

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

VS.

CASE NO: 6:20-cr-103-Orl-40LRH

MISUGA KAIUN CO. LTD

ORDER

This cause is before the Court on the United States' Motion for Statutory Award Payment pursuant to 33 U.S.C. § 1908(a). (Doc. 25). Upon due consideration, the Motion is granted in part and denied in part.

I. BACKGROUND

The United States charged Defendant Misuga Kaiun Co. LTD (“**Misuga**”) in a one-count Information with violating the Act to Prevent Pollution from Ships (“**APPS**”) by failing to maintain an accurate Oil Record Book. (Doc. 1). The gravamen of the offense is the discharge of oily bilge water without first processing it through the ship’s Oily Water Separator and Oil Content Monitor. (*Id.*). This violation was brought to the attention of the United States Coast Guard when it boarded the *M/V Diamond Queen* to conduct a Port State Control inspection after a crewmember, Mr. Emmanuel A. Nestal, provided information of the improper discharge. (Doc. 25, p. 3). Mr. Nestal gave the Coast Guard photographs and video recordings showing that the emergency de-watering system in the engine room had been altered to allow for the discharge of the bilge holding tank. (*Id.* at p. 4).

Mr. Nestal pointed out to the Coast Guard a valve used in the discharge in a location that is not normally inspected and gave them a falsified Sounding Log. (*Id.* at pp.

4–5). The log is used to allow the engineering crew to keep track of the liquid contents of tanks in the engine room, and the fake Sounding Book was altered by the Chief Engineer to match the ORB. (*Id.* at p. 5). The Coast Guard interviewed other crewmembers who corroborated Mr. Nestal’s account. (*Id.* at p. 6). During the sentencing proceeding for Defendant Misuga, government counsel disclosed that Mr. Nestal participated in at least one of the improper discharges of oily water, and approximately 3 other crewmembers provided information to the Coast Guard concerning the discharges. Mr. Nestal, however, is the only crewmember seeking compensation. The Government moved the Court to award Mr. Nestal the maximum amount payable to a whistleblower—\$750,000.00.¹

II. DISCUSSION

The Court, in the exercise of its discretion, may award a whistleblower “an amount equal to not more than” one-half of the fine imposed upon the defendant for a violation of the MARPOL protocol, or the regulations issued thereunder, in exchange for having provided information leading to a conviction. See 33 U.S.C. § 1908(a). The Government argued that the APPS award provision “serves a valuable law enforcement purpose by encouraging those most likely to know of illegal conduct to report it and cooperate with law enforcement.” (Doc. 25, pp. 2–3). Moreover, a whistleblower may face reprisal which further justifies monetary compensation. (*Id.* at p. 3).

The Court is in complete agreement with the policy considerations that underpin the rationale for compensating whistleblowers. Here, however, the amount of

¹ The award is one-half of the \$1,500,000.00 fine imposed on Defendant.

compensation recommended by the Government is excessive.² The Court has carefully considered the cooperation provided by Mr. Nestal, including the timeliness of his cooperation, the value of his inside information, the fact that he participated in the improper dumping of oily water, and that other crewmembers also cooperated with the Coast Guard, albeit after being approached.

Mr. Nestal's cooperation was completed in relatively short-order, and his inside information is derived from his participation in the improper discharge. Additionally, as part of its plea agreement with the Government, Defendant Misuga has entered into an Environmental Compliance Plan to be supervised by a third-party contractor approved by the Government. (Doc. 3; 3-1). Defendant also agrees "that it will not take any adverse action against the officers and crew members who cooperated with the investigation because of their cooperation." (Doc. 3, p. 6). To the extent the APPS award is intended to protect individuals who may be unable to continue working onboard ships after cooperating, Defendant Misuga has agreed—as a term of probation—not to retaliate.

On balance, Mr. Nestal's cooperation should be rewarded, but the facts do not support an award at the maximum rate of 50% of the fine. After considering the facts of this case and the historical APPS payments cited by the Government, the Court finds Mr. Nestal should receive 25% of the fine: \$375,000.00. An award of this amount satisfies the need to reward whistleblowers without providing a windfall.

² The Government cited several cases reflecting a range of payments made to whistleblowers pursuant to Section 1908(a) of APPS. (Doc. 25, pp. 6–7). In nearly every case cited, the APPS award is divided among several individuals, with the maximum award to a single whistleblower being \$350,000. (*Id.*).

III. CONCLUSION

It is hereby ORDERED that from the total fine paid by Misuga Kaiun Co. LTD., an award of \$375,000.00 attributable to Count One of the Information shall be paid to Emmanuel A. Nestal, less any tax withholding that is required. The Clerk of Court is DIRECTED to move and disperse \$375,000.00 to Emmanuel A. Nestal.

It is further ORDERED that, upon receipt of payment of the fine by Defendant Misuga Kaiun Co. LTD, the Clerk of the Court shall electronically transfer the funds to Emmanuel A. Nestal.

It is further ORDERED that counsel for Emmanuel A. Nestal, Bruce Merrill, shall provide the Clerk of the Court the bank information and routing number to effectuate the transfer.

DONE AND ORDERED in Orlando, Florida on July 29, 2020.


PAUL G. BYRON
UNITED STATES DISTRICT JUDGE

Total fine
Copies furnished to:

Counsel of Record
Unrepresented Parties