

Department of Environmental Management
Administrative Adjudication Division
State of Rhode Island
Re: Arthur W. Yaghoobian
AAD NO.08-002/MSA
License Application Appeal
2008

DECISION AND ORDER

This matter is before the Administrative Adjudication Division for Environmental Matters of the Department of Environmental Management, (AAD) on an appeal filed by Applicant Arthur W. Yaghoobian (Yaghoobian or Applicant) dated May 22, 2008. Applicant is appealing the denial of his Application entitled "Resident Marine License Application, 2008 New License Opportunity" filed on February 8, 2008. The Applicant was seeking a "quahog endorsement" and a Commercial Fishing license (CFL). Notice of denial was forwarded to Applicant by letter dated April 21, 2008 from the Office of Boat Registration and Licensing.

On June 11, 2008 a Status Conference was held attended by Applicant, representing himself, pro se, and Gary Powers, attorney for the Office of Boating Regulations and Licensing Division (OBRL or Division). On June 23, 2008 OBRL filed a Motion for Summary Judgment alleging that a judgment should be entered in favor of the OBRL pursuant to Rule 56 (c) of the Superior Court Rules of Civil Procedure. Oral arguments for consideration of the Motion for Summary Judgment were scheduled for August 21, 2008.

On August 21, 2008 Attorney for OBRL appeared at the AAD prepared to present an oral argument. The Applicant did not appear or advise the Hearing Officer of his intent not to appear prior to the scheduled time. The Hearing Officer will rule on the Motion for Summary Judgment based on the filed documents.

ANALYSIS

Summary Judgment is appropriate if Pleadings, Affidavits, Answers to Interrogatories and Admissions filed together to show that there is no genuine issue as to any material fact and that the moving party is entitled to Judgment as a matter of law. SUPER. R. Civ. P. 56. The party opposing a Motion for Summary Judgment has an affirmative burden to prove the existence of a genuine issue of material fact by presenting specific facts by Affidavit or other evidence to the Court. Harritos v. Cambio 683 A2d 359, 360 (R.I. 1996). The objecting party can not meet the affirmative burden to establish a genuine issue of material fact by resting upon allegations or mere conclusions in the pleadings or otherwise, but must provide the Court competent evidence demonstrating a genuine issue of material fact. Harritos, 683A2d at 360. Additionally, mere recitation of facts sympathetic to an opponent's position will not defeat a proponents Motion for Summary Judgment unless the facts are pertinent to the claim or defense which is actually being asserted. Saltzman v. Atlantic Realty Company 434 A2d 1343, 1345 (R.I. 1981). The primary issue is, therefore, whether or not there exists a material issue of fact.

Applicant in his request for a hearing advised that he "would like to go back to work as a shore digger. Could you please give me a quahog license..." OBRL presented an affidavit from Margaret McGrath, the supervisor for OBRL to the affect that the Applicant was not the holder of a CFL and had not actively fished as required by the Regulations.

The "Rules and Regulations Governing the Management of Marine Fisheries" dated December 7, 2007 were adopted pursuant to Chapter 42-17.1, Section 20-1-4, Section 20-2.1 and Public Laws Chapter 02-047, in accordance with Chapter 42-35 of the Rhode Island General Laws of 1956 as amended. Section 6.7-6 of the Rules and Regulations entitled "Issuance of New Commercial

Fishing Licenses with Quahog, Restricted Finfish and/or Lobster Endorsements” at section (a) (ii) states that endorsements will be issued to “licensed resident fishers holding Principal Effort Licenses who have been actively fishing their licenses.” (emphasis added)

In order to demonstrate “actively fishing” we must look to the definition provided in Section 5.1 of the Rules and Regulations as follows:

”Actively fishing” - A license holder will be considered to have been actively fishing that license/endorsement if he or she demonstrates by dated transaction records that they have fished at least seventy-five (75) days in the preceding two years.“

OBRL has taken the position that the Applicant's application was denied because he does not have a CFL and failed to file the necessary documentation as required by the Regulations. OBRL argues that the requirement is clearly stated in the Regulations and that the Applicant is on notice of this requirement. The Department received 202 applications for new commercial fishing licenses/endorsements. Pursuant to the Regulations adopted in December 2007, 16 quahog endorsements were made available for 2008. The Applicant was not considered for an endorsement because his application was not supported by evidence that he had a CFL and had been “actively fishing”. OBRL could not issue a quahog endorsement without a complete application. The Rules and Regulations are clear and unambiguous. OBRL has made its case that there is no issue of material fact in dispute and that judgment should be entered in its behalf as a matter of law.

FINDINGS OF FACT

1. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
2. On February 8, 2008 the Applicant Arthur W. Yaghoobian, submitted to the Office of Boat Registration and Licensing a “Residual Marine License Application, 2008 New License Opportunity”.
3. The Applicant is not and has not been the holder of a CFL License.
4. The Application filed by Applicant sought the issuance of new commercial fishing license with quahog endorsement.
5. The Rules and Regulations Governing the Management of Marine Fisheries requires an applicant be the holder of a CFL and submits documentary evidence of “actively fishing”.
6. Sixteen (16) new quahog endorsements were issued in 2008.
7. Applicant did not file any documentary evidence as required to demonstrate that he had a CFL and been “actively fishing”.
8. The OBRL properly sorted the applications and properly interpreted the Rules and Regulations.
9. The OBRL properly denied Applicant's application for New Commercial Fishery license with quahog endorsement.
10. Applicant has not met his burden of proof that OBRL wrongfully denied his application for New Commercial Fishing License with quahog endorsement.
11. There is no issue of material fact we dispute and OBRL is entitled to entry of judgment in its behalf.

CONCLUSIONS OF LAW

After due consideration of the above findings of fact and the legal argument of the parties, I conclude the following as a matter of law:

1. The Administrative Adjudication for Environmental Matters (AAD) has jurisdiction over this matter pursuant to R.I.G.L. § 42-17.7.7-2; R.I.G.L. § 20-2.1-12; and Rule 6.7-10(a) of the Marine Fisheries Regulations.

2. Section 6.7-6 of the Rules and Regulations Governing the Management of Marine Fisheries in section (a) (ii) provides a requirement that applicants for New Commercial Fishing Licenses with Quahog, Restricted Finfish and/or Lobster Endorsements require the showing that the applicant has a CFL and been “actively fishing” their license.

3. Section 5.1 of the Rules and Regulations provides the following definition of “actively fishing”:

”A license holder will be considered to have been actively fishing that license/endorsement if he or she demonstrates by dated transaction records that they have fished at least seventy-five (75) days in the preceding two years.“

4. The holding of a CFL is a prerequisite for the issuance of a quahog endorsement.

5. Inclusion of documentation of “actively fishing” is a condition precedent to the issuance of new license and/or endorsement under the Rules and Regulations.

6. Failure to provide documentation of “actively fishing” with an application for new license and/or endorsement constitutes an incomplete application.

7. Rules 56(c) of the Superior Court Rules of Civil Procedure require the entry of judgment in the absence of any issue of material fact or law.

ORDERED

1. OBRL Motion for Summary Judgment is GRANTED.

2. Judgment is hereby entered in favor of OBRL.

3. Applicant's Appeal is DISMISED.

Entered as an Administrative Order this _____ day of _____, 2008 and herewith recommended to the Director for issuance as a Final Agency Order.

David Kerins

Acting Chief Hearing Officer

Entered as a Final Agency Order this _____ day of _____, 2008.

W. Michael Sullivan, Ph.D.,

Director

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