

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
ADMINISTRATIVE ADJUDICATION DIVISION**

**RE: S & R CONSTRUCTION CO., INC. / OZZI REALTY      AAD NO. 01-018/WME  
ASOCIATES, LLC / OZZI REALTY COMPANY  
NOTICE OF VIOLATION OC&I/UST NO. 01-02967**

**FINAL ORDER OF DEFAULT**

This matter came before Hearing Officer Joseph F. Baffoni on September 20, 2002 for the purpose of a Prehearing Conference. Respondent failed to appear or otherwise apprise the Hearing Officer of the inability to appear at said prehearing conference. The Office of Compliance and Inspection ("OCI") moved for a conditional order of default against Respondents.

On September 23, 2002, this Hearing Officer issued a Conditional Order of Default affording the Respondents until and including October 1, 2002 to show good cause in writing why a Final Default Judgement should not enter and the Notice of Violation and Order and Penalty which was issued November 16, 2001 become a compliance order.

On October 2, 2002, via telephone conference, the Respondents requested an extension of time to show good cause in writing why a Final Default Judgement should not enter against the Respondents. The Respondents' request was granted, and the time for filing was extended to October 8, 2002.

The Respondents filed a response on October 9, 2002 stating that their absence was due to a temporary misplacement of the notification in their office. OCI filed an objection to Respondent's show cause submittal on October 15, 2002.

By order dated October 24, 2002, a show cause hearing was scheduled on November 8, 2002 for the Hearing Officer to determine whether Respondents' explanation for nonappearance sustains their show cause burden to prevent a final default in this matter. The Respondents failed to appear or otherwise apprise the

Hearing Officer of their inability to appear at said show cause hearing.

FINDINGS OF FACT

1. The Prehearing Order issued to the parties on March 21, 2002 provided that: "upon failure of a party to appear at the Prehearing Conference, the Hearing Officer shall sua sponte issue a seven (7) day Conditional Order of Dismissal/Default with prejudice which shall automatically become final unless objected to by the absent party, said objection stating the grounds for the failure to appear."
2. The prehearing conference was held on September 20, 2002.
3. Respondents failed to appear at the prehearing conference.
4. A Conditional Order of Default was issued against Respondents on September 23, 2002.
5. Pursuant to the Conditional Order, Respondents had until October 1, 2002 to show good cause why a Final Order of Default should not enter and the Notice of Violation issued on November 16, 2001 become a compliance order. At Respondents' request, this time was extended to October 8, 2002.
6. The Respondents filed a response on October 9, 2002.
7. A show cause hearing was held on November 8, 2002.
8. The Respondents failed to appear at the show cause hearing.
9. The Respondents have not adequately responded to the Conditional Order of Default.

CONCLUSIONS OF LAW

1. Respondents have failed to show cause that relief from the Conditional Order of Default should be granted.
2. Respondents have failed to show good cause why a Final Order of Default should not enter and the Notice of Violation issued on November 16, 2001 become a compliance order.

Wherefore, it is hereby

**ORDERED**

1. Respondents are deemed to have waived their rights to an adjudicatory hearing.

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2. The Notice of Violation issued on November 16, 2001 shall be final and become a compliance order immediately upon the entry of the Final Agency Order herein.

Entered as an Administrative Order this 18<sup>th</sup> day of November, 2002 and herewith recommended to the Director for issuance as a Final Agency Order.

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Joseph F. Baffoni  
Hearing Officer  
Administration Adjudication Division  
235 Promenade Street, Third Floor  
Providence, RI 02908  
(401) 222-1357

Entered as a Final Agency Order this 19<sup>th</sup> day of November, 2002.

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Jan H. Reitsma, Director  
Department of Environmental Management  
235 Promenade Street, 4<sup>th</sup> Floor  
Providence, RI 02908

**CERTIFICATION**

I hereby certify that I caused a true copy of the within Order to be forwarded by first-class mail, postage prepaid, to Rocco Izzo, Jr., Vice President, S & R Construction Co., Inc., 60 Dyerville Avenue, Johnston, RI 02919; via interoffice mail to Bret Jedele, Esquire, DEM Office of Legal Services and Dean Albro, Chief, Office of Compliance & Inspection, 235 Promenade St., 4th Fl., Providence, RI 02908 on this \_\_\_\_\_ day of November, 2002.

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If you are aggrieved by this final agency order, you may appeal this final order to the Rhode Island Superior Court within thirty (30) days from the date of mailing of this notice of final decision pursuant to the provisions for judicial review established by the Rhode Island Administrative Procedures Act, specifically, R.I. Gen. Laws §42-35-15.