

Department of Environmental Management  
Administrative Adjudication Division

RE: TROUVE, MICHAEL

AAD No. 03-010/MSA  
December 11, 2003

**ORDER GRANTING OFFICE OF MANAGEMENT SERVICES' MOTION FOR SUMMARY JUDGMENT**

This matter is before the hearing officer on the Motion for Summary Judgment ("Motion") filed by the Office of Management Services ("OMS") of the Department of Environmental Management ("Department" or "DEM") on October 23, 2003. The OMS requests that Summary Judgment be granted in its favor and that the Applicant Michael Trouve's appeal and request for a hearing be dismissed with prejudice. Oral argument on the Motion was heard on November 12, 2003.

The OMS contends that there is no genuine issue of material fact in dispute in this appeal; and that pursuant to Rule 56 of the Rhode Island Superior Court Rules of Civil Procedure, the OMS is entitled to summary judgment in its favor as a matter of law. The OMS's contention is predicated on the following: (1) that Applicant is not legally eligible for a multi-purpose license; and (2) that Applicant did not apply for a license by the February 28 deadline.

OMS's primary contention is that it is undisputed and uncontroverted that the Applicant has not held a commercial multi-purpose fishing license since 1992, and therefore Applicant is not legally eligible for issuance of a multi-purpose license pursuant to R.I. GEN. LAWS Section 20-2.1-5(1)(iii) as well as Rule 7 of the Rules and Regulations Governing the Management of Marine Fisheries ("Fisheries Regulations"). OMS argues that in considering the facts in the light most favorable to the nonmoving party, there is no doubt that Applicant is not eligible for a multi-purpose license in 2003.

OMS further contends that, even if Applicant was statutorily eligible to apply for a multi-purpose license for 2003, summary judgment should still be entered in favor of OMS since Applicant did not apply for a license by the February 28, 2003 deadline as required by R.I. GEN. LAWS Section 20-2.1-4(g).

Applicant argues that the entry of summary judgment is not mandated by R.I. GEN. LAWS § 20-2.1-5(1)(iii) or 20-2.1-4(g); and that he should be afforded the right to present evidence that he meets the statutory criteria set forth in R.I. GEN. LAWS Section 20-2.1-12(b).

Applicant contends that a determination of whether he has met the statutory criteria of 20-2.1-12(b) is a disputed factual question. Applicant maintains that he has satisfied his burden of establishing that disputed factual questions exist as to whether he meets the aforesaid statutory criteria. Applicant avers that if given the opportunity for full hearing, evidence would establish that he meets these statutory criteria. Accordingly, Applicant argues that this matter should not be decided based solely on a procedural issue; and that Applicant should be afforded his right to present his evidence at full hearing.

Rule 56 of the Superior Court Rules governs Motions for Summary Judgment and Super.R.Civ.P.56(c) 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 matter of law."

In deciding on motions for summary judgment, the trier of facts 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). A party opposing a motion for summary judgment may not rely upon mere allegations or denials in his or her pleadings. Small Business Loan Fund v. Loft, 734 A.2d 953, 955 (R.I. 1998). Rather, a party who opposes a motion for summary

judgment carries the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions, or mere legal opinions. Macera Bro. Of Crans. v. Gelfuso & Lachut, 740 A.2d 1262, 1264 (R.I. 1999). It is well settled law that 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. If the opposing party fails to establish specific facts to demonstrate that there is a genuine issue of fact to be resolved at trial, then movant is entitled to judgment as a matter of law and summary judgment must be granted. Grande v. Almac's Inc., 623 A.2d 971, 972 (R.I. 1993).

The OMS submitted an Affidavit of Margaret McGrath, Programming Services Officer in the Office of Boat Registration and Licensing ("OBR&L"), together with an attached copy of a printout from the official records of the OBR&L concerning the license history of the Applicant, to establish that the Applicant did not possess a valid multi-purpose commercial fishing license on December 31, 2002. This fact is undisputed and uncontroverted, and was acknowledged by Applicant.

The issue for consideration in this matter is whether, pursuant to R.I. GEN. LAWS § 20-2.1-5(1)(iii) or Rule 7 of the Fisheries Regulations, the OMS is entitled to entry of summary judgment based on the fact that Applicant did not have a valid multi-purpose license as of December 31, 2002.

