

ORIGINAL

Application for Admission to Practice - Leonardo Ortiz 1

FEDERAL MARITIME COMMISSION

APPLICATION OF LEONARDO ORTIZ
FOR ADMISSION TO PRACTICE BEFORE
THE FEDERAL MARITIME COMMISSION

Docket No. 09-05

Served: November 5, 2009

BY THE COMMISSION: Richard A. Lidinsky, Jr.,
Chairman, Joseph E. BRENNAN, and Rebecca F. DYE,
Commissioners.

**Order Denying Application of Leonardo Ortiz for
Admission to Practice**

By Order served July 30, 2009, the Commission directed Respondent Leonardo Ortiz to demonstrate that he is qualified to practice before the Commission as a non-lawyer, pursuant to 46 C.F.R. §§ 502.27 and 502.29. Despite two opportunities to be heard, Mr. Ortiz did not submit evidence or otherwise respond to the Commission's Order. Accordingly, the Commission upholds the Secretary's April 15, 2009 decision letter to Mr. Ortiz, and denies Mr. Ortiz certification to practice before the Commission.

BACKGROUND

Mr. Ortiz filed an Application for Admission to Practice before the Commission on December 31, 2007, showing that he is self-employed and operating from his residence in Anderson, SC. Following discussions among FMC staff and further communications with Mr. Ortiz, the Secretary issued a decision letter on April 15, 2009, indicating the denial of Mr. Ortiz's application to practice before the Commission as a non-attorney. Among issues cited in the Secretary's decision letter for the determination are Respondent's lack of legal academic credentials and lack of relevant work experience demonstrating his qualifications to practice before the Commission.

In the decision letter, the Secretary informed Mr. Ortiz of his right to request a hearing within twenty days, pursuant to Rule 29 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.29. Mr. Ortiz timely requested a hearing on April 29, 2009.

Pursuant to Mr. Ortiz's request, the Commission duly served an Order directing applicant to show his qualifications to practice as a non-attorney before the Commission. The Secretary served such Order on Mr. Ortiz via Federal Express courier service on July 31, 2009. Mr. Ortiz signed a Federal Express receipt, evidencing his receipt of the Commission's Order. Notice of this proceeding also was published in the Federal Register. 74 Fed. Reg. 38627 (Aug. 4, 2009).

The Commission's Order designated Mr. Ortiz as a Respondent and directed him to file affidavits of fact and a memorandum of law no later than September 4, 2009. The Order designated the Commission's Bureau of Enforcement (BOE) as a party, and required BOE to submit rebuttal affidavits of fact and memoranda of law no later than October 5, 2009. Thereafter, Mr. Ortiz was permitted to file a reply brief no later than October 20, 2009.

BOE timely submitted its memorandum of law and factual case on October 5, 2009. BOE's case includes the verified statement of the Commission's Secretary, Karen V. Gregory, which describes the factual background of the Secretary's review of the subject application, along with the Secretary's decision letter issued to Mr. Ortiz on April 15, 2009. To date, Mr. Ortiz has not submitted evidence, any memoranda of law, or otherwise responded to the Commission's Order.

DISCUSSION

The Secretary is authorized to approve or deny an application to practice before the Commission. 46 C.F.R. § 501.24(a). If the Secretary denies an application to practice before the Commission, written notice is given so that the applicant can request a hearing before the Commission. 46 C.F.R. § 502.29. At hearing, Mr. Ortiz has the burden of showing the applicant's qualifications. 46 C.F.R. § 502.155.

