

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

RE: OLIVEIRA, MARK

AAD No. 03-004/MSA

DECISION AND ORDER

This matter came before the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters ("AAD") pursuant to the appeal by Mark Oliveira ("Applicant") of the denial of Applicant's request to upgrade his Principle Effort License #000412 to a multipurpose license.

The within proceeding was conducted in accordance with the statutes governing the AAD (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 et seq.; the Rules and Regulations Governing the Management of Marine Fisheries ("Fisheries Regulations"); and the Administrative Rules of Practice and Procedure for the Department of Environmental Management Administrative Adjudication Division for Environmental Matters ("AAD Rules").

Mr. Oliveira, by written request to the Office of Boat Registration and Licensing ("OBR&L") of the Office of Management Services dated January 7, 2003, requested an upgrade of his principal effort license PEL 000412 to a multi-purpose license. The OBR&L, by letter dated February 20, 2003, informed Mr. Oliveira that his application was denied since he did not possess a valid multi-purpose license as of December 31, 2002. Mr. Oliveira appealed directly to the Administrative Adjudication Division since the Commercial Fishing License Review Board was not yet appointed and confirmed.

The Prehearing Conference was held on May 2, 2003 (immediately prior to the hearing. The Applicant appeared pro se and Deborah A. George, Esquire represented the OBR&L.

The following are the stipulations of fact agreed upon by the parties:

1. Mark Oliveira held a multi-purpose license from August 23, 1991 through December 31, 1991. (MULT 2079).

2. From May 18, 1995 until December 31, 2002, Mark Oliveira held a shellfish license (SFRA 4288).
3. On December 31, 2002, Mark Oliveira obtained a principal effort license (PEL 000412) with two fishing sector endorsements: non-quahog shellfish and quahog shellfish and his vessel declaration. (VDECL 000458).

The list of exhibits proffered by the parties, marked as they were admitted at the hearing, is attached to this Decision as Appendix A.

At the hearing, Applicant testified on his own behalf. Margaret McGrath, Programming Service Officer, testified for OBR&L.

The Applicant testified that he did not know that the law changed in the year 2000 regarding his ability to obtain his multi-purpose license. He thought that as long as his name was on record with the Department, that he could always get his multi-purpose license back. He stated that it did not say on the license application that multi-purpose licenses were unavailable. It was Applicant's belief that under the new rules and regulations that he was going to be able to upgrade his license. It was elicited in cross-examination of Mr. Oliveira that he could have obtained the multi-purpose license during the years 1995-2001, but that he chose not to obtain said license during that period of time.

Margaret McGrath testified that she has been a supervisor in OBR&L since 1992, and that as part of her duties she handles commercial fishing licenses. This witness explained the laws regarding the first commercial fishing license moratorium that went into effect from 1995 to 1998. She testified that the moratorium was lifted in 1998, and that many new licenses were issued in 1998. However, even during the moratorium years (1995 to 1998) as long as an individual held a previous license, they could still upgrade an existing license.

Mrs. McGrath further explained the various changes in the commercial fishing license laws that were enacted in 2000. In that year, R.I. GEN. LAWS § 20-2-1.1 was amended such that in order to obtain a commercial fishing license between July 1, 2000 and June 30, 2001, an applicant was required to provide proof that he/she possessed a valid Rhode Island commercial fishing license prior to July 1, 2000.

This witness further testified that in 2001 a very important change was enacted by the legislature; viz. that no new licenses were to be issued, and renewals were only available to an applicant who could provide proof that he/she possessed a valid commercial fishing license subsequent to July 1, 2000.

Mrs. McGrath testified at length regarding the extensive efforts undertaken by the Department to notify commercial fisherman of the changes in the license laws in the year 2000, and to notify them that anyone who possessed a valid Rhode Island commercial fishing license prior to July 1, 2000 had to renew that license by August 15, 2000. She also testified about the current state of the law regarding commercial fishing licenses; and explained that pursuant to the new licensing structure that became effective January 1, 2003, no new multi-purpose licenses were available for 2003 and that only those persons who held a valid Rhode Island multi-purpose license as of December 31, 2002 were eligible to obtain a multi-purpose license in 2003.

It is Mr. Oliveira's contention that he should be allowed to obtain a multi-purpose license in 2003 because he held a multi-purpose license in 1991. Applicant argues that he should be able to obtain said license (1) because he was told by the "Office of Licensing" that he would be able to upgrade his license at a later date with no problem; and (2) that he believes he should have been notified before the closure went into effect.

