

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

**RE: KEN ROCHA COLLISION, LLC
NOTICE OF VIOLATION OCI-HW-15-83**

AAD NO. 18-004/WME

ORDER

This matter came before the Chief Hearing Officer David Kerins on July 8, 2019 for consideration of Respondent's Motion to Dismiss. On June 4, 2019 the Honorable Associate Justice Brian P. Stern of the Superior Court issued a written Decision declaring that the Department of Environmental Management lacked jurisdiction to adjudicate matters under the Rhode Island Hazardous Waste Management Act. A copy of said Decision and Order is annexed hereto and made a part hereof. The Decision was issued as a result of a complaint for Declaratory Judgement entitled Ken Rocha Collision LLC v. The Rhode Island Department of Environmental Management C.A. No: PC-2019-4836. The complaint referenced a Motion to Dismiss filed before this Tribunal in the instant matter on November 27, 2018. The Motion to Dismiss was denied by this Hearing Officer on March 21, 2019. Counsel for Respondent requested by letter dated June 6, 2019 that, based on Judge Stern's Decision, the instant matter be dismissed. On June 12, 2019 Counsel for Respondent by email, with copy to counsel for DEM, forwarded a copy of Judge Stern's Order and requested this matter be dismissed without additional conference or motion. The Administrative Adjudication Division has not received an Objection or communication from counsel for DEM.

Wherefore it is hereby:

ORDERED

1. By virtue of the written Decision and Order of the Honorable Associate Justice Brian Stern issued on June 12, 2019 this Matter is hereby **DISMISSED** due to lack of jurisdiction.

RE: KEN ROCHA COLLISION, LLC
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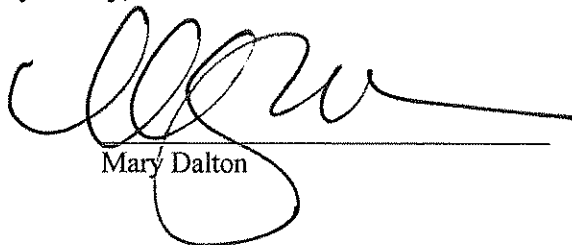
Entered as an Administrative Order this 10th day of July 2019.



David Kerins
Chief Hearing Officer
Administrative Adjudication Division
235 Promenade Street, 3rd Floor, Rm 350
Providence, RI 02908
(401) 222-4700 Ext. 4600

CERTIFICATION

I hereby certify that I caused a true copy of the within Status Conference Order to be forwarded by first-class mail to: Joelle C. Rocha, Esquire, Kelly, Souza, Rocha & Parmenter, PC, 128 Dorrance Street, Suite 300, Providence, RI 02903; via interoffice mail to; Tricia Quest, Legal Counsel, DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 and David Chopy, on this 10 day of July, 2019.



Mary Dalton

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

KEN ROCHA COLLISION, LLC
Plaintiff,

vs.

THE RHODE ISLAND DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT and
JANET COIT, in her capacity as Director of
The Rhode Island Department of
Environmental Management
Defendants.

PC-2019-4836

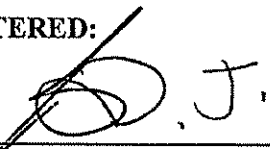
ORDER

This matter came on for hearing on Plaintiff's Motion for Summary Judgment or, in the Alternative, Motion for Declaratory Judgment and Defendants' Objection thereto on May 31, 2019, before the Honorable Associate Justice Brian P. Stern. After hearing thereon, and based on the written decision of the Court dated June 4, 2019, it is hereby:

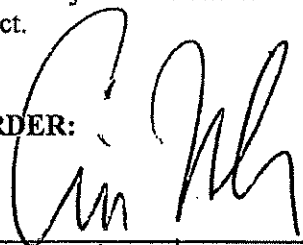
ORDERED, ADJUDGED & DECREED

- 1. That Plaintiff's Motion for Declaratory Judgment is **GRANTED**; and
- 2. Department of Environmental Management's Administrative Adjudication Division lacks subject matter jurisdiction to adjudicate matters under the Rhode Island Hazardous Waste Management Act.

ENTERED:


Judge

PER ORDER:


Clerk 6/12/19

Date: 6/12/19

Respectfully Submitted,

Plaintiffs,
By and through its attorneys:

/s/ Joelle C. Rocha

Joelle C. Rocha, Esq. (#7590)
Kelly, Souza, Rocha & Parmenter, P.C.
128 Dorrance Street, Suite 300
Providence, RI 02903
Tel#: (401) 490-7334
Fax#: (401) 490-7874
jrocha@ksrplaw.com

CERTIFICATE OF SERVICE

I hereby certify that, on this 6th day of June, 2019, I filed and served the within document through the electronic filing system on the following parties:

Tricia Quest, Esq.
Rhode Island DEM
Senior Legal Counsel
Office of Legal Services
235 Promenade Street, 4th Floor
Providence, RI 02908
Tricia.quest@dem.ri.gov

