

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

RE: SARDINHA, JACOB  
LICENSE TRANSFER DENIAL

AAD NO. 16-003/MSA

**DECISION AND ORDER**

**Parties and Jurisdiction**

This matter came on for Administrative Hearing on July 18, 2016. The Rhode Island Department of Environmental Management, Office of Boat Registration and Licensing (“OBRL” or “Division”), was represented by Gary Powers, Esquire and Alexandra Lister (Rule 9 law student). The Applicant, Jacob Sardinha (“Applicant”) represented himself. A stenographic transcript was made of the proceedings which was purchased and provided to the parties. The Division filed its Post Hearing Memorandum on August 30, 2016. Applicant filed his Post Hearing Memorandum on September 13, 2016.

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (“AAD”) (R. I. General Laws §42-17.7-1 et. seq.); the *Administrative Procedures Act* (R. I. General Laws §42-35-1 et. seq.); and the *Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matter* (“AAD Rules”). The parties agreed that the Administrative Adjudication Division has jurisdiction over the subject matter of the Applicant’s appeal as well as personal jurisdiction over the Applicant pursuant to the Applicant’s request for an appeal filed March 4, 2016.

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Facts and Travel

This action is before the Rhode Island Department of Environmental Management, Administrative Adjudication Division ("AAD") pursuant to a request for a Hearing submitted to the AAD by Applicant Jacob Sardinha. The Appeal challenges the determination by the OBRL of February 8, 2016 denying the Applicant's December 20, 2015 request to transfer the commercial fishing license (Multi-Purpose Fishing License #MPURP001348), which had been issued to Russell Souza Sr., (the "Decedent" or the "License holder") The OBRL denied the Applicant's application for the license transfer because the commercial fishing history of MPURP001348 revealed that the license holder was not actively fishing at the time of his demise as mandated by Rule 6.7-9(a) and Rule 5.1 of the *Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations*.

Rule 6.7-9(a) – (c) of the *Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations* provide as follows.

(6.7-9) Issuance of New Licenses and Operator Permits Under Hardship Conditions

- (a) A hardship shall be deemed to exist if a license holder who is actively fishing (emphasis added) dies or becomes permanently or temporarily incapacitated by illness or injury so as to not be able to fish for any period in excess of fourteen (14) days.
- (b) The Department will require proof of hardship in the form of a death certificate or a diagnosis and prognosis of the incapacity of the license holder signed by a medical doctor (M.D. or O.D.).
- (c) In the case of permanent incapacity or death, the Department will issue, upon application, a single, new equivalent license with applicable endorsement(s) to a member of the license holder's family who is a Rhode Island resident. That family member may be designated by the license holder or by mutual agreement among surviving family members if the license holder is deceased. Prior to issuance of the new license, the original license will be surrendered. The new license will be valid for the balance of the license year, and will be eligible for renewal pursuant to the terms and conditions set forth in Section 6.7-3.

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Rule 5.1 of the *Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations* defines "Actively Fishing" as follows:

- (5.1) "Actively Fishing." – A license holder will be considered to have been actively fishing that license/ endorsement if he or she demonstrates by dated transaction records, as verified by dealer reports to the Department, that he or she has fished at least seventy-five (75) days in the preceding two calendar years, with some of the fishing activity occurring in each of the two years. (emphasis added) Evidence as to days fished may be supplemented by one or more Vessel Trip Reports, which specifically reference the license holder's name and license number, and correspond to dated transaction records, where in the determination of the Department such dates are verified by dealer reports to the Department; where such reports verifiably reflect two or more calendar days at sea during a single trip, those days may be used to establish fishing activity. For the purpose of this definition the term "day" shall mean any 24-hour period or part thereof.  
(Emphasis added.)

#### Issue

Whether the Applicant satisfied his burden of proving that the OBRL's February 8, 2016 denial of his December 20, 2015 application requesting the transfer of MPURP # 001348 to him pursuant to Rule 6.7-9 and Rule 5.1 of the *Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations* was incorrect and inconsistent with Rule 6.7-9 and Rule 5.1.

#### Stipulated Facts

At Prehearing Conference prior to the commencement of the Administrative Hearing on the merits, the Parties agreed to stipulate to each of the following uncontested facts:

- (1) The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
- (2) Pursuant to the application dated December 20, 2015, the Applicant submitted to the Division a request to transfer/acquire the Multi-Purpose Fishing License #MPURP 001348 upon the purchase of the vessel and gear that had been owned by Russell Souza, Sr.
- (3) The Applicant's December 20, 2015 transfer application requesting transfer of Multi-

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Purpose Fishing License #MPURP001348 was denied by the Division in a letter dated February 8, 2016.

