

Department of Environmental Management

Administrative Adjudication Division

State of Rhode Island

RE: BEST IN THE BAY, INC.

AAD No. 98-002/ENE

September 15, 2000

AMENDED DECISION AND ORDER

This matter came before Hearing Officer Mary F. McMahon pursuant to the Modification and Remand of Recommended Decision issued by the Director on July 28, 2000. In the Modification and Remand, the Director disagreed with this Hearing Officer's interpretation of the definition of the term "possession" as set forth in R.I.G.L. Section 20-1-3(a)(b) and remanded the matter for new conclusions of law consistent with the Director's interpretation of the term.

Upon AAD's receipt of the remand, the parties were afforded a brief opportunity to pursue settlement of the matter. Those efforts have been unsuccessful.

I have reviewed the evidence in light of the Director's interpretation of the term "possession" and have therefore amended Conclusions of Law 2 and 3 as set forth below. Since I have concluded that the Division has proven by a preponderance of the evidence that Respondent violated R.I.G.L. §20-6-11 as set forth in the letter of suspension dated December 22, 1998, I have also reviewed the evidence to determine whether the period of suspension sought by the Division is warranted.

Suspension

R.I.G.L. §20-6-24 provides in pertinent part:

20-6-24. License for shellfish buyers — Suspension or revocation.

(a) ***

(b) Any licensee operating under the provisions of this section shall purchase shellfish from licensed persons only and shall purchase or possess only those shellfish legally taken or possessed.

(c) The director shall issue and enforce rules and regulations and orders governing bartering and trading in shellfish by licensed fishers of shellfish, licensed shellfish buyers and other persons, partnerships, firms, associations, or corporations.

(d) The director may suspend, revoke, or deny the license of a shellfish buyer or fisher of shellfish for the violation of any provision of this title or the rules, regulations, or orders adopted or issued pursuant to this title.

(e) ***

(f) ***

(g) ***

The Division has proven Respondent's violation of R.I.G.L. §20-6-11 and, consequently, has proven that Respondent purchased or possessed illegal shellfish in violation of paragraph (b) above.

In accordance with paragraph (c) above, the Department has adopted rules and regulations governing bartering and trading in shellfish. Rules 8.01 and 8.02 of the Department's Rules and Regulations Governing Taking, Possession, Holding, Bartering and Trading of Shellfish provide as follows:

8.01 In addition to other penalties provided by law or other rule or regulation, any licensed shellfisherman or licensed shellfish buyer who violates the provision of G.L. section 20-6-24, or these rules, or an order issued by the Director shall be subject to suspension, revocation or denial of his license in accordance with R.I.G.L. sections 20-2-13 and 42-17.1-2(s).

8.02 The penalties for the initial and subsequent violations are as follows:

a) first violation, up to six (6) month suspension of license

b) second violation, revocation of license

The Division, in the letter of suspension and in testimony at the hearing, continues to seek a thirty (30) day suspension of the shellfish buyers portion of Respondent's Multi-Purpose Dealer's License. In testimony, Deputy Chief Thomas Greene stated that he had reviewed Respondent's prior record but considered this to be a first offense, and that he also considered the seriousness of the offense. He also testified that a thirty (30) day suspension is the minimum suspension imposed by the Division.

I therefore find that a thirty (30) day suspension of the shellfish buyers portion of the Multi-Purpose Dealer's License is consistent with the pertinent statutes and regulations and warranted by the evidence presented at the hearing.

Conclusion

The Findings of Fact set forth in the recommended Decision and Order, issued by this Hearing Officer on July 7, 2000, are herewith adopted in their entirety in this Amended Decision and Order and incorporated herein by reference.

Conclusion of Law # 1 is likewise adopted in this Amended Decision and Order and incorporated herein by reference.

Conclusions of Law 2 and 3 are amended as set forth below. Since this Amended Decision also addresses the matter of the suspension, I have made further recommended conclusions of law and set forth a new recommended Final Agency Order.

CONCLUSIONS OF LAW

Consistent with the Director's Modification and Remand of Recommended Decision and based upon the adopted Findings of Fact and Conclusion of Law # 1 set forth in the recommended Decision and Order issued July 7, 2000, I conclude the following as a matter of law:

2. The Division has proved by a preponderance of the evidence that Respondent had "possession" of the undersized quahaugs as the term is defined in R.I.G.L. §20-1-3 (a) (6) and in the regulations.
3. The Division has proved by a preponderance of the evidence that Respondent violated R.I.G.L. §20-6-11 as alleged in the letter of suspension dated December 22, 1998.
4. The Division has proved by a preponderance of the evidence that Respondent violated R.I.G.L. §20-6-24 (b).
5. Based upon the evidence and pursuant to R.I.G.L. §20-6-24 and Rules 8.01 and 8.02 of the Rules and Regulations Governing Taking, Possession, Holding, Bartering and Trading of Shellfish, a thirty (30) day suspension of the shellfish buyers portion of Respondent's Multi-Purpose Dealer's License is warranted.

Wherefore, based upon the adopted Findings of Fact and Conclusions of Law 1 through 5, it is hereby

ORDERED

The shellfish buyers portion of Best in the Bay, Inc.'s Multi-Purpose Dealer's License is suspended for a period of thirty (30) days commencing on October 1, 2000 at 12:00 a.m. and terminating on October 30, 2000 at 12:00 p.m.

Entered as an Administrative Order this 15th day of September, 2000.

Mary F. McMahon
Hearing Officer

Entered as a Final Agency Order this 15th day of September, 2000.

Jan H. Reltsma
Director