

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

RE: HOCHMAN, DAVID

AAD No. 03-007/MSA

DECISION AND ORDER

This matter came before the Administrative Adjudication Division ("AAD") pursuant to an appeal by David Hochman ("Applicant") of the denial of his request for renewal of his non-resident, principal effort commercial fishing license with restricted and non-restricted finfish endorsements. The hearing was conducted before Administrative Hearing Officer, Joseph Baffoni, and a recommended decision was presented to this Office on August 8, 2003.

Based upon my review of the applicable statutory and regulatory provisions and of the record as set forth in the Hearing Officer's recommendation, and by the authority vested in the Office of the Director under Title 42, Chapters 17.1, 17.7 and 35, I agree with the recommended decision of the Hearing Officer to uphold the denial of the request for license renewal. I do so, however, with certain qualifications, which I will explain below.

I agree that the denial of the renewal request is consistent with the governing statutes and regulations. In particular, there can be no doubt that the General Assembly established strict requirements for the application for, and issuance of, commercial fishing licenses and license renewals. Strict enforcement of these requirements is essential to implement the legislative mandate for a more tightly structured fisheries management program that protects both the resource and the livelihood of participants depending on the resource. Part of that mandate is that the Department have accurate information about the number of fishers fishing for particular species, so that appropriate management measures can be developed and implemented. A licensing process that is essentially open-ended is contrary to that mandate.

This case turns on whether Applicant submitted the requisite application by the statutory deadline. The record includes evidence supporting Applicant's claim that he did so, on the date of the deadline, February 28, 2003. The evidence falls short, however, of what the statute and regulations require, which is either an application in person or an application postmarked by the date of the deadline. This requirement is neither unreasonable nor usual. Although the Applicant's statements and those of corroborating witnesses appear to be credible, they cannot

overcome the absence of the requisite proof: a properly postmarked application. This is especially true in light of the fact that the Department has experienced no other problems with delivery of mailed applications. To the extent there is any risk involved in mailing an application, the burden is commonly and appropriately on applicants to minimize such risk by mailing in a timely fashion and/or requesting certification of receipt.

I cannot agree, however, with the suggestion that I am absolutely prohibited, regardless of other circumstances, from issuing a renewal whenever it has not received an application by the statutory deadline. While legislative intent clearly mandates strictness, it must be presumed to include reasonableness, as well. Moreover, the General Assembly specifically established a Commercial Fishing License Review Board to hear appeals from licensing decisions, taking into account, among other things, the possibility of unreasonable hardship to an applicant from a licensing decision. In this case, Applicant appealed directly to AAD because the Review Board had not yet been constituted. Under such circumstances it is appropriate for AAD to use the guidance the statute provides for the Review Board, and to consider unreasonable hardship, as well as impact on fisheries management, equity with other license holders, and consistency with management plans, prior decisions and the statutory purposes. In other words, the General Assembly envisioned a balancing of interests and consideration of various circumstances, rather than a bright line test focusing on one particular criterion.

In this case, for example, Applicant did have a valid commercial license which made him eligible for renewal, a circumstance not common to all appeals and one that can affect the outcome of a balancing test. On the other hand, Applicant does not derive income solely from commercial fishing and thus may incur less economic hardship compared to others who are denied a license. The outcome may differ depending on circumstances that cause an applicant to miss a deadline, and might have been different in this case had the Department experienced widespread problems with mailed-in applications. Impacts of fisheries or conflict with management plans may vary depending on the particular license or fishery involved. The combination of these factors, and the weight of each, is likely to differ from case to case. Although it is not necessary, nor practical, to evaluate these factors and circumstances at the time of initial license decisions, which should stick with narrow application of the rules, it is appropriate to conduct such a balancing analysis on a case by case basis when reviewing appeals, and to summarize the same in stating the rationale for a decision on the appeal.

In this matter, I find that the impact from issuing an additional commercial fishing license with both restricted and non-restricted finfish endorsements is not insignificant, as is illustrated by

restrictions imposed by the management plans for finfish. Further, while I do not discount the loss of supplemental income, I find that Applicant has not met his burden of establishing an unreasonable hardship that outweighs the need to tighten up the licensing and management system, in large part to benefit the fishing community. That finding also takes into account that, however unfortunate it is that Applicant's effort to file on the date of the deadline was unsuccessful, he had ample notice and opportunity to file an application in a more timely manner.

Wherefore, based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

**ORDERED**

That the appeal to the Administrative Adjudication Division for Environmental Matters by the Applicant, David Hochman, is DENIED and a decision is hereby rendered upholding the denial issued by the Office Of Boat Registration & Licensing.

Entered as a Final Agency Decision and Order this 15th day of August, 2003.

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

**CERTIFICATION**

I hereby certify that I caused a true copy of the within Decision and Order to be delivered via regular mail, postage prepaid to: David Hochman, 42 Grant Street, Milford CT 06460; and via interoffice mail to: Deborah George, Esquire, DEM Office of Legal Services, 235 Promenade St., 4th Fl., Providence, RI 02908; on this 18<sup>th</sup> day of August, 2003.

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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.