UNITED STATES DEPARTMENT OF COMMERCE
UNDER SECRETARY FOR INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

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| In the Matters of: | ) | |
| | ) | |
| Peter Goldsmith | ) | Docket Nos. 07-BIS-0026 |
| Michele Geslin | ) | 07-BIS-0027 |
| | ) | |
| Respondents. | ) | |

FINAL DECISION AND ORDER

This matter is before me upon a Recommended Decision and Order ("RDO") of an Administrative Law Judge ("ALJ"), as further described below.

In a charging letter filed on December 18, 2007, the Bureau of Industry and Security ("BIS") alleged that Respondent Michele Geslin committed one violation of the Export Administration Regulations (currently codified at 15 CFR Parts 730-774 (2008) ("Regulations")), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401-2420 (2000)) (the "Act"),[1] when she aided and abetted the unlicensed export of a vessel to Cuba during a regatta she had helped to organize. Specifically, the charge against Respondent Michele Geslin is as follows:

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 - 1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of July 23, 2008 (73 FR 43603, July 25, 2008), has continued the Regulations in effect under IEEPA.

**Charge 1 15 C.F.R. § 764.2(b) – Aiding or Abetting the Export of a Vessel without the Required License**

Between on or about April 10, 2003 through on or about May 31, 2003, Geslin aided and/or abetted the doing of an act prohibited by the Regulations. Specifically, Geslin aided and/or abetted the export of the vessel Kailuana, an item classified on the Commerce Control List under Export Control Classification Number (ECCN) 8A992.f, to Cuba without the required Department of Commerce authorization. Geslin aided and/or abetted the export of the vessel to Cuba by organizing a regatta to Cuba and by traveling on board the Kailuana and assisting with the vessel's export to Cuba during the regatta. Geslin, as organizer of the regatta, was advised by the BIS Office of Export Enforcement in a letter dated April 24, 2003, that a Department of Commerce export license was required for all participants in the regatta who were to take a vessel to Cuba. On May 22, 2003, the Office of Export Enforcement met with Geslin and other regatta participants at the regatta's pre-launch party and again informed Geslin that a license was required for the temporary export of vessels to Cuba during the regatta. On May 23, 2003, the Office of Export Enforcement provided Geslin, as co-organizer of the regatta, with an additional letter indicating that an export license was required by all regatta participants who took their vessels to Cuba and that a particular license that had been identified by some participants as authority to take their vessel to Cuba during the regatta did not in fact authorize the temporary export of a vessel. Pursuant to Section 746.2 of the Regulations, a license is required for the export of vessels to Cuba and no license was obtained for the export of the Kailuana to Cuba. In aiding and abetting this unlicensed export, Geslin committed one violation of Section 764.2(b) of the Regulations.

December 18, 2007 Charging Letter against Michele Geslin, at 1-2 (originally included as Ex. E in BIS's Motion for Summary Decision).

Furthermore, in a separate charging letter filed on December 18, 2007, BIS alleged that Respondent Peter Goldsmith also committed one violation of the Regulations when he aided and abetted the unlicensed export of a vessel to Cuba during the same regatta, which he also helped to organize. Specifically, the charge against Respondent Peter Goldsmith is as follows:

**Charge 1 15 C.F.R. § 764.2(b) – Aiding or Abetting the Export of a Vessel without the Required License**

Between on or about April 10, 2003 through on or about May 31, 2003, Goldsmith aided and/or abetted the doing of an act prohibited by the Regulations. Specifically, Goldsmith aided and/or abetted the export of the vessel Eu-Bett, an

> item classified on the Commerce Control List under Export Control Classification Number (ECCN) 8A992.f, to Cuba without the required Department of Commerce authorization. Goldsmith aided and/or abetted the export of the vessel to Cuba by organizing a regatta to Cuba and by traveling on board the Eu-Bett and assisting with the vessel's export to Cuba during the regatta. Goldsmith, as organizer of the regatta, was advised by the BIS Office of Export Enforcement in a letter dated April 10, 2003, that a Department of Commerce export license was required for all participants in the regatta who were to take a vessel to Cuba. Further, the Office of Export Enforcement contacted Goldsmith on or about April 28, 2003 via telephone to again state the need of regatta participants to obtain a Department of Commerce export license before exporting a vessel to Cuba. On or about May 22, 2003, the Office of Export Enforcement met with Goldsmith and other regatta participants at the regatta's pre-launch party and again informed Goldsmith that a license was required for the temporary export of vessels to Cuba during the regatta. Pursuant to Section 746.2 of the Regulations, a license is required for the export of vessels to Cuba and no license was obtained for the export of the Eu-Bett to Cuba. In aiding and abetting this unlicensed export, Goldsmith committed one violation of Section 764.2(b) of the Regulations.

