

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

RE: LACKEY, KEVIN, J.

AAD No. 02-001/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”) in the above-captioned appeal. Kevin J. Lackey, Jr. (“Applicant”) filed no objection to the Motion, and neither party requested oral argument. As is the Administrative Adjudication Division’s (“AAD”) practice, however, oral argument was scheduled on this dispositive Motion for May 3, 2002 in conjunction with a rescheduled status conference. Mr. Lackey appeared pro se and the OMS was represented by Deborah A. George, Esq. Margaret McGrath of the Office of Boat Registration and Licensing also attended the oral argument.

OMS seeks dismissal of the appeal on the grounds that the AAD is without jurisdiction to entertain an appeal of a denial of a commercial fishing license. OMS contends that the applicable law provides no right of appeal for such denials. Counsel for OMS argues that legislative changes to the statute during the 2000 session of the General Assembly specifically eliminated any right to appeal.

For purposes of the oral argument, the parties agreed on the record that Applicant did not possess a valid Rhode Island commercial fishing license subsequent to July 1, 2000.

The sole question before the AAD, pursuant to the Motion, is whether the OMS’s denial of Applicant’s request for a shellfish license is subject to appeal and/or request for an adjudicatory hearing before the AAD. Whether the Applicant has a right to appeal the denial to AAD is a question of law.

The statute pertinent to this proceeding was enacted by the General Assembly on July 1, 2001. That legislation extended and amended a then-existing commercial fishing license moratorium. The amended legislation, embodied in R.I. Gen. Laws § 20-2-1.1(a) provides in pertinent part:

“The commercial marine fishing licenses as provided for in sections 20-2-20(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). The moratorium shall provide time for a continued study of the commercial marine fishing licensing program to insure the sustainable viability and use of marine fisheries and for a recommendation to the general assembly, in accordance with chapter 3.1 of title 20.”

There is no appeal provision contained in the amended statute nor is there express language prohibiting appeals. This silence requires that AAD ascertain the intent behind the statute and effectuate that intent. In construing R.I. Gen. Laws § 20-2-1.1 (a), AAD cannot imply what the Legislature did not express absent compelling reasons to do so. *See, Orthopedic Specialists, Inc. v. Great Atlantic & Pacific Tea Co., Inc.*, 120 R.I. 378, 388 A.2d 352 (1978). 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. AAD must be guided by the legislative history of the Act. A comparison of the 2000 enactment and the subsequent amendment is telling. 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. (emphasis added)

An examination of the 2000 and 2001 versions of the Act reveals that the Legislature intended to abrogate the right to appeal denials of commercial fishing licenses under the facts of this case. The 2000 version of § 20-2-1.1(a) contained express language affording qualified individuals the right to appeal. During the approximately one-year period that the 2000 version of the act was in effect, AAD handled over one hundred (100) appeals of such license denials. This appeal language was subsequently deleted by the Legislature in 2001 when they amended the act to, *inter alia*, extend the moratorium. A well-established tenet of statutory construction suggests that the Legislature is presumed to know the state of existing law when it enacts or amends a statute. *Simeone V. Charron*, 762 A.2d 442 (2000). Consequently, there can be no doubt that in amending this statute, the Legislature intended that there be no right to appeal the denial of a commercial fishing license.

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 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.

Based on the foregoing, it is hereby

ORDERED

1. The Motion to Dismiss is GRANTED.
2. That Kevin J. Lackey's appeal/request for a hearing is DISMISSED with prejudice.

Entered as a Recommended Decision and Order this 17th day of May,
2002.

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 Order this 17th day of May, 2002.

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 Kevin J. Lackey, 5 Joy Street, 2nd Floor, Johnston, RI 02919; 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 May, 2002.

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.