STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: May 19, 2017]

PETER K. SULLIVAN *Appellant*	**:** **:**	
v.	**:**	**C.A. No. PC-2016-2165**
RHODE ISLAND DEPARTMENT OF ENVIRONMENTAL MANAGEMENT *Appellee*	**:** **:**	

DECISION

VAN COUYGHEN, J. On February 10, 2016, the Rhode Island Department of Environmental Management's (RIDEM) Office of Boat Registration & Licensing (the Division) denied Peter K. Sullivan's application to renew his expired multi-purpose commercial fishing license.[1] Mr. Sullivan appealed that denial to RIDEM's Administrative Adjudication Division (the AAD). On April 18, 2016, via a written decision (the Decision), the AAD affirmed and sustained the denial. Mr. Sullivan timely appealed to this Court. Jurisdiction is pursuant to G.L. 1956 § 42-35-15. For the reasons set forth herein, the Court vacates the Decision and remands this matter for further proceedings consistent with this decision.

[1] Pursuant to RIDEM's Commercial and Recreational Saltwater Fishing Licensing Regulations, specifically Rule 6.8-4, the holder of a valid Multi-Purpose License "may participate in all fishery endorsement sectors at Full Harvest and Gear Level as set by the Department pursuant to Rule 8." Commercial and Recreational Saltwater Fishing Licensing Regulations, Rule 6.8-4(b).

I

Facts and Travel

At the outset, the Court notes that there is no transcript of the April 5, 2016 hearing from which the Decision was rendered (the Hearing). The following is a brief recitation of the facts gleaned from the documents filed, including the Decision.

Mr. Sullivan is a resident of the Town of Bristol, Rhode Island. Until December 31, 2009, he was the holder of Multi-Purpose License # 000981 (the License). See Div.'s Hr'g Ex. 2. On December 31, 2009, the License expired. See id. On July 27, 2015—nearly five years and seven months after the License had expired—Mr. Sullivan wrote a letter to Margaret McGrath (Ms. McGrath), the Programming Services Officer for the Division, requesting that he be provided a waiver to renew the License despite his having missed the application deadline. See Div.'s Hr'g Ex. 5. Mr. Sullivan cited health issues and doctors' advice as the basis for not renewing the License sooner. See id. Mr. Sullivan also requested that he be allowed to obtain a 65 and Over Shellfish License,[2] as he would be turning sixty-five in approximately fourteen months. See id.

In a letter dated August 17, 2015, Ms. McGrath responded and explained that Mr. Sullivan's request to renew the License would be denied in accordance with Rule 6.7-4[3] of the

[2] The 65 and Over Shellfish License is available, without fee, to Rhode Island residents who are at least sixty-five years of age as of February 28 of the license year. See id. at 6.8-6.

[3] Rule 6.7-4(c) states in pertinent part:

> "Applicants who possessed a valid Multi-Purpose License (resident only) as of the immediately preceding year may obtain a Multi-Purpose License for the immediately following year; alternatively, applicants who possessed a valid Multi-Purpose License (resident only) as of the immediately prior year may obtain a Principal Effort License with Quahaug (resident only), Soft-Shell Clam (resident only), Shellfish Other (resident only), Lobster (resident only), Non-Lobster Crustacean (resident only), Restricted

Commercial and Recreational Saltwater Fishing Licensing Regulations (the Licensing Regulations). See Div.'s Hr'g Ex. 6. Ms. McGrath explained that because Mr. Sullivan "did not possess a valid multi-purpose license as of 12/31/2014, [he was] unable to obtain a multi[-]purpose [license] in 2015." Id. Likewise, Mr. Sullivan's request to obtain a 65 and Over Shellfish License prior to reaching the age of sixty-five was denied pursuant to Rule 6.8-6. See id. Ms. McGrath advised Mr. Sullivan that he could appeal the decisions to the AAD within thirty days of his receipt of the letter. See id. Mr. Sullivan did not appeal those decisions.

