

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

RE: MAJOR, ROBERT

AAD NO. 17-003/MSA

DECISION AND ORDER

This matter came before Hearing Officer David Kerins on August 2, 2017 for Hearing. The Rhode Island Department of Environmental Management ("RIDEM"), Office of Boat Registration and Licensing, ("The Division") was represented by Gary Powers, Esquire. The Applicant, Mr. Robert Major, represented himself. The Applicant indicated that he did not desire a stenographer and the proceedings were recorded electronically.

The Division filed its Post Hearing Memorandum on August 30, 2017 and the Applicant filed its Appeal Summary on August 29, 2017.

Jurisdiction

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R.I. General Laws §42-17.7-1 et. seq.) and the *Administrative Procedures Act* (R.I. General Laws §42-35-1 et. seq.); the *Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matter* (AAD Rules).

Burden of Proof

The Applicant bears the burden of proof in this matter and must prove, by a preponderance of the evidence that the denial of his Restricted Finfish Endorsement Application by the Division on May 5, 2017 was not in accordance with the Department of Environmental

Page 2

Management's Commercial and Recreational Saltwater Fishing Licensing Regulations (the "Regulations"). Proof by a preponderance of the evidence requires that the facts be shown to be more likely than not in support of the proponent's conclusion Perry v. Alessi, 890 A.2d 463, 469 (R.I. 2006).

Stipulated Facts

The Applicant and the Division stipulated to the following facts during the Prehearing Conference:

(1) The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.

(2) The Applicant applied on February 24, 2017 to the Division for the issuance of the one of the fifteen (15) available restricted finfish endorsements that was available for issuance in 2017.

(3) The Division's letter dated May 5, 2017 advised the Applicant that on the basis of review of his application that he was not one of the applicants selected for the issuance of one of the fifteen (15) restricted finfish endorsements available for issuance in 2017.

(4) The Applicant submitted a timely letter dated May 16, 2017 to the Administrative Adjudication Division requesting a hearing concerning the Division's letter dated May 5, 2017 advising the Applicant that on the basis of review of his application that he was not one of the applicants selected for the issuance of one of the fifteen (15) restricted finfish endorsements available for issuance in 2017.

Stipulated Exhibits

1. The parties agreed at Prehearing conference that the following exhibits could be admitted as full:

Division's Exhibit A. The Applicant's application to the Division dated February 24, 2017 for the issuance of the one of the fifteen (15) restricted finfish endorsements available for issuance in 2017. 1 Page (Copy).

Division's Exhibit B. The Division's letter dated May 5, 2017 advising the Applicant that he was not one of the applicants selected for the issuance of one of the fifteen (15) restricted finfish endorsements available for issuance in 2017 on the basis of review of his application. 2 Pages (Copy).

Division's Exhibit C. The Applicant's letter dated May 16, 2017 to the Administrative Adjudication Division requesting a hearing concerning the Division's letter dated May 5, 2017 advising the Applicant that on the basis of review of his application that he was not one of the applicants selected for the issuance of one of the fifteen (15) restricted finfish endorsements available for issuance in 2017. 1 Page (Copy).

2. At hearing, the following exhibits were admitted as full:

Division's Exhibit D. A copy of the guidance document entitled *New License/Endorsement opportunities Available for 2017* that was attached to the endorsement application form. 5 Pages (Copy).

Page 4

Joint Exhibit #1. A copy of the guidance document entitled *Guidance for Applicants Seeking New Restricted Finfish Endorsements* that was attached to the endorsement application form. 5 Pages (Copy).

Hearing Summary

The Applicant testified on his own behalf. He stated that on February 24, 2017 he went to the Boat Registration Office to apply for a Restricted Finfish Endorsement. He spoke with a person he described as "Carol" who tried to help him out. She gave him an application.

The Applicant stated that following the submittal of his endorsement application that he did have an opportunity to inquire of "Harry" as to the status of the endorsement applications. He stated that "Harry" stated that if the Applicant had filed his SAFIS reports that he should have a good chance being selected. SAFIS Reports are a record of catches submitted to DEM by all Commercial License holders via computer.

The Applicant also testified that he did not receive and never read Division's Exhibit D or Joint Exhibit #1 prior to filing his application for an endorsement. The Applicant further testified that neither "Harry" nor "Carol" advised him to supplement his application with supporting materials.

The Applicant testified that he was qualified with 100 or so catches for 2015 and 2016. He advised that he fished with a license from 1994 to 2001. In 2001 he was hit by a car and had significant medical disability from 2001 through 2008. He stated that his medical disability was not made known to the Division. The applicant argues that he was misled about the necessity of submitting his SAFIS Report. He feels that the fact that he had submitted his catch

Page 5

information in by his SAFIS Report, that information should have been known to the Division and taken into consideration when considering his application.

