

Minutes of Meeting

**VIRGINIA BOARD FOR BRANCH PILOTS
INFORMAL FACT-FINDING CONFERENCES
NOVEMBER 19, 2003 (11:00 A.M.)**

The Virginia Board for Branch Pilots convened in Norfolk, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Bruce R. Cherry and Meade G. Stone, Jr., Board Members, Presided. No other Board members were present.

Douglas W. Schroder appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Zahn, Hall & Zahn, Registered Professional Reporters, and the Summaries or Consent Orders are attached unless no decision was made.

Disc - Disciplinary Case

R - Respondent/Regulant
A - Attorney

Participants

John Brockington Beasley
File Number 2004-01886 (Disc)

Beasley - R
Carter T. Gunn - A

The meeting adjourned at 1:00 p.m.

Virginia Board for Branch Pilots



Robert T. Hasler, Jr., President

Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR BRANCH PILOTS

In Re:

Captain John B. Beasley
Virginia Beach, Virginia

File Number 2004-01886
License Number 0701095432

CONSENT ORDER

Respondent Captain John B. Beasley ("Captain Beasley") was at all times material to this matter a licensed Branch Pilot in Virginia (No. 0701095432).

As a result of this status, Captain Beasley recognizes and acknowledges being subject to and bound by the Regulations of the Board for Branch Pilots ("Board"), as well as by all other applicable Virginia laws.

A violation of these Regulations has been reported and investigated. These matters were considered on November 19, 2003, in an Informal Fact Finding Conference ("IFF") pursuant to the Administrative Process Act §§ 2.2-4019 and 2.2-4021 of the Code of Virginia, as amended. This IFF was held in the Offices of the Virginia Port Authority, Norfolk, Virginia and was attended by Captain John B. Beasley and his attorney Carter T. Gunn. Board Members Bruce R. Cherry and Meade G. Stone, Jr. presided at the IFF.

The Board's 2001 Regulations provide:

18 VAC 45-20-40(1) Grounds for denial of licensure, denial of renewal, or discipline.

The board shall have the authority to deny initial licensure, deny an extension of license, or deny renewal of as well as to discipline existing licensees, whether limited or not, for the following reasons:

1. Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or misdemeanor involving moral turpitude

or any alcohol or drug-related offense there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this paragraph. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such convictions.

Summation of Facts

The Board has found sufficient evidence to believe that:

1. On September 29, 2003, the office of the Board for Branch Pilots received a letter dated September 25, 2003, from Captain John B. Beasley (Captain Beasley), Branch Pilot License # 0701-095432, stating that on September 15, 2003, he pleaded guilty to a charge of driving under the influence (DUI) in Virginia Beach Traffic Court. The charge of refusal to submit to a breath test was dismissed.
2. A letter dated September 29, 2003, was sent to Captain Beasley from Mark N. Courtney, Executive Director, informing Captain Beasley that his letter would be discussed by the Board at its next meeting scheduled for November 3, 2003.
3. At the meeting on November 3, 2003, at which Captain Beasley was present, the Board for Branch Pilots voted to refer this matter to an IFF to consider a possible violation of regulation 18 VAC 45-20-40(1).

The Board and Captain Beasley, as evidenced by the signatures affixed below, enter into this Consent Order. Captain Beasley knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§ 2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

Further, by signing this Consent Order, Captain Beasley acknowledges an understanding of the charges. Captain Beasley hereby admits to the violation(s) of the Board's Regulations and consents to the following term(s) by the Board:

1. **Captain Beasley agrees to complete A.S.A.P. as ordered by the court and report his successful completion to the Board.**
2. **Captain Beasley agrees to be evaluated by a healthcare professional for alcohol abuse to determine whether he is a threat to the public and can perform his duties as a Branch Pilot safely and properly. Captain Beasley agrees to provide a copy of the evaluation, which reflects to the satisfaction of the Board, that he is not a threat to the public and can perform his duties as a Branch Pilot safely and properly, as part of Captain Beasley's license renewal application that is due by December 8, 2003.**

3. Captain Beasley admits that he failed to follow the procedures required by 18 VAC 45-20-50(B)(3) regarding his prescription and is admonished to comply with this regulation in the future.

4. Captain Beasley agrees to pay Board costs in the assessed amount of \$300.00 to partially defray the costs and expenses in this matter.

The above assessed costs are to be paid within thirty days of the effective date of this consent order. Captain Beasley acknowledges the costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Captain Beasley will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in § 58.1-15 of the Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

Captain Beasley acknowledges that failure to pay the costs, or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Captain Beasley's license until such time as there is compliance with all terms of this Order. Captain Beasley understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§ 2.2-4019 and 2.2-4021 of the Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§ 2.2-4020 and 2.2-4021 of the Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

Captain John B. Beasley

Date

Counsel for Respondent

Date

CITY/COUNTY OF _____
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this ____ day of _____, 2003.

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this ____ day of _____, 2003.

Board for Branch Pilots

BY: _____
President

COPY TESTE:

Custodian of the Records

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INFORMAL FACT-FINDING CONFERENCES
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Bruce R. Cherry and W. Hugh McCrory, Jr., Board Members, Presided. No other Board members were present.