The issue presented is purely one of statutory interpretation, and a review of the pertinent statute and Fisheries Regulations clearly establishes that OMS has correctly interpreted the applicable statutes and regulations as they apply to Applicant. R.I. GEN. LAWS § 20-2.1-5(1)(iii) provides that "All multi-purpose license holders as of December 31, 2002, shall be eligible to obtain a multi-purpose license, which shall allow the holder to engage in commercial fishing in all fisheries sectors at the full harvest and gear levels." Rule 7.1 of the Fisheries Regulations provides that "No new Multi-Purpose Licenses shall be available for 2003, except pursuant to sections 6.7-8 and 6.7-9".<sup>1</sup> There is no provision in the statute or the Fisheries Regulations which permits the issuance of a multi-purpose license to those who held a multi-purpose license in previous years, but not as of December 31, 2002. Re: Mark Oliveira, AAD No. 03-004/MSA, Final Decision and Order dated July 9, 2003.

The fact that the Applicant did not possess a valid multi-purpose license as of December 31, 2002 was clearly established by the McGrath affidavit, and indeed acknowledged by Applicant. The Applicant attempted to avoid the granting of summary judgment, by arguing at length concerning the factors that should be considered by the commercial fishing license review board pursuant to Section 20-2.1-12(b). The legislature made it abundantly clear that it established "grandfathered" eligibility for those licensed as of December 31, 2002 to be eligible for a license in 2003. To consider any extenuating circumstances or hardships suffered by Applicant as grounds to deny OMS's Motion for Summary Judgment would fly in the face of Section 20-2.1-5(1)(iii).

Super.R.Civ.P.56(c) clearly mandates that a party opposing motion for summary judgment has an affirmative duty to set forth specific facts to demonstrate that there is a genuine issue of fact to be resolved at trial. Viewing the facts in a light most favorable to Applicant, there is no doubt that the Applicant has failed to demonstrate that there is a genuine issue of material fact concerning Applicant's eligibility pursuant to Section 20-2.1-5(1)(iii). Therefore, OMS is entitled to judgment as a matter of law and summary judgment must be granted.

Because the Applicant does not meet the statutory criteria for eligibility established by Section 20-2.1-5(1)(iii), I decline to reach OMS's second contention as to the timeliness of the application.

In view of my determination that summary judgment should be granted, I hereby make the following specific Findings of Fact and Conclusions of Law:

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<sup>1</sup> The exception listed in Sections 6.7-8 and 6.7-9 are not applicable to this matter.

### FINDINGS OF FACT

1. The Applicant, Michael Trouve, obtained for the first time a commercial fishing (rod & reel) license on July 1, 1992.
2. Michael Trouve obtained for the first time a commercial fishing (multi-purpose) license on August 14, 1992.
3. The multi-purpose license issued to Michael Trouve on August 14, 1992 expired on December 31, 1992.
4. The Applicant, Michael Trouve, did not possess a multi-purpose license as of December 31, 2002.
5. On or about January 6, 2003 Michael Trouve obtained a commercial fishing license with non-restricted finfish and non-quahog shellfish endorsements.
6. On March 10, 2003, the Department received Michael Trouve's application for a multi-purpose license in the form of a letter from John H. Brown, Esq., the attorney for Michael Trouve, to the Director of DEM dated March 6, 2003.
7. The Office of Boat Registration and Licensing issued a final denial by letter dated August 20, 2003.
8. Applicant filed an appeal with the Administrative Adjudication Division on September 16, 2003.

### CONCLUSIONS OF LAW

1. The Administrative Adjudication Division for Environmental Matters ("AAD") has jurisdiction over this matter pursuant to R.I. GEN. LAWS § 42-17.7-2; Rule 3 of the Administrative Rules of Practice and Procedure for the AAD; R.I. GEN. LAWS § 20-2.1-12(c); and Rule 6.7-10(i) of the Rules and Regulations Governing Management of Marine Fisheries.
2. The Rhode Island General Laws and the Fisheries Regulations prohibit the issuance of new multi-purpose licenses for 2003.
3. Applicant is not eligible to apply for a multi-purpose license pursuant to R.I. GEN. LAWS § 20-2.1-5(1)(iii).
4. There is no dispute as to any genuine issue of material fact and the Office of Management Services is entitled to judgment as a matter of law.

Wherefore, based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

### **ORDERED**

1. The Office of Management Services' Motion for Summary Judgment is GRANTED.
2. The Applicant's appeal is DISMISSED.

Entered as an Administrative Order and herewith recommended to the Director for issuance as a Final Agency Decision and Order this 2nd day of December, 2003.

Joseph F. Baffoni  
Hearing Officer

Entered as a Final Agency Decision and Order this 11<sup>th</sup> day of December, 2003.

Frederick J. Vincent  
Acting Director

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.