BOE cites the Secretary's decision letter as setting forth three major points which justify denying Mr. Ortiz admission to practice before the Commission: First, Mr. Ortiz is not a credentialed attorney because he does not have a license to practice law before any Federal, State or Territorial court. BOE Memorandum of Law at 3; Application of Leonardo Ortiz at 2, (Question 10); Decision Letter of April 15, 2009, at 1. Second, Mr. Ortiz lacks other credible proof of legal or academic education to justify his entitlement to practice before the Commission, inasmuch as the American Bar Association has not granted recognition to the British American School of Law, where Mr. Ortiz attended. BOE Memorandum of Law at 3; Application of Leonardo Ortiz at 2, (Questions 7 and 12a); Verified Statement of Karen V. Gregory at ¶7; and Decision Letter of April 15, 2009, at 1. Third, Mr. Ortiz's purported work experience assisting attorneys in criminal, contract, torts, and Federal administrative law is not sufficient to make him qualified to practice before the Commission. BOE Memorandum of Law at 3; Application of

Leonardo Ortiz at 2, (Questions 8 and 12b); Verified Statement of Karen V. Gregory at ¶7; and Decision Letter of April 15, 2009, at 2. Likewise, possession of a U.S. Coast Guard Merchant Marine Master license does not establish the requisite basis to conclude that Mr. Ortiz has shown the necessary “legal, technical or other qualifications to render valuable service before the Commission and is otherwise competent to advise and assist in the presentation of matters before the Commission,” 46 C.F.R. § 502.27(a)(1). See also BOE Memorandum of Law at 1-2; Decision Letter of April 15, 2009, at 1.

Although Mr. Ortiz submitted several recommendations with his application, it was determined that these letters lacked sufficient information or support as to his qualifications to be admitted to practice before the Commission. BOE Memorandum of Law at 1-2, and Decision Letter of April 15, 2009, at 2. The Secretary determined that such letters served only to provide evidence of Mr. Ortiz’s good character. *Id.*

Despite adequate notice of the issues in the Decision Letter and notice of the September 4, 2009 deadline by which Mr. Ortiz should respond to the Order, Mr. Ortiz never submitted evidence, memoranda of law or affidavits to contest the Secretary’s determinations.

As the Commission explained in *Revocation of License No. 016019N – Central Agency of Florida Inc.*, 31 S.R.R. 486 (FMC, 2008): “It is a familiar rule of evidence that the party with control of information relevant to a disputed issue may be assigned the burden to provide such information or suffer an adverse inference for its failure to respond,” 31 S.R.R. at 486-7, citing *Commonwealth Shipping Ltd., Cargo Carriers Ltd., Martyn C. Meritt – Submission of Materially False or Misleading Statements to the Federal Maritime Commission*, 29 S.R.R. 1408, 1412 (FMC 2003); *Adair v. Penn-Nordic Lines*, 26 S.R.R. 11, 15 (ALJ, 1991), citing *Alabama Power Co. v. FPC*, 511 F.2d 383, 391 (D.C.Cir., 1974). Of similar import, an applicant who fails to meet its burden

of contesting allegations or evidence upon a disputed issue is deemed to have accepted the opposing party's allegations and evidence as true. *Revocation of License No. 016019N – Central Agency of Florida Inc.*, 31 S.R.R. at 487; *Capitol Transportation, Inc. v. United States*, 612 F.2d 1312, 1318-1319 (1st Cir. 1979); *Bermuda Container Line Ltd. v. SHG Int'l Sales Inc., FX Coughlin Co., and Clark Building Systems, Inc.*, 28 S.R.R. 312, 314 (I.D. 1998).

Having requested this hearing, Mr. Ortiz has, on two separate occasions, neglected his opportunity to respond to those issues specified in the Commission's Order. In view of the uncontested nature of BOE's case, the Commission validly may find that Mr. Ortiz is not qualified to practice before the Commission as a non-attorney, as provided by 46 C.F.R. §502.27. Accordingly, the Commission upholds the Secretary's Decision Letter of April 15, 2009 and hereby denies certification for Mr. Ortiz to practice before the Commission.

CONCLUSION

THEREFORE, IT IS ORDERED, That the Application of Leonardo Ortiz to practice before the Commission as a non-attorney is DENIED.

By the Commission


Karen V. Gregory
Secretary