

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

RE: RILEY, STEVEN J.

AAD No. 03-011/MSA

**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 Boat Registration and Licensing ("OBRL") of the Department of Environmental Management on December 17, 2003. The OBRL requests that Summary Judgment be granted in its favor and that the appeal and request for a hearing of Steven J. Riley ("Applicant") be dismissed with prejudice. Applicant filed an objection out of time, without objection, on January 7, 2004 with an accompanying memorandum of law. Oral argument on the Motion was heard on January 21, 2004.

Steven J. Riley did not possess a principal effort license or any valid commercial fishing license as of December 31, 2002. On February 21, 2003 he applied to the OBRL for a principal effort license with restricted finfish and quahog endorsements. His application was denied by the OBRL by letter dated February 27, 2003. The denial was ultimately reconsidered by the Commercial Fishing License Review Board which recommended that the license(s) not be issued. On August 20, 2003, OBRL issued a final denial.¹ The basis of that denial, and similarly the gravamen of the summary judgment motion, is that the governing statute and regulations allow only applicants who possessed a valid commercial fishing license as

¹ Although OBRL denied the requested license, Mr. Riley did obtain entrance into some fisheries sectors, securing a 2003 commercial fishing licenses for lobster, non-restricted finfish and non-quahog shellfish.

of December 31, 2002 to obtain such a license in 2003, and only for the categories for which they were licensed as of December 31, 2002. OBRL further asserts that the license for which Mr. Riley applied constitutes a “new” license for purposes of the statute and Regulations. Rule 7 of the Regulations addresses the availability of new licenses in the year 2003. The critical section of Rule 7 states as follows:

(7.2) Principal Effort Licenses

- (a) No new Principal Effort licenses shall be available for 2003, except pursuant to sections 6.7-8 and 6.7-9².

OBRL argues that Applicants’s lack of a license on December 31, 2002 is dispositive of the appeal and pursuant to R.I. GEN. LAWS Section 20-2.1-5(1)(ii) as well as Rule 7 of the Rules and Regulations Governing the Management of Marine Fisheries (“Fisheries Regulations”) it is entitled to judgment as a matter of law.

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 motions for summary judgment, the trier of fact 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).

² Neither section is applicable to the instant proceeding.

R.I. GEN. LAWS §20-2.1-5(1)(ii) reads in pertinent part:

(ii) *Principal effort license.* Duly licensed persons in a fishery as of December 31, 2002 shall be eligible to obtain a principal effort license for the fishery sector for which they were licensed on December 31, 2002. . . .

OBRL applied the provisions of this statute to deny the issuance of principal effort licenses to applicants who did not hold a license as of December 31, 2002. Steven J. Riley is such an individual. OBRL concludes that they are entitled to judgment as a matter of law because Applicant does not meet the fundamental eligibility standard set forth in §20-2.1-5(1)(ii).

In further support of its arguments OBRL invites the hearing officer to consider two previous agency decisions. *In Re: Michael Trouve*, AAD No. 03-010/MSA, Final Decision and Order dated December 11, 2003 and *In Re: Mark Oliveira*, AAD No. 03-004/MSA, Final Decision and Order dated July 9, 2003 addressed an analogous section of this commercial fishing license statute, specifically §20-2.1-5(1)(iii). Both final agency decisions concluded as a matter of law that the lack of a valid multi-purpose fishing license as of December 31, 2002 was fatal to applicant's appeal. Holding a license (or being in that fishery) as of December 31, 2002 was a necessary condition precedent to issuance of such a license in the following year.

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 Brothers. of Cranston v.*

Gelfuso & Lachut, 740 A.2d 1262, 1264 (R.I. 1999). 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).

In this appeal, Applicant urges a more liberal interpretation of §20-2.1-5(1)(ii). Applicant asserts that the language of this section merely creates a preference for those persons who held a license as of December 31, 2002, but that it does not, as OBRL argues, prohibit the issuance of new licenses to persons not in the fishery as of that date. Interpreting the statute in this manner, argues Applicant, renders it consistent with §20-2.1-12(b) which allows *any person* whose application was denied to request reconsideration before the commercial fishing license review board.

A second ground for objection to this Motion is Applicant's assertion that pending discovery may lead to genuine issues of material fact to be resolved at hearing. Outstanding are Applicant's interrogatories propounded to Dennis Nixon, Chairman of the Commercial Fishing License Review Board. A Motion to Strike the Interrogatories and a Motion for a Protective Order and objection thereto have been filed in this matter. Applicant maintains that because a discovery request is pending, the Motion is premature. I disagree. The pivotal issue in deciding this summary judgment motion is whether there exists a genuine issue of material fact, and if not, whether the moving party is entitled to judgment as a matter of law. Regardless of the potential answers to interrogatories, the key fact remains that Applicant did not hold a license as of December 31, 2002. There is no genuine issue of material fact.

