

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

RE: CHAMPLIN, KENNETH JR.

AAD No. 01-064/MSA

DECISION AND ORDER

This matter is before the Hearing Officer on the Motion to Dismiss (“Motion”) filed by the Office of Management Services (“OMS”). Mr. Champlin filed no objection to the Motion, and neither party requested oral argument. As is the Administrative Adjudication Division’s (“AAD”) practice however, a hearing was scheduled on this dispositive Motion. Mr. Champlin appeared pro se and the OMS was represented by Deborah A. George, Esq.

OMS seeks dismissal of the Applicant Kenneth Champlin, Jr.’s appeal and request for a hearing on the grounds that the AAD is without jurisdiction to hear Applicant’s appeal and request for a hearing. OMS contends that the statute lacks language creating a right to appeal and legislative changes to the statute during the 2000 session of the General Assembly specifically deleted a previous right to appeal such denials.

The facts in this matter are not in dispute. A recitation of same is made for consideration, evaluation, and proper disposition of the subject Motion.

The pertinent events and occurrences in this matter are set forth in the following findings of fact::

1. Applicant possessed a license issued pursuant to Chapter 2 of Title 20, which expired on June 30, 2000.
2. Applicant did not renew his license for 2001.
3. Applicant did not possess a valid Rhode Island commercial fishing license subsequent to July 1, 2000.

4. OMS refused to issue the license requested by Applicant.
5. On July 20, 2001, applicant filed a request for a hearing/appeal to obtain a multi-purpose commercial marine license (license to participate in all commercial marine fisheries).
6. On July 26, 2001, OMS filed a Motion to Dismiss the applicant Kenneth Champlin, Jr.'s appeal and request for a hearing in the within matter, based on R.I.G.L. 20-2-1.1(a).
7. A hearing on said Motion was held at the AAD on August 8, 2001.

The sole question before the AAD is whether the OMS's denial of Applicant's request for a multi-purpose commercial fishing license is subject to appeal and/or request for an adjudicatory hearing before the AAD. The facts in this matter are not in dispute, and the question of whether OMS's Motion to Dismiss should be granted is an issue of purely statutory interpretation. I have reviewed the pertinent statutes, regulations and court decisions concerning this issue, and they demonstrate that there is no right to appeal the OMS's denial of Applicant's request for a multi-purpose commercial fishing license, and therefore the AAD lacks jurisdiction to consider the instant denial.

On July 1, 2001, the Rhode Island General Assembly passed legislation extending a commercial fishing license moratorium. R.I.G.L. § 20-2-1.1. § 20-2-1.1(a) provides:

"The commercial marine fishing licenses as provided for in sections. . . 20-2-28.1(a) . . . shall be issued for renewal only. No new licenses applicable to these sections shall be issued between July 1, 2001 and June 30, 2002. In order to obtain a license applicable to these sections between July 1, 2001 and June 30, 2002, an individual must provide proof that he or she possessed a valid Rhode Island commercial fishing license subsequent to July 1, 2000, and submit a license application to the department environmental management (sic)."

It is well settled that when the language of a statute is clear and unambiguous, the statute must be interpreted literally and the words of the statute must be given their

plain and ordinary meanings. In construing statutes, it is necessary to determine and effectuate the Legislature's intent and to attribute to the enactment the meaning most consistent with its policies or obvious purposes. If the statutory language is clear and unambiguous, the statute must be interpreted literally and the words of the statute given their plain and ordinary meanings in determining the Legislature's intent. Local 400, IFOTPE v. Labor Relations Bd., 747 A.2d 1002 (R.I. 2000). Applying the above principles of statutory interpretation to the instant matter, it is clear that there is no right to appeal license refusals to individuals who did not possess a valid Rhode Island commercial fishing license subsequent to July 1, 2000.

The intent of the legislation is clear when a comparison is made between the 2000 enactment and subsequent amendments. The 2000 version of § 20-2-1-1(a) provided:

The commercial marine fishing licenses as provided for in §§. . . ; and 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 environmental management (sic) 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.

A comparison of this same statute (as it existed prior to the 2001 amendment) and the current version (as passed by the Legislature in 2001) clearly demonstrates that the Legislature intended to obrogate the right to appeal in situations such as exist in the instant matter. The 2000 version of § 20-2-1.1(a) contained language which afforded qualified individuals the right to appeal. This appeal language was expressly deleted by the Legislature in 2001. Consequently, there can be no doubt that the Legislature intended that there be no right to appeal the denial of the multi-purpose

commercial fishing license to individuals who did not possess a valid Rhode Island commercial fishing license subsequent to July 1, 2000.

Assuming arguendo, that the AAD does have subject matter jurisdiction in this matter, the same result would have been reached since the Applicant acknowledged that he did not renew his prior license which expired on June 30, 2000, and that he did not possess a valid Rhode Island commercial fishing license subsequent to July 1, 2000. Consequently, the Applicant could not possibly have established entitlement to the license requested even if the AAD possessed the requisite jurisdiction.

I conclude the following as a matter of law:

1. R.I.G.L. § 20-2-1.1(a) affords no right of appeal in this matter and the Applicant has no right to appeal or request a hearing concerning the denial of his request for a license.
2. AAD lacks subject matter jurisdiction in this matter.

Based on the foregoing, it is hereby

ORDERED

1. The Motion to Dismiss is GRANTED.
2. That Kenneth Champlin, Jr.'s appeal/request for a hearing is DISMISSED with prejudice.

Entered as a Recommended Decision and Order this 24th day of August, 2001.

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

Entered as a Final Agency Order this 29th day of August, 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 Kenneth Champlin, Jr., 341 South Road, Wakefield, RI 02879; 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 August, 2001.

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.