

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

RE: MANN, DONALD F.
LICENSE DENIAL MPURP 967

AAD NO.07-001/MSA

DECISION AND ORDER

This matter came before the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters (AAD) pursuant to Applicant's request for hearing on the denial of his application for renewal of multi-purpose license #MPURP967 ("multi-purpose license" or "commercial fishing license") by the Department of Environmental Management, Office of Boat Registration & Licensing ("OBRL" or "Division"). Applicant Donald F. Manns appeared on his own behalf. Gary Powers, Esq. appeared on behalf of the OBRL.

The hearing was conducted on August 15, 2007 immediately following the prehearing conference.

The within proceeding was 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.*); the *Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters (AAD Rules)*; and the *Rules and Regulations Governing the Management of Marine Fisheries*.

PREHEARING CONFERENCE

A prehearing conference was conducted on August 15, 2007. The parties agreed to the following stipulations:

1. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
2. During November 2006, the Applicant possessed a vehicle, a 1994 Ford Econoline van, which was registered in the Applicant's name in the State of New York.
3. The Applicant surrendered his Rhode Island driver's license to the State of New York in April 2005 and was issued and possessed a valid New York driver's license until April 2007.
4. On March 30, 2007, Applicant appeared in a case captioned State v. Manns, Case #61-2007-05050, pending in Sixth Division District Court, Providence, Rhode Island, Mr. Justice Clifton, presiding, to answer a criminal charge of violating R.I. GEN. LAWS § 20-2-8 by the making of a false representation as to his Rhode Island residency relative to Applicant's 2006 renewal of MPURP #967. At that time, Applicant pled *nolo contendere*.
5. The Applicant submitted to the Department an Application for Renewal of MPURP #967 dated April 25, 2007.
6. The Applicant's Application for Renewal of MPURP #967 dated April 25, 2007 was denied by the Division via a Preliminary Denial letter to the Applicant dated May 8, 2007.
7. The Preliminary Denial letter dated May 8, 2007 advised Applicant of his opportunity to request within ten (10) days of receipt of the Preliminary Denial a reconsideration of the Preliminary Denial by the Commercial Fishing License Review Board.
8. Pursuant to the Applicant's request, the Division forwarded a letter dated May 17, 2007 to the Commercial Fishing License Review Board for reconsideration by the Commercial Fishing License Review Board of the Preliminary Denial.
9. The Applicant submitted a letter dated July 1, 2007 to the Administrative Adjudication Division requesting a hearing concerning the Division's June 8, 2007 Denial of the Applicant's Application for Renewal of MPURP #967.

Applicant identified the following as issues to be considered by the Hearing Officer at the hearing:

1. Whether Mr. Manns was a Rhode Island resident for the entire year of 2006, through April 2007.

2. Whether the OBRL was incorrect in denying the renewal of Applicant's multi-purpose commercial fishing license.

The OBRL identified the following issue to be considered by the Hearing Officer at the hearing:

1. Whether the denial of Applicant's Application for Renewal of MPURP #967 was consistent with the governing statutes and regulations that permit renewal of multi-purpose commercial fishing license only upon proof of an applicant's residency in the State of Rhode Island during the six months prior to application as well as the statutory impact of the Applicant's plea on March 30, 2007 of *nolo contendere* to a charge alleging a violation of R.I. GEN. LAWS § 20-2-8 due to the making of a false representation as to his Rhode Island residency relative to Applicant's 2006 renewal of MPURP #967 in State v. Manns, Case #61-2007-05050.

A list of the exhibits that were presented by the parties is attached to this Decision as Appendix A.

HEARING SUMMARY

By letter dated May 8, 2007 Mr. Manns was informed that his 2007 application to renew multi-purpose license #MPURP967 was denied. The letter explained that his residency status and plea of *nolo contendere* to filing a false statement on his 2006 application were the basis for the denial. Applicant was advised by the OBRL that he could request reconsideration of this preliminary denial to the Commercial Fishing License Review Board. Div. 1. Although a request for reconsideration was made, the OBRL advised Mr. Manns by letter dated June 8, 2007 that the Commercial Fishing License Review Board had chosen not to make a recommendation regarding Applicant's case. As a result the OBRL's preliminary denial became final. Div 3. Applicant thereafter filed his request for hearing at the AAD. Div 4.

