

Department of Environmental Management
Administrative Adjudication Division
State of Rhode Island

RE: FLORENCE INGRAM

AAD No. 93-082/IE
Notice of Violation No. CI91-159
August 21, 1995

FINAL ORDER OF DEFAULT

This matter came before Hearing Officer Mary F. McMahon on July 10, 1995 for the continuation of the hearing which began on May 22, 1995. It had been the subject of a Conditional Order of Default and is now ripe for entry of a Default Judgment. Some background is in order.

The Notice of Violation and Order ("NOV") in this matter was issued to Florence and Richard Ingram as owners of the property, citing them for an alleged long-standing problem with the septic system. Florence Ingram's attorney filed a request for hearing on her behalf. Her son, Richard Ingram, did not request a hearing and, as to him, the NOV operates as a compliance order. R.I.G.L. §42-17.1-2(u)(1).

When this matter was reached for hearing on May 22, 1995, Mrs. Ingram's attorney requested a continuance to allow him to consult with the Respondent and her son regarding a proposed settlement. Subsequently, after being unsuccessful in reaching his client, the attorney moved to withdraw as her counsel, stating that

"he cannot counsel the Respondent consistent with the Rhode Island Supreme Court Rules of Professional Conduct. Specifically, all reasonable attempts by counsel to communicate with Respondent have been unsuccessful. Counsel is unable to comply with Rule 1.2 Scope of Representation "(a) A lawyer shall abide by a client's decisions concerning the objectives of representation***". Motion to Reconsider, filed June 12, 1995.

Withdrawal was granted June 15, 1995. The Order was sent to Mrs. Ingram at two addresses, as was the Notice of Administrative Hearing. Order Granting Withdrawal and Rescheduling Hearing, entered June 15, 1995; Notice of Administrative Hearing, issued June 15, 1995. The matter was again reached for hearing on July 10, 1995. Respondent failed to appear and the Conditional Order of Default was issued.

Respondent's son, Richard W. Ingram, filed a response to the Conditional Order on July 19, 1995. His letter cited Respondent's medical condition, Richard Ingram's efforts to hook up to the town's sewer system, and the financial constraints faced by both he and his mother. He also represented that he had been told that he could not speak at the hearing, thus he did not attend. There was no response from Mrs. Ingram.

The Division of Groundwater and ISDS ("Division") objected, asserting that Mr. Ingram's letter should not be accepted as an adequate response to the Conditional Order of Default because "Richard Ingram is not an attorney nor is he a party to this action." Further, the Division maintains that the letter presents issues which had been previously addressed by the Administrative Adjudication Division ("AAD") or are irrelevant to Respondent's failure to appear.

Even assuming that Mr. Ingram possessed the legal authority to represent Mrs. Ingram in this tribunal, his letter in response to the Conditional Order fails to demonstrate good cause to deny entry of the Default Judgment. While Respondent's medical circumstances may initially appear to justify vacating the Conditional Order, a closer look, as set forth below, indicates otherwise. As for Mr. Ingram's recitations of his efforts to connect to the town's sewer system and of his mother's financial limitations, these issues are unrelated to Respondent's failure to appear at the hearing.

Mrs. Ingram's advanced age and significant medical problems had been the subject and basis for the Motion

to Continue filed by Respondent's counsel when this matter was reached for prehearing conference on May 18, 1994. Said motion requested an indefinite continuance of all proceedings. Chief Hearing Officer Lanphear twice considered Respondent's medical situation and determined that a continuance would be fruitless since Respondent's advanced age and ill health had no demonstrated prospect of improving with the passage of time. She concluded, citing 68 ALR 2d 470 and 66 ALR 2d 232, that denial of a continuance was proper. Order Denying Continuance, September 20, 1994; Order, January 4, 1995. Further, the Chief Hearing Officer allowed the Respondent the option to provide her testimony by way of written or videotaped deposition and to elect to proceed with prefiled direct testimony as permitted pursuant to R.I.G.L. § 42-17.7-5. Order Denying Continuance, September 20, 1994. Respondent failed to timely elect this option as was set forth in the Order. The matter was then scheduled for hearing in due course.

As a result of the previous AAD determination regarding Respondent's medical circumstances, the letter from Mr. Ingram does not establish good cause to deter entry of a Default Judgment. Nor do the other issues identified by Mr. Ingram warrant denial of the Default Judgment.

Wherefore, I make the following findings of fact:

1. IN RE: FLORENCE & RICHARD INGRAM, AAD No. 93-082/IE was scheduled for hearing on July 10, 1995.
2. Respondent Florence Ingram failed to appear at the hearing on July 10, 1995.
3. The Division of Groundwater and ISDS moved for entry of a Default Judgment at the hearing.
4. Respondent's son Richard Ingram filed a letter with the AAD on July 19, 1995.
5. The Division filed its Objection on July 28, 1995.
6. Mrs. Ingram's ill health and advanced age were previously considered by the AAD.

Wherefore, based upon the above, I make the following conclusions of law:

1. Respondent has failed to show good cause why a Default Judgment should not enter.

Wherefore, it is hereby.

ORDERED

1. Respondent is deemed to have waived her right to an adjudicatory hearing on the within Notice of Violation and Order.
2. This Final Order of Default constitutes a final administrative adjudication of the within matter and the Notice of Violation and Order shall be final and become a Compliance Order immediately upon the entry of the Final Agency Order herein.

Entered as an Administrative Order this 16th day of August, 1995.

Mary F. McMahon
Hearing Officer

Entered as a Final Agency Order this 21st day of August, 1995.

Timothy R. E. Keeney
Director