On February 4, 2016, Mr. Sullivan filed a "2016 Multi-Purpose License Renewal Application" (the Application) with the Division. See Div.'s Hr'g Ex. 1. Mr. Sullivan included with the Application letters from two doctors and landing records from 2009. See id. The landing records purported to show that the License was in use when Mr. Sullivan was physically able to fish. See id. On February 10, 2016, Ms. McGrath denied Mr. Sullivan's application on the grounds that he "did not possess a valid multi-purpose license as of 12/31/2015." Div.'s Hr'g Ex. 2. Ms. McGrath cited Rule 6.7-4(c) as the basis for the decision, and informed Mr. Sullivan that he could appeal the decision to the AAD within thirty days of his receiving the letter. Id. On February 16, 2016, Mr. Sullivan appealed the February 10, 2016 decision to the AAD. See Div.'s Hr'g Ex. 3.

On April 5, 2016, pursuant to §§ 42-17.7-1 et seq., this matter came before the Hearing Officer to determine whether the February 10, 2016 denial of Mr. Sullivan's application violated

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Finfish, Non-Restricted Finfish, and/or Whelk (resident only) endorsements for the immediately following year." Sec. 6.7-4(c).

the Licensing Regulations.[4] The Division was represented by counsel, and Mr. Sullivan appeared *pro se*. Neither an electronic nor a stenographic recording of the Hearing was taken.[5]

On April 18, 2016, the Hearing Officer issued the Decision denying and dismissing Mr. Sullivan's appeal, and affirming and sustaining the Division's decision to deny Mr. Sullivan's application. The Decision included findings of fact and conclusions of law, and ultimately held, "[b]ased on all of the facts, circumstances, and evidence presented," that "[Mr. Sullivan] failed to sustain his burden of proof, by a preponderance of the evidence, that the Division's determination and letter of February 10, 2016 denying his request for renewal of his Multi-Purpose Fishing License (#MPURP000981) violated the Department of Environmental Management's Commercial and Recreational Saltwater Fishing License Regulations." Decision 7-8.

On May 13, 2016, Appellant timely filed the present appeal.

II

Standard of Review

The Superior Court has jurisdiction to hear appeals from the decisions of administrative agencies pursuant to the Rhode Island Administrative Procedures Act (APA), § 42-35-15. See Champlin's Realty Assocs. v. Tikoian, 989 A.2d 427, 434 (R.I. 2010). The Court's review of an agency's decision is governed by the standards set forth in § 42-35-15(g), which provides:

> "(g) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The

[4] Sec. 42-17.7-1 states that "[t]here shall be established a division for administrative adjudication within the department of environmental management. Such division shall exercise its functions under the control of the director of environmental management."

[5] The parties are not in agreement as to the reason this occurred. RIDEM contends, and the Decision states, that the parties agreed at the March 9, 2016 status conference that they did not want the Hearing transcribed. Mr. Sullivan contends that he never agreed to conduct the Hearing without it being recorded.

> court may affirm the decision of the agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
> "(1) In violation of constitutional or statutory provisions;
> "(2) In excess of the statutory authority of the agency;
> "(3) Made upon unlawful procedure;
> "(4) Affected by other error or law;
> "(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> "(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Sec. 42-35-15(g).

The Court's review is "circumscribed and limited to 'an examination of the certified record to determine if there is any legally competent evidence therein to support the agency's decision.'" Nickerson v. Reitsma, 853 A.2d 1202, 1205 (R.I. 2004) (quoting Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126, 1138 (R.I. 1992)). "If competent evidence exists in the [certified] record . . . the court is required to uphold the agency's conclusions." Id. at 1204 (citation omitted). However, when deficiencies in the record preclude a meaningful review, a remand to the agency is most appropriate. See Champlin's Realty Assocs., 989 A.2d at 448-49 (quoting Lemoine v. Dep't of Mental Health, Retardation and Hosps., 113 R.I. 285, 290, 320 A.2d 611, 614 (1974) ("[t]his Court has characterized the authority of the Superior Court to remand for further proceedings under § 42–35–15(g) as 'a broad grant of power . . . to remand, in a proper case, to correct deficiencies in the record and thus afford the litigants a meaningful review'")).

