

FEDERAL MARITIME COMMISSION

POSSIBLE REVOCATION OF PASSENGER VESSEL
OPERATOR PERFORMANCE CERTIFICATE NO.
PI 397 GREAT NORTHERN & SOUTHERN
NAVIGATION Co., LLC DBA FRENCH AMERICA LINE

DOCKET NO. 19-08

GREAT NORTHERN & SOUTHERN NAVIGATION CO. LLC D/B/A FRENCH AMERICA LINE MEMORANDUM TO SHOW CAUSE WHY ITS PERFORMANCE CERTIFICATE SHOULD NOT BE REVOKED FOR CAUSE

Great Northern & Southern Navigation Co. LLC d/b/a French America Line (French America Line or FAL) submits the following Memorandum to Show Cause Why Its Performance Certificate Should not be Revoked for Cause. In this regard, Affidavit of Christopher Kyte has been served contemporaneously herewith by email to Secretary@fmc.gov, and all original signed documents and five (5) copies will be delivered within seven (7) working days of November 26, 2019 to the Secretary, FMC.

The purpose of this Memorandum is to address the legal basis cited in the Order Granting Hearing and Directing Great Northern & Southern Navigation Co. LLC d/b/a French America Line to Show Cause dated October 31, 2019:

INTRODUCTION

FAL owns a luxury riverboat, *Louisiane*, which completed one cruise on October 26, 2016, and sustained a catastrophic sewage event during its second cruise on October 27, 2016. As a direct result of that casualty, the second cruise was cancelled. Although FAL had great expectations of having the vessel repaired and back in service in fairly

short order, that did not occur. FAL met with major issues with Hull underwriter, which is still in ongoing litigation in state court in Louisiana.

Pursuant to an FMC approved Escrow Agreement, FAL has maintained, and continues to maintain an escrow account with KeyBank N.A. All passenger deposits were deposited into this Escrow Account. By the end of December 2017 all passenger deposits had been returned.

As of October 2017, FAL was no longer advertising or taking deposits, and at that time had no plans to renew cruise operations.

FAL has been in continuous written communications and verbal communications with the FMC whereby FAL kept FMC advised as to its current status. See Affidavit of Christopher Kyte.

Paragraph 48 of the aforesaid Order cites *Royal Venture Cruise Line, Inc. and Anastassios Kiriakidis – Possible Violations of Passenger Vessel Certification Requirements*, 27 S.R.R. 1069 (FMC1997), for the proposition that passenger vessel operators are not entitled to a Certificate where an operator misled Commission staff, and failed to respond to lawful inquiries.

Key Facts of that case:

1. They arranged, offered and advertised cruises on a passenger vessel, and collected deposits and fares for passengers on that vessel without first having obtained a Certificate of Financial Responsibility from the FMC.
2. They were warned by the FMC, but continued their activities.
3. They did not return \$110,000 in travel deposits.

A Cease and Desist Order was issued to “assist in alerting the travel industry to any future cruise offerings in which Royal or Kiriakidis participate, served to forestall future violations and provide a mechanism to enjoin any prohibited activity.

The cease and desist is from advertising or otherwise offering, arranging or providing passage on any passenger vessel with berth or stateroom accommodations for fifty or more passengers which is to embark at a U.S. port until they complied with the financial responsibility requirements of Section 3 of P.L.89-777 and the pertinent FMC Regulations at 46 C.F.R. Part 540.

In this regard, FAL was in regular communication (written and telephone) with the Commission. FAL has not submitted copies of all of the exchanges since it would be voluminous, and obviously the FMC has such exchanges. FAL concedes that it certainly on occasion was dilatory in providing information and documentation to the FMC, which is due to the fact that the casualty as described in Christopher A. Kyte’s Affidavit effectively temporarily put FAL out of business. The vessel only sailed for three days on its first cruise, and on the first day of her second cruise suffered a sewage problem, which necessitated costly repairs and ultimately U.S. Coast Guard approval of the repairs. The repairs were finally completed as of December 26, 2018.

FAL’s Hull underwriters failed to fulfill their obligations under the applicable Hull Insurance Policy necessitating FAL to file suit against Hull Underwriters. At this time, Hull Underwriters has still not reimbursed FAL for the repair expenses.

The Commission also cites *American Star Lines, Inc., National Transatlantic Lines of Greece S.A. and Dimitri Anninos* – Possible Violations of Passenger Vessel Certification

Requirements, 25 S.R.R. 1153 (FMC 1990). This was a similar situation to *Royal Venture*. In that case American Star did not respond to discovery propounded by the Bureau of Enforcement (BOE). Ultimately, American Star did not defend the action taken by the FMC.

FAL respectfully submits that the Commission's citation to *Royal Venture* and American Star Lines is inapposite to the circumstance pertaining to FAL. Reviewing the facts recited by the Commission, FAL was dilatory in providing the requested reports. However, the recomputation certificates have been duly filed and are current through November 20, 2019. The quarterly independent audit reports are current through June 30, 2018, although the Commission rejected the audits on technical grounds. The Commission is fully aware of the fact that there is nothing for an auditor to review since there are no deposits. As of October 2017, FAL was no longer advertising or taking deposits, and at the time had no plans to renew cruise operations.

With respect to FAL's name, and address, FAL respectfully submits that the Commission is being hyper-technical. The *Louisiane*'s owner operator has always been Great Northern & Southern Navigation Co., LLC, a Louisiana limited liability company. It's always done business under the name French America Line. It is a company in good standing with the State of Louisiana. Its mailing address has never changed. Physically FAL relocated because it has no employees other than Christopher Kyte, who is the Chairman of the Board. Finally, and most importantly, FAL has always maintained its FMC approved Escrow Account at KeyBank N.A. and all passengers have been refunded the cancelled cruises.

Pursuant to 46 C.F.R. §540.8(b) a Performance Certificate may be suspended or modified. It is FAL's preference that it not surrender its Performance Certificate. Although at the present time, the vessel is not engaged in passenger cruises, nor is the *Louisiane* being marketed or advertised.

FAL respectfully submits that it is and always has been financially responsible and that its Performance Certificate should not be revoked.

Respectfully submitted,



William B. Milliken, Esq.
Florida Bar No.: 143193
HORR, NOVAK & SKIPP, P.A.
Two Datran Center, Suite 1700
9130 South Dadeland Boulevard
Miami, FL 33156
Telephone: 305-670-2525
Facsimile: 305-670-2526
Attorneys for French America Line

64/1544818