The Division presented Margaret McGrath, the Division's Programming Services Officer as its only witness. Ms. McGrath testified that part of her responsibilities as Programming Services Officer was to serve as the Department staff member who is primarily charged with selecting those applicants who are to be issued one of the license endorsements that may become available annually. She stated that she reviewed one hundred seventy three (173) applications for the issuance of one of the fifteen (15) highly sought after restricted finfish endorsements that were available for available for issuance in 2017. Applying Section 6.7.6(a) of the *Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations*, Ms. McGrath determined the priority of the various applicants based upon a review of their applications.

As part these responsibilities, Ms. McGrath stated that she reviewed Applicant's application dated February 24, 2017 for the issuance of the one of the fifteen (15) available restricted finfish endorsements available for issuance in 2017. Division's Exhibit A Full. She read into the record line 5 of the paragraph that is blocked off and appears on the lower half of the front page of Exhibit A and that states: "You must submit justification as to your eligibility for this endorsement per criteria set forth in the *Commercial and Recreational Saltwater Fishing Licensing Regulations*." Ms. McGrath also read into the record from line 7 of the paragraph that is blocked off and appears on the lower have of the front page of Exhibit A which reads: "**Please read all guidance material prior to submission to this application and all supporting documentation.**"

Page 6

Ms. McGrath testified that the Applicant did not submit any supporting materials with his application other than the form that has been marked Division's Exhibit A Full. She further testified that each of the successful applicants for issuance of one of the available restricted finfish endorsements in 2017 submitted supporting materials in order to establish their fishing experience and thereby secure a priority ranking pursuant to Section 6.7.6(a) of the *Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations*.

Ms. McGrath also stated that some other applicants for issuance of one of the available restricted finfish endorsements in 2017 did not submit any supporting materials. She indicated that that these applicants like the Applicant in this proceeding were deemed qualified for the lowest priority ranking, i.e., "Resident of the State of Rhode Island." No applicants in this category were determined eligible for the issuance of one of the fifteen available endorsements. Ms. McGrath also stated that it was physically impossible for her to second guess each applicant who had elected to submit no supporting materials and review each one of the hundreds of applications submitted in order to determine if supporting materials might have been available for those applicants to submit to increase the likelihood that their applications might have been selected.

Analysis

The question is: Did the Applicant meet his Burden of Proof that the Division acted improperly in denying his Application?

Page 7

The Applicant has the Burden of Proof to show, by legally competent evidence, that the Division acted incorrectly and in violation of its Regulations when it denied his Application for a Finfish Endorsement. In other words this means that the Applicant must show that it is more likely than not that the Division acted improperly.

The Applicant presented his case through his testimony. Applicant appeared to be a credible and intelligent individual who fully understood the parameters of the Administrative Proceeding. The Applicant was allowed to testify, under oath, in a narrative form. He testified fully and included facts and matters which were both relevant and irrelevant. The Division did not object to his irrelevant testimony and the Hearing Officer will not consider the irrelevant matters in this Decision.

The relevant testimony focused on the circumstances under which he filed his application on February 24, 2017. The Applicant testified that when he submitted his application he did not receive Division Exhibit D Full. "New License/ Endorsement Opportunities for 2017". He also testified that he did not receive Joint Exhibit # 1 Full. "Guidance for Applicants Seeking New Restricted Finfish Endorsements 2017". Both Division Exhibit D and Joint Exhibit # 1 explain in detail the Division's method of selection for the Applicants and how priority status is established. Joint # 1 Full states that there are Five (5) general categories for priority status. Those Applicants with the lowest priority for Island residents are placed in a lottery. For the year 2017 there were fifteen (15) new Restricted Finfish Endorsements awarded out of the two hundred and sixty eight (268) Applicants. The Applicant in this matter was not one of the fifteen (15) awarded.

The Applicant argues that he was qualified for a higher priority status based on his fishing record as reported in the SAFIS system. The SAFIS system is a computerized record of individual fishing records. The Applicant did not file a copy of his fishing history with his application because he was let to believe from his conversation with two (2) DEM employees that it was not necessary and this his application was sufficient as submitted. The Applicant did not present the DEM employees as witnesses not did he submit a copy of his fishing history at the Administrative Hearing to support his assertions. If he did submit this evidence at the Administrative Hearing, however, it would not have changed the outcome of his appeal.

The Department is not charged with the task of researching the fishing record of applicants. It is unreasonable for the Division to be responsible for finding and confirming the fishing records of the one hundred and seventy four (174) applicants who did not submit supporting documentation. Applicant acknowledges receipt of Division's Exhibit A. Full "2017 New License Opportunities Resident Marine License Application". In the boxed area of the application we find the following language: "you must submit justification as to your eligibility for this endorsement per criteria set out in the Commercial & Recreational Saltwater Fishing License Regulations".

