

IN THE MATTER OF LICENSE NO. 14391
Issued to: Frank C. SEEHORN, Jr.

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1960

Frank C. SEEHORN, Jr.

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 23 March 1972, an Administrative Law Judge of the United States Coast Guard at Long Beach, California suspended Appellant's license for 6 months outright plus 6 months on 10 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as Ocean Operator on board the H-10 Water Taxi #11 under authority of the license above captioned, on or about 3 September 1971, Appellant did wrongfully and intentionally operate said vessel in Los Angeles Harbor in such a manner as to endanger the life, limb and property of persons aboard a motor lifeboat from the M/S MARGARET JOHNSON, to wit, operated said vessel on such a course, at such speed and in such proximity to the lifeboat in an overtaking situation as to create, without justification, a hazardous condition.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence records of H-10 Water Taxi, live testimony of four witnesses and the deposition of a fifth witness.

In defense, Appellant offered in evidence three diagrams and the live testimony of himself, his co-respondent and two other witnesses.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification were proved. He entered an order suspending all documents issued to Appellant for a period of 6 months outright plus 6 months on 10 months' probation.

The entire decision was served on 26 July 1972. Appeal was timely filed on 24 March 1972 and perfected on 26 September 1972.

FINDINGS OF FACT

On 3 September 1971, Appellant was serving as Ocean Operator on board the H-10 Water Taxi #11 and acting under authority of his license while the vessel was in Los Angeles Harbor.

At approximately 1800 hours, the lifeboat of the M/S MARGARET JOHNSON was proceeding, with about 15 persons aboard, to the H-10 Water Taxi dock at a speed of approximately 5-6 knots. The lifeboat was navigating just starboard of midchannel over an area where the channel is about 1000 feet wide. In the vicinity of Reservation Point, H-10 Water Taxi #11, operated by Frank C. Seehorn, Jr., overtook the lifeboat and passed to port without signal. In order to minimize the roll caused by the water taxi's wake, the operator of the lifeboat adjusted his course to follow the stern of the water taxi. When the water taxi was about 150 feet ahead of the lifeboat, H-10 Water Taxi #21, operated by Raymond W. Norton, approached and proceeded to pass the lifeboat to starboard without signal. At this time Seehorn reduced the speed of H-10 Water Taxi #11 causing the lifeboat to approach to within several feet. Thus, the operator of the lifeboat attempted to alter his course to starboard. However, H-10 Water Taxi #21 was approximately 5 feet to starboard. As the two water taxis were abeam of the lifeboat, they proceeded ahead, crossed the bow of the life-boat and headed for the dock. The lifeboat was required to

reduce speed and suffered heavy rolling as a result of the water taxis' wake.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

- (1) the evidence fails to support the findings;
- (2) the Investigating Officer made prejudicial statements in his closing arguments; and
- (3) there was no motive for Appellant's alleged actions.

APPEARANCE: George M. Stephenson, San Pedro, California by
Frank W. Masse.

OPINION

I

The evidence offered at the hearing by the Coast Guard and the Appellant presented two substantially opposing accounts of the incident in question. The Administrative Law Judge, having considered the evidence, the demeanor of the witnesses and their respective interests in the outcome of the proceedings, chose to accept substantially the testimony of the government witnesses. Such a determination is peculiarly within the realm of the Administrative Law Judge's discretion and will be altered on appeal only upon a showing that he acted arbitrarily or capriciously. There being substantial evidence on the record of a reliable and probative nature in support of the Administrative Law Judge's findings and conclusions, I am unable to state that he so acted.

II

Appellant complains of four specific statements made by the Investigating Officer during the course of his closing argument. The first such utterance was to the effect that he had yet another witness who had been prepared to testify in the same manner as the

government witnesses who actually did testify. Counsel objected and the Administrative Law Judge responded that he realized that the Investigating Officer's argument was not testimony, thus showing that Appellant was not prejudiced by the remark.

The second statement of which Appellant complains related to the reasons for seeking the deposition of the fifth government witness. I am unable to find in that statement any implication of "guilty knowledge" as alleged by Appellant. Under the circumstances, including Counsel's comments, in his final argument, as to the deposition, the Investigating Officer's remarks were merely fair commentary on the evidence and in no way prejudicial to the Appellant. It is noted, as an aside, that Counsel made no objection to this statement at the hearing.

The third allegedly objectionable statement concerned extra-record facts and was, indeed, improper. However, Counsel made a timely objection and the Administrative Law Judge stated that he would disregard such comments. Thus, under the circumstances, there was no prejudice to Appellant.

The fourth statement complained of dealt with the condition of the lifeboat. Since that was not a relevant issue and played no part in the decision of the Administrative Law Judge, it was not the occasion for prejudice to Appellant.

III

Appellant assigns as erroneous the finding of a motive for Appellant's actions and contends that the existence of such a motive was a vital facet of the Investigating Officer's case. This contention is meritless, as the proof of existence of a motive is not necessary to a finding of misconduct. The existence of a motive may, in a given case, be relevant to the question as to whether or not the person charged in fact perpetrated the act in question. Once that question has been decided, however, the only remaining function of motive is as a matter in aggravation.

The decision of the Administrative Law Judge in the instant case leaves no doubt that he was convinced of the Appellant's guilt of misconduct, not on the basis of motive, but on the operative factual evidence presented by the Coast Guard. Appellant

was found guilty of misconduct, not because the Administrative Law Judge considered him to bear malice towards those utilizing lifeboats for transportation, but because he passed the lifeboat and then reduced his speed for no proper reason. The fact that the Administrative Law Judge rendered a harsher order in Appellant's case as opposed to that of his co-respondent is attributable to the fact that the former's actions were "more serious" and placed the occupants of the lifeboat in a greater degree of danger. It is, thus, apparent that the existence of a motive for Appellant's actions is irrelevant to this case, and it cannot be said that it had any effect upon the severity of the order adjudged.

ORDER

The order of the Administrative Law Judge dated at Long Beach, California on 23 March 1972, is AFFIRMED.

T. R. SARGENT
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 28th day of June 1973.

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