December 18, 2007 Charging Letter against Peter Goldsmith, at 1-2 (originally included as Ex. F in BIS's Motion for Summary Decision).

By separate letters, each dated "02/10/2008," Geslin and Goldsmith responded to these charges indicting an intention to contest the charges. These responses were treated as answers to the Charging Letters, and on February 11, 2008, these cases were assigned to ALJ Brudzinski of the U.S. Coast Guard. On April 1, 2008, the cases against Geslin and Goldsmith were consolidated.[2] In accordance with the Scheduling Order of ALJ Brudzinski, BIS propounded discovery requests, including Requests for Admission, upon both Geslin and Goldsmith. Neither responded to any the discovery requests, including the Requests for Admission, thus admitting the matters of fact therein. 15 C.F.R. § 766.9(b).

[2] These cases were consolidated with a case against a third respondent. BIS has not moved for summary decision against this third respondent and, accordingly, that claim is not addressed in the RDO nor will be addressed in this Final Decision and Order.

On September 8, 2008, BIS filed a motion for summary decision against Respondents Geslin and Goldsmith as to the above charges. On October 15, 2008, based on the record before him, ALJ Brudzinski issued an RDO in which he determined that BIS was entitled to summary decision as to both of the charges at issue, finding that Geslin committed one violation of § 764.2(b) when she aided and abetted an unlicensed export to Cuba of the vessel Kailuana, an item subject to the Regulations and classified under ECCN 8A992.f, and that Goldsmith also committed one violation of § 764.2(b) when he aided and abetted an unlicensed export to Cuba of the vessel Eu-Bett, also an item subject to the Regulations and classified under ECCN 8A992.f. ALJ Brudzinski also recommended, following consideration of the record, that Geslin and Goldsmith each be assessed a monetary penalty of $11,000.00 and a denial of export privileges for three years. The ALJ further recommended that the denial of export privileges for each respondent be suspended for the entire three year period provided that each respondent pays the monetary penalty within 30 days of the Final Decision and Order and that each respondent commits no further violations during the period of suspension. In his RDO, ALJ Brudzinski indicated that, should either Geslin or Goldsmith fail to abide by any of the conditions of suspension, then the denial order will become active with regard to whichever respondent has failed to meet the terms of the suspension.

The RDO, together with the entire record in this case, has been referred to me for final action under § 766.22 of the Regulations. I find that the record supports the ALJ's findings of fact and conclusions of law, including the conclusion that the movement of a vessel from the United States to Cuba is considered an export, even if the vessel remains in Cuba only temporarily. RDO at 7.

I also find that the penalty recommended by ALJ Brudzinski based upon his review of the entire record is appropriate, given the nature of the violations, the facts of this case, and the importance of deterring future unauthorized exports, and especially given the multiple warnings that the respondents received from BIS agents.[3]

Based on my review of the entire record, I affirm the findings of fact and conclusions of law in the RDO.

[3] The sanction recommended by the ALJ also is consistent with the sanction proposed by BIS, which based its request on the facts, as admitted, and circumstances of the case as a whole.

ACCORDINGLY, IT IS THEREFORE ORDERED,

FIRST, that a civil penalty of $11,000.00 is assessed against Michele Geslin and that a civil penalty of $11,000 is also assessed against Peter Goldsmith, each of which shall be paid to the U.S. Department of Commerce within (30) thirty days from the date of entry of this Order.

SECOND, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. 3701-3720E (2000)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Geslin and/or Goldsmith, will be assessed, in addition to the full amount of the civil penalty and interest, a penalty charge and administrative charge.

THIRD, for a period of three (3) years from the date that this Order is published in the Federal Register, Michele Geslin, 2627 Staples Avenue, Key West, FL 33040, and Peter Goldsmith, 2627 Staples Avenue, Key West, FL 33040, and their successors or assigns, and when acting for or on behalf of Geslin and/or Goldsmith, their representatives, agents, or employees (hereinafter collectively known as the "Denied Persons") may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving

any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

FOURTH, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Persons any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Persons of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Persons acquire or attempt to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Persons of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Persons in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Persons, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Persons if such service involves the use of any item subject to the

Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

FIFTH, that, after notice and opportunity for comment as provided in § 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Persons by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

SIXTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

SEVENTH, that, as authorized by § 766.17(c) of the Regulations, the denial period set forth above with regard to each respondent shall be suspended in its entirety, and shall thereafter be waived, provided that: (1) within thirty days of the effective date of this Order, the respondent pays the monetary penalty imposed against him or her of $11,000.00 in full, and (2) for a period three years from the effective date of this Order, the respondent commits no further violations of the Act or Regulations.

EIGHTH, that the final Decision and Order shall be served on both Geslin and Goldsmith and shall be published in the Federal Register. In addition, the ALJ's Recommended Decision and Order, except for the section related to the Recommended Order, shall also be published in the Federal Register.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the Federal Register.

