

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

RE: SOARES, MICHAEL A.

AAD No. 01-023/MSA

DECISION AND ORDER

This matter came before the Department of Environmental Management Administrative Adjudication Division for Environmental Matters ("AAD") pursuant to the request for hearing filed by Michael A. Soares ("Applicant") regarding the denial of a renewal of his commercial fishing license by the Office of Management Services ("OMS"). A prehearing conference was conducted on June 21, 2001 and the hearing commenced immediately thereafter.

Applicant was represented by Denita Gramitt, Esq.. The Office of Management Services was represented by Deborah George, Esq.

The proceedings were conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R.I. GEN. LAWS §§ 42-17.7-1 et seq.); the Administrative Procedures Act (R.I. GEN. LAWS §§ 42-35-1 et seq.); R.I. GEN. LAWS § 20-2-1.1; and the Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters ("AAD Rules").

PREHEARING CONFERENCE

At the prehearing conference, the parties agreed to the following stipulations of fact:

1. Michael A. Soares held a previous commercial multi-purpose license in 1991 and 1995.

2. The Department published a public notice announcing the license renewal window within seven (7) days following enactment of the moratorium. By agreement of the parties, the following exhibits proffered by OMS were

marked and admitted as Full:

OMS 1 Full Legal Notice

OMS 2 Full Commercial License Information printout

No other exhibits were offered by either party.

The parties also identified the following as issues to be considered by the Hearing Officer at the hearing:

1. Whether the one-year moratorium ending June 30, 2001 constitutes a hardship on the Applicant; and
2. Whether the failure to apply by the August 15, 2000 deadline was due to circumstances beyond Applicant's control; and
3. Whether Applicant would have qualified for a renewal of his multi-purpose license even if he had applied for a renewal prior to August 15, 2000 because he was not a Rhode Island resident prior to August 15, 2000.

HEARING SUMMARY

At the hearing, Applicant testified on his own behalf. The Office of Management Services presented one (1) witness, Margaret McGrath, an employee in the DEM Office of Boat Registration and Licensing.

Mr. Soares testified that he had invested \$40,000-45,000 for a lobster boat and gear. He stated that it would be difficult to sell the boat and gear and obtain the return of his original investment. Mr. Soares testified that his current employment was temporary and that he wanted to take up commercial fishing again.

The witness explained that he had been living in Wisconsin since 1995 - 1996 through August 2000 when he returned to Rhode Island. He had had no knowledge of

the deadline to renew his license and no access to Rhode Island newspapers. Although he learned of the moratorium in August 2000, he first contacted Ms. McGrath on March 12, 2001.

Applicant averred that he has been a continuous resident of Rhode Island since the end of August 2000, living at 64 Clegg Avenue in Tiverton. Under cross examination he agreed that for the period July 1, 2000 through August 15, 2000 he was still living in Wisconsin. He also conceded that he continued to carry a Wisconsin driver's license.

Margaret McGrath testified that a nonresident would not be able to obtain a multipurpose license. An individual must have been a Rhode Island resident for six (6) months prior to applying for the license, according to this witness. Ms. McGrath stated that if Applicant had applied for the license renewal between July 1, 2000 and August 15, 2000 he would have been denied the license because he was not a Rhode Island resident at the time of application.

Under cross examination the witness allowed that the interpretation that the residency status must be six (6) months "prior to the application" was the advice from their legal representation.

CONCLUSION

R.I. GEN. LAWS §20-2-1.1 provides in pertinent part:

20-2-1.1. Commercial fishing license moratorium – (a) The commercial marine fishing licenses as provided for in . . . 20-2-28.1(a) shall be issued for renewal only. No new licenses applicable to these sections shall be issued between July 1, 2000, and June 30, 2001. In order to obtain a license applicable to these sections between July 1, 2000 and June 30, 2001, an individual must provide proof that he or she possessed a valid Rhode Island commercial fishing license prior to July 1, 2000, and submit a license application to the department of environmental management prior to August 15, 2000. After August 15, 2000, an individual qualified to obtain a license

pursuant to this section shall be afforded the right to appeal to the department to obtain a license pursuant to applicable department regulations. . . .

By way of the Public Notice (OMS 1 Full) issued by the Department of Environmental Management, individuals who were not able to meet the August 15, 2000 deadline for license renewal were afforded the opportunity to obtain the commercial fishing license if they could prove the following:

1. The one year moratorium is a hardship;
2. The Applicant possessed a valid Rhode Island commercial fishing license prior to July 1, 2000; and
3. The failure to apply by the deadline was due to circumstances beyond Applicant's control.

In its closing statement, the OMS argued that Applicant had to prove that not having a license for the licensing period ending June 30, 2001 was a hardship. According to counsel, Applicant had failed to present any testimony that lack of a license would be a hardship for these last nine days in the licensing period. OMS also suggested that Applicant could sell his boat and gear, thus reducing any economic hardship.