III

Analysis

The gravamen of Mr. Sullivan's argument is that he provided detailed evidence and testimony at the Hearing that addressed the criteria identified in the Licensing Regulations for

reconsidering license denials. The Licensing Regulations, specifically Rule 6.7-10(g), state in pertinent part:

> "(g) In reaching its recommendation the Board shall consider:
> "(i) the impact that issuance of the license will have on the fisheries management program overall;
> "(ii) equity with other license holders;
> "(iii) consistency with prior agency decisions;
> "(iv) consistency with management plans;
> "(v) unreasonable hardship to the applicant; and consistency with the provisions and purposes of RIGL Chapter 20-2.1 and the rules and regulations set forth herein[.]" Licensing Regulations, Rule 6.7-10(g).

Mr. Sullivan contends that he testified regarding each factor and that the Hearing Officer failed to consider the evidence presented. Mr. Sullivan argues that the lack of a transcript prejudices his ability to effectively demonstrate that the Decision was rendered against the weight of the evidence. Mr. Sullivan alleges that he never agreed to conduct the Hearing without a stenographer present and that proceeding without one violated the "Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters" (AAD Rules of Procedure).

RIDEM forwards several arguments in opposition. First, RIDEM moves to dismiss the complaint pursuant to Super. R. Civ. P. 12(b)(4). RIDEM contends that Mr. Sullivan failed to properly serve process because he did not include a copy of the summons with the complaint. Additionally, RIDEM contends that the complaint was served upon the incorrect party—namely, RIDEM's attorney. Second, RIDEM argues that the Hearing Officer had express authority under AAD Rules of Procedure § 16(k) to conduct the Hearing without a stenographer. RIDEM contends that the Hearing Officer had the discretion to not only impose upon either party the burden to record the proceedings, but also to require neither party to record the proceedings. As

such, it is RIDEM's position that this Court is limited to the record before it, and that a review of that record will demonstrate that Mr. Sullivan's position fails on the merits.

The Court will address these arguments seriatim.

A

Service of Process

An appeal from the decision of a state agency is subject to Super. R. Civ. P. 80, "which deals with review of administrative agency decisions and orders." Carbone v. Planning Bd. of Appeal of Town of S. Kingstown, 702 A.2d 386, 388 (1997). "Rule 80 is designed to provide a uniform appellate procedure in the Superior Court for judicial review of administrative action whether the review is instituted pursuant to the Administrative Procedures Act, or any other statute applicable to specific agencies[.]" Caran v. Freda, 108 R.I. 748, 751, 279 A.2d 405, 407 (1971). "When a statute provides for review by the Superior Court of any action by a governmental agency . . . such review shall be instituted by the filing of a complaint . . . and any other required document[.]" Super. R. Civ. P. 80(a). "A copy of the complaint shall be served upon the governmental agency . . . in the manner provided by Rule 5." Super. R. Civ. P. 80(b). Service of process need not be effected by an officer pursuant to Rule 4, and "[n]o responsive pleading need be filed unless required by statute." Super. R. Civ. P. 80(a); see Robert B. Kent, et al., Rhode Island Civil and Appellate Procedure, Reporter's Notes to Rule 80 at 638 (explaining "Rule 80(b) provides for a copy of the complaint to be sent to the agency and other parties by delivery or by mail under Rule 5 and does not require service of process by an officer under Rule 4").

RIDEM contends that Mr. Sullivan's appeal should be dismissed pursuant to Rule 12(b)(4)—Insufficiency of Process. RIDEM's position is that Mr. Sullivan should have included

a summons with his complaint, and that the complaint and summons ought to have been served upon either RIDEM or RIDEM's director, Janet L. Coit (Director Coit), and not RIDEM's attorney, Gary Powers, Esq. Rhode Island case law and Rule 80, however, make clear that RIDEM's position is without merit.

