

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

RE: MANCHESTER, EVERETT, JR.

AAD NO. 03-021/MSA

DECISION AND ORDER

This matter came before the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters ("AAD") pursuant to Applicant Everett Manchester, Jr.'s request for hearing. Mr. Manchester had applied for a multi-purpose license from the Office of Boat Registration and Licensing ("OBRL") and had his request denied because he had not held a multi-purpose license on December 31, 2002. In accordance with R.I. GEN. LAWS § 20-2.1-12 and section 6.7.10 of the Rules and Regulations Governing the Management of Marine Fisheries ("Fisheries Regulations"), Mr. Manchester then sought reconsideration of the denial before the Commercial Fishing License Review Board ("Review Board"). The Review Board heard the matter and determined that they would not support Mr. Manchester's request for the multi-purpose license. The OBRL considered the Review Board's recommendation and issued its final denial of the license on October 1, 2003. Applicant thereafter filed his appeal at the AAD.

The hearing was scheduled for December 18, 2003. Three days prior thereto, the OBRL filed a Motion for Summary Judgment. Rather than continuing the hearing, the matter proceeded for both hearing and oral argument on the motion. The Applicant was granted leave to file his objection and any supporting memorandum by December 22, 2003. The hearing was deemed concluded on December 22, 2003.

The OBRL was represented by Deborah A. George, Esq.. Mr. Manchester represented himself.

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R.I. GEN. LAWS § 42-17.7-1 et seq.); the Administrative Procedures Act (R.I. GEN. LAWS § 42-35-1 et seq.); and the Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters ("AAD Rules").

PREHEARING CONFERENCE

A prehearing conference was conducted on November 21, 2003. At the prehearing conference, the parties agreed to the following stipulations of fact:

1. Applicant Everett Manchester did not hold a valid multi-purpose commercial fishing license as of December 31, 2002.
2. Applicant Everett Manchester held a valid shellfish license as of December 31, 2002.
3. All 2003 applications for new or renewed commercial fishing licenses were required to be received by the Department or postmarked by February 28, 2003.
4. Applicant's written request for a commercial multi-purpose fishing license was dated July 28, 2003.

Applicant identified the following as an issue to be considered by the Hearing Officer at the hearing:

Whether the Commercial Fish Gear Registration dated 9/21/83 qualifies for issuance of a multi-purpose license.

The OBRL identified the following issues to be considered by the Hearing Officer at the hearing:

1. Whether Applicant Everett Manchester was eligible to apply for a commercial multi-purpose license since he did not possess a valid multi-purpose license as of December 31, 2002.

2. Whether Applicant Everett Manchester was eligible to apply for a new multi-purpose license since he did not apply by the February 28, 2003 deadline and his application was dated July 28, 2003.

A list of the exhibits, marked as they were admitted at the hearing, is attached to this Decision as Appendix A.

HEARING SUMMARY

At the hearing, Applicant testified on his own behalf. The OBRL presented one (1) witness, Margaret McGrath, the Programming Services Officer at OBRL.

Mr. Manchester testified that from 1978 through 1983 he had held a gear registration number that allowed him to set conch pots. He has also held a shellfish license, also called a principal effort license, and was able to renew that license in December 2002.

He now seeks to upgrade to a multi-purpose license so that he can sell the tautog that he occasionally catches in his conch pots. Approximately five years ago he had been told that if he had held a gear license in the past, he could obtain the multi-purpose license. He had not been aware that there was to be a moratorium on new multi-purpose licenses.

Mr. Manchester currently does shell fishing to supplement his income as a firefighter in the Tiverton Fire Department, from which he anticipates retiring in May 2004. He stated in correspondence dated July 28, 2003 that he had fished since he was a young boy and would like to "turn back to the water for my livelihood." Appl 1.

Margaret McGrath, testifying on behalf of the OBRL, stated that she administers the commercial fishing licenses program. In September 2002 a letter was sent to all

license holders that informed them of the deadlines. She stated that Mr. Manchester, as a license holder, would have received one of the letters.

According to the witness, prior to January 1, 2003, applicants could renew their licenses throughout the year. On January 1, 2003, however, a deadline of applying by February 28, 2003 was imposed.

Ms. McGrath also stated that the old gear registration number would not have made the Applicant eligible for a multi-purpose license. Subject to certain exceptions that do not apply in this case, the witness stated that the only individuals eligible for the multi-purpose license were those who had held the license on December 31, 2002.

OBRL's Motion for Summary Judgment

The OBRL states in its motion and in argument that there are no genuine issues of material fact in this matter and therefore it should be granted summary judgment. The two undisputed facts upon which the motion rests are that Mr. Manchester's application for the multi-purpose license was made on July 28, 2003 and that he did not hold a multi-purpose license on December 31, 2002.