The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Lynn M. Daigle

Lynn M. Daigle
Kelly, Souza, Rocha & Parmenter, P.C.
128 Dorrance Street, Suite 300
Providence, RI 02903

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

KEN ROCHA COLLISION, LLC, :
Plaintiff, :

v. : C.A. No: PC-2019-4836

THE RHODE ISLAND DEPARTMENT OF :
ENVIRONMENTAL MANAGEMENT and :
JANET COIT, in her capacity as Director :
The Rhode Island Department of :
Environmental Management, :
Defendants. :

DECISION

STERN, J. Before this Court for Decision is the Plaintiff's, Ken Rocha Collision, LLC (KRC), Motion for Declaratory Judgment on Count II of the Complaint. KRC specifically requests this Court to declare that the Rhode Island Department of Environmental Management's Administrative Adjudication Division (AAD) lacks subject matter jurisdiction to adjudicate or make any determinations under G.L. 1956 § 23-19.1-1, *et seq.*—The Hazardous Waste Management Act. The Defendants, The Rhode Island Department of Environmental Management and Janet Coit, in her capacity as Director of The Rhode Island Department of Environmental Management (collectively, DEM), timely objected. Jurisdiction is pursuant to G.L. 1956 § 9-30-1, *et seq.*

I

Facts and Travel

On July 20, 2015, DEM conducted an inspection of KRC's property located at 555 Cranston Street, Providence, Rhode Island 02907 (Property). The inspection resulted in

numerous violations against KRC that included twelve violations of the Rhode Island Hazardous Waste Management Act (HWMA), as well as, violations of DEM's Rules and Regulations. DEM's findings of facts and violations were incorporated into the Notice of Violation, which KRC challenged. A hearing was held for final determination before the AAD. KRC appealed the Notice of Violation and DEM sought its enforcement, which is presently pending before the AAD. On November 27, 2018, KRC filed a motion to dismiss the AAD action for lack of subject matter jurisdiction to adjudicate violations under § 23-19.1-1, *et seq.* DEM filed a memorandum in opposition. On January 25, 2019, a hearing was held before the AAD, which resulted in the hearing officer rendering a decision denying KRC's Motion to Dismiss. KRC moved to reconsider the AAD's Decision, but the AAD hearing officer denied KRC's Motion to Reconsider. Consequently, KRC filed its' Complaint appealing the Decision of the AAD pursuant to G.L. 1956 § 42-35-15 and seeking a declaration from this Court that the AAD lacks subject matter jurisdiction to adjudicate violations brought under the Rhode Island Hazardous Waste Management Act—§ 23-19.1-1, *et seq.*

II

Standard of Review

It is well settled that a justice of the Superior Court has discretion to grant or deny declaratory relief under the Uniform Declaratory Judgments Act (UDJA) (G.L.1956 chapter 30 of title 9). *Sullivan v. Chafee*, 703 A.2d 748, 751 (R.I. 1997) (citing *Woonsocket Teachers' Guild Local Union 951, AFT v. Woonsocket School Committee*, 694 A.2d 727, 729 (R.I. 1997) and *Lombardi v. Goodyear Loan Co.*, 549 A.2d 1025, 1027 (R.I. 1988)). "A decision to grant or deny declaratory relief is addressed to the sound discretion of the trial justice and will not be disturbed on appeal unless the record demonstrates a clear abuse of discretion or the trial justice committed

an error of law.” *Imperial Casualty and Indemnity Co. v. Bellini*, 888 A.2d 957, 961 (R.I. 2005) (quoting *Hagenberg v. Avedisian*, 879 A.2d 436, 441 (R.I. 2005)).

It is the function of the trial justice to undertake fact-finding and then decide whether declaratory relief is appropriate. *Providence Lodge No. 3, Fraternal Order of Police v. Providence External Review Authority*, 951 A.2d 497, 502 (R.I. 2008). The Superior Court has the “power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” *Key et al v. Brown University et al*, 163 A.3d 1162, 1171 (R.I. 2017) (citing *Taylor v. Marshall*, 119 R.I. 171, 180, 376 A.2d 712, 716-17 (1977)). “It is well-established that the findings of fact of a trial justice, sitting without a jury, will be given great weight and will not be disturbed absent a showing that the trial justice overlooked or misconceived material evidence or was otherwise clearly wrong.” *Casco Indemnity Co. v. O'Connor*, 755 A.2d 779, 782 (R.I. 2000).

III

Analysis

Plaintiff argues that this Court should expressly declare that the AAD lacks subject matter jurisdiction to adjudicate the matter at hand because Superior Court is the only entity with jurisdiction over violations of the HWMA or the regulations promulgated thereunder.

In turn, Defendants contend that proper subject matter jurisdiction over a Notice of Violation issued by the DEM alleging violations of the HWMA and administrative penalties lies with the AAD because the HWMA grants power to the Director of the DEM to promulgate and adopt rules and regulations regarding Hazardous Waste Management. Defendants further contend that R.I. Gen. Laws Sec. 42-17.1-2(17) allows for the Director of the DEM to exercise all powers necessary for the administration of the HWMA.

