

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-575940
LICENSE NO. 451272
Issued to: Joel Michael SEARS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2058

Joel Michael SEARS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1 and 3

By order dated 21 October 1975, an Administrative Law Judge of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for three months plus six months on twelve months' probation upon finding him guilty of misconduct and negligence. The specifications found proved allege that while serving as an operator on board the uninspected towing vessel MAUREEN MORAN under authority of the document and license above captioned, on or about 20 September 1975, Appellant:

- (1) wrongfully absented himself from the wheelhouse for a period of approximately 15 minutes, leaving the responsibilities of navigation of the vessel and its tow to an unlicensed deckhand, thereby contributing to a collision between the tow and a pier, and
- (2) failed to post a proper lookout, notwithstanding the fact that the vessel was being navigated from the lower

wheelhouse and the light barge in tow alongside to port partially obstructed vision from the wheelhouse on the port side, thereby contributing to the collision.

At the hearing, Appellant elected to act as his own counsel and entered a plea of guilty to the charge and specification of misconduct and not guilty to the charge and specification of negligence.

The Investigating Officer introduced in evidence the testimony of the deckhand who was at the wheel of the MAUREEN MORAN at the time of the collision.

In defense, Appellant offered in evidence his own testimony as well as 3 letters attesting to his professional competence as an operator of towboats.

At the end of the hearing, the Judge rendered a written decision in which he concluded that the charges and supporting specifications had been proved by evidence and by plea. He then served a written order on Appellant suspending all licenses and documents, issued to Appellant, for a period of three months outright plus six months on twelve months' probation.

The entire decision and order was served on 28 October 1975. Appeal was timely filled on 7 November 1975.

FINDINGS OF FACT

On 20 September 1975, Appellant was serving as an operator on board the uninspected towing vessel MAUREEN MORAN and acting under authority of his license while the vessel was towing the empty tank barge RHODE ISLAND south on the Hudson River.

The towing vessel MAUREEN MORAN is equipped with two vertical wheelhouse, the upper wheelhouse being approximately 25 feet above the lower. On the aforementioned date the vessel was being navigated from the lower wheelhouse. The towing vessel is 105 feet long, or approximately 1/3 the length of the barge. The barge RHODE ISLAND was lashed to the port side of the MAUREEN MORAN, on the aft starboard third of the barge. Because of the "light"

condition of the barge it rode high in the water in a manner which partially obstructed the view from the port window in the lower wheelhouse.

Appellant was assigned the 1800-2400 watch as the licensed operator on this date. Donald Joseph Schenck, a deckhand who is unlicensed as an operator, served under the Appellant during this watch. At approximately 1850, at the direction of the Appellant, Schenck took control of the wheel in the lower wheelhouse. Shortly thereafter the Appellant left the wheelhouse in order to go to the "head". He was absent from the wheelhouse for approximately 15 minutes. At 1910, while the vessel was under the control of Schenck, the RHODE ISLAND collided with the northern bulkhead of the Kennedy Marina, located on the eastern shore of the river near Yonker's, New York. The bulkhead of the marina extends some three hundred feet out into the channel of the river.

When Schenck took control of the wheel it was daylight and visibility was good, yet because of the visual obstructions of the barge he could not see the New York shore out of the port side window. There was no lookout posted at the time of the collision.

46 USC 405(b)(2) requires, in part, that uninspected towing vessels, when underway, be under the actual direction and control of operators licensed for such service.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that irrespective of Appellant's guilty plea t