

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

RE: THEODORE SHULTERBRANDT/  
BUTTONWOODS CLEANERS & TAILORS, INC.

AAD NO. 92-035/AHE  
Notice of Violation No. RCRA 92-43

ORDER

This matter is before Hearing Officer Baffoni on Hoffman/New Yorker, Inc.'s ("Hoffman/New Yorker") Motion to Dismiss Third-Party Complaint, and on Theodore Shulterbrandt/Buttonwoods Cleaners & Tailors, Inc. ("Shulterbrandt/Buttonwoods" or "Respondents") Motion to Vacate Order Dismissing Third-Party Complaint against Yankee Equipment Systems, Inc. ("Yankee"). The Motion to Dismiss and the Memorandum in support thereof were filed at the Administrative Adjudication Division ("AAD") on October 1, 1993. The Motion to Vacate was filed at the AAD on October 8, 1993. Shulterbrandt/Buttonwoods filed an objection to said Motion to Dismiss on October 8, 1993. Yankee filed an objection to the Motion to Vacate on October 13, 1993.

By way of background, the Division of Air and Hazardous Materials ("Division") issued the instant Notice of Violation and Order and Penalty ("NOVAP") to Respondents in June of 1992. The Respondents filed their request for a formal hearing concerning the NOVAP at the AAD. Subsequently, the Respondents filed a Motion to add Hoffman/New Yorker and Yankee as Third-Party Defendants. No objection having been filed by Division, an Order was entered by the AAD granting

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leave to Respondents to add Hoffman/New Yorker and Yankee as Third-Party Respondents.

The Third-Party Complaint filed by Respondents alleges that the Division seeks funds for restoration, pumping, penalties and fines regarding the discharge of the chemicals referenced in the Notice of Violation; that Third-party defendant, Hoffman/New Yorker is the manufacturer of certain dry cleaning equipment, which equipment was and is used by Buttonwoods; that Third-Party defendant, Yankee, sold and provided training in the operation of said equipment to Respondents; and that if the allegations in the NOVAP are proved to be true, then third-party defendants are liable to the third-party plaintiffs, Shulterbrandt/Buttonwoods for all the restoration costs, fines and penalties thereby imposed plus attorney's fees. Wherefore, Respondents as third-party plaintiffs demanded judgment against the third-party defendants for indemnification, contribution, costs and attorney's fees.

Hoffman/New Yorker asserts that the AAD lacks jurisdiction over the subject matter of the Third-Party complaint and therefore maintains that its Motion to Dismiss should be granted.

The Respondents base their objection to the Motion to Dismiss on the following:

1. That on September 23, 1993, the third-party plaintiff filed a petition under Chapter 7 of the U.S. Bankruptcy Code which stays all proceedings both administrative and otherwise; and
2. That Hoffman/New Yorker, Inc. was the manufacturer of the equipment which allegedly caused the harm which is the subject of this matter.

Respondents assert that the Motion to Vacate should be granted because the defendant, Theodore Shulterbrandt, filed a petition under Chapter 7 of the U.S. Bankruptcy Code on September 23, 1993; and therefore the instant action is automatically stayed.

Yankee argues in opposition to the Respondents Motion to Vacate that:

- A. The Respondents failed to comply with AAD Rule 8.00(a)(2) which requires that the Motion to Vacate be accompanied by a written memorandum; and also that Respondents waived any objection to Yankee's Motion to Dismiss since Respondent failed to file a written objection within the prescribed time period.
- B. The automatic stay under the Bankruptcy Code does not apply to this proceeding.

The automatic bankruptcy stay has been raised by Respondents in both Motions. Because this issue would be

dispositive of both Motions, I will address it first.

Respondents' contention that the instant proceedings should be stayed because of the filing of a bankruptcy petition is without merit. Clearly the U.S. Bankruptcy Code provides for an automatic stay of certain proceedings; however, not all proceedings are stayed as suggested by Respondents. The Bankruptcy Code specifically provides that the stay provisions are subject to certain exceptions enumerated therein.

11 U.S.C. § 362(a) provides that:

"Except as provided in subsection (b) of this section, a petition filed under section 301, 302 or 303 of this title...operates as a stay, applicable to all entities, of...