Applicant bears the burden of proving by a preponderance of the evidence that the denial of the license renewal was not in accordance with the *Rules and Regulations Governing the Management of Marine Fisheries*.

The Applicant's only witness was himself. The OBRL called one (1) witness: Margaret McGrath, a Programming Services Officer in the OBRL.

In Applicant's presentation of his case, he stated that he has been a commercial fisherman since 1975. In January 2005 he moved to Fishkill, New York to stay with his mother who was in poor health. At the time he had a Rhode Island driver's license and held a Rhode Island commercial fishing license. When it was difficult to find work in the Fishkill area, he decided to attend a driving school in preparation to obtain a commercial driver's license. The school told him to obtain a New York driver's license, which he did.

The witness explained that in June 2005 when his sister decided to move from Maryland to stay with their mother, he returned to Rhode Island. He continued to visit New York to complete the driving lessons and received his "B" license in August 2005. In October 2005 he took the test to obtain a hazardous materials endorsement on the license which he finally acquired on December 24, 2005. He stated that he worked for Scituate Cesspool, leaving the company to return to fishing in January 2006. He served briefly aboard the F/V *Luke & Sarah*, and then on the F/V *Miss Judith* from February 2006 through July 2007.

Mr. Manns had attempted to "swap" the New York license for a Rhode Island driver's license but was unable to do so because he owed 4 years of back taxes in Rhode Island. After a year and a half the tax matter was settled and he finally obtained the Rhode Island driver's license on or about April 22, 2007.

He testified that in 2006 when he applied for renewal of his multi-purpose license, he did not list the New York driver's license because he intended to change it over to a Rhode Island license. When he finally obtained the Rhode Island driver's license in April 2007, he immediately registered his vehicle in Rhode Island and proceeded to the DEM to renew his commercial fishing license.

He testified that there was proof that he lived and worked in Rhode Island during the year 2006 even though he did not have a Rhode Island driver's license. He resided at 320 South Road, East Greenwich, RI and worked only in Rhode Island throughout that year. Two of the exhibits presented by the Applicant confirm the address. One exhibit is a witness subpoena served on Mr. Manns on October 4, 2005 (Appl. 4 at 2) and the other exhibit is payroll information from Scituate Cesspool, Inc. covering the period December 4, 2005 through February 4, 2006. Appl. 3.

Under cross-examination Mr. Manns admitted that he had used his old, no longer valid, Rhode Island driver's license when he applied for the renewal of his multi-purpose license in 2006. Following the conclusion of OBRL's cross-examination, Applicant rested his case.

The OBRL then presented its case and called as its only witness Margaret McGrath, the Programming Services Officer for the OBRL. She stated that she handles the overall duties in the office, including overseeing the issuance of licenses and license renewals for boats, motors, hunting and fishing. She had considered Mr. Manns' application to renew multi-purpose license #MPURP967, dated April 25, 2007. She stated that based on the information she had, she needed "further authorization" to renew Mr. Manns' multi-purpose license for 2007.

The OBRL provided two exhibits that concern Mr. Manns' application for renewal in 2006. The first exhibit is a Summons Report from the Division of Enforcement with attached Narratives from EPO Charles M. Jackman and EPO Jennifer E. Connors, and a copy of Donald

