



16200  
April 18, 2023

[REPRESENTATIVE]  
[REPRESENTATIVE ADDRESS]

RE: Activity No. 5804588  
[PARTY]  
[VESSEL]  
\$1,750.00

Dear [REPRESENTATIVE]:

The Coast Guard Hearing Office has forwarded the file in Civil Penalty Case No. 5804588, which includes your appeal on behalf of [PARTY] as owner of the vessel [VESSEL]. The appeal is from the action of the Hearing Officer in assessing a \$2,500.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 CFR § 15.401	Employment of an individual, or service in a position by an individual, without the appropriate license.	\$500.00
46 CFR § 180.71	Failure to ensure there are appropriate number of life jackets for persons on board and that life jackets comply with 46 CFR § 180.71(a)-(e).	\$500.00
46 CFR § 16.203(a)(1)	Failure of the marine employer to ensure meeting the requirements of 46 Part 16.	\$250.00
46 CFR § 176.100(a)	Small passenger vessel failed to have valid USCG COI on board.	\$750.00
33 CFR § 173.15(a)(2)	Failure to display a number issued on the vessel.	\$100.00
33 CFR § 83.33(b)	(RULE 33) – failure to have some means of making an efficient sound signal for vessels less than 12 meters in length.	\$200.00

33 CFR 173.21(a)(1)	Use of a vessel without a valid Certificate of Number or temporary certificate on board.	\$200.00
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The alleged violations were discovered on February 19, 2022, when the Coast Guard boarded the vessel one-half nautical mile south of Broad Causeway Bridge in Miami, Florida. The operator of the vessel was the son of the owner, your client. On appeal, you do not contest the findings on Charges 5, 6 and 7, but contend that the findings on Charges 1, 2, 3, and 4 are not supported by evidence. Your appeal is denied in part and granted in part.

As the critical finding underlying Charge 4 affects the other disputed charges, I will address it first. Under Charge 4, your client was found in violation of 46 CFR § 176.100(a), which provides that a vessel to which the regulation applies may not be operated without having on board a valid U.S. Coast Guard Certificate of Inspection. The regulation applies, according to 46 CFR § 175.110(a), to a vessel of less than 100 gross tons that carries more than six passengers, including at least one for hire (with certain exceptions not relevant here, for larger vessels). These regulations are part of 46 CFR Subchapter T, governing small passenger vessels.

According to 46 CFR § 175.400, “passenger” is defined in relevant part as an individual carried on a vessel, except the owner or individual representative of the owner, the master, or a paid member of the crew. In the same section, “passenger for hire” is defined as “a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent or any other person having an interest in the vessel.”

(These definitions track those in 46 U.S.C. § 2101.)

Your client’s vessel is less than 100 gross tons and was carrying twelve passengers. The question of whether the vessel was subject to the regulation therefore depends on whether there was a passenger for hire aboard. There is evidence that a person paid [RENTAL COMPANY] and, in return, received information of the pickup location for the vessel; and that this person ended up aboard the vessel when the Coast Guard boarded it. You assert that neither the owner nor the operator of the vessel was involved in any transaction or aware of any monetary exchange or received any money. However, the fact that the person who paid ended up aboard the vessel is circumstantial evidence that [RENTAL COMPANY] was agent for the vessel owner, your client. This is substantial evidence to support that there was a passenger for hire aboard the vessel. And there is evidence that the vessel did not have a Certificate of Inspection.

Thus, there is evidence in the file to support the finding that a violation of 46 CFR § 176.100(a) occurred.

Concerning Charge 1, given that your client’s vessel was a small passenger vessel, it was required to be operated by an individual with an appropriate license pursuant to 46 U.S.C. § 8902 and 46 CFR § 15.401. As the operator did not have such a license, Charge 1 was properly found proved.

Concerning Charge 2, the Hearing Officer did not cite to any specific evidence that the life jackets did not comply with 46 CFR § 180.71. He noted that because your client's vessel was operating as a Small Passenger Vessel, it was subject to the requirements of 46 CFR § 180.71, and he stated that the life jackets did not meet those requirements. However, he did not explain in what respect the requirements were not met. I have not found any reliable evidence of noncompliance in the file. Hence Charge 2 cannot stand.

Similarly, Charge 3 cannot stand because there is no evidence in the file to support the Hearing Officer's finding of a violation of 46 CFR § 16.203(a)(1). Indeed, there is no indication in the file that the matter was investigated.

Charges 2 and 3 are dismissed. I find that there is substantial evidence in the record to support the Hearing Officer's conclusion that the other five violations occurred, and that [PARTY] is a 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 **\$1,750.00** 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

Interest at the annual rate of 1% accrues from the date of this letter but will be waived if payment is 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,

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

Copy: Coast Guard Hearing Office  
Coast Guard Finance Center