1. The commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor..."

11 U.S.C. § 362(b) provides that:

"The filing of a petition under section 301, 302 or 303 of this title...does not operate as a stay... under subsection (a)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit's police or regulatory power"

A review of the Bankruptcy Code, therefore, manifests that the instant proceeding is expressly exempted from the automatic stay provisions of §362(a). In a similar situation involving an environmental clean-up, the United States District Court for the District of Rhode Island ruled that

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said proceeding was not stayed by the automatic stay provision of the bankruptcy code. Friends of the Sakonnet v. Dutra. 25 B.R.69 (D.R.I. 1991).

The District Court cited the decision of the United States Supreme Court in Midlantic Nat. Bank v. N. J. Dept. of Environmental Protection, 474 U.S. 494 (1986), wherein it was held that a trustee in bankruptcy may not abandon property in contravention of a State statute or regulation that is reasonably designed to protect the public health or safety from identified hazards. The Supreme Court noted that the legislative history of the statute indicates Congress' desire to create an exemption for actions relating to health and safety: "Thus, where a governmental unit is suing a debtor to prevent or stop violation or fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws, or attempting to fix damages for violation of such a law, the action or proceeding is not stayed under the automatic stay."

A careful scrutiny of this matter reveals that the claim for relief as sought by Respondents in their Third-Party Complaint is not brought before the proper forum. The AAD has been empowered to conduct hearings concerning enforcement, licensing and administrative penalty proceedings in which the Divisions of the DEM are involved. Accordingly, the AAD lacks jurisdiction to entertain Respondents' Third-party Complaint.

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Lakeview Farm, Inc., AAD No. 93-007/WRE.

The Third-Party Complaint is clearly in the nature of an indemnification claim for which the AAD lacks jurisdiction. Hearing Officers and ultimately the Director are without jurisdiction to decide civil issues involving contract and indemnification claims and jurisdiction lies with the District or Superior Courts after a final administrative adjudication to properly resolve such civil disputes. Barbara D'Allesandro, AAD No. 91-006/GWE.

The jurisdiction of the AAD is circumscribed by statute. R.I.G.L. Section 42-17.7-2. The Rhode Island Law does not empower the AAD to hear claims for indemnification or contribution of the type as set forth in Respondents' Third-Party Complaint, and the Superior Court Rules of Civil Procedure cannot extend the jurisdiction of the AAD. Clearly the AAD lacks authority to award judgment in favor of the Third-Party Plaintiffs against the Third-Party Defendants and the Third-Party action should be stricken.

In light of the foregoing, it is unnecessary to consider Yankee's other arguments concerning Respondents' failure to file a timely objection to Yankee's Motion to Dismiss and Respondents' failure to submit a written memorandum with its Motion to Vacate.

Wherefore, it is hereby

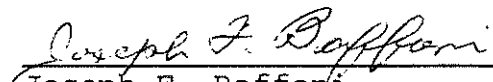
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ORDERED

1. Hoffman/New Yorker, Inc.'s Motion to Dismiss the Third-Party Complaint is GRANTED, and the Third-Party Complaint is hereby DISMISSED.

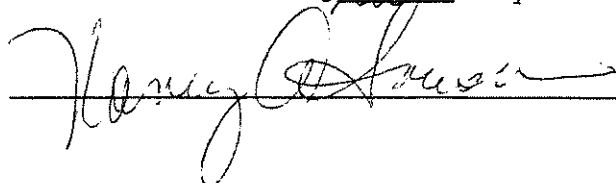
2. Theodore Shulterbrandt/Buttonwoods Cleaners & Tailors, Inc.'s Motion To Vacate the Order of Dismissal (previously entered as to Yankee) is DENIED.

Entered as an Administrative Order this 9<sup>th</sup> day of December, 1993.

  
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Joseph F. Baffoni  
Hearing Officer  
Department of Environmental Management  
Administrative Adjudication Division  
One Capitol Hill, Third Floor  
Providence, Rhode Island 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within order to be forwarded, via regular mail, postage prepaid to Stephen B. Lang, Esq., Higgins Cavanagh & Cooney, 123 Dyer St., Providence, RI 02903; Barbara S. Cohen, Goldenburg & Muri, 15 Westminster St., Providence, RI 02903; S. Paul Ryan, Esq., 670 Willett Ave. East Providence, RI 02915 and via interoffice mail to Mark Siegars, Esq., Office Legal Services, 9 Hayes Street, Providence, RI 02908 on this 9<sup>th</sup> day of December, 1993.

  
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