I turn next to the second prong of a summary judgment test, namely, whether OBRL is entitled to judgment as a matter of law. I have carefully reviewed the arguments of counsel, the stipulation and affidavit and conclude that pursuant to R.I. GEN. LAWS §20-2.1-5(1)(ii), Applicant's lack of a valid license as of December 31, 2002 makes him ineligible for a new license in 2003. This interpretation is consistent with prior agency decisions analogous to this matter, and consistent with the statute as a whole and the Rules and Regulations Governing the Management of Marine Fisheries ("Regulations") adopted in accordance therewith. Rule 6.7-4 entitled "License Renewals; Grandfathered Rights" provides in section (a) as follows:

- (a) *Applicant's who possessed a valid commercial fishing license as of December 31, 2002 may obtain a Principal Effort License for 2003, but only for the fishery endorsement categories – lobster, quahaug, or restricted finfish – for which they were licensed as of that date. In addition, any such applicant may also obtain up to three additional endorsements with their Principal Effort License: non-lobster crustacean (resident only), non-quahaug shellfish (resident only), and non-restricted finfish. (emphasis added)*

Great deference is accorded to an agency's interpretation of a regulatory statute whose administration and enforcement have been entrusted to the agency. *In Re: Lallo*, 768 A. 2d 921 (R.I. 2001). Such deference will be accorded to the agency's interpretation even when that interpretation may not be the only permissible interpretation that could be applied. *Pawtucket Power Associates Ltd. Partnership v. City of Pawtucket*, 622 A. 2d 452 (R.I. 1993). Moreover, administrative regulations are prima facie evidence of a proper construction of a statute which an agency is charged with administering and will be considered controlling unless the interpretation is clearly erroneous or unauthorized. *Rice Machinery, Inc. v. Norberg*, 391 A. 2d 66, (R.I. 1978); *Parascandolo v. Rhode Island Conflict of Interest Commission*, 1995 WL 663103, R.I.

Super., March 1, 1985, No. P.C. 84-0644, (Gibney, J.); *Coventry Teachers Alliance School Committee of Town of Coventry v. State Retirement Board*, 1980 WL 336022, R.I. Super. Feb. 1, 1980, No. M.P. 79-41 (Lageux, J.). Since Mr. Riley did not hold a license as of December 31, 2002, the license he seeks is a new license as contemplated by the statute and Regulations. Issuance of new Principal Effort Licenses is barred by Rule 7.2 of the Regulations, consistent with the statute and the statutory scheme for regulation of the commercial fishing industry. OBRL's interpretation of the statute is neither clearly erroneous nor unauthorized.

Super.R.Civ.P. 56(c) clearly mandates that a party opposing motion for summary judgment has an affirmative duty to establish that there is a genuine issue of fact to be resolved at trial. Viewing the facts in a light most favorable to Applicant, he has failed to demonstrate that there is a genuine issue of material fact concerning his eligibility pursuant to Section 20-2.1-5(1)(ii). Based on the law and Regulations and there being no genuine issue of material fact, the OBRL is entitled to entry of summary judgment.

FINDINGS OF FACT

1. The Applicant, Steven J. Riley, did not possess a commercial fishing license as of December 31, 2002.
2. On February 21, 2003 Steven J. Riley applied for a commercial fishing license (Principal Effort License) with quahog and restricted finfish endorsements.
3. The Office of Boat Registration and Licensing issued a final denial by letter dated August 20, 2003.
4. 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; R.I. GEN. LAWS § 20-2.1-12(c); and Rule 6.7-10(i) of the Rules and Regulations Governing the Management of Marine Fisheries.
2. The license sought by Applicant constitutes a new license as contemplated by R.I. GEN. LAWS §20-2.1-5 (1)(ii) and the Rules and Regulations Governing the Management of Marine Fisheries.
3. Rule 7.2 of the Rules and Regulations Governing the Management of Marine Fisheries prohibits the issuance of new Principal Effort Licenses (including licenses with quahog and non-restricted finfish endorsements) for 2003.
4. Rule 7.2 of the Rules and Regulations Governing the Management of Marine Fisheries is consistent with R.I. GEN. LAWS §20-2.1-5 (1)(ii) and furthers the statutory scheme and purposes of the statute.
5. Pursuant to R.I. GEN. LAWS § 20-2.1-5(1)(ii) Applicant is not eligible for a principal effort license with quahog and non-restricted finfish endorsements.
6. 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 Boat Registration and Licensing's 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 26th day of January, 2004.

Kathleen M. Lanphear
Chief Hearing Officer
Administration Adjudication Division
235 Promenade Street, Third Floor
Providence, RI 02908
(401) 222-1357

Entered as a Final Agency Decision and Order this 29th day of January, 2004.

Frederick J. Vincent
Interim Director
Department of Environmental Management
235 Promenade Street, 4th Floor
Providence, RI 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded, via regular mail, postage prepaid to: Robert J. Caron, Esquire, 55 Bradford Street, Suite 203, Providence, RI 02903 and via interoffice mail to: Deborah George, Esquire, DEM Office of Legal Services, 235 Promenade St., 4th Fl., Providence, RI 02908; on this 30th day of January, 2004.

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.

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