- (4) The fishing history failed to establish that Multi-Purpose Fishing License #MPURO001348 qualified as "Actively Fishing" as that term is defined pursuant to Section 5.1 of the Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations.
- (5) The Bill of Sale executed on July 13, 2015 by the Applicant in order to purchase the subject vessel and gear including Multi-Purpose Fishing License #MPURP001348 provides the following disclaimer.

"The surrender of Commercial Fishing License MPURP 001348, issued to Russell Souza, to Jacob D. Sardinha, the Buyer, however the Estate of Russell Souza makes no representations or warranties that said license is renewable, transferable or otherwise able to be used by any individual, entity or business."

**Exhibits Admitted at Hearing**

1. At Prehearing Conference, the Parties agreed that each of the following exhibits are to be admitted as full at the hearing in the instant matter:
  - Division's Exhibit A - The Applicant's Application dated December 20, 2015 submitted to the Division requesting the transfer of Multi-Purpose Fishing License #MPURP001348. 8 Pages (Copy)
  - Division's Exhibit B - The Divisions letter to Applicant dated February 8, 2016 denying Applicant's December 20, 2015 transfer Application. 2 pages (Copy).
  - Division's Exhibit C - The Applicant's March 4, 2016 letter submitted to the AAD requesting a hearing before the AAD concerning the Division's letter dated February 8, 2016 denying the Applicant's December 20, 2015 application for the transfer of Multi-Purpose Fishing License #MPURP001348. 1 Page (Copy).
  - Division's Exhibit D- A computer printout of the license history of Russell Souza, Sr., Multi- Purpose Fishing License #000856. 6 pages (Copy).
2. At hearing, during testimony of the Division's witness, Ares Nichole, each of the following exhibits was admitted as full.

Division's Exhibit -E A computer printout of the license activity of Russell Souza,

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Sr., the seller of the vessel and gear including Multi-Purpose Fishing License #MPURP001348 for the years 2012 and 2013 compiled by the Atlantic Coastal Cooperative Statistics Program. 2 Pages (Copy).

Division's Exhibit F – A computer printout of the license activity of Russell Souza, Sr., the seller of the vessel and gear including Multi-Purpose Fishing License #MPURP001348 for the years 2013 and 2014 compiled by the Atlantic Coastal Cooperative Statistics Program. 1 Page (Copy).

Division's Exhibit G – A computer printout of the license activity of Russell Souza Sr. concerning Commercial Fishing License #856 for the years 2011 and 2012 compiled by the Atlantic Coastal Cooperative Statistics Program. 1 Page (Copy)

Division's Exhibit H. – A computer printout of the license history of Russell Souza, Sr. concerning Fishing License history of Russell Souza, Sr. concerning Commercial Fishing License #856 for the years 2012 and 2013 compiled by the Atlantic Coastal Cooperative Statistics Program. 1Page (Copy)

Witness / Testimony

At hearing, the Applicant appeared and testified on his own behalf. The Applicant briefly testified that he purchased the "gear and Vessel," F/V Delores Louise, LLC, from the Estate of Russell Souza, Sr. in July 2015 and applied on December 20, 2015 to the Division for the transfer/acquisition of Multi-Purpose Fishing License #MPURP001348 which had been held by Mr. Souza [Division's Exhibit A]. The Applicant also testified that he appealed to the AAD on March 4, 2016 [Division's Exhibit C] concerning the Division's February 8, 2016 denial [Division's Exhibit B] of his December 20, 2015 transfer application. On cross examination, the Applicant identified as part of his December 20, 2015 transfer application [Division's Exhibit A], the Bill of Sale which the Applicant signed on July 13, 2015 in order to purchase the "vessel and gear," F/V Delores Louise, LLC, including Multi-Purpose Fishing License #MPURP1348 that had been owned by Russell Souza, Sr. The applicant also specifically recognized the disclaimer

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that appeared on the first page of the Bill of Sale which disclaimed the absence of any “representations or warranties that said license (Multi-Purpose Fishing License #MPURP001348), is renewable, transferrable or otherwise able to be used by any individual, entity or business.”

The Applicant also proffered Mr. Gerald Carvalho as an expert witness for the limited purpose of testifying that the Department does not have any regulation that governs situations in which a person dies prior to possessing a commercial fishing license for the two years to garner the necessary fishing history to qualify as Actively Fishing.

The Division presented two witnesses in an attempt to establish the factual and regulatory basis upon which the Division’s February 8, 2016 denial of the Applicant’s December 20, 2015 Application for the transfer/acquisition of Multi- Purpose Fishing License #MPURP001348 was not in violation of the *Department of Environmental Management’s Commercial and Recreational Saltwater Fishing License Regulations*.