“In matters of statutory interpretation our ultimate goal is to give effect to the purpose of the act as intended by the Legislature.” *State v. Hazard*, 68 A.3d 479, 485 (R.I. 2013) (quoting *Alessi v. Bowen Court Condominium*, 44 A.3d 736, 740 (R.I. 2012)). “[W]hen the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.” *Hazard*, 68 A.3d at 485 (quoting *Waterman v. Caprio*, 983 A.2d 841, 844 (R.I. 2009)).

Here, the plain and ordinary language of the HWMA makes unambiguously clear that any proceedings for enforcement of the HWMA shall be brought in Superior Court. Specifically, Sec. 23-19.1-15 provides in pertinent part: “The superior court for Providence county shall have jurisdiction to enforce the provisions of this chapter and any rule, regulation, or order issued pursuant to this chapter.” Sec. 23-19.1-15.

Indeed, Defendants concede in their papers that the HWMA may be clear and unambiguous but argue that one cannot read the HWMA in a vacuum. Rather, Defendants assert that the HWMA must be read together with R.I. Gen. Laws Sec. 42-17.1 *et seq.*, which establishes the DEM and defines its powers. Pursuant to R.I. Gen. Laws Sec. 42-17.1-2(17) the Director of RIDEM is authorized “to exercise all functions, powers, and duties necessary for the administration of chapter 19.1 of title 23 entitled ‘Rhode Island Hazardous Waste Management Act.’” However, that section additionally provides that

“the Director RIDEM has the power to “give notice of an alleged violation of law to the person responsible therefor whenever the director determines that there are reasonable grounds to believe that there is a violation of any provision of law within his or her jurisdiction or of any rule or regulation adopted pursuant to authority granted to him or her, *unless other notice and hearing procedure is specifically provided by that law.*” R.I. Gen. Laws Sec. 42-17.1-2(21) (emphasis added).

It follows that the Director of the DEM must follow the notice and hearing procedure specifically provided for by the HWMA for an alleged violation of the HWMA because the HWMA specifically provides for enforcement proceedings to take place in Superior Court. *See* Sec. 23-19.1-15; *see also Hotel Associates LLC v. HMS Associates Limited Partnership*, 2004 WL 422812 (R.I. Super. February 20, 2004, J. Darrigan) (holding that “[t]he HWMA provides a clear and specific legal remedy for redressing violations of the HWMA . . . the initiation of enforcement proceedings in the Providence County Superior Court.”)

Furthermore, our Supreme Court has held that “it is only when a statute is ambiguous that we apply the rules of statutory construction and examine the statute in its entirety to determine the intent and purpose of the Legislature.” *Grasso v. Raimondo*, 177 A.3d 482, 489 (R.I. 2018). As the language of the HWMA is clear and unambiguous, this Court need not engage in statutory interpretation and need not rely on chapter 42-17.1-1 *et seq.* to glean the legislature’s intent in providing the DEM Director with the authority to exercise all powers necessary to administer the HWMA. Thus, this Court finds that the AAD lacks subject matter jurisdiction to adjudicate the matter pending before it. *See Hazard*, 68 A.3d at 485 (holding that “when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.”).

At oral argument, the DEM brought to this court’s attention a prior Rhode Island Superior Court decision in which the court rejected the plaintiff’s argument that the court’s exclusive jurisdiction under the HWMA extended to the Industrial Property Remediation and Reuse Act (IPRRA) and held that the DEM was vested with the power to determine who a “responsible party” was under the IPRRA. *See Southern Union Company, v Rhode Island Department of Environmental Management*, No. PC07-2056, 2007 WL 2173829 (R.I. Super.

July 13, 2007). However, in that case, the DEM brought its Notice of Violation pursuant to the IPRRA and the DEM's Remedial Regulations. *Id.* at 7. Thus, the court reasoned that because the IPRRA specifically granted to the Director of the DEM the power to effectuate the IPRRA, and because both the HWMA and IPRRA dealt with the same subject, but the IPRRA dealt with the subject in a more detailed way, the IPRRA prevailed. *Id.* at 28-29. Therefore, the court held that the plaintiff's contention that the Superior Court's exclusive jurisdiction within the HWMA extended to the IPRRA was unavailing. *Id.*

Here, unlike *Southern Union Company*, the DEM brought its Notice of Violation pursuant to HWMA and not the IPRRA or any other section within Title 23, Chapter 19 that deals exclusively with the care, treatment, disposal, etc. of hazardous waste in Rhode Island. Therefore, here, the exclusive jurisdiction of the Superior Court within the HWMA is controlling.

IV

Conclusion

For the reasons stated herein, this Court grants KRC's Motion for Declaratory Judgment as DEM's Administrative Adjudication Division lacks subject matter jurisdiction to adjudicate matters under the Rhode Island Hazardous Waste Management Act. Counsel shall confer and submit the appropriate order for entry.