As to RIDEM's contention that Mr. Sullivan improperly served Attorney Powers, Rule 80(b) states "[a] copy of the complaint shall be served upon the governmental agency . . . in the manner provided by Rule 5." Super. R. Civ. P. 80(b). RIDEM's position that Mr. Sullivan ought to have served Director Coit can be readily disposed of as Rule 5 states "[w]henever under these rules service is required or permitted to [be] made upon a party represented by an attorney, the service shall be made upon the attorney unless the court orders service on the party." Id. at Rule 5(b)(1). This Court has issued no such order; therefore, service was properly made upon Attorney Powers. Additionally, that the service was made via certified mail is likewise proper under the rules. See id. at Rule 5(b)(3)(B) (explaining that for self-represented litigants who do not elect to electronically file pursuant to Art. X, Rule 3(b), service may be made by "[m]ailing a copy to the last known address of the person served").

Nevertheless, "[i]n Rhode Island, it is well established that a summons is not required when a defendant makes a voluntary appearance, and thus waives the right to personal service." Boyer v. Bedrosian, 57 A.3d 259, 275 (R.I. 2012) (citing Theta Props. v. Ronci Realty Co., 814 A.2d 907, 912–13 (R.I. 2003)). When a defendant makes a general appearance, as opposed to a special appearance, "[the] defendant submits himself to the jurisdiction of the court, [and] any failure to serve him with process becomes immaterial." Mack Constr. Co. v. Quonset Real Estate Corp., 84 R.I. 190, 194, 122 A.2d 163, 164 (1956) (citation omitted). "[I]f the appearance is general, the defendants have submitted themselves to the jurisdiction of the court for all

purposes[.]" Industrial Trust Co. v. Rabinowitz, 65 R.I. 20, 22, 13 A.2d 259, 260 (1940). "[A]n entry of appearance for any purpose other than to attack the jurisdiction of the court subjects the defendants to its jurisdiction." See id. (citation omitted).

Though RIDEM contends that it was not properly served, Attorney Powers appeared at the June 30, 2016 hearing on Mr. Sullivan's request to establish a briefing schedule; and, in fact, Attorney Powers drafted and presented the order setting forth that briefing schedule. RIDEM did not challenge this Court's jurisdiction at that hearing. On August 5, 2016, a second hearing was held on Mr. Sullivan's motion to assign this case for a decision on the merits. No challenge was filed at that time. RIDEM's memorandum in opposition, filed pursuant to the July 13, 2016 scheduling order, included the first challenge to this Court's jurisdiction, a motion to dismiss pursuant to Rule 12(b)(4), as well as extensive argument in opposition to the merits of Mr. Sullivan's appeal. It can hardly be said that RIDEM entered a special appearance for the limited purpose of challenging this Court's jurisdiction; as such, any challenge to this Court's jurisdiction, based on allegedly defective service of process, was waived. See Industrial Trust Co., 65 R.I. at 22, 13 A.2d at 260 ("[i]f an entry of appearance is not so limited, but other matters relating to the merits of the cause itself are included therein, then the appearance becomes general, even though by its terms it is described as special, and any attempted reservation of rights thereunder is ineffectual"). Thus, regardless of the substance of the arguments put forth by RIDEM regarding defective service, those arguments are deemed waived by its failure to assert the defense prior to entering a general appearance in this case.

RIDEM's motion to dismiss is without merit and therefore is denied.