The Division’s first witness was Nichole Ares whose direct examination was conducted by Alexandria Lester, a Rule 9 Law Student. Ms. Nichole Ares testified that she serves as the Department’s staff member who is charged with the responsibility of overseeing the Rhode Island component of the Standard Atlantic Fisheries Information System (SAFIS) Program. Ms. Ares described the SFIS Program as the Program by which dealers are obligated by regulation to report to the Department all sales of fish and other commercial sea products that have been sold to the dealers by commercial fishers and the Program by which the Department records these reports.

Ms. Ares further testified that she had searched the SAFIS records and generated the computer printout that reflected all of the license activity of Russell Souza, Sr., the Seller of the vessel and gear including Multi-Purpose Fishing License #MPURP001348 for the years 2012 and

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2013. This document was marked as Division's Exhibit E and was admitted as full. Ms. Ares also testified that she had searched the SAFIS records and generated the computer printout of all of the license activity of Seller's Multi-Purpose Fishing License #MPURP001348 for the years 2013 and 2014. This document was marked as Division's Exhibit F and was admitted as a full exhibit. Ms. Ares then testified that she had searched the SAFIS records and generated the computer printout of the license activity of the Seller when he operated pursuant to the authority of Commercial Fishing License #856 which is the license that he had possessed for the years 2011 and 2012 prior to his acquisition of Multi-Purpose Fishing License #MPURP001348. This document was marked as Division's Exhibit G and was admitted as a full exhibit. Ms. Ares finally testified that she had searched the SAFIS records and generated the computer printout of the license history of the Seller concerning Commercial Fishing License #856 for the years 2012 and 2013 prior to his acquisition of Multi-Purpose Fishing License #MPURP001348. This document was marked as Division's Exhibit H and was admitted as a full exhibit.

The Division's next witness was Margaret McGrath who testified that she is the Programming Services Officer with the Office of Management Services and that she was the Department staff member who was primarily responsible for determining whether applicants were eligible to transfer or acquire licenses upon the purchase of a vessel and gear from sellers who were licensed fishers and who were no longer fishing commercially or who were willing to retire from commercial fishing. Ms. McGrath further testified that she had authored the Division's February 8, 2016 denial [Division's Exhibit B] of the application presented to the Division on December 20, 2015 by the Applicant [Division's Exhibit A]. She testified that she was compelled to deny the Applicant's request for the transfer/acquisition of Multi-Purpose Fishing License

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#MPURP001348 due to the fact that her review of the license history of the Seller failed to reveal that the Seller's fishing history qualify as "Actively Fishing" as required pursuant to Section 6.7-8 in order for a license to be authorized to be transferred/acquired upon the sale of vessel and gear. She further testified that the term "Actively Fishing" was defined in Section 5 of the *Department of Environmental Management's Commercial and Recreational Saltwater Fishing Regulations* as requiring the Seller to land seafood product with a licensed Rhode Island seafood dealer "at least seventy-five (75) days in the preceding two calendar years, with some of the fishing activity occurring in each of the two years."

Ms. McGrath then relied upon Division's Exhibits E and F to support the finding set out in the Division's February 8, 2016 denial [Division's Exhibit A] that Multi-Purpose Fishing License MPURP001348 could not qualify as "Actively Fishing" and, thus, was not eligible to be acquired/transferred by the Applicant. Indeed, Division's Exhibit E and Division's F revealed that no landings credited to Multi-Purpose Fishing License #MPURP001348 during the periods 2012 and 2013 or 2013 and 2014 respectively.

Ms. McGrath also testified that Division's Exhibit E and Division's Exhibit F revealed that the Seller had not actively fished his license, Multi-Purpose Fishing License #MPURP001348, as defined in section 6.7-11, during the two (2) calendar years preceding his material incapacitation. Ms. McGrath further testified that she had also reviewed Division's Exhibit G and Division's Exhibit H which the license history of Commercial Fishing License #856 which is the license that the Seller possessed prior to his acquisition of Multi-Purpose Fishing License #MPURP001348. Ms. McGrath stated that Division's Exhibit G revealed that four (4) landings were credited to Seller's Commercial Fishing License #856 during the two year

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period 2011 and 2012 and that Division's Exhibit H revealed that four (4) landings were credited to Seller's Commercial Fishing License #856 during the two year period 2012 and 2013 – far short of the requirement to qualify as “actively fishing,” i.e., “at least seventy-five (75) days in the preceding two calendar years, with some of the fishing activity occurring in each of the two years.”

