

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

**RE: ROACH, ROBERT N., III**

**AAD NO. 02-002/MSA**

**DECISION AND ORDER DISMISSING APPEAL**

This matter came before Hearing Officer Mary F. McMahon for consideration of the Motion to Dismiss filed by the Office of Management Services (“OMS”) on July 17, 2002. Applicant filed his Objection with supporting memorandum on August 14, 2002. Oral argument on the motion was heard on August 20, 2002.

This matter involves the moratorium legislation that applies to the commercial fishing license that Applicant seeks. As indicated in Applicant’s hearing request, Mr. Roach apparently requested renewal of his 1999 commercial rod and reel fishing license in 2002, having failed to renew the license in the year 2000. Due to the moratorium, OMS denied him the license. Applicant, on or after May 24, 2002, filed his request for hearing with the Administrative Adjudication Division for Environmental Matters (“AAD”).

The OMS seeks dismissal of Applicant’s request for hearing on the grounds that the AAD is without jurisdiction to hear an appeal of a denial of a commercial fishing license. The 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 2001 session of the Rhode Island General Assembly specifically eliminated any right to appeal.

Applicant has countered that AAD’s jurisdictional statute should govern in this matter. Applicant asserts that denial of his license has resulted in the “contested licensing” proceeding contemplated in R.I. GEN. LAWS § 42-17.7-2 that sets forth AAD’s jurisdiction.

The parties’ positions are more fully set forth in the Motion and Objection.

DECISION AND ORDER

A previous AAD matter has addressed this issue, but rather than summarily granting OMS' Motion to Dismiss based upon the Final Agency Order in Re: Kevin J. Lackey, AAD No. 02-001/MSA, dated May 17, 2002, I have decided to present a fresh analysis of the pertinent statutes and caselaw. I do so because, as Applicant's counsel has pointed out, Mr. Lackey had appeared for motion argument without counsel and may not have presented adequate legal argument on the jurisdictional issue. The Decision and Order in Lackey does not discuss AAD's jurisdictional statute which served as the focus of Applicant's argument in this matter.

R.I. GEN. LAWS § 42-17.7-2 identifies the jurisdiction of the Division for Administrative Adjudication in the Department of Environmental Management:

**42-17.7-2. Adjudication of environmental licenses and violations --- Informal resolution.** --- All contested enforcement proceedings, all contested licensing proceedings, and all adjudicatory proceedings under chapter 17.6 of title 42 shall be heard by the division of administrative adjudication pursuant to the regulations promulgated by the director of environmental management. . . .

The reference to chapter 17.6 of title 42 deals with assessment of administrative penalties and is inapplicable to the present appeal.

Other applicable statutory provisions are set forth in R.I. GEN. LAWS § 42-35-1 *et seq.* --- The Administrative Procedures Act. Among the pertinent statutes:

**42-35-1.1. Bodies subject to chapter.** --- Notwithstanding any other provision of the general laws or any public law or special act to the contrary, all agencies as defined in § 42-35-1(a) and all agencies, boards, commissions, departments, and officers authorized by law to make rules or to determine contested cases, and all authorities as defined in § 42-35-1(b) are subject to the provisions of this chapter.

And:

**42-35-14. Licenses.** --- (a) Whenever the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this chapter concerning contested cases apply. . . .

R.I. GEN. LAWS § 42-35-9 provides the process required for hearing contested cases:

**42-35-9. Contested cases --- Notice --- Hearing --- Records. ---**

- (a) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.
- (b) The notice shall include:
  - (1) A statement of the time, place, and nature of the hearing;
  - (2) A statement of the legal authority and jurisdiction under which the hearing is to be held;
  - (3) A reference to the particular sections of the statutes and rules involved;
  - (4) A short and plain statement of the matters inserted [sic]. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved and detailed statement shall be furnished.
- (c) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. . . .

The Administrative Procedures Act defines many of the terms used in the above statutes. R.I. GEN. LAWS § 42-35-1 provides the following definitions:

**42-35-1. Definitions ---** As used in this chapter:

- (a) "Agency" includes each state board, commission, department, or officer, other than the legislature or the courts, authorized by law to make rules or to determine contested cases. . . .
- (b) \*\*\*
- (c) "Contested case" means a proceeding, including but not restricted to ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a specific party are required by law to be determined by an agency after an opportunity for hearing;
- (d) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes;
- (e) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license; . . .

According to AAD's jurisdictional statute, the AAD is authorized to hear, *inter alia*, all contested licensing proceedings. R.I. GEN. LAWS § 42-17.7-2. The Administrative Procedures Act ("APA") governs and supplements what is set forth in AAD's jurisdictional statute. R.I. GEN. LAWS § 42-35-1.1. It also provides a definition for what constitutes a contested case and sets forth the general procedure for parties to be heard. Pursuant to

the APA, a “contested case” is a proceeding in which the legal rights, duties, or privileges of a specific party are required by law to be determined by the agency after an opportunity for hearing. R.I. GEN. LAWS § 42-35-1(c).

