

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: Hassen M. Fadl Z-1192982

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2251

Hassen M. Fadl

This appeal has been taken *in* accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 31 July 1980, an Administrative Law Judge of the United States Coast Guard at New York, New York, revoked Appellant's seaman's document upon finding him guilty of the charge of "conviction for a narcotic drug law violation." The one specification found proved alleges that while holder of the document above captioned, on or about 5 August 1970, Appellant was convicted by the Criminal Court of the City of New York, County of New York, a court of record, for violation of Section 220.05 of the Penal Law of the State of New York, for criminal possession of a dangerous drug, to wit; Hashish.

The hearing was held at New York, New York, on 25 July 1980.

Appellant did not appear and was not represented at the hearing, which was held in *absentia*.

The Investigating Officer introduced in evidence two documents.

Subsequent to the hearing, the Administrative Law Judge

entered a written decision in which he concluded that the charge and the specification had been proved. He then entered an order of revocation.

The decision was served on 12 August 1980. Appeal was timely filed on 5 September 1980 and perfected on 22 September 1980.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that there are many instances of clear error in the record, there is a lack of substantial evidence of a reliable, material and probative character to support the findings, and that the Coast Guard failed to meet its burden of proof to establish the Appellant's guilt.

APPEARANCE: Phillips & Cappiello, P.C., New York, New York.

OPINION

The record is unclear as to what section of the Penal Law of the State of New York was violated by the Appellant. Investigating Officer Exhibit I alleges a violation of Section 220.15, possession of a narcotic drug. The Appellant was found guilty by the State court pursuant to plea of violation of Section 110-220.05, the attempt section for possession of a dangerous drug. No evidence was introduced by the Coast Guard investigator to show that the substance in question was a narcotic drug, and not some other dangerous substance. Therefore, this record does not support the findings of proof of a conviction of a narcotic drug law violation, and the evidence does not meet the criteria necessary to invoke the provisions of 46 U.S.C. 239b.

ORDER

The order of the Administrative Law Judge, dated at New York, New York, on 31 July 1980, is VACATED. The findings are SET ASIDE. The charge is DISMISSED without prejudice to the institution of further proceedings.

R. H. SCARBOROUGH

Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D.C., this 10th day of June 1981.

***** END OF DECISION NO. 2251 *****

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