Ms. McGrath concluding that by noting that her review of the Seller's fishing history for all of the four two year periods, i.e. 2011 and 2012 [Division's Exhibit G], 2012 and 2013 [Division's Exhibit E], and 2013 and 2014 [Division's Exhibit F], failed to reveal any two year period in which the Seller Russell Souza, Sr. could be deemed to qualify as Actively Fishing as required pursuant to Section 6.7-8 of *The Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations* and, thus, the Division was obligated to deny the subject application.

#### Analysis

The burden of proof in an application denial appeal is on the Applicant to prove by a preponderance of the facts that the Department improperly denied his application.

The Applicant has not proven by a preponderance of the evidence that the Department improperly denied his application.

The Applicant and his witness made a sincere and honest presentation of his case. The Applicant argues that the regulations do not provide transfer of license in the situation at hand. The Applicant has purchased a license from the estate of a deceased license holder who did not have the requisite “actively fishing” history. (Rule 6.7-9 (a) and Rule 5.1). The Applicant did not

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raise the issue of (Material Incapacity” or “death” to obtain an exception to the strict application of the Rule.

The Applicant did not raise the issue of “Material Incapacity” at the time of submission of his application. In fact, the right to request an exception due to “Material Incapacity” at the time of submission of his application lies in the license transferor not the transferee. The Applicant cannot come forward and raise the issue of “Material Incapacity” for the first time in his appeal even if it was his right to raise.

The Applicant argues that the Regulations do not provide for a situation such as his and therefore the Hearing Officer should, in effect, rewrite or interpret the insufficient Regulations so as to do justice. It is not within the authority of the Hearing Officer to rewrite or interpret the Regulations beyond its clear meaning. If the Regulations are legally defective as insufficient relief cannot be granted by this tribunal.

The Applicant has not proven by a preponderance of the evidence that the Department improperly denied his application. The Hearing Officer does not have the authority to rewrite the Regulations or ignore its clear language. The Applicant’s appeal must therefore dismissed.

Findings of Fact

- (1) The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
- (2) Pursuant to the application dated December 20, 2015, the Applicant submitted to the Division a request to transfer/acquire the Multi-Purpose Fishing License #MPURP 001348 upon the purchase of the vessel and gear that had been owned by Russel Souza, Sr.
- (3) The Applicant's December 20, 2015 transfer application requesting transfer of Multi-Purpose Fishing License #MPURP001348 was denied by the Division in a letter dated February 8, 2016.
- (4) The fishing history filed to establish that Multi-Purpose Fishing License #MPURO001348 qualified as "Actively Fishing" as that term is defined pursuant to Section 5.1 of the Department of Environmental Management's Commercial and Recreational Saltwater Fishing Licensing Regulations.
- (5) The Bill of Sale executed on July 13, 2015 by the Applicant in order to purchase the subject vessel and gear including Multi-Purpose Fishing License #MPURP001348 provides the following disclaimer.

"The surrender of Commercial Fishing License MPURP 001348, pot #1576mp, issued to Russell Souza, to Jacob D. Sardinha, the Buyer, however the Estate of Russell Souza makes no representations or warranties that said license is renewable, transferable or otherwise able to be used by any individual, entity or business."

- (6) The Applicant did not apply to the OBRL for any hardship relief pursuant to the provisions of Rule 6.7-9.

Conclusions of Law

1. 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.); the *Administrative Procedures Act* (R. I. General Laws §42-35-1 et. seq.); and the *Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matter* ("AAD Rules").
2. The parties agreed that the Administrative Adjudication Division has jurisdiction over the subject matter of Applicant's appeal as well as personal jurisdiction over the Applicant pursuant to the Applicant's request for an appeal filed March 4, 2016.
3. The Applicant had the burden of proving, by a preponderance of the evidence, that the OBRL's denial of the transfer request application was incorrect.
4. The Applicant failed to prove, by a preponderance of the evidence that the OBRL improperly and incorrectly denied his request of December 20, 2015 to transfer of commercial fishing license MPURP001348.

Wherefore, it is hereby **ORDERED** that:

1. The OBRL's denial of Applicant's December 20, 2015 request to transfer commercial fishing license MPURP001348 is hereby **Upheld** and **Sustained**.
2. The Applicant's appeal is hereby **Denied** and **Dismissed**.

Entered as an Administrative Order this 4<sup>th</sup> day of October, 2016.

  
David Kerins

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

RE: SARDINHA, JACOB  
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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: Jacob Sardinha, 92 Kickemuit Avenue, 93B, Bristol, RI 02809 and via interoffice mail to Gary Powers, Esquire, DEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this 4<sup>th</sup> day of October, 2016.

Bruce L. Stewart

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**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.