and you admit as much, but you were not charged with such a violation. In the absence of clear notice to you that the expiration of the COD was the violation intended to be charged, with a proper citation, I will dismiss the first charge.

Concerning the second charge, failure to have a licensed operator, the Coast Guard's allegation that the vessel was an uninspected towing vessel, subject to 46 CFR § 15.610, serves as an acknowledgment that the vessel was exempt from the requirements of Subchapter M, as it was transporting a recreational vessel between marina facilities "within a limited geographic area, as determined by the local Captain of the Port, per 46 CFR § 136.105(a)(2)(iii)." Otherwise it would have been subject to 46 CFR § 15.535(b) instead of 46 CFR § 15.610(b).<sup>1</sup>

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<sup>1</sup> The primary requirement of 46 CFR § 15.610(b) is that a towing vessel of at least 26 feet in length "must be under the direction and control of a person holding a license or MMC officer endorsement as master or mate (pilot) of

You raise various potentially mitigating matters concerning the fourth charge, for the navigation lights violation. The Hearing Officer considered what you presented to him, but did not reduce the penalty for this important safety violation. This was not an abuse of discretion.

The first charge, for violation of 46 CFR § 67.325, is dismissed. I find that there is substantial evidence in the record to support the Hearing Officer's conclusion that the other violations occurred and that you are the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed.

In accordance with the regulations governing civil penalty proceedings, 33 CFR Subpart 1.07, this decision constitutes final agency action.

Payment of **\$1,000.00** 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 979123  
St. Louis, MO 63197-9000

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 2% 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.

If you are financially unable to pay the penalty amount, you may request establishment of a payment plan by contacting the collection office at (510) 437-3644.

Sincerely,

L. I. McCLELLAND  
Civil Penalty Appellate Authority  
By direction of the Commandant

Copy: Coast Guard Hearing Office  
Coast Guard Finance Center

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towing vessels, or as master or mate of vessels of greater than 200 GRT." The primary requirement of 46 CFR § 15.535(b) is essentially identical.