F. Manns' 2006 Multi-Purpose License Resident Renewal. The Summons indicates that Donald Manns was arrested on January 18, 2007 for the offense of making a false statement. Div. 5 at 1. The Narrative by Officer Jackman explains the basis for the issuance of the Summons. On November 17, 2006 Officer Jackman had observed in the parking lot at Pier 9 in Newport, a van bearing New York license plates that was registered to Donald Manns of Fishkill, New York. Officer Jackman ran a check to see if Mr. Manns had a Rhode Island fisheries license and was informed that a 2006 multi-purpose license had been issued to Mr. Manns, with Applicant's address identified as 320 South Road, East Greenwich, RI. The Officer determined that Mr. Manns' vehicle, driver's license and home address came back as 364 Carey Road, Fishkill, New York but that Mr. Manns had filled out the 2006 Multi-Purpose License Resident Renewal with the East Greenwich address and had provided a Rhode Island driver's license number, stating that he was a Rhode Island resident. According to the report, Mr. Manns has surrendered his Rhode Island driver's license in April 2005. A Summons was issued to Mr. Manns for making false statements on his application for renewal. Div. 5 at 2.

The second exhibit is a copy of the Criminal Docket Sheet Report that shows that the complaint was filed against Donald Manns on November 17, 2006. The Defendant pled *nolo contendere* to a violation of R.I. GEN. LAWS § 20-2-8 and paid the fine and court costs at the arraignment conducted on March 30, 2007. Div. 6.

According to Ms. McGrath it was the above sequence of events that caused the denial of Donald Manns' 2007 multi-purpose license. She explained that because of the plea in the criminal action concerning false information on the license renewal in 2006 (his use of the invalid Rhode Island driver's license when he held a current New York license), his 2006 commercial fishing license became null and void. She believed that he could not renew the commercial

fishing license in 2007 because it had to have been a valid license in 2006 in order to be renewed the following year. She issued the preliminary denial of his license renewal on May 8, 2007. Div. 1. The denial later became final. Div. 3.

Applicant waived cross-examination of the witness. The Division then rested its case.

Applicant stated in closing argument that he has had no criminal involvement in 35 years. He explained that his use of the invalid Rhode Island driver's license for the 2006 multi-purpose license renewal was because he knew he would be obtaining a Rhode Island driver's license again. He acknowledged that he had made a mistake in using the old Rhode Island driver's license number.

In the Division's closing argument, counsel stated that Applicant should be denied the 2007 commercial fishing license for two reasons. First, Mr. Manns' violation of R.I. GEN. LAWS § 20-2-8 caused his 2006 commercial fishing license to become null and void. As a result, he did not have a license to renew in 2007. In addition, the statute provides that no license is to be issued for one year from the date of conviction.

The Division's second argument was that the license Mr. Manns seeks is only available to Rhode Island residents and that there was no evidence that he had met the definition of "resident" set forth in the statute. Counsel contended that Mr. Manns moved to New York; obtained his New York driver's license and relinquished his Rhode Island driver's license; and retained the New York license until April 2007. He did not continuously live in Rhode Island for the 6 months prior to applying for the license on April 25, 2007.

Conclusion

Mr. Manns' actions concerning the 2006 multi-purpose license renewal did not occur without consequence. In an effort to resolve the charge of providing false information on a

state application, Mr. Manns pled *nolo contendere* and paid a \$50.00 fine plus \$3.50 in court costs. Div. 6. Unfortunately for Mr. Manns, the *nolo* plea and fine has repercussions beyond what transpired in Sixth Division District Court on March 30, 2007.

R.I. GEN. LAWS § 20-2-8 provides as follows:

False statements and violations -- Cancellation of license. -- Any person who willfully makes a false representation as to birthplace or requirements of identification or of other facts required in an application for license under this chapter, or is any wise directly or indirectly a party to such a false representation, shall be punished by a fine of not more than fifty dollars (\$50.00). A license obtained by any person through such a false representation shall be null and void, and the license shall be surrendered immediately to the director. No license shall be issued under this title to this person for a period of one year from the date of conviction.

A plea of *nolo contendere* followed by the imposition of a sentence (fine or imprisonment, whether suspended or not) constitutes a conviction. Castellucci v. Battista, 847 A.2d 243, 251 (R.I. 2004); Ludwig v. Kowal, 419 A.2d 297, 302 (R.I. 1980). Although Mr. Manns has testified that he lived and worked in Rhode Island through much of 2005 and all of 2006, by his own plea he stands convicted of a violation of the above statute. In accordance with the statute's provisions, since Mr. Manns made the false representation on the 2006 Multi-Purpose License Resident Renewal, the 2006 multi-purpose license became null and void.