Section 8.00 of the AAD Rules provides that parties in contested matters before the AAD may make such motions which are permitted under the AAD Rules and under the Superior Court Rules of Civil Procedure. *Super. Ct. R. Civ. P.* Rule 56, which governs motions for summary judgment, provides that "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, 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."

The OBRL first seeks summary judgment based upon the late filing of the application. Pursuant to R.I. GEN. LAWS § 20-2.1-4 (g),

no new or renewed licenses shall be issued after February 28 of each year, unless an applicant has submitted an application by the February 28 deadline

The OBRL states that under this section, the Department “has no legal authority to issue any licenses, including Applicant’s license, after this deadline.” *Office of Management Services’ Memorandum of Law in Support of Its Motion for Summary Judgment (“OBRL’s Memorandum”)* at 2.

Mr. Manchester argues in his response that, due to the moratorium, the DEM did not have an application for him to apply for a multi-purpose license. He therefore considers that he did not miss the deadline. *Statement of Facts for summary judgment (“Applicant’s Statement”)* at 1.

The OBRL’s second basis for seeking summary judgment is that Mr. Manchester did not hold a multi-purpose license on December 31, 2002 and was therefore not eligible for a multi-purpose license in 2003. The OBRL cites the provisions of R.I. GEN. LAWS § 20-2.1-5(1)(iii) and Rule 7.1 of the Fisheries Regulations. Those sections are set forth later in this decision.

Applicant has responded that he was never notified of the moratorium and would have obtained the license if he had known. Mr. Manchester also states that he had been previously told that the gear registration would be sufficient for him to obtain the multi-purpose license but that now he was being told otherwise. *Applicant’s Statement* at 1.

Conclusion

Summary judgment is a drastic remedy that should be cautiously applied. *McPhillips v. Zayre Corp.*, 582 A.2d 747 (R.I. 1990). In deciding motions for summary judgment, the trier of fact must “examine the pleadings, admissions and other appropriate evidence in a light most favorable to the party opposing the motion to decide whether an issue of material fact exists and whether the moving party is entitled to summary judgment as a matter of law.” *Buonanno v. Colmar Belting Co., Inc.*, 638 A.2d 712, 715 (R.I. 1999). The nonmoving party has the affirmative duty to set forth specific facts to demonstrate that there is a genuine issue of material fact to be resolved at trial. *Grande v. Almac’s Inc.*, 623 A.2d 971, 972 (R.I. 1993).

This case presents the awkward situation of the OBRL seeking summary judgment, yet the matter has already had its administrative hearing. I am therefore addressing the substance of the summary judgment arguments based solely upon the parties’ stipulations in this case and applicable law and regulations.

On the first issue, I find that the OBRL is not entitled to summary judgment merely because Mr. Manchester’s application was filed after February 28, 2003. The Director’s Decision and Order in *In Re: David Hochman*, AAD No. 03-007/MSA, Final Agency Decision and Order dated August 15, 2003, sets forth the Department’s position that it is not prohibited from issuing a renewal if it has not received the application by the statutory deadline. The Director considered the legislative intent in establishing the Commercial Fishing License Review Board and its obligation to weigh, *inter alia*, the possibility of unreasonable hardship to an applicant from a licensing decision. He concluded that the General Assembly, although mandating strictness,

also “envisioned a balancing of interests and consideration of various circumstances ”
Id. at 2.

Based upon the interpretation of the statute set forth in the Director’s Decision, it is not an absolute bar to issuance of a license if the application is received after February 28. If this were the only issue for summary judgment, then the motion would have been denied and this matter would have properly proceeded to hearing for factual findings to determine whether Mr. Manchester met those factors listed in R.I. GEN. LAWS § 20-2.1-12 and Section 6.7-10 of the Fisheries Regulations.

I need not weigh those factors in this decision, however, since OBRL should be granted summary judgment on the second issue. There is no genuine issue of material fact that warranted a determination at the hearing. The dispositive fact is that Mr. Manchester did not hold a multi-purpose license on December 31, 2002. The pertinent sections are R.I. GEN. LAWS § 20-2.1-5(1)(iii) and Rule 7.1 of the Fisheries Regulations.

R.I. GEN. LAWS § 20-2.1-5(1)(iii) provides as follows:

Multi-purpose license. All multi-purpose license holders as of December 31, 2002, shall be eligible to obtain a multi-purpose license

Rule 7.1 of the Fisheries Regulations states that “No new Multi-Purpose Licenses shall be available for 2003, except pursuant to sections 6.7-8 and 6.7-9¹.” The statute and the rule were addressed in several recent decisions: *In Re: Steven J. Riley*, AAD No. 03-011/MSA “Order Granting Office of Management Services’ Motion for Summary Judgment” entered as a Final Agency Decision and Order on January 29, 2004; *In Re:*

¹ The exceptions are inapplicable in this matter.