Dated: 9/4, 2008.

Daniel O. Hill
Acting Under Secretary of Commerce
for Industry and Security

**UNITED STATES DEPARTMENT OF COMMERCE**
**BUREAU OF INDUSTRY AND SECURITY**
**WASHINGTON D.C. 20230**

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| In the Matter of: | |
| **Peter Goldsmith**<br>**Michele Geslin** | **Docket Nos.: 07-BIS-0026**<br>**07-BIS-0027** |
| Respondents. | |

# RECOMMENDED DECISION AND ORDER[1]

**Issued: October 15, 2008**

**Issued by: Hon. Walter J. Brudzinski, Administrative Law Judge**

[1] For proceedings involving violations not relating to Part 760 of the Export Enforcement Regulations, 15 C.F.R. § 766.17(b) and (b)(2) prescribe that the Administrative Law Judge's decision be a "Recommended Decision and Order." The violations alleged in this case are found in Part 764. Therefore, this is a "Recommended" decision. That section also prescribes that the Administrative Law Judge make recommended findings of fact and conclusions of law that the Under Secretary for Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, must affirm, modify or vacate. 15 C.F.R § 766.22. The Under Secretary's action is the final decision for the U.S. Commerce Department. 15 C.F.R. § 766.22(e).

## *PRELIMINARY STATEMENT*

This Recommended Decision and Order is issued in response to the Agency's September 8, 2008 Motion for Summary Decision in the above captioned matters. Pursuant to the undersigned's Scheduling Order of May 7, 2008, Respondents had until October 8, 2008 to respond to the Agency's motion. Since that time has passed with no response, this matter is now ripe for decision.

On April 1, 2008, I consolidated the following BIS cases: 1) In the Matter of Peter Goldsmith, Docket: 07-BIS-0026; 2) In the Matter of Michele Geslin, Docket: 07-BIS-0027; and 3) In the Matter of Wayne LaFleur, Docket: 07-BIS-0028. This Recommended Decision and Order pertains only to Respondents Michele Geslin and Peter Goldsmith (hereinafter, collectively, "Respondents"). The Agency is not seeking summary decision with regard to Respondent LaFleur. Accordingly, the matter involving Respondent LaFleur has been excluded from the case caption.

On December 18, 2007, the Bureau of Industry and Security, U.S. Department of Commerce ("BIS" or "Agency"), issued separate Charging Letters initiating administrative enforcement proceedings against Michele Geslin and Peter Goldsmith. The Charging Letter addressed to Ms. Geslin alleged that she committed one violation of the Export Administration Regulations, currently codified at 15 C.F.R. Parts 730-774 (2008) (the "Regulations"),[2] issued under the Export Administration Act of 1979, as amended (50 U.S.C. App. §§ 2401-2420 (2000))

[2] The charged violations occurred in 2003. The Regulations governing the violations at issue are found in the 2003 version of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2003)). The 2008 Regulations establish the procedures that apply to this matter.

(the "Act").[3] The Charging Letter addressed to Goldsmith alleged that he also committed one violation of the Regulations.

Specifically, the Charging Letters allege that, between on or about April 10, 2003 through on or about May 31, 2003, each respondent aided and abetted an unlawful export to Cuba in violation of the Regulations. BIS alleged that Geslin and Goldsmith organized a regatta during that time period and that Geslin assisted the passage of the vessel Kailuana, an item classified on the Commerce Control List under Export Control Classification Number (ECCN) 8A992.f, to Cuba during that regatta. BIS further alleges that Goldsmith assisted the passage of the vessel Eu-Bett, also an item classified under ECCN 8A992.f, to Cuba during that regatta. BIS alleges that these acts violate 15 C.F.R. § 764.2 (2003), which prohibits the causing, aiding, or abetting of a violation of the Regulations, because the exports of the vessel Kailuana and the vessel Eu-Bett to Cuba were not authorized by the required Department of Commerce export licenses.

In a letter dated February 10, 2008, Respondent Geslin responded to BIS's Charging Letter in which she stated "I do not feel that the charges are viable." Moreover, in a similar letter dated February 10, 2008, Respondent Goldsmith responded to BIS's Charging Letter in which he stated "I would like to contest these charges." Subsequently, in a letter dated March 20, 2008, the Respondents, collectively, demanded a hearing.

On February 25, 2008, this case was assigned to the undersigned Administrative Law Judge ("ALJ") for adjudication pursuant to an Interagency Agreement with the Bureau of Industry and Security. As previously mentioned above, on April 1, 2008, the proceedings against Michele Geslin and Peter Goldsmith were consolidated. The matter involving Wayne

[3] Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of July 23, 2008 (73 Fed. Reg. 43,603 (July 25, 2008)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 – 1706 (2000)).

LaFleur was also consolidated with these cases. However, BIS has stated that it will move for resolution of the case against LaFleur at a later time.