The *Rules and Regulations Governing the Management of Marine Fisheries* set a procedure for obtaining commercial fishing licenses and for their renewal. Section 6.7-4 provides as follows:

(c) Applicants who possessed a valid Multi-Purpose License as of the immediately preceding year may obtain a Multi-Purpose License for the immediately following year.

When Mr. Manns sought to renew his multi-purpose license in 2007, he was attempting to renew a license that was not valid in the immediately preceding year. In accordance with the

above section, the OBRL was justified in denying him the renewal of his multi-purpose license in 2007.

Because Mr. Manns has been convicted of violating R.I. GEN. LAWS § 20-2-8, the statute requires the Department of Environmental Management to deny Mr. Manns any license authorized under Title 20 of the General Laws of Rhode Island until March 30, 2008. The licenses authorized by Title 20 include those for hunting, fishing, and the taking of fish, game, birds, shellfish and lobsters. R.I. GEN. LAWS § 20-2-1. Chapter 2.1 of Title 20 imposes a system of licensure for commercial fishing licenses that includes provisions for multi-purpose licenses for Rhode Island residents. *See* R.I. GEN. LAWS § 20-2.1-5. The Department therefore was required to deny Mr. Manns the issuance of a multi-purpose license for the year 2007.

Due to the outcome in Sixth Division District Court and its impact on Mr. Manns' 2007 multi-purpose license, it is unnecessary to determine whether the Applicant presented sufficient evidence to prove he was a Rhode Island resident when he applied for the license on April 25, 2007.

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

FINDINGS OF FACT

1. Donald F. Manns surrendered his Rhode Island driver's license to the State of New York in April 2005 and was issued and possessed a valid New York driver's license until April 2007.

2. In 2006 Donald F. Manns obtained the renewal of RI multi-purpose license #MPURP967, expiration date December 31, 2006.
3. During November 2006 Donald F. Manns registered a vehicle, a 1994 Ford Econoline van, in his name in the State of New York.
4. On November 17, 2006 a criminal complaint was filed against Donald Manns for a violation of R.I. GEN. LAWS § 20-2-8.
5. On March 30, 2007 Donald F. Manns pled *nolo contendere* to a violation of R.I. GEN. LAWS § 20-2-8. Mr. Manns was sentenced to pay a \$50.00 fine, plus \$3.50 in court costs.
6. On or about April 22, 2007 Donald F. Manns obtained a Rhode Island driver's license. Shortly thereafter Mr. Manns registered his vehicle in Rhode Island.
7. On or about April 25, 2007 Donald F. Manns submitted an Application for Renewal of #MPURP967 to the OBRL.
8. The OBRL denied the Application for Renewal of #MPUR967 through the issuance of a Preliminary Denial letter dated May 8, 2007. By letter dated June 8, 2007 the OBRL's decision to deny the Application for Renewal of #MPUR967 became final.
9. By letter dated July 1, 2007 Donald F. Manns filed a request for hearing at the Administrative Adjudication Division.

CONCLUSIONS OF LAW

After due consideration of the documentary and testimonial evidence of record and based upon the above findings of fact, I conclude the following as a matter of law:

1. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
2. A plea of *nolo contendere* followed by the imposition of a sentence (fine or imprisonment, whether suspended or not) constitutes a conviction.
3. Donald F. Manns was convicted of violating R.I. GEN. LAWS § 20-2-8 on March 30, 2007.
4. Pursuant to R.I. GEN. LAWS § 20-2-8, Mr. Manns' 2006 multi-purpose license became null and void.

