

IN THE MATTER OF LICENSE NO. 87845
Issued to: Richard J. PETTER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1966

Richard J. PETTER

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

By order dated 28 September 1972 at San Diego, California, and amended on 25 October 1972 at Long Beach, California, an Administrative Law Judge of the United States Coast Guard revoked a fraudulently obtained endorsement on Appellant's license and suspended said license for 12 months outright upon finding him guilty of misconduct. The specifications found proved allege that, while acting under the authority of the license above described Appellant did:

(1) on or about 12 May 1971, knowingly, wrongfully and fraudulently submit false evidence of device on certain waters in applying for an extension of route on his existing license, to wit, a letter dated 7 May 1971 from H & M Landing showing approximately 14 trips as a crew member; and

(2) on or about 4 May 1971, knowingly and wrongfully provided fraudulent information for the purpose of extending the route on the license of one of his employees, to wit, a letter dated 4 May 1971 stating that James Richard Hand had worked on Appellant's vessel, BANDIDO, on certain waters on which Appellant knew or should have known said employee had not in fact served.

At the hearing, Appellant was represented by professional counsel and entered a plea of guilty to the charge and each specification.

The Investigating Officer introduced in evidence copies of Appellant's license and two allegedly fraudulent letters and the testimony of James R. Hand.

In mitigation, Appellant offered in evidence his own testimony and that of one other witness.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and both specifications had been proved by plea. He subsequently entered an order revoking fraudulently obtained endorsement on Appellant's license and suspending that license for a period of 12 months outright.

The entire decision was served on 30 September 1972. Appeal was timely filed on 20 October 1972.

FINDINGS OF FACT

Appellant is the holder of a license authorizing him to operate mechanically propelled passenger carrying vessels of less than 100 gross tons over a certain area of the Pacific Ocean.

On 4 May 1971, Appellant, acting under the authority of that license, addressed a letter to the Coast Guard Officer-in-Charge of Marine Inspection at Terminal Island, California, certifying that his employee, James R. Hand, had served aboard Appellant's charter boat, BANDIDO, on 18 trips in the Morro Bay area. This information was known by Appellant to be false and was proffered for the purpose of obtaining a route extension on the license of Mr. Hand.

On or about 12 May 1971, Appellant, acting under the authority of his license, filed with the Coast Guard an application for an extension of route and submitted therewith a letter from H & M Landing stating that he had served as a crewman on about 14 particular trips. Appellant knew that such information was false and he fraudulently submitted the letter.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that said order is unduly harsh and disproportionate to the offense found proved.

APPEARANCE: Richard P. MacNulty, San Diego, California.

OPINION

The degree of severity of an order is a matter peculiarly within the discretion of the Administrative Law Judge. This being so, an order will be modified on appeal only upon a clear showing of arbitrary and capricious action on his part. The instant case involves two fully knowledgeable fraudulent acts done with an intent to circumvent the laws relating to maritime safety. These are offenses of a most serious nature, for which even revocation would not be inappropriate. However, the Administrative Law Judge revoked only so much of Appellant's license as was fraudulently obtained, an order about which Appellant will not be heard to complain. The suspension of the remainder of his license is far from severe under the circumstances.

ORDER

The amended order of the Administrative Law Judge dated at Long Beach, California on 25 October 1972, is AFFIRMED.

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

Signed at Washington, D. C., this 3rd day of July 1973.

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