On April 14, 2008, the undersigned issued an Order granting BIS's Motion to Strike or Deny Respondents' Demand for a Hearing because the demand for hearing was deemed untimely. I further ordered that because of the untimely filing of the demand for hearing by the Respondents, this matter will be decided on the record by the undersigned ALJ, in accordance with 15 CFR § 766.15.

On May 7, 2008, I issued a Scheduling Order for filing various motions and Discovery. On May 14, 2008, BIS issued to the Respondents its Requests for Admission. Responses to the Requests for Admission were due on June 6, 2008. Respondents Geslin and Goldsmith both failed to respond to these requests. Thus, all requests for admission must be deemed admitted under 15 U.S.C. § 766.9. Further, on May 14, 2008, BIS issued to the Respondents its Requests for Interrogatories and Production of Documents. The answers to all interrogatories and the requested documents were due on July 11, 2008. Again, Respondents Geslin and Goldsmith were unresponsive to these requests.

On September 8, 2008, BIS filed its Motion for Summary Decision together with 12 exhibits listed in Appendix A. BIS moved for summary decision on the charges against Geslin and Goldsmith based on the evidence contained in the exhibits and Respondents' admissions. That evidence demonstrates that there are no genuine issues of material fact and that under the facts presented, BIS is entitled to summary decision as a matter of law. Section 766.8 of the Regulations provides that the Administrative Law Judge may render a recommended summary decision and order disposing of some or all of the issues if the entire record shows as to the issues under consideration "[t]hat there is no genuine issue as to any material fact[,]" and "[t]hat

the moving party is entitled to a summary decision as a matter of law." 15 C.F.R. § 766.8 (2008). A dispute over a material fact is "genuine" if the evidence is such that a reasonable fact finder could render a ruling in favor of the non-moving party. *Anderson* v. *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Substantive law dictates which facts are material, and only disputes that might affect the outcome of the litigation will properly preclude the entry of summary decision. *Id.* at 247.

Section 764.3 of the Regulations sets forth the sanctions BIS may seek for violations of the Regulations. The applicable sanctions are: (i) a monetary penalty, (ii) a denial of export privileges under the Regulations, and (iii) suspension from practice before the Bureau of Industry and Security. 15 C.F.R. § 764.3. Pursuant to the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 – 1706 (2000)) ("IEEPA"), as amended, the maximum monetary penalty in this case is $250,000 per violation. International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007); see also In the Matter of: Kabba & Amir Investments, Inc., d.b.a. International Freight Forwarders, 73 Fed. Reg. 25649, 25653 (May 7, 2008), aff'd 73 Fed. Reg. 25648. BIS requests that the ALJ recommend to the Under Secretary of Commerce for Industry and Security[4] that Respondents each (1) be assessed a civil penalty in the amount of $11,000 and (2) be made subject to a denial of export privileges for a period of three years which shall be suspended if each respondent pays the monetary fine against him or her within thirty days from the date of the final Decision and Order and does not commit any further violations of the Regulations during the three year period of the suspension.

[4] Pursuant to Section 13(c)(1) of the Export Administration Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases, the ALJ makes recommended findings of fact and conclusions of law that the Under Secretary must affirm, modify or vacate. The Under Secretary's action is the final decision for the U.S. Department of Commerce.

BIS seeks this sanction because the Respondents, while they were organizing the regatta during which the vessels in question were exported to Cuba, were advised on numerous occasions by federal agents that taking a vessel to Cuba without the proper Department of Commerce authorization was a violation of U.S. law.[5] In addition, the items exported in this case involved vessels controlled for anti-terrorism reasons to a country that the United States Government has designated a state sponsor of international terrorism.[6]

Pursuant to the undersigned's Scheduling Order of May 7, 2008, the deadline for serving and filing a response to Motions for Summary Decision is 30 days from the date of the motion. In this matter, the Respondents' responses were due no later than October 8, 2008. Prior to issuing this Recommended Decision and Order, the undersigned waited an additional week for Respondents to submit a response in the event of unexpected delays in mail delivery. To date, the Respondents have failed to submit a response.

I find that the entire record before me shows that there are no genuine issues of material fact and that BIS is entitled to summary decision against Respondents Geslin and Goldsmith as a matter of law. Through their failure to answer BIS's Requests for Admissions, Respondents admitted that they aided and abetted the export of the vessels Kailuana and Eu-Bett to Cuba. [6]

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[5] See 15 C.F.R. Part 766, Supp. No. 1, § III.A. (discussing the factors that BIS considers in the context of settling an enforcement action and stating that "[i]n cases involving gross negligence, willful blindness to the requirements of the EAR, or knowing or willful violations, BIS is more likely to seek a denial of export privileges . . . and/or a greater monetary penalty than BIS would otherwise typically seek").