The Rhode Island Supreme Court has addressed the issue of what constitutes a contested case under the provisions of the APA. In Property Advisory Group, Inc. v. Rylant, 636 A2d 317, 318 (R.I. 1994), the court stated that an agency must comply with the procedural requirements of the APA, “only if the matter before the agency involves a contested case.” The court concluded that according to APA’s definition, a hearing must be required by law in order for an administrative matter to constitute a contested case. [citations omitted] *Id.*

The OMS argues that under the APA, the within matter is not a contested case. In its Motion to Dismiss, but more particularly in oral argument, the OMS discussed the legislative history of the moratorium statute. As presented by counsel, and as noted in the “History of Section” notes to R.I. GEN. LAWS § 20-2-1.1, the moratorium on commercial fishing licenses was first established through legislation in 1995. In the 2000 session of the General Assembly, legislation was enacted establishing a new moratorium (since the 1995 moratorium expired on July 1, 1998). That legislation created a brief license renewal window and afforded individuals who were otherwise qualified but who missed the renewal period, the right to appeal to the Department to obtain a license pursuant to applicable department regulations.

The 2000 version of the statute provides in pertinent part:

**20-2-1.1 Commercial fishing license moratorium.** ---- (a) The commercial marine fishing licenses . . . shall be issued for renewal only. No new licenses . . . 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).

Following the enactment of the 2000 legislation, the AAD handled approximately one hundred (100) appeals of such license denials.

In the 2001 session of the Rhode Island General Assembly, this section of the General Laws was revisited. New legislation was enacted that, *inter alia*, altered licensing dates and deleted the right to appeal by striking the language from the Act. Due to the format in which legislation is presented to the members of the General Assembly, the body would have been aware that the right to appeal was being removed from the statutory language of § 20-2-1.1.

The pertinent amended section of § 20-2-1.1, as enacted in 2001, is set forth below:

**20-2-1.1 Commercial fishing license moratorium.** ---- (a) The commercial marine fishing licenses . . . 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. The moratorium shall provide time for a continued study of the commercial marine fishing licensing program . . .

The 2002 legislative session also considered amending the statute. Dates were again altered but the right to appeal was not reinstated.

Applicant argues that the right to appeal exists even without the specific statutory language. Notwithstanding Applicant's assertion, it is axiomatic that 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.

It is clear from the 2000 and 2001 versions of the Act that the Legislature intended to abrogate the right to appeal denials of commercial fishing licenses that it had conferred upon qualified individuals in the 2000 legislation.

The AAD cannot interpret statutes to broaden the scope of its jurisdiction. The Rhode Island Supreme Court acknowledged in Caithness Rica Ltd. v. Malachowski, 619 A2d 833, 836 (R.I. 1993), that it has “. . . consistently prevented state administrative agencies from expanding their jurisdiction through strained interpretations of unambiguous statutes.”

I conclude that Applicant has not met the APA requirement that his legal rights, duties, or privileges are “required by law” to be determined by the DEM AAD after an opportunity for hearing. He has therefore failed to meet the definition of a “contested case” under the APA. The AAD has no jurisdiction to hear a matter that is not a “contested case” under the APA.

I therefore conclude the following as a matter of law:

1. Pursuant to R.I. GEN. LAWS § 42-17.7-2, the Department of Environmental Management Administrative Adjudication Division has jurisdiction to hear contested enforcement proceedings and contested licensing proceedings.
2. Pursuant to R.I. GEN. LAWS § 42-35-1.1 the DEM is subject to the provisions of the Administrative Procedures Act.
3. The Administrative Procedures Act requires that in any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.
4. The AAD has no jurisdiction to hear a matter that is not a contested case under the Administrative Procedures Act.
5. The Administrative Procedures Act defines “contested case” to mean a proceeding in which the legal rights, duties or privileges of a specific party are required by law to be determined by an agency after an opportunity for hearing.
6. There is no statutory or regulatory requirement that establishes the right to administratively appeal the denial of a commercial marine fishing license.

7. Robert N. Roach, III has failed to demonstrate that his legal rights, duties or privileges are required by law to be determined by the DEM after an opportunity for hearing.
8. Robert N. Roach, III has failed to meet the requirements of a "contested case" under the Administrative Procedures Act.
9. The AAD has no jurisdiction to hear the appeal filed by Robert N. Roach, III in this matter.

Wherefore, it is hereby

**ORDERED**

1. The Motion to Dismiss is GRANTED.
2. The appeal filed by Robert N. Roach, III is DISMISSED.

Entered as an Administrative Order this 26<sup>th</sup> day of August, 2002 and herewith recommended to the Director for issuance as a Final Agency Order.

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Mary F. McMahon  
Hearing Officer  
Department of Environmental Management  
Administrative Adjudication Division  
235 Promenade Street, Third Floor  
Providence, RI 02908  
(401) 222-1357

Entered as a Final Agency Order this 28<sup>th</sup> day of August, 2002.

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Jan H. Reitsma  
Director  
Department of Environmental Management  
235 Promenade Street, Fourth 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 Carolyn A. Mannis, Esquire, 170 Westminster Street, Suite 800, Providence, RI 02903; via interoffice mail to Deborah A. George, Esquire, Office of Legal Services and 235 Promenade Street, Providence, RI 02908 on this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

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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.