

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

RE: MIRANDA, JOHN A. III  
LOBSTER TRAP ALLOCATION MPURP 000162

AAD NO.07-031/F&WA

FINAL ORDER OF DISMISSAL

This matter came before Hearing Officer Mary F. McMahon on January 7, 2008 for prehearing conference and hearing. Attorney Gary Powers appeared on behalf of the Division of Fish and Wildlife (Division). Applicant John A. Miranda, III failed to appear or otherwise inform the Hearing Officer of his inability to appear at the prehearing conference and hearing. A stenographer was present to provide a record of the hearing if the matter had proceeded. The Division moved for entry of a Conditional Order of Dismissal and requested that payment of the stenographic costs be imposed as a condition for vacating the Conditional Order of Dismissal. The motion was granted.

The Conditional Order of Dismissal was entered on January 8, 2008 and required Applicant to explain in writing his failure to appear and imposed the condition of payment of the stenographic costs in order to return the matter to the hearing schedule. On January 17, 2008 Applicant filed a response to the Conditional Order of Dismissal, explaining that he had not appeared at the prehearing conference and hearing due to illness. He further represented that when he appears at any hearing on this matter, he "loses at least \$150.00 per day." Applicant requested that the Division's request for him to pay stenographic costs be denied.

Applicant's illness was found to be good cause for his failure to appear but also good grounds for him to have requested a continuance. The Order Requiring Applicant's Payment of Stenographic Costs By May 30, 2008 stated that if Applicant "had complied with the Order and Notice of Administrative Hearing and Prehearing Conference and followed the AAD Rules, then

the Division would not have incurred the stenographic cost of \$150.00." If payment was not made in accordance with the Order Requiring Applicant's Payment of Stenographic Costs By May 30, 2008, then Applicant would be deemed to have waived his right to an adjudicatory hearing on the Lobster Trap Allocation and his appeal would be dismissed.

Applicant has not made the required payment of the \$150.00 stenographic costs.

FINDINGS OF FACT:

A review of the AAD file reveals the following:

1. This matter was scheduled for an adjudicatory hearing on January 7, 2008.
2. Applicant failed to appear at the hearing on January 7, 2008.
3. The Division moved for entry of a Conditional Order of Dismissal against the Applicant. The Division requested that payment of the stenographic costs be imposed as a condition of vacating the Conditional Order of Dismissal.
4. A Conditional Order of Dismissal was entered on January 8, 2008 against the Applicant and required the Applicant to demonstrate good cause for his failure to appear at the hearing or the matter would be dismissed. The Order also provided that if the Applicant demonstrated good cause and paid the \$150.00 stenographic costs, then the matter would be returned to the hearing schedule.
5. Applicant timely responded to the Conditional Order of Dismissal.
6. On April 15, 2008 an Order Requiring Applicant's Payment of Stenographic Costs By May 30, 2008 was issued. The Order provided that if the Applicant failed to make the required payment by May 30, 2008 then he would be deemed to have waived his right to an adjudicatory hearing on the Lobster Trap Allocation and this matter would be recommended to the Director for issuance of a Final Agency Order of Dismissal.
7. The Applicant has not complied with the Order Requiring Applicant's Payment of Stenographic Costs By May 30, 2008.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact, I conclude the following as a matter of law:


1. Applicant John A. Miranda, III is deemed to have waived his right to an adjudicatory hearing on the Lobster Trap Allocation determined by the Division of Fish and Wildlife.

Wherefore, it is hereby

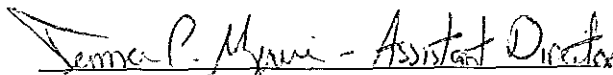
ORDERED

1. Applicant's request for hearing on the Lobster Trap Allocation is herewith DISMISSED.

Entered as an Administrative Order this 9<sup>th</sup> day of June, 2008 and herewith recommended to the Director for issuance as a Final Agency Order.

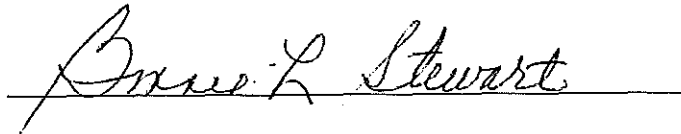
  
Mary F. McMahon  
Hearing Officer  
Department of Environmental Management  
Administrative Adjudication Division  
235 Promenade Street, Third Floor  
Providence, RI 02908  
(401) 222-1357

Entered as a Final Agency Order this 10<sup>th</sup> day of June, 2008.

  
W. Michael Sullivan, Ph.D., Director  
Department of Environmental Management  
235 Promenade Street, 4<sup>th</sup> Floor  
Providence, Rhode Island 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Final Order of Dismissal to be forwarded, via regular mail, postage prepaid to: John A. Miranda, III, 51 Alan Street, Tiverton, RI 02878; via interoffice mail to Gary Powers, Esquire, DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this 10<sup>th</sup> day of June, 2008.

  
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NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Environmental Management pursuant to R.I. Gen. Laws § 42-35-12. Pursuant to R.I. Gen. Laws § 42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.