

IN THE MATTER OF LICENSE NO. 258272 AND ALL OTHER LICENSES
Issued to: Edward Moller

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1449

Edward Moller

This appeal has been taken in accordance with Title 46 United States Code 139(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 6 December 1963, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's license for three months on twelve months' probation upon finding him guilty of negligence. The three specifications found proved allege that while serving as Master on board the United States SS FLYING ENDEAVOR under authority of the license above described, on 14 March 1963, Appellant contributed to the grounding of his vessel by failing to acquaint himself with available Notices to Mariners (first specification), by using an obsolete chart while navigating the vessel (second specification), and by failing to use all navigating information which was available (third specification).

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

The Investigating Officer introduced documentary evidence consisting of an Official Logbook entry and a casualty report referring to the grounding on the new extension of the breakwater at Barcelona, Spain, Notice to Mariners No. 24 of 16 June 1962 which indicates that the Barcelona breakwater was being extended, and a chart (H.3. 3995) corrected to 9 February 1963 which depicts the construction project as described in Notice to Mariners No. 24 of 1962.

Appellant testified in his defense and submitted chart H.O. 3995 corrected to 23 March 1963 which indicates that the breakwater extension was shorter than shown on the Government exhibit and that the navigational markings were different. Appellant testified that he would not have navigated as close to the breakwater as he did if he had known that it was being extended.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification has been proved.

FINDINGS OF FACT

On a foreign voyage which began on 26 February 1963 and extended beyond 14 March 1963, Appellant was serving as Master on the United States SS FLYING ENDEAVOR and acting under authority of his license.

About two or three days before leaving the Port of New York at the beginning of the voyage, Appellant told the navigating officer (Second Mate) that a stop at Barcelona, Spain had been added to the schedule for the voyage. It was the practice on the ship to discard Notices to Mariners after using them to correct only the charts needed for the ship's route. Since the ship had not been to Barcelona for at least four years, Appellant informed the Second Mate of the newly scheduled stop at Barcelona at least two days before departing New York and told him to check the Barcelona chart. On the following day, the Second Mate notified Appellant that the Barcelona chart was on board. This was chart H.O. 3995 which showed on its face that it was corrected to November 1958 and contained nothing to indicate that any later correction had been made. In this condition, the chart was used by Appellant while approaching Barcelona. There was nothing on the chart about the construction project to extend the Barcelona breakwater. This was the subject matter of Notice to Mariners no. 24 of 16 June 1962 which was readily available in New York.

The FLYING ENDEAVOR stopped at Cadiz, Spain and then headed for Barcelona. Appellant was personally in charge of the ship's navigation as she approached to within about a mile of the Barcelona breakwater on the morning of 14 March and signaled for a pilot. While waiting, Appellant allowed the ship to move at a very slow speed toward the end of the visible breakwater for approximately fifteen minutes as the pilot boat stayed inside the breakwater.

The entire breakwater extension which was under construction was below the water line and Appellant did not know of this project. At 0730, the ship ran aground on the sand and gravel fill used for the breakwater extension. This was about 300 yards from the end of the visible breakwater and at a point where the ship's chart indicated nine fathoms of water.

With the assistance of tugs, the ship was afloat at 0952. Examination of the hull by divers at Barcelona failed to disclose any damage and the ship was permitted to proceed on her voyage.

Appellant has been going to sea since 1922 and has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that there is insufficient evidence to support the decision of the Examiner.

APPEARANCE: David C. Phillips, Esquire, of San Francisco,
California, of Counsel

OPINION

The above findings of fact are based on Appellant's testimony with the exception of the information pertaining to the construction of the breakwater extension.

The findings are sufficient to support the conclusion that on 14 March 1963 Appellant was negligent in navigating the vessel as he did while depending on a chart which gave no indication that it had been checked for Notice to Mariners corrections issued after 1958 (second specification). The evidence does not support the allegation that Appellant negligently failed to acquaint himself with available Notice to Mariners on 14 March (first specification) since there is no evidence as to what Notice to Mariners were on board. The third specification, which alleges the failure to use all available navigational information, on 14 March, is vague and the record does not clarify the purpose of this specification. Therefore, the conclusion that the first and third specifications were proved is set aside and the two specifications are dismissed.

With respect to Appellant's reliance on the Barcelona chart, corrected to November 1958, it is my opinion that this constituted negligence which contributed to the grounding. Appellant testified that he did not question the accuracy of the chart after the Second Mate simply reported that it was on board. Knowing that the Barcelona chart would not have been kept current by corrections because the ship had not been stopping there, Appellant should have questioned the Second Mate about the chart. This would have disclosed that it had not been checked by him for corrections in all Notices to Mariners after November 1958 as it should have been. It was negligent for Appellant, as the ship's Master, to have relied on such an old chart without at least having taken this reasonable precaution to ascertain whether or not it was up-to-date.

The fact that Notice to Mariner's No. 24 of 16 June 1962 did not accurately describe the event of the breakwater extension or the navigational aids marking it is not material since this notice correctly showed that there was construction work in progress where the ship ran aground on the submerged fill. Appellant testified that he would not have gone in so far toward the breakwater if he had been using the chart, introduced by the Government, depicting the construction project in terms of Notice to Mariners No. 24 of 1962.

The Examiner took into consideration Appellant's prior excellent record and certain mitigating circumstances such as the failure of the navigating officer to bring the chart up-to-date and the lack of any warning by the pilot boat as the FLYING ENDEAVOR approached the breakwater. In view of these factors, the Examiner's order of a suspension placed on probation is appropriate and will be sustained.

ORDER

The order of the Examiner dated at San Francisco, California, on 6 December 1963, is **AFFIRMED**.

E. J. Roland
Admiral, United States Coast Guard

Commandant

Signed at Washington, D. C., this third day of April, 1964.