

**STATE OF RHODE ISLAND
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION
235 PROMENADE STREET
PROVIDENCE, RHODE ISLAND 02908**

**RE: ROBERT A. BRIERLY
LICENSE DENIAL**

AAD NO. 20-001/MSA

FINAL ORDER

This matter arose out of the Department of Environmental Management's ("Department") Notice of Intent to Deny Robert Brierly's ("Respondent") application to renew his multi-purpose license MPURP000303 ("License") issued to the Respondent by the Department on February 10, 2020 and the Respondent's timely request for a hearing.¹ On April 7, 2020, the parties held a telephonic status conference² at which time it was agreed that the parties would provide the undersigned with a written status report by May 7, 2020. On May 8, 2020, the Department's counsel wrote to the undersigned that she had reached out to the Respondent in order to resolve this matter but had not heard from him. The undersigned scheduled another telephonic status conference for May 22, 2020 at which time the Respondent did not dial in. The Department requested that a hearing be held in this matter.

Due to the COVID19 pandemic, notice was given by the undersigned of a remote hearing scheduled for June 22, 2020 by zoom.³ On June 22, 2020, the Respondent failed to appear or otherwise inform the AAD for his reason for non-appearance. The Department's counsel moved for a Conditional Default. The Amended Status Conference Order of March

¹ The Administrative Adjudication Division ("AAD") has jurisdiction over this matter pursuant to R.I. Gen. Laws § 42-17.1-1 *et seq.*, R.I. Gen. Laws § 42-17.7-1 *et seq.*, R.I. Gen. Laws § 42-35-1 *et seq.*, and 250-RICR-10-00-1 *Rules and Regulations for the Administrative Adjudication Division*. The undersigned heard this matter pursuant to a delegation of authority dated November 27, 2019 by Chief Hearing Officer David Kerins.

² The status conference was held by telephone due to the COVID19 pandemic.

³ During this matter, the parties communicated by email including the Respondent who dialed in for the initial status conference having received notice of the telephone conference number by email.

13, 2020 provided that a seven (7) day Conditional Order of Dismissal/Default would be issued for the Respondent's non-appearance.

On July 1, 2020, the undersigned issued an Order of Conditional Default which provided that the Respondent was in violation of the Amended Status Order dated March 13, 2020 by failing to appear at the hearing on June 22, 2020 and therefore was in default.⁴ The Respondent had until July 15, 2020 to file,⁵ in writing, a statement demonstrating good cause why a Final Judgment of Default/Dismissal should not be entered. The Order for Conditional Default provided that if the AAD did not receive any statement from the Respondent by July 15, 2020, a Final Order of Default/Dismissal would be issued.

The undersigned did not receive any statement or any correspondence from the Respondent by July 15, 2020. To date, the undersigned has not received any statement or correspondence from the Respondent.

Therefore, based on the foregoing, the Respondent's application to renew his License is denied.

⁴ The Order for Conditional Default was sent by email to the email address where the Respondent had received correspondence from this office and where he had sent correspondence from to this office. The Order for Conditional Default was also sent by first class mail and certified mail, return receipt requested to the address on record with the Department and the AAD (and at which address the Respondent received the Notice of Intent to Deny Renewal of License and which the Respondent received as he appealed said Notice). The certified mail was not delivered to the Respondent as it was returned to this office and the United States Post Office indicated that the addressee was not known. The first class mail was returned to the AAD as "not deliverable as addressed" and "unable to forward." However, the Respondent was served since the Order of Conditional Default was sent to his last known address. *Castro v. Employees' Retirement System of Rhode Island*, 2012 WL 1154774 (service is made by mailing to last known address).

⁵ This represented 14 days from the date of the Order of Conditional Default.

Entered as an Administrative Order this 22nd day of July, 2020.

1st Catherine R. Warren

Catherine R. Warren
Hearing Officer
Administrative Adjudication Division
235 Promenade Street, Room 350
Providence, RI 02908
(401) 222-4700 ext 4600

NOTICE OF APPELLATE RIGHTS

THIS DECISION 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, THIS 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.

CERTIFICATION

I hereby certify that I caused a true copy of the within Final Order to be forwarded by certified mail, return receipt requested and first-class mail, postage prepaid, and electronically via email to: Robert A. Brierly, 217 Grand View Drive, Warwick, RI 02886; via electronic mail to Christina Hoefsmit, Esquire, and Joseph LoBianco, Esquire, DEM Office of Legal Services, and Margaret McGrath, Office of Licensing & Registration, 235 Promenade Street, Providence, RI 02908 on this 22 day of July, 2020.


Mary Dalton