B

Record of the Proceedings

The AAD was established pursuant to § 42-17.7-1[6] and has jurisdiction over "[a]ll contested enforcement proceedings, all contested licensing proceedings, and all adjudicatory proceedings under chapter 17.6 of title 42[.]" Sec. 42-17.7-2. Hearings occur before an administrative hearing officer. Envtl. Scientific Corp. v. Durfee, 621 A.2d 200, 203 (R.I. 2003). RIDEM and the Coastal Resources Management Council are charged with drafting and implementing rules and regulations aimed at ensuring uniform, consistent proceedings. See § 42-17.7-6(b) (stating "[t]he department of environmental management and the coastal resources management council shall promulgate such rules and regulations, not inconsistent with law, as to assure uniformity of proceedings as applicable"). As such, RIDEM and the coastal resources management council have drafted and adopted the AAD Rules of Procedure.[7]

The Decision notes that the Hearing was conducted in accordance with the statutes governing AAD hearings, including the AAD Rules of Procedure. Mr. Sullivan contends that the Hearing was procedurally improper because it violated § 16(k) of the AAD Rules of Procedure. Section 16(k) states:

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[6] "There shall be established a division for administrative adjudication within the department of environmental management." Sec. 42-17.7-1.

[7] AAD Rules of Procedure § 1 states:

> "These rules are adopted pursuant to Chapters 42-35, 42-92 and 42-17.7 of the Rhode Island General Laws, specifically Rhode Island General Laws Sections 42-35-2(a)2, 42-35-3 and 42-17.7-3(2) for the purpose of assisting the carrying out of the functions, powers and duties assigned to the Department of Environmental Management and the Administrative Adjudication Division of the Department of Environmental Management in Chapters 42-17.7 and 42-17.1 of the R.I.G.L. and any other provisions of the General Laws conferring jurisdiction upon the Director of the Department and/or the Administrative Adjudication Division." AAD Rules of Procedure § 1.

> "Testimony and argument at the hearing shall be recorded electronically or stenographically. Transcripts of the proceedings shall be supplied to any Party at his/her own expense upon request to the stenographer. The AHO [Administrative Hearing Officer], within his or her discretion and in order to ensure an accurate record, is authorized to require the appellant to record the hearing stenographically in application matters and the Division in enforcement matters and a certified copy of the transcript shall be provided to the Clerk of the AAD." Sec. 16(k).

Mr. Sullivan argues that had the proceedings been recorded, he would have been able to order a transcript and demonstrate to this Court that his testimony concerning arterial fibrillation, a medical condition he contends contributed to his inability to renew the License, was improperly ignored by the Hearing Officer.[8] Mr. Sullivan alleges that one-third of his testimony concerned the condition and the effect it had on renewing the License. He asserts that the testimony satisfied the hardship criteria set forth in Rule 6.7-10(g)(v).

RIDEM argues that Mr. Sullivan elected not to have the proceedings transcribed under § 42-35-9(f), which states in pertinent part that "[o]ral proceedings or any part thereof conducted under the provisions of this chapter shall be transcribed on request by any party." Sec. 42-35-9(f) (emphasis added). RIDEM contends that the parties agreed to conduct the Hearing without a stenographer present,[9] and that § 16(k) gave the Hearing Officer discretion to

[8] Indeed, the April 5, 2016 hearing was not recorded electronically or stenographically, and the Decision does not mention arterial fibrillation.

[9] The Decision states that "[a]t the Status Conference on March 9, 2016 both parties sated that they did not want the proceedings at the Hearing transcribed." Decision 1. The Decision cites, without explanation, to G.L. 1956 § 42-35-9(f), which states:

> "Oral proceedings or any part thereof conducted under the provisions of this chapter shall be transcribed on request by any party. Stenotypists occupying positions within the state service as hearing reporters for any state agency, who report stenographically the proceedings in administrative hearings and the taking of depositions in their capacity as reporters for a state agency, shall be paid at the rate established by § 8-5-5 from the requesting party;

allow the Hearing to proceed unrecorded. RIDEM posits that when read in its entirety, § 16(k) carries the negative inference that a hearing officer may or may not require the parties to pay for recording services, and therefore may or may not require the proceedings to be recorded at all. However, when read in its entirety, § 16(k) makes clear that the Hearing Officer had no such discretion, and that the Hearing was required to be recorded either stenographically or electronically.