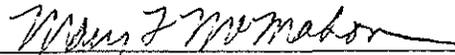
5. Pursuant to Section 6.7-4 of the *Rules and Regulations Governing the Management of Marine Fisheries*, Mr. Manns could not renew his multi-purpose license in 2007 because the license was not valid in the immediately preceding year.
6. Pursuant to R.I. GEN. LAWS § 20-2-8, the Department of Environmental Management is required to deny Mr. Manns any license authorized under Title 20 of the General Laws of Rhode Island until March 30, 2008.
7. Applicant has failed to prove by a preponderance of the evidence that the denial of his application for renewal of multi-purpose license #MPURP967 for the year 2007 was not in accordance with the *Rules and Regulations Governing the Management of Marine Fisheries*.

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

ORDERED

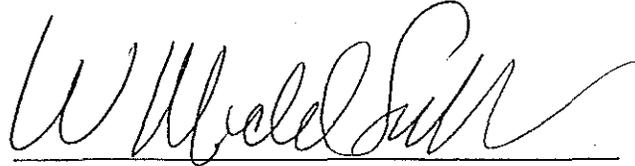
Applicant's request for the renewal of his multi-purpose license for the year 2007 is DENIED.

Entered as an Administrative Order this 19th day of November, 2007 and herewith recommended to the Director for issuance as a Final Agency Order.



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

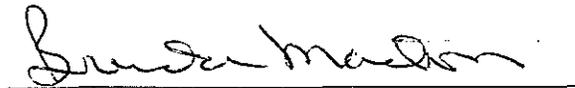
Entered as a Final Agency Decision and Order this 21st day of November, 2007.



W. Michael Sullivan, Ph. D.
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 forwarded by first-class mail, postage prepaid to: Donald F. Manns, 1157 Point Judith Road, Narragansett, RI 02882; and via interoffice mail to Gary Powers, Esq., DEM Office of Legal Services, 235 Promenade Street, 4th Floor, Providence, RI 02908 on this 23rd day of November, 2007.



NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Environmental Management pursuant to RI General Laws § 42-35-12. Pursuant to R.I. Gen. Laws § 42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.

APPENDIX A
LIST OF EXHIBITS

APPLICANT'S EXHIBITS

Appl 1 Full	Copy of NY State Vehicle registration
Appl 2 Id	Letter from Scituate Cesspool dated July 24, 2007
Appl 3 Full	Paycheck stubs from Scituate Cesspool
Appl 4 Full	Letter from Point Jude Boats, Inc. dated October 7, 2005; witness subpoena to appear October 7, 2005
Appl 5 for Id	2006 RI Tax Return for Donald Manns
Appl 6 for ID	Two (2) 2006 1099-Misc forms for Donald Manns
Appl 7 Full	Receipts from Atlantic Coast Driver Training, Inc. to Donald Manns dated June 2005 and July 2005; and receipts from New York State (related to CDL)
Appl 8 for Id	Letter from Drag-on Fisheries dated July 18, 2007
Appl 9 for ID	Letter from Thomas P. Quinn, Esq. dated July 24, 2007

DIVISION'S EXHIBITS

Div 1 Full	The Divison's Preliminary Denial letter to the Applicant dated May 8, 2007. 2 Pages (Copy).
Div 2 Full	The Division's May 17, 2007 letter to the Commercial Fishing License Review Board. 1 Page (Copy).
Div 3 Full	The Divison's June 8, 2007 letter to the Applicant denying Applicant's Application For Renewal of MPURP #967 dated April 25, 2007. 3 Pages (Copy).

Div 4 The Applicant's letter to the Administrative Adjudication Division dated July 1,
Full 2007 requesting a hearing. 1 Page (Copy).

Div. 5 Summons #07-13-AR and incident reports by Environmental Police Officer
Full Charles Jackman and Environmental Police Sergeant Edward Cabral date
 reported November 17, 2006/arrest date January 18, 2007. 4 Pages (Copy).

Div. 6 Criminal Docket Sheet Report of March 30, 2007 relative to State v. Manns,
Full Sixth Division District Court, Case #61-2007-05050, Providence, Rhode Island.
 2 Pages (Copy).