Douglas W. Schroder appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Zahn, Hall & Zahn, Registered Professional Reporters, and the Summaries or Consent Orders are attached unless no decision was made.

Disc - Disciplinary Case

R - Respondent/Regulant
A - Attorney

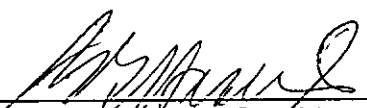
Participants

Frank M. Rabena
File Number 2004-01885 (Disc)

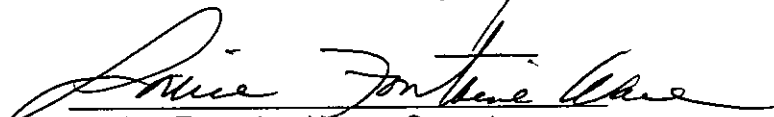
Rabena - R
Carter T. Gunn - A

The meeting adjourned at 4:00 p.m.

Virginia Board for Branch Pilots



Robert T. Hasler, Jr., President



Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR BRANCH PILOTS**

In Re:

Captain Frank M. Rabena
Virginia Beach, Virginia

File Number 2004-01885
License Number 0702000021

CONSENT ORDER

Respondent Captain Frank M. Rabena ("Captain Rabena") was at all times material to this matter a licensed Limited Branch Pilot in Virginia (No. 0702000021).

As a result of this status, Captain Rabena recognizes and acknowledges being subject to and bound by the Regulations of the Board for Branch Pilots ("Board"), as well as by all other applicable Virginia laws.

A violation of these Regulations has been reported and investigated. These matters were considered on November 19, 2003 in an Informal Fact Finding Conference ("IFF") pursuant to the Administrative Process Act §§ 2.2-4019 and 2.2-4021 of the Code of Virginia, as amended. This IFF was held in the Offices of the Virginia Port Authority, Norfolk, Virginia and was attended by Captain Rabena and his attorney Carter T. Gunn. Board Members Bruce R. Cherry and Captain W. Hugh McCrory, Jr. presided at the IFF.

The Board's 2001 Regulations provide:

18 VAC 45-20-40(5) Grounds for denial of licensure, denial of renewal, or discipline.

The board shall have the authority to deny initial licensure, deny an extension of license, or deny renewal of as well as to discipline existing licensees, whether limited or not, for the following reasons:

5. Negligence or misconduct in the performance of duties;

Summation of Facts

The Board has found sufficient evidence to believe that:

1. On September 3, 2003, the office of the Board for Branch Pilots received a letter dated August 29, 2003, from Captain Frank M. Rabena (Captain Rabena), Limited Branch Pilot license # 0702000021, stating that on August 25, 2003, as he was piloting the USNS SATURN, the vessel contacted green buoy 11 as the vessel was outbound in Norfolk Harbor Reach.
2. A letter dated September 3, 2003, was sent to Captain Rabena from Mark N. Courtney, Executive Director, informing Captain Rabena that his letter would be discussed by the Board at its next meeting scheduled for November 3, 2003.
3. In Captain Rabena's letter, he stated that on August 25, 2003, he was ordered to sail the USNS SATURN to Cape Henry, during which time the "starboard quarter lightly contacted the base of the buoy once, and then the rest of the ship passed clear" with no damage to the ship or the buoy.
4. At the meeting on November 3, 2003, the Board for Branch Pilots voted to refer this matter to an Informal Fact Finding Conference (IFF) to consider a possible violation of regulation 18 VAC 45-20-40(5).

The Board and Captain Rabena, as evidenced by the signatures affixed below, enter into this Consent Order. Captain Rabena knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§ 2.2-4020 and 2.2-4021 of the Code of Virginia, as amended.

Further, by signing this Consent Order, Captain Rabena acknowledges an understanding of the charges. Captain Rabena hereby admits to the violation(s) of the Board's Regulations and consents to the following term(s) by the Board:

1. **Captain Rabena agrees to draw from memory the portions of the chart which include Lamberts Bend to Sewells Point in the Port of Hampton Roads at his examination for upgrade in licensure from Foxtrot to Golf.**
2. **Captain Rabena agrees to the extension of his apprenticeship for a period of 30 days, which is suspended contingent upon his not having been found at fault for any marine incident by the Board during the remainder of his licensure as a Limited Branch Pilot.**

3. Captain Rabena agrees to pay Board costs in the assessed amount of \$300.00 to partially defray the costs and expenses in this matter.

The above costs are to be paid upon the execution of this consent order by the Board for Branch Pilots on December 15, 2003. Captain Rabena acknowledges the costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Captain Rabena will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in § 58.1-15 of the Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

Captain Rabena acknowledges that failure to pay the costs assessed, or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Captain Rabena's license until such time as there is compliance with all terms of this Order. Captain Rabena understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§ 2.2-4019 and 2.2-4021 of the Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§ 2.2-4020 and 2.2-4021 of the Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

Captain Frank M. Rabena

Date

Counsel for Respondent

Date

CITY/COUNTY OF _____
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this ____ day of _____, 2003.

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this ____ day of _____, 2003.

Board for Branch Pilots

BY: _____
President

COPY TESTE:

Custodian of the Records