It is OBR&L's position that Mr. Oliveira is not eligible to apply for a commercial multi-purpose license under R.I. GEN. LAWS § 20-2.1-5(1)(iii) or Rule 7 of the Fisheries Regulations. OBR&L contends that this should be dispositive of this matter, and that Applicant's request for a multi-purpose license in 2003 must be denied since he did not

hold a valid Rhode Island multi-purpose license as of December 31, 2002. In addition to the foregoing, OBR&L argues that any consideration of unreasonable hardship under Rule 5.54 of the Fisheries Regulations is negated by virtue of the fact that Mr. Oliveira created his own difficulties by not applying for the multi-purpose license during any of the seven years that he was eligible to apply. OBR&L denies Applicant's claims that he was misled or failed to be notified by OBR&L; and counters that Applicant should not be allowed to "shift the blame" to the Department for his alleged lack of understanding of the applicable commercial fishing license laws.

The issue for consideration in this matter is whether the Applicant Mark Oliveira is eligible to apply for a multi-purpose license since he did not have a valid multi-purpose license as of December 31, 2002 pursuant to R.I. GEN. LAWS § 20-2.1-5(1)(iii) or Rule 7 of the Fisheries Regulations.

The issue presented is purely one of statutory interpretation, and a review of the pertinent statute and Fisheries Regulations clearly establishes that OBR&L has correctly interpreted the applicable statutes and regulations as they apply to Applicant. R.I. GEN. LAWS § 20-2.1-5(1)(iii) provides that "All multi-purpose license holders as of December 31, 2002, shall be eligible to obtain a multi-purpose license, which shall allow the holder to engage in commercial fishing in all fisheries sectors at the full harvest and gear levels." Rule 7.1 of the Fisheries Regulations provides that "No new Multi-Purpose Licenses shall be available for 2003, except pursuant to sections 6.7-8 and 6.7-9".¹ There is no provision in the statute or the Fisheries Regulations which permits the issuance of a multi-purpose license to those who held a multi-purpose license in previous years, but not as of December 31, 2002.

It is a well established rule of statutory construction that 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, International Federation of Technical and Professional Engineers v. Rhode Island State Labor Relations Board, 747 A.2d 1002

(R.I. 2000) citing Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996).

The language of R.I. GEN. LAWS § 20-2.1-5(1)(iii) is clear and unambiguous, and clearly demonstrates that Mr. Oliveira is not eligible to apply for a multi-purpose license in 2003 since he did not possess a valid multi-purpose license as of December 31, 2002.

Applicant has therefore failed to meet his burden of proving by a preponderance of the evidence that he is eligible for the issuance of a commercial multi-purpose license in 2003. This conclusion is dispositive of this matter, and renders it unnecessary to consider the criteria established by R.I. GEN. LAWS § 20-2.1-12(b) and Fisheries Regulation 6.7-10(g).

The facts in this case are clearly distinguishable from Heaney and Thibeault¹. In each of those cases, the Applicant had a multi-purpose license as of December 31, 2002, and had applied for a Gill Net Endorsement. In this case, the Applicant did not have a multi-purpose license as of December 31, 2002. The statute and regulations are dispositive of this matter; and there is no reason to proceed to the unreasonable hardship issue or other criteria provisions of the statute or regulations.

Assuming arguendo that the above is not dispositive of this matter, a review of the evidence presented clearly demonstrates that the Applicant failed to meet his burden of proving that he meets the criteria established in R.I. GEN. LAWS § 20-2.1-12 and Rule 6.7-10 of the Fisheries Regulations that the issuance of the license (1) will have no impact on the fisheries management program overall; (2) would place Applicant at equity with other license holders; (3) would be consistent with prior agency decisions; and (4) would be consistent with management plans.

It is difficult to understand how the Applicant, who is a commercial fisherman, would not be aware of the license changes, especially considering the numerous laws and regulations that commercial fisherman are required to address on a daily basis. In

¹ Re: Patrick J. Heaney AAD No. 03-001/MSA and Re: Brian Thibeault AAD No. 03-006/MSA.

any event, any such unawareness is insufficient to support any claimed eligibility. It is indeed unfortunate that Mr. Oliveira did not apply for his license during the period of time that he was eligible (1995-2001); however, contrary to Applicant's belief, there is no provision under the existing statutes or the rules and regulations that would permit an upgrade of Applicant's shellfish license to a multi-purpose license based on the fact that he held such a license for over two years at an earlier time. Consequently, the decision of OBR&L to deny Mark Oliveira his multi-purpose license for 2003 was consistent with the statute and the Fisheries Regulations and should be affirmed.