The Applicant signed his application (Division's Exhibit A. Full) and is presumed to have read its contents. Within the boxed area it also states in bold print: "Please read all guidance document material prior to submission of this application and all supporting documents". The Division cannot be faulted for not considering information not properly submitted by the Applicant.

Conclusion

The Applicant has not met his Burden of Proof that the Division improperly denied his application for a Restricted Finfish Endorsement. The Regulations and the guidance materials require the Applicant to file and establish his fishing history in order to qualify for a priority status. The Applicant did not file documentation to establish his fishing history. The justification alleged by the Applicant for failing to file his documentation is not sufficient to rebut the overwhelming evidence placing the burden on the Applicant to do so.

The Division acted properly in denying Applicant's application. Applicant's appeal, therefore, must be denied.

Findings of Fact

Based on the testimonial and documentary evidence I make the following findings of fact:

- (1) The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant;
- (2) The Applicant applied on February 24, 2017 to the Division for the issuance of the one of the fifteen (15) available restricted finfish endorsements that was available for issuance in 2017;
- (3) The Applicant, at the time he submitted his application, did not receive and therefore did not read Division Exhibit D Full "New License/Endorsement Opportunities for 2017";

Page 10

- (4) The Applicant, at the time he submitted his application, did not receive and therefore did not read, Joint Exhibit #1 Full "Guidance for Applicants Seeking New Restricted Finfish Endorsements 2017";
- (5) The application submitted by Applicant contained language stating "you must submit justification as to your eligibility for this endorsement per criteria set out in the Commercial & Recreational Saltwater Fishing License Regulations";
- (6) The applications submitted by Applicant contained language in bold lettering which stated "Please read all guidance document material prior to submission of the application and all supporting documentation";
- (7) The Applicant did not submit supporting documentation to establish his fishing history at the time he filed his application;
- (8) It is the responsibility of the Applicant to submit supporting documentation with his application to obtain a priority status;
- (9) It is not the responsibility of the Division to research the fishing history of applicants in review of their applications;
- (10) The Applicant qualified for the lowest priority status, i.e. "Resident of the State of Rhode Island";
- (11) One hundred seventy four (174) individuals qualified at the lowest priority rating;
- (12) From the list of one hundred and seventy four individuals qualifying at the lowest priority rating fifteen (15) were chosen by lottery to receive the restricted finfish endorsement;

- (13) The Applicant was not one of the fifteen (15) individuals selected by lottery.
- (14) The Division's letter dated May 5, 2017 advised the Applicant that on the basis of review that he was not one of the applicants selected for the issuance of one of the fifteen (15) restricted finfish endorsements available for issuance in 2017;
- (15) The Applicant submitted a timely letter dated May 16, 2017 to the Administrative Adjudication Division requesting a hearing concerning the Division's letter May 5, 2017 advising the Applicant that on the basis of review of his application that he was not one of the applicants selected for the issuance of one of the fifteen (15) restricted finfish endorsements available for issuance in 2017.

Conclusions of Law

Based on the above Findings of Fact I make the following Conclusions of Law:

- (1) The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant;
- (2) The Regulations and the Application materials charge the Applicant with the responsibility of submission of any supporting documentation, which would entitle him to a priority status;
- (3) The Division is not charged with the responsibility of researching Applicant's fishing history;
- (4) The application filed by the Applicant on February 24, 2017 without documentation establishing sufficient fishing history is entitled to the lowest

priority ranking under the Section 6.7.6 (a) of the Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations ("Regulations");

- (5) The Applicant was properly determined to be in the lowest priority rating;
- (6) The Regulations provide that only a limited number of applicants in the lowest priority status will receive a license as determined by lottery;
- (7) The Applicant herein was not selected to receive one of the limited licenses;
- (8) The Applicant failed to sustain his burden of proof by a preponderance of the evidence that the Division's determination and letter dated May 5, 2017 denying his application for a Restricted Finfish Endorsement violated the Department of Environmental Management's Commercial and Recreational Saltwater Fishing License Regulations.

ORDERED

1. The Applicant's Appeal to the Administrative Adjudication Division filed May 16, 2017 is hereby **DENIED AND DISMISSED**.
2. The Division's May 5, 2017 denial letter of the Applicant's finfish endorsement Application is hereby **AFFIRMED** and **SUSTAINED**.

Entered as an Administrative Order this 18th day of October, 2017.



David Kerins
Chief Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, 2nd Floor
Providence, RI 02908
(401) 574-8600

RE: MAJOR, ROBERT

AAD NO. 17-003/MSA

Page 13

CERTIFICATION

I hereby certify that I caused a true copy of the within Status Conference Order to be forwarded, via regular mail, postage prepaid to: Robert Major, 45 Sowams Drive, Bristol, RI 02809 and via interoffice mail to Gary Powers, Esquire, DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this 18TH day of October, 2017.



NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Environmental Management pursuant to RI General 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.