[6] See 15 C.F.R. Part 766, Supp. No. 1, § III.A. (discussing the factors that BIS considers in the context of settling an enforcement action and stating that "BIS is more likely to seek a greater monetary penalty and/or denial or export privileges . . . in cases involving: (1) exports or reexports to countries subject to anti-terrorism controls . . ."). Cuba has been designated as a Terrorist Supporting Country and is subject to such anti-terrorism controls. See 15 C.F.R. Part 740, Supp. No. 1 Country Group E:1 (2003); 15 C.F.R. §§ 742.1, 746.2 (2003).

7 See 15 C.F.R. § 766.9 (noting that "matters of fact or law of which admission is requested shall be deemed admitted unless, within a period designated in the request . . . the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party to whom the request is directed cannot truthfully either admit or deny such matters").

Section 746.2 of the Regulations, requires a license to export these vessels from the United States to Cuba. Under the Regulations, the movement of the vessels from the United States to Cuba is considered an export, even if the vessels remained in Cuba only temporarily.[7] [8]

The Respondents have admitted, and BIS has confirmed by searching its licensing database, that no such licenses were obtained. Ex. L, Ex. J (Requests 6 & 15). Respondents have also both admitted to receiving multiple letters from BIS agents prior to the regatta in question informing them that the export of a vessel to Cuba required an export license. Ex. J (Requests 7-9, 16-18), Exs. A-D. In addition to admitting the facts described in the Charging Letters against them, the Respondents have also failed to raise any defenses to the charges in their answers to the respective Charging Letters, thus precluding them from any attempt to raise any new defense at this time.[9]

After admitting the facts against them and waiving any defenses to the charges, it is clear that no genuine issues of material fact remain in this case and that BIS is entitled to summary decision as a matter of law with regard to the charges against Geslin and Goldsmith.

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[8] See 15 C.F.R. § 734.2 (defining "export" to include "an actual shipment or transmission of items subject to the [Regulations] out of the United States . . . ."). As BIS noted in its Motion, temporary exports have been subject to export control laws for more than 60 years. See, e.g., 7 Fed. Reg. 5007 (July 2, 1942) (amending Part 802 of title 32 of the Code of Federal Regulations to authorize the export of certain stores and spare parts that are carried abroad on vessels and planes for use or consumption by the crew); cf. 15 C.F.R. 740.15(b)(2008).

[9] 15 C.F.R. § 766.6(b). See In the Matter of BiB and Malte Mangelsen, 71 Fed. Reg. 37042, 37050 (June 29, 2006) (affirming that defenses not specifically set forth in the answer shall be deemed waived in accordance with 15 C.F.R. § 766.6(a))(aff'd by Under Secretary at 37042).

## *RECOMMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW*

Based upon the record before me, I make following findings of fact and conclusions of law:

**Findings of Fact**

1. The vessel Kailuana was classified under Export Control Classification Number 8A992.f on the Commerce Control List at the time of the alleged violations. Ex. K.
2. The vessel Kailuana traveled to Cuba during the regatta described in the charging letter. Ex. J (Request 3)
3. Prior to the regatta that began on May 23, 2003, BIS specifically warned Michele Geslin on multiple occasions that a Department of Commerce license is required for a vessel to travel to Cuba. Ex. J (Requests 7-9).
4. No Department of Commerce authorization was obtained for the Kailuana to travel to Cuba. Ex. J (Request 6); Ex. L.
5. Michele Geslin organized and/or promoted the regatta that is referenced in the charging letter and which began on May 23, 2003. Ex J (Request 1).
6. In addition, Michele Geslin traveled onboard the vessel Kailuana to Cuba during the regatta that began on May 23, 2003 and assisted its passage to Cuba as a crew member or through assistance to the captain and crew of that vessel. Ex. J (Requests 2 & 4).
7. The vessel Eu-Bett was classified under Export Control Classification Number 8A992.f on the Commerce Control List at the time of the alleged violations. Ex. K.
8. The vessel Eu-Bett traveled to Cuba during the regatta described in the charging letter. Ex. J (Request 12)
9. Prior to the regatta that began on May 23, 2003, BIS specifically warned Peter Goldsmith on multiple occasions that a Department of Commerce license is required for a vessel to travel to Cuba. Ex. J (Requests 16-18).
10. No Department of Commerce authorization was obtained for the vessel Eu-Bett to travel to Cuba. Ex. J (Requests 15); Ex. L.
11. Peter Goldsmith organized and/or promoted the regatta that is referenced in the charging letter and which began on May 23, 2003. Ex J (Request 10).
12. Peter Goldsmith traveled on board the vessel Eu-Bett to Cuba during the regatta that began on May 23, 2003 and assisted its passage to Cuba as a crew member or through assistance to the captain and crew of that vessel. Ex. J (Requests 11 & 13).