FINDINGS OF FACT

After considering the testimonial and documentary evidence of record, I find as a fact the following:

1. Mark Oliveira held a multi-purpose license from August 23, 1991 through December 31, 1991. (MULT 2079).
2. From May 18, 1995 until December 31, 2002, Mark Oliveira held a shellfish license (SFRA 4288).
3. On December 31, 2002, Mark Oliveira obtained a principal effort license (PEL 000412) with two fishing sector endorsements: non-quahog shellfish and quahog shellfish and his vessel declaration. (VDECL 000458).
4. On or about January 7, 2003, the Applicant applied to the Office of Boat Registration and Licensing ("OBR&L") for an upgrade of his principal effort license (PEL 000412) to a multi-purpose license.
5. The OBR&L, by letter dated February 20, 2003, notified Applicant of the denial of his application for a multi-purpose license.
6. On or about March 21, 2003, Applicant filed a request with the OBR&L for reconsideration of the denial by the Commercial Fishing License Review Board ("Review Board").
7. The Review Board was not fully operating as of the date of Applicant's request for consideration and was not yet operating within thirty (30) days of the request for reconsideration, and therefore the decision of denial by the OBR&L became final.
8. The Applicant duly appealed the final decision of the OBR&L to the Administrative Adjudication Division for Environmental Matters.

9. The Applicant, Mark Oliveira, did not possess a multi-purpose license as of December 31, 2002.

CONCLUSIONS OF LAW

After due consideration of the documentary and testimonial evidence of record and based on the findings of fact as set forth herein, I conclude the following as a matter of law:

1. The Administrative Adjudication Division for Environmental Matters ("AAD") has jurisdiction over this matter pursuant to R.I. GEN. LAWS § 42-17.7-2; Rule 3 of the Administrative Rules of Practice and Procedure for the AAD; R.I. GEN. LAWS § 20-2.1-12(c); and Rule 6.7-10(i) of the Rules and Regulations Governing Management of Marine Fisheries.
2. The Rhode Island General Laws and the Fisheries Regulations prohibit the issuance of new multi-purpose licenses for 2003.
3. Applicant is not eligible to apply for a multi-purpose license since he did not have a valid multi-purpose license as of December 31, 2002 pursuant to R.I. GEN. LAWS § 20-2.1-5(1)(iii).

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

ORDERED

1. The request of Applicant, Mark Oliveira, for a multi-purpose license for 2003 is DENIED.

Entered as an Administrative Order and herewith recommended to the Director for issuance as a Final Agency Decision and Order this 9th day of July, 2003.

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

Entered as a Final Agency Decision and Order this 9th day of July 2003.

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

CERTIFICATION

I hereby certify that I caused a true copy of the within Decision and Order to be delivered via regular mail, postage prepaid to: Mark Oliveira, 50 Bottom Street, Tiverton, RI 02878 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 _____ day of _____, 2003.

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.

APPENDIX A
LIST OF EXHIBITS

JOINT EXHIBITS

- JOINT 1 Full Copy of written request (dated January 7, 2003) from Mark Oliveira to DEM Office of Boat Registration & Licensing requesting upgrade to multi-purpose license
- JOINT 2 Full Copy of denial letter (dated February 20, 2003) to Mark Oliveira from Office of Boat Registration & Licensing
- JOINT 3 Full Copy of written request (not dated) by Mark Oliveira to AAD to pursue denial of upgrade to multi-purpose license
- JOINT 4 Full Copy of commercial license history status for Mark Oliveira

APPLICANT'S EXHIBITS

- APPLICANT'S 1 for ID Copy of newspaper clipping
- APPLICANT'S 2 for ID Copy of back side of old application form (unfilled & not filed)
- APPLICANT'S 3 for ID Copy of graph of total licenses (active & inactive)

APPLICANT'S 4 for ID Copy of "no documents found" on DEM website search

APPLICANT'S 5 for ID Copy of graph from DEM concerning the number of RI commercial licenses issued 1990-2000

APPLICANT'S 6 for ID Copy of newspaper clipping (which is second half of A1 for ID)

OFFICE OF BOAT REGISTRATION & LICENSING'S EXHIBITS

STATE 1 Full Copy of 2000 Commercial Fishing License Moratorium legislation

STATE 2 Full Copy of 2001 Commercial Fishing License Moratorium legislation

STATE 3 Full Copy of 2000 News Release - "DEM REMINDS COMMERCIAL FISHERMEN OF LICENSE RENEWAL WINDOW" dated for release 07/28/2000

STATE 4 Full Copy of 2000 PROJO.COM notice "TUESDAY LAST DAY FOR RENEWAL OF COMMERCIAL FISHING LICENSES" dated 08/13/2000

STATE 5 Full Copy of Providence Journal clipping "TUESDAY LAST DAY FOR RENEWAL OF COMMERCIAL FISHING LICENSES" dated 08/13/2000

STATE 6 Full Copy of notice (sent to all licensed marine fishery dealers per Richard Sisson, DEM Fish & Wildlife and posted in DEM Office of Boat Registration & Licensing 3rd floor, room 360 235 Promenade St. Providence) regarding moratorium on licenses prohibiting issuance of new commercial fishing licenses as well as notification that all existing licenses must be renewed by August 15, 2000

STATE 7 Full Copy of Title 20 Fish and Wildlife Chapter 20-2.1 Commercial Fishing Licenses

¹.. The exception listed in Sections 6.7-8 and 6.7-9 are not applicable to this matter.