

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

RE: MARCIN, PAUL  
LICENSE DENIAL

AAD NO. 11-004/MSA

DECISION AND ORDER

This matter is before Hearing Officer David M. Spinella on the Office of Management Services of the Department of Environmental Management's (the "Division") Motion for Summary Judgment. The Division moves pursuant to Rule 8.00(a)(1) of the Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters and Rule 12(b)(1) and Rule 56 of the Rhode Island Superior Court Rules of Civil Procedure. Mr. Marcin filed an objection on September 6, 2012 in response to the Division's Motion. He states that his application has been denied twice when he attempted to prove residency.

This appeal was filed by Respondent Paul Marcin on September 6, 2012 after he allegedly was denied a renewal of his recreational lobster license in May and June, 2011. The Division, however, asserts that contrary to Mr. Marcin's allegation, the Division **did not deny** his request for a recreational lobster license. Rather than deny the applicant's request, the Division merely sent applicant a request for information concerning proof of his Rhode Island residency. No determination was rendered by the Division either denying or granting the applicant's request for renewal of his recreational lobster license for 2011 because Mr. Marcin failed to complete the application process according to the Division.

I find that the May 11, 2011 communication from the Division to Mr. Marcin was **not a denial** of his permit but rather a request for additional information. As such, Mr. Marcin's

appeal is not appropriately before this Tribunal at this time as it lacks Subject Matter Jurisdiction pursuant to Superior Court Rule 12(b)(1) to hear this matter.

If Mr. Marcin is ultimately denied his license renewal after providing the requested additional information to the Division, he may file an appeal, in a timely fashion, as this matter is being dismissed **without prejudice**.

**FINDINGS OF FACT**

- (1) On May 11, 2011 the Office of Management Services sent Mr. Marcin a request for proof of his Rhode Island Residency.
- (2) Respondent, Paul Marcin filed a Request for Hearing on September 6, 2011 with the Administrative Adjudication Division of the Department of Environmental Management.

**CONCLUSIONS OF LAW**

- (1) The appeal filed on September 6, 2012 by Mr. Paul Marcin was based on a request for additional information (proof of his Rhode Island Residency) and not a denial of his recreational lobster license.
- (2) Pursuant to Rule 12(b)(1) of the Superior Court Rules of Civil Procedure the Administrative Adjudication Division of the Department of Environmental Management lacks the Subject Matter Jurisdiction to hear this matter at this time.
- (3) This matter is dismissed **without prejudice**.

Entered as an Administrative Order this 10<sup>th</sup> day of September, 2012.

  
David M. Spinella  
Hearing Officer  
Department of Environmental Management  
Administrative Adjudication Division  
One Capitol Hill, 2<sup>nd</sup> Floor  
Providence, RI 02908  
(401) 574-8600

RE: MARCIN, PAUL  
LICENSE DENIAL

AAD NO. 11-004/MSA

Page 3

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded, via regular mail, postage prepaid to: Paul Marcin, 66 Stanton Avenue, Narragansett, RI 02882 and via interoffice mail to Gary Powers, Esquire, DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this 10th day of September, 2012.

Bruce L Stewart