I have considered OMS' nine-day argument. I am concerned that the fact that only nine days remained in the period as of the date of the hearing was due to a delay in scheduling the hearing. I have therefore determined that it would be unreasonable to hold this delay against Mr. Soares.

While Applicant's evidence of hardship is not compelling, he has demonstrated a significant expenditure on his boat and gear that marginally persuades me that he has met his burden on the hardship issue.

Applicant has also proven that he possessed a valid Rhode Island commercial fishing license prior to July 1, 2000. Applicant's testimony that he was out-of-state and

unaware of the impending moratorium sufficiently proves that his failure to apply by the deadline for the § 20-2-28.1(a) multi-purpose commercial marine license was due to circumstances beyond his control.

The OMS argues, however, that Mr. Soares would not have qualified for the § 20-2-28.1(a) multipurpose commercial marine license even if he had applied prior to the moratorium deadline because he was not a Rhode Island resident prior to August 15, 2000. OMS counsel contends that the fact that he has now been in Rhode Island since late August 2000 is irrelevant.

Applicant's counsel presents the argument that the applicable definition of "resident" is silent as to whether Applicant must have met the six (6) months residency requirement prior to applying for the license renewal. She contends that since Applicant currently meets the six (6) month requirement, he should be issued the license. Applicant cites statutory construction guidelines that when a statute is clear and unambiguous, it should be given its literal meaning.

§ 20-2-28.1(a) provides as follows:

20-2-28.1. Multi-purpose license --- Fees. --- (a) Each **resident of this state** (emphasis added) is eligible to obtain a multi-purpose commercial marine license to participate in all commercial marine fisheries licensed subject to this chapter upon payment of an annual fee of three hundred dollars (\$300).

Pursuant to the Definitions section of title 20, the term "Resident" has the following meaning, unless the context indicates a different meaning:

"Resident" means an individual who has had his or her actual place of residence and has lived in the state of Rhode Island for a continuous period of not less than six (6) months. §20-1-3(a)(8).

While the above definition does not specifically state that the individual must have lived in Rhode Island for six (6) months prior to applying for the license or renewal

of the license, the OMS interpretation of the definition in that manner is a rational and reasonable one.

A reading of § 20-2-1.1, set forth on page 3 of this Decision, supports OMS' interpretation that the individual must have been a resident at the time of application. That statute includes the language that if the license application is not submitted prior to August 15, 2000 then

[a]fter August 15, 2000, an individual qualified to obtain a license pursuant to this section shall be afforded the right to appeal

Applicant was not an individual qualified to obtain a license prior to August 15, 2000. To adopt Applicant's interpretation would allow an individual to obtain a license renewal for which he or she would not have been eligible during the licensing period set forth in § 20-2-1.1.

Wherefore, after considering the stipulations of the parties and the testimonial and documentary evidence of record, I make the following:

FINDINGS OF FACT

1. Applicant possessed a Rhode Island multi-purpose commercial fishing license in 1991 and 1995.
2. Applicant was not living in the State of Rhode Island on August 15, 2000 or for a period of six (6) months prior to that date.
3. Applicant has been a continuous resident of Rhode Island since late August 2000.
4. Applicant applied for renewal of his multi-purpose commercial marine fishing license after August 15, 2000.
5. Applicant expended in excess of \$40,000.00 for a lobster boat and gear.
6. Applicant was unaware of the license renewal window and the impending deadline of August 15, 2000.

CONCLUSIONS OF LAW

After due consideration of the above findings of fact and the legal argument presented at the hearing, I conclude the following as a matter of law:

1. Applicant was not a Rhode Island resident as defined in § 20-1-3(a)(8) on August 15, 2000.
2. Applicant was not eligible to obtain a multi-purpose commercial marine fishing license as provided in § 20-2-28.1(a) on August 15, 2000.
3. Applicant has proved by a preponderance of the evidence that the one-year moratorium is a hardship.
4. Applicant has proved by a preponderance of the evidence that he possessed a valid Rhode Island commercial fishing license prior to July 1, 2000.
5. Applicant has proved by a preponderance of the evidence that the failure to apply by the deadline was due to circumstances beyond Applicant's control.

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

ORDERED

The application of Michael A. Soares for renewal of his multi-purpose commercial marine fishing license is herewith **DENIED**.

Entered as an Administrative Order this 25th day of June, 2001 and herewith recommended to the Director for issuance as a Final Agency Order.

Mary F. McMahon
Hearing Officer
Administration Adjudication Division
235 Promenade Street, Third Floor
Providence, RI 02908
(401) 222-1357

Entered as a Final Agency Order this 27th day of June 2001.

Jan H. Reitsma
Director
Department of Environmental Management
235 Promenade Street, 4th Floor
Providence, Rhode Island 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded by first-class mail, postage prepaid, to Denita M. Gramitt, Esquire, 181 Chace Road, P.O. Box 52, Portsmouth, RI 02871; and via interoffice mail to: Deborah George, Esquire, DEM Office of Legal Services, 235 Promenade St., 4th Fl., Providence, RI 02908; on this _____ day of June, 2001.