**Conclusions of Law**

1. The vessel Kailuana's passage to Cuba was an export and as such it required an export license from the Department of Commerce. See Ex. L; See also, Ex. J (Requests 5 & 14).
2. Geslin aided and/or abetted an act prohibited by the Regulations by assisting the vessel Kailuana's passage to Cuba as a crew member or through assistance to the captain and crew of that vessel.
3. The vessel Eu-Bett's passage to Cuba was an export and as such it required an export license from the Department of Commerce. See Ex. L; See also, Ex. J (Request 14).
4. Goldsmith aided and/or abetted an act prohibited by the Regulations by assisting the vessel Eu-Bett's passage to Cuba as a crew member or through assistance to the captain and crew of the vessel.

Respondents' role in aiding and abetting the export of vessels from the United States to Cuba demonstrates indifference to U.S. export control laws. Therefore, I find BIS's penalty recommendation entirely reasonable, especially given the repeated efforts made by BIS agents to specifically advise Respondents of the proper export licensing requirements.

Accordingly, I recommend that the Under Secretary enter an Order imposing, for each respondent, an $11,000 civil penalty and a denial of export privileges for three years. Further, I recommend the Order state that the denial of export privileges with regard to each Respondent be suspended for the three year period provided that each respondent pays the monetary penalty within 30 days of the final Decision and Order and that each respondent commits no further violations during the period of the suspension. Should either Geslin or Goldsmith fail to abide by any of the conditions of suspension, then the denial order will become active with regard to whichever respondent has failed to meet the terms of the suspension. This penalty is consistent with prior cases decided by this Court. See In the Matter of: Kabba & Amir Investments, Inc., d.b.a. International Freight Forwarders, 73 Fed. Reg. 25649, 25652 (May 7, 2008), aff'd at 73 Fed. Reg. 25648 (imposing a monetary penalty of $6,000 and a conditional denial of export

privileges for three years against a freight forwarder that aided and abetted an attempted export of medical equipment to Cuba).

The terms of the export privileges denial against the Respondents should be consistent with the standard language used by BIS in such orders with modifications as necessary to comply with the conditional nature of the denial of export privileges described above:

WHEREFORE,

**[REDACTED SECTION]**

**[REDACTED SECTION]**

[REDACTED SECTION]

**[REDACTED SECTION]**

This Order, which constitutes the final agency action in this matter, is effective upon publication in the Federal Register.

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the Respondents, as provided in Section 766.7 of the Regulations.

Within thirty (30) days after receipt of this Recommended Decision and Order, the Under Secretary will issue a written order affirming, modifying or vacating the Recommended Decision and Order. See 15 CFR § 766.22(c). A copy of the Agency's regulations for Review by the Under Secretary is attached as Appendix B.

Done and dated this 15th day of October, 2008 at
New York, New York

Walter J. Brudzinski

HON. WALTER J. BRUDZINSKI
Administrative Law Judge

## APPENDIX A

## LIST OF EXHIBITS

### A. Agency's Exhibits

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| Exhibit A | Letter to Michele Geslin dated April 24, 2003, with copy of certified mail receipt signed by Michele Geslin. (3 pages) |
| Exhibit B | Letter to race participants from BIS Special Agent dated April 22, 2003. (1 page) |
| Exhibit C | Letter to All Third Annual Conch Republic Cup Race Participants dated May 23, 2003; letter to race participants, dated May 23, 2003. (2 pages) |
| Exhibit D | Letter to Peter Goldsmith dated April 10, 2003, with copy of certified mail receipt initialed by Peter Goldsmith. (3 pages) |
| Exhibit E | Charging Letter addressed to Michele Geslin dated December 18, 2007. (3 pages) |
| Exhibit F | Charging Letter addressed to Peter Goldsmith dated December 18, 2007. (3 pages) |
| Exhibit G | Michele Geslin's Answer to Charging Letter dated February 10, 2008. (1 page) |
| Exhibit H | Peter Goldsmith's Answer to Charging Letter dated February 10, 2008. (1 page) |
| Exhibit I | BIS Interrogatories and Requests for Production of Documents, with certificate of service dated May 14, 2008. (14 pages) |
| Exhibit J | BIS Requests for Admission, with certificate of service dated May 14, 2008. (9 pages) |
| Exhibit K | Certified Licensing Determination dated September 4, 2008. (2 pages) |
| Exhibit L | Certified copy of letter indicating results of BIS's search of its electronic licensing database for records of export licenses or applications related to the transactions in question. (2 pages) |

### B. Respondents' Exhibits

Respondents did not file any exhibits.

## APPENDIX B

NOTICE TO THE PARTIES REGARDING REVIEW BY UNDER SECRETARY

TITLE 15 -- COMMERCE AND FOREIGN TRADE
SUBTITLE B -- REGULATIONS RELATING TO COMMERCE AND FOREIGN TRADE
CHAPTER VII -- BUREAU OF INDUSTRY AND SECURITY, DEPARTMENT OF COMMERCE
SUBCHAPTER C -- EXPORT ADMINISTRATION REGULATIONS
PART 766 -- ADMINISTRATIVE ENFORCEMENT PROCEEDINGS

15 CFR 766.22

§ 766.22 Review by Under Secretary.

