

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

IN RE: Lee & Richard Abbott AAD No. 91-017/AHE
Notice of Violation No. 91-09 ERB

DECISION & ORDER ON THE THIRD PARTY RESPONDENT'S REQUEST FOR
SUMMARY JUDGEMENT

This matter came before Hearing Officer Patricia Byrnes pursuant to a request by Fleet National Bank ("Fleet") the Third Party Respondent to grant summary judgment in its favor. As grounds for such a request, Fleet alleges that there are no genuine issues of material fact regarding the third party complaint. In support of the motion Fleet has supplied this tribunal with affidavits and a memorandum of law. No objection to this motion has been filed.

DECISION & ORDER

The Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters promulgated in July 1990 (hereinafter "AAD Rules") sets forth the requirements all parties must follow during the adjudicatory process.

AAD Rule 8.00 governs the procedures for motion practice before this tribunal. AAD Rule 8.00(2) notifies the non-moving party that "within seven (7) days after a written motion is filed with the Administrative Adjudication Division ("AAD"), the parties opposing said motion must file a written objection ..." and provides "that a failure to file a written

objection in the prescribed time is deemed a waiver of that objection."

In the instant case, counsel for Fleet filed his motion with AAD on May 10, 1993. In accordance with AAD Rule 5.00(b), the computation of the seven (7)-day objection period begins on the first day following that act which initiates the running of the time period. The last day of the time period is included unless it is a Saturday, Sunday or legal holiday in which case the period runs until the end of business of the following day. Pursuant to AAD Rule 5(b), the objections were due to be filed at the end of business on May 17, 1993. To date, no objection has been filed.

Therefore, in accordance with AAD Rule 8.00 and the applicable administrative decisions (see Carol Ann Mancini, AAD No. 91-039/IE DEM's motion to dismiss, granted 1/13/92; Fredric Dupuis Spotless Cleaners, AAD No. 92-001/AHE respondent's motion to Dismiss, granted 2/3/92, Block Island Power Company, AAD No. 92-002GWE, (respondent's motion to dismiss granted April 5, 1993), the Hearing Officer grants the Third Party Respondent's motion for summary judgement.

After granting the Third Party Respondent's motion for summary judgement on procedural grounds, the Hearing Officer received Respondent Richard Abbott's objection to said motion. The correspondence from Mr. Abbott shows that his objection was certified and mailed to the Administrative Adjudication Division and all parties on May 17, 1993. The objection was received by this tribunal on May 19, 1993. As

stated previously, the rules of practice and procedure governing this body provide that the objection must be filed with AAD within the seven-day objection period outline in AAD Rule 8.00(2).

However due to the fact that this matter is scheduled for hearing on Monday, May 24, 1993 and to avoid any delay of that proceeding, the Hearing Officer will address the substantive issues raised in the Third Party Respondent's motion for summary judgement and Respondent Richard Abbott's subsequent objection.

Once a motion for summary judgment has been filed, the non-moving party has an affirmative duty to set forth specific facts that show there is a genuine issue of material fact to be resolved at trial Quimette v. Moran 541 A2d 855 (1988). Trend Precious Metals Co., Inc. v. Sammartino, Inc. 577 A2d 986 (1990).

In support of his position that there are genuine issues of material fact to be resolved at trial, the Respondent has provided the Hearing Officer with a memorandum of law and supporting affidavit from Ethel Abbott.

In light of Fleet's motion and Respondents' answer, the Hearing Officer must now determine by examining the pleading, admissions, affidavits, regulations and other applicable documents submitted by the parties in the light most favorable to the non-moving party Commercial Union Companies v. Graham 495 A2d 243 (1985), Marandola v. Hillcrest Buildings, Inc. 102 RI 46, 227 A2d 785 (1987) without passing

on the creditability of the evidence Doyle v. State of Rhode Island 411 A2d 907, 909 (1980).

After reviewing documents in the Administrative Adjudication file, the elements needed to substantiate a prima facie case, the memorandum of law and the affidavits provided by the Third Party Respondent in the light most favorable to the Respondent, Richard Abbott, the Hearing Officer fails to see that any genuine issue of material fact remains in dispute.

Since no genuine issue of material fact exists, Fleet is entitled to summary judgement as a matter of law. Alfano v. Landers 585 A2d 651, (1991), Tangleridge Dev. Corp. v. Joslin 570 A2d 1109 (1990).

Therefore the Third Party Respondent's motion for summary judgement is granted.

1. That the Third Party Respondent filed a motion for summary judgment with this tribunal on May 10, 1993.
2. That the Department of Environmental Management, Cornell Industrials, Lee Abbot and Richard Abbot had seven (7) days to file an objection.
3. That said objections were due on Monday, May 17, 1993.
4. That the Department of Environmental Management, Cornell Industrials, Lee Abbot & Richard Abbot did not file an objection to Respondent's motion.

5. That pursuant to AAD Rule 8.00 no objection to a motion is deemed a waiver of that objection.
6. That pursuant to AAD Rule 8.00, the Department of Environmental Management, Cornell Industrials, Lee Abbot & Richard Abbot has waived any objection to the Third Party Respondent's motion.
7. That on May 19, 1993 AAD received an objection for Respondent Richard Abbott.
8. That to avoid a delay of the hearing, the Hearing Officer addressed the issues raised in Respondent's objection.
9. That after reviewing the Third Party Respondent's motion for summary judgement and Respondent's objection, the Hearing Officer found no genuine issues of material fact.
10. That having found no genuine issue of material fact, the Third Party Respondent is entitled to summary judgement as a matter of law.
11. That this motion is properly before the Hearing Officer pursuant to R.I.G.L. Section 42-17.1-2 et seq. as amended, and R.I.G.L. Section 42-35 et seq. as amended, and the duly-promulgated Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for


Environmental Matters.

Wherefore, for the reasons stated above, the Hearing Officer enters the following

ORDER

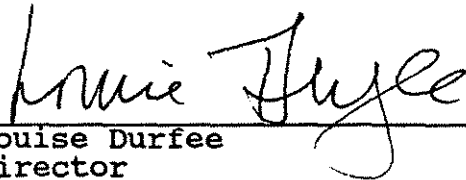
1. That the third party respondent's motion for summary judgment is GRANTED on procedural and substantive grounds.

Entered as an Administrative Order this 19th day of May, 1993.



Patricia Byrnes
Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, Third Floor
Providence, RI 02908

Entered as a Final Agency Order this 21st day of May, 1993



Louise Durfee
Director
Department of Environmental Management
9 Hayes Street
Providence, RI 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within order to be forwarded via regular mail, postage prepaid to Thomas Hemmendinger, Esq., Salter, McGowan, Swartz & Holden, 321 South Main Street, Providence, RI 02903; Richard Abbott, Esq., 435 Springfield Street, Agawam, MA 01001* and via interoffice mail to Mark Siegars, Esq., Office of Legal Services, 9 Hayes Street, Providence, RI 02908 on this 21st day of May, 1993.