Michael Trouve, AAD No. 03-010/MSA, Final Agency Decision and Order dated December 11, 2003; and *In Re: Mark Oliveira*, AAD 03-004/MSA, Final Agency Decision and Order dated July 9, 2003.

Pursuant to R.I. GEN. LAWS § 20-2.1-5(1)(iii), Rule 7 of the Fisheries Regulations, and the recent line of Final Agency Decisions, Mr. Manchester was not eligible to receive a multi-purpose license in 2003. As stated in *In Re: Trouve, supra*, the legislative intent of R.I. GEN. LAWS § 20-2.1-5(1)(iii) was to establish “grandfathered” eligibility for those licensed as of December 31, 2002 to be eligible for a license in 2003. *Id.* at 4. Because this Applicant did not hold the multi-purpose commercial fishing license on December 31, 2002, he does not meet the statutory criteria for eligibility established by § 20-2.1-5(1)(iii). Based upon the first stipulation set forth below, the OBRL is entitled to summary judgment.

STIPULATIONS OF FACT

1. Applicant Everett Manchester, Jr. did not hold a valid multi-purpose commercial fishing license as of December 31, 2002.
2. All 2003 applications for new or renewed commercial fishing licenses were required to be received by the Department or postmarked by February 28, 2003.
3. Applicant’s written request for a multi-purpose commercial fishing license was dated July 28, 2003.

CONCLUSIONS OF LAW

After due consideration of the above stipulations, the legal argument of the parties and prior agency decisions on the issues raised, I conclude the following as a matter of law:

1. The Department is not absolutely prohibited from issuing a renewal of a license when an Applicant has failed to apply by February 28 if the Applicant can

demonstrate that he or she has met the factors set forth in R.I. GEN. LAWS § 20-2.1-12 and Section 6.7-10 of the Fisheries Regulations.

2. Pursuant to R.I. GEN. LAWS § 20-2.1-5(1)(iii) and Section 7.1 of the Fisheries Regulations, this Applicant must have held a multi-purpose commercial fishing license as of December 31, 2002 to be eligible for a multi-purpose commercial fishing license in 2003.
3. Pursuant to R.I. GEN. LAWS § 20-2.1-5(1)(iii) and Section 7.1 of the Fisheries Regulations, this Applicant was not eligible for a multi-purpose commercial fishing license in 2003.

Wherefore, based upon the stipulations of the parties and the above conclusions of law, it is hereby

ORDERED

1. The OBRL's Motion for Summary Judgment is GRANTED.
2. Applicant's request for a multi-purpose commercial fishing license for 2003 is DENIED.

Entered as an Administrative Order and herewith recommended to the Director for issuance as a Final Agency Decision and Order this 18th day of February, 2004.

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

Entered as a Final Agency Decision and Order this 23rd day of March,
2004.

Frederick J. Vincent
Acting 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 Order to be forwarded, via regular mail, postage prepaid to: Everett Manchester, Jr., 2734 Main Road, Tiverton, RI 02878; via interoffice mail to Deborah George, Esquire, Office of Legal, 235 Promenade Street, Providence, RI 02908 on this 23rd day of March, 2004.

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.

APPENDIX A

Applicant's Exhibits:

- APPL 1** Letter addressed to "To Whom It May Concern" from Everett
Full Manchester, Jr., dated July 28, 2003.
- APPL 2** Letter addressed to "To Whom It May Concern" from Everett
Full Manchester, Jr., dated August 8, 2003.
- APPL 3** Letter addressed to "To Whom It May Concern" from Everett
Full Manchester, dated October 17, 2003.

OMS' Exhibits:

- OMS 1** RIDEM Commercial Fishing License History for Applicant
Full (3 pages)
- OMS 2** Letter dated July 28, 2003 from Applicant (1 page)
Full
- OMS 3** Letter dated August 5, 2003 from OBR&L (2 pages)
Full
- OMS 4** Letter dated August 8, 2003 with enclosure (2 pages)
Full
- OMS 5** Letter dated September 23, 2003 from Commercial Fishing
Full License Review Board (1 page)
- OMS 6** Letter dated October 1, 2003 from OBR&L to Applicant (2
Full pages)
- OMS 7** Letter mailed September 12, 2002 to all eligible applicants (3
for ID pages)
- OMS 8** Resume of Mark Gibson (5 pages)
Full
- OMS 9** Resume of David Borden (4 pages)
Full