(a) Recommended decision. For proceedings not involving violations relating to part 760 of the EAR, the administrative law judge shall immediately refer the recommended decision and order to the Under Secretary. Because of the time limits provided under the EAA for review by the Under Secretary, service of the recommended decision and order on the parties, all papers filed by the parties in response, and the final decision of the Under Secretary must be by personal delivery, facsimile, express mail or other overnight carrier. If the Under Secretary cannot act on a recommended decision and order for any reason, the Under Secretary will designate another Department of Commerce official to receive and act on the recommendation.

(b) Submissions by parties. Parties shall have 12 days from the date of issuance of the recommended decision and order in which to submit simultaneous responses. Parties thereafter shall have eight days from receipt of any response(s) in which to submit replies. Any response or reply must be received within the time specified by the Under Secretary.

(c) Final decision. Within 30 days after receipt of the recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order of the administrative law judge. If he/she vacates the recommended decision and order, the Under Secretary may refer the case back to the administrative law judge for further proceedings. Because of the time limits, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing, and any submissions by the parties concerning the recommended decision.

(d) Delivery. The final decision and implementing order shall be served on the parties and will be publicly available in accordance with § 766.20 of this part.

(e) Appeals. The charged party may appeal the Under Secretary's written order within 15 days to the United States Court of Appeals for the District of Columbia pursuant to 50 U.S.C. app. § 2412(c)(3).

**UNITED STATES DEPARTMENT OF COMMERCE**
**Bureau of Industry and Security**
Washington, D.C. 20230

DEC 18 2007

CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Peter Goldsmith
2627 Staples Avenue
Key West, FL 33040

Dear Mr. Goldsmith:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that you, Peter Goldsmith ("Goldsmith"), in your individual capacity, have committed one violation of the Export Administration Regulations (the "Regulations"),[1] which are issued under the authority of the Export Administration Act of 1979, as amended (the "Act").[2] Specifically, BIS charges that Goldsmith committed the following violation:

**Charge 1** **15 C.F.R. § 764.2(b) – Aiding or Abetting the Export of a Vessel without the Required License**

Between on or about April 10, 2003 through on or about May 31, 2003, Goldsmith aided and/or abetted the doing of an act prohibited by the Regulations. Specifically, Goldsmith aided and/or abetted the export of the vessel Eu-Bett, an item classified on the Commerce Control List under Export Control Classification Number (ECCN) 8A992.f, to Cuba without the required Department of Commerce authorization. Goldsmith aided and/or abetted the export of the vessel to Cuba by organizing a regatta to Cuba and by traveling on board the Eu-Bett and assisting with the vessel's export to Cuba during the regatta. Goldsmith, as organizer of the regatta, was advised by the BIS Office of Export Enforcement in a letter dated April 10, 2003, that a Department of Commerce export license was required for all participants in the regatta who were to take a vessel to Cuba. Further, the Office of Export Enforcement contacted Goldsmith on or about April 28,

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[1] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2007). The violation charged occurred during 2003. The Regulations governing the violation at issue are found in the 2003 version of the Code of Federal Regulations. *See* 15 C.F.R. Parts 730-774 (2003). The 2007 Regulations govern the procedural aspects of this case.

[2] 50 U.S.C. app. §§ 2401- 2420 (2000). Since August 21, 2001 the Act has been in lapse. However, Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 Fed. Reg. 46,137, Aug. 16, 2007), continues the Regulations in effect under International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA"). The Act and the Regulations are available on the Government Printing Office website at: http://www.access.gpo.gov/bis/.

2003 via telephone to again state the need of regatta participants to obtain a Department of Commerce export license before exporting a vessel to Cuba. On or about May 22, 2003, the Office of Export Enforcement met with Goldsmith and other regatta participants at the regatta's pre-launch party and again informed Goldsmith that a license was required for the temporary export of vessels to Cuba during the regatta. Pursuant to Section 746.2 of the Regulations, a license is required for the export of vessels to Cuba and no license was obtained for the export of the Eu-Bett to Cuba. In aiding and abetting this unlicensed export, Goldsmith committed one violation of Section 764.2(b) of the Regulations.

* * * * *

Accordingly, Goldsmith is hereby notified that an administrative proceeding is instituted against him pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

- The maximum civil penalty allowed by law of up to $250,000 per violation;[3]
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

If Goldsmith fails to answer the charge contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7 (2007). If Goldsmith defaults, the Administrative Law Judge may find the charge alleged in this letter to be true without a hearing or further notice to Goldsmith. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on the charge in this letter.

