

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S LICENSE NO. 440097  
Issued to: Joseph A. Shepard

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

2079

Joseph A. Shepard

This appeal has been taken in accordance with Title 46 Code of Federal Regulations 5.30-1.

By order dated 8 December 1975, an Administrative Law Judge of the United States Coast Guard at New York, New York, suspended Appellant's license for 3 months on 12 months' probation upon finding him guilty of negligence. The specification found proved alleges that while serving as pilot on board the M/V FRANK D. MOORES (Brit.) being the holder of the license above captioned, on or about 16 July 1975, Appellant did imprudently navigate said vessel in heavy fog causing the vessel to collide with a fixed object, to wit, the Mount Hope Bridge, Mount Hope Bay, Rhode Island.

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

The Investigating Officer introduce in evidence the testimony of seven witnesses, and six exhibits.

In defense, Appellant offered in evidence his own sworn testimony and the testimony of one witness.

After the hearing, the Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant suspending Appellant's license for a period of 3 months on 12 months' probation.

The entire decision and order was served on 8 December 1975. Appeal was timely filed on 8 January 1976.

#### *FINDINGS OF FACT*

Because of the disposition to be made of this case, no findings of fact are necessary.

#### *BASES OF APPEAL*

The sole basis of appeal that must be considered is that R.S. 4442, 46 U.S.C. 214, does not alone authorize action to suspend or revoke Appellant's federal pilot's license.

APPEARANCE: Miles and Miles, by Frankland W. L. Miles, Jr.,  
Esq.

#### *OPINION*

In *Dietze v. Siler*, Civ. 75-3501, D.C. E.D.La., June 14, 1976, it was held that R.S. 4442, 46 U.S.C. 214, did not independently provide a basis for action to suspend or revoke a license as a pilot issued by the Coast Guard, but that R.S.4450, 46 U.S.C. 239, was the controlling statute for such actions. Since Appellant was not acting under authority of his Coast Guard issued pilot's license, and thus not charged under R.S.4450, and since *Dietze* held that jurisdiction did not alone lie under R.S. 4442, the charge in this case must be dismissed.

*ORDER*

The order of the Administrative Law Judge dated as New York, New York, on 8 December 1975, is SET ASIDE, and the charge against Appellant is DISMISSED.

E. L. PERRY  
VICE ADMIRAL, U. S. COAST GUARD  
ACTING COMMANDANT

Signed at Washington, D. C., this 27th day of Sept, 1976.

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