

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

RE: JARVIS, JASON D.  
LOBSTER TRAP ALLOCATION CFL 000021

AAD NO.07-074/F&WA

FINAL ORDER OF DISMISSAL

This matter came before Hearing Officer Mary F. McMahon on June 19, 2007 for prehearing conference and hearing. Attorney Gary Powers appeared on behalf of the Division of Fish and Wildlife (Division). Applicant Jason D. Jarvis failed to appear but had emailed the AAD the previous evening that he would not be appearing for the prehearing conference and hearing scheduled to commence at 9:30 a.m. on June 19, 2007. Because a continuance had not been granted, the Division moved for entry of a Conditional Order of Dismissal and requested that payment of the stenographic costs be imposed as a condition for vacating the Conditional Order of Dismissal. The motion was granted.

The Conditional Order of Dismissal was entered on July 3, 2007 and required Applicant to explain in writing his failure to appear and imposed the condition of payment of the stenographic costs in order to return the matter to the hearing schedule. On August 23, 2007 an Order was entered that again required Applicant to pay the stenographic costs of \$150.00 to return the matter to the AAD hearing schedule. After several months passed with no payment of the stenographic costs, a third order was issued: "Order Requiring Applicant's Payment of Stenographic Costs by May 9, 2008." If payment was not made as required by the Order, then Mr. Jarvis would be deemed to have waived his right to an adjudicatory hearing on the Lobster Trap Allocation and his appeal would be dismissed.

Mr. Jarvis has not made the required payment of the \$150.00 stenographic costs.

FINDINGS OF FACT:

A review of the AAD file reveals the following:

1. This matter was scheduled for an adjudicatory hearing on June 19, 2007.
2. Mr. Jarvis failed to appear at the hearing on June 19, 2007.
3. It was discovered that Mr. Jarvis had emailed AAD's clerk typist at 8:41 p.m. the previous evening that he would not be appearing for the hearing on June 19, 2007.
4. Because the hearing was not cancelled at least one day prior to its scheduled time, the Division of Fish and Wildlife (Division) incurred a \$150.00 attendance fee for stenographic services.
5. The Division moved for entry of a Conditional Order of Dismissal, citing the following: Applicant's failure to follow AAD procedure in seeking a continuance; Applicant's failure to contact the Division counsel and failure to contact the AAD Administrative Clerk; the lateness of the request; and the cost incurred by the Division. The Division requested that payment of the stenographic costs be imposed as a condition of vacating the Conditional Order of Dismissal.
6. A Conditional Order of Dismissal was entered on July 3, 2007 against Mr. Jarvis and required Mr. Jarvis to demonstrate good cause for his failure to appear at the hearing or the matter would be dismissed. The Order also provided that if Mr. Jarvis demonstrated good cause and paid the \$150.00 stenographic costs, then the matter would be returned to the hearing schedule.
7. Mr. Jarvis timely responded to the Conditional Order of Dismissal.
8. By Order dated August 23, 2007 Mr. Jarvis was found to have demonstrated good cause for his failure to appear at the hearing and was provided a copy of the invoice for stenographic services and instruction for payment.
9. On April 9, 2008 an Order Requiring Applicant's Payment of Stenographic Costs By May 9, 2008 was issued. The Order provided that if Mr. Jarvis failed to make the required payment by May 9, 2008 then he would be deemed to have waived his right to an adjudicatory hearing on the Lobster Trap Allocation and this matter would be recommended to the Director for issuance of a Final Agency Order of Dismissal.
10. Mr. Jarvis has not complied with the Order Requiring Applicant's Payment of Stenographic Costs By May 9, 2008.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact, I conclude the following as a matter of law:

1. Applicant Jason D. Jarvis is deemed to have waived his right to an adjudicatory hearing on the Lobster Trap Allocation determined by the Division of Fish and Wildlife.

Wherefore, it is hereby

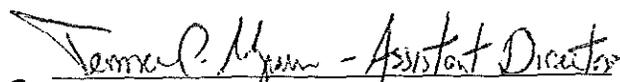
ORDERED

1. Applicant's request for hearing on the Lobster Trap Allocation is herewith DISMISSED.

Entered as an Administrative Order this 2<sup>nd</sup> day of June, 2008 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 Order this 17<sup>th</sup> day of June, 2008.

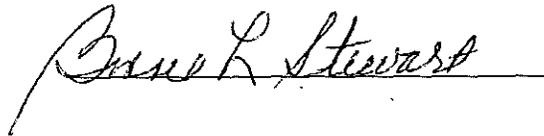
  
for W. Michael Sullivan, Ph.D., Director  
Department of Environmental Management  
235 Promenade Street, 4<sup>th</sup> Floor  
Providence, Rhode Island 02908

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CERTIFICATION

I hereby certify that I caused a true copy of the within Final Order of Dismissal to be forwarded by first-class mail, postage prepaid to Jason D. Jarvis, 70 Beach Street, Westerly, RI 02891; and via interoffice mail to Gary Powers, Esq., DEM Office of Legal Services, 235 Promenade Street, 4<sup>th</sup> Floor, Providence, RI 02908 on this 4<sup>th</sup> day of June, 2008.

A handwritten signature in cursive script, reading "Bruce L. Stewart", is written over a horizontal line.

NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Environmental Management pursuant to R.I. Gen. 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.