Goldsmith is further notified that he is entitled to an agency hearing on the record if he files a written demand for one with his answer. *See* 15 C.F.R. § 766.6 (2007). Goldsmith is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent him. 15 C.F.R. §§ 766.3(a) and 766.4 (2007).

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18 (2007). Should Goldsmith have a proposal to settle this case, Goldsmith or his representative should transmit it through the attorney representing BIS, who is named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Goldsmith's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

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[3] *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

In addition, a copy of Goldsmith's answer must be served on BIS at the following address:

Chief Counsel for Industry and Security
Attention: Charles Wall and Greg Michelsen
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Charles Wall and Greg Michelsen are the attorneys representing BIS in this case; any communications that Goldsmith may wish to have concerning this matter should occur through them. Mr. Wall or Mr. Michelsen may be contacted by telephone at (202) 482-5301.

Sincerely,

John Sonderman
Acting Director
Office of Export Enforcement

DEC 18 2007

**UNITED STATES DEPARTMENT OF COMMERCE**
**Bureau of Industry and Security**
Washington, D.C. 20230

CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Michele Geslin
2627 Staples Ave
Key West, FL 33040

Dear Ms. Geslin:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that you, Michele Geslin ("Geslin"), in your individual capacity, have committed one violation of the Export Administration Regulations (the "Regulations"),[1] which are issued under the authority of the Export Administration Act of 1979, as amended (the "Act").[2] Specifically, BIS charges that Geslin committed the following violation:

**Charge 1 15 C.F.R. § 764.2(b) – Aiding or Abetting the Export of a Vessel without the Required License**

Between on or about April 10, 2003 through on or about May 31, 2003, Geslin aided and/or abetted the doing of an act prohibited by the Regulations. Specifically, Geslin aided and/or abetted the export of the vessel Kailuana, an item classified on the Commerce Control List under Export Control Classification Number (ECCN) 8A992.f, to Cuba without the required Department of Commerce authorization. Geslin aided and/or abetted the export of the vessel to Cuba by organizing a regatta to Cuba and by traveling on board the Kailuana and assisting with the vessel's export to Cuba during the regatta. Geslin, as organizer of the regatta, was advised by the BIS Office of Export Enforcement in a letter dated April 24, 2003, that a Department of Commerce export license was required for all participants in the regatta who were to take a vessel to Cuba. On May 22, 2003, the Office of Export Enforcement met with Geslin and other regatta participants at

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[1] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2007). The violation charged occurred during 2003. The Regulations governing the violation at issue are found in the 2003 version of the Code of Federal Regulations. *See* 15 C.F.R. Parts 730-774 (2003). The 2007 Regulations govern the procedural aspects of this case.

[2] 50 U.S.C. app. §§ 2401- 2420 (2000). Since August 21, 2001 the Act has been in lapse. However, Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2007 (72 Fed. Reg. 46,137, Aug. 16, 2007), continues the Regulations in effect under International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA"). The Act and the Regulations are available on the Government Printing Office website at: http://www.access.gpo.gov/bis/.

the regatta's pre-launch party and again informed Geslin that a license was required for the temporary export of vessels to Cuba during the regatta. On May 23, 2003, the Office of Export Enforcement provided Geslin, as co-organizer of the regatta, with an additional letter indicating that an export license was required by all regatta participants who took their vessels to Cuba and that a particular license that had been identified by some participants as authority to take their vessel to Cuba during the regatta did not in fact authorize the temporary export of a vessel. Pursuant to Section 746.2 of the Regulations, a license is required for the export of vessels to Cuba and no license was obtained for the export of the Kailuana to Cuba. In aiding and abetting this unlicensed export, Geslin committed one violation of Section 764.2(b) of the Regulations.

* * * * *

Accordingly, Geslin is hereby notified that an administrative proceeding is instituted against her pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

- The maximum civil penalty allowed by law of up to $250,000 per violation;[3]
- Denial of export privileges; and/or
- Exclusion from practice before BIS.

If Geslin fails to answer the charge contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. *See* 15 C.F.R. §§ 766.6 and 766.7 (2007). If Geslin defaults, the Administrative Law Judge may find the charge alleged in this letter to be true without a hearing or further notice to Geslin. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on the charge in this letter.

Geslin is further notified that she is entitled to an agency hearing on the record if she files a written demand for one with her answer. *See* 15 C.F.R. § 766.6 (2007). Geslin is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent her. 15 C.F.R. §§ 766.3(a) and 766.4 (2007).

The Regulations provide for settlement without a hearing. *See* 15 C.F.R. § 766.18 (2007). Should Geslin have a proposal to settle this case, Geslin or her representative should transmit it through the attorney representing BIS, who is named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Geslin's answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

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[3] *See* International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

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Sincerely,

John Sonderman
Acting Director
Office of Export Enforcement