The rules of construction that govern this Court's interpretation of statutes also govern its interpretation of administrative rules of procedure. See Murphy v. Zoning Bd. of Review of Town of S. Kingstown, 959 A.2d 535, 541 (R.I. 2008) ("[t]he principles or rules of statutory construction apply to administrative regulations") (internal quotes omitted). The rules of statutory construction apply when a statute is ambiguous, and "'ambiguity exists when a word or phrase in a statute is susceptible of more than one reasonable meaning.'" State v. Hazard**,** 68 A.3d 479, 485 (R.I. 2013) (quoting Drs. Pass and Bertherman, Inc. v. Neighborhood Health Plan of R.I., 31 A.3d 1263, 1269 (R.I. 2011)). When confronted with an unclear or ambiguous statute, the Court will examine the statute in its entirety in order to "glean the intent and purpose of the Legislature." RIH Medical Foundation, Inc. v. Nolan, 723 A.2d 1123, 1126 (R.I. 1999) (internal quotes omitted). "[The Court's] interpretive gaze [will] not be restricted to a mere isolated provision; and under no circumstances will [this Court] construe a statute to reach an absurd result." Mancini v. City of Providence, No. 2014-88, 2017 WL 924178, at *3 (R.I. Mar. 8, 2017) (citation and internal quotes omitted). However, if the language of a statute or administrative rule is clear on its face, then statutory construction is at its end. See RIH Medical

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provided, however, the state agency shall not be required to compensate the stenotypists for the transcript." Sec. 42-35-9(f).

Foundation, 723 A.2d at 1126 (citing State v. DiCicco, 707 A.2d 251, 253 (R.I. 1998) ("[w]hen confronted with an unambiguous statute, we must apply the statute as written").

Section 16(k) could not be clearer: "[t]estimony and argument at the hearing shall be recorded electronically or stenographically." Sec. 16(k). If either party wishes to order a transcript of the recording, he or she may do so at his or her own expense. Id. Additionally, a hearing officer may require either party, depending on the nature of the hearing, to bear the burden of recording the proceedings. Id. In the instant matter, RIDEM appears to use the terms "record" and "transcribe" interchangeably, which violates the statutory provision.

The American Heritage Dictionary of the English Language defines "record" as "set[ting] down for preservation in writing or other permanent form." The American Heritage Dictionary of the English Language 1461 (4th ed. 2000). Black's Law Dictionary defines "transcribe" as "[t]o make a written or typed copy of spoken material, esp. testimony." Black's Law Dictionary 771 (4th pocket ed. 1996). Once testimony is recorded in written or electronic form, a full, written or typed copy of the original can be produced in the form of a transcript. Transcription enables multiple parties to review the original recording without their needing to have access to the original. Thus, the decision to have the proceedings transcribed is optional, and if a party decides to avail themselves of that option, "transcripts shall be supplied . . . at his/her own expense." Sec. 16(k). Alternatively, the decision to record the proceedings, for transcription at a later time, is not optional—the unambiguous language in § 16(k) makes that clear. See id.

The Decision states that at the March 9, 2016 status conference the parties stated that they did not want to have the proceedings transcribed.[10] Decision 1. This assertion nevertheless does

[10] Mr. Sullivan vehemently contends that he did not agree to conduct the hearing without it being recorded and that he understood at all times that the proceedings would be recorded. Mr. Sullivan identifies language in the pre-hearing order that he understood to mean that a

not explain why the proceedings were not recorded. As this was an application matter, pursuant to § 16(k), the Hearing Officer was permitted to impose upon Mr. Sullivan the burden of recording the Hearing stenographically; however, the Hearing Officer did not have the discretion to conduct the Hearing without a stenographer or an electronic recording device present. Failing to record the Hearing pursuant to § 16(k) constituted unlawful procedure. See § 42-35-15(g)(3).

This Court's review must conform to the standards set forth in § 42-35-15. "We are not privileged to assess the credibility of witnesses and may not substitute our judgment for that of the trial examiner concerning the weight of the evidence on questions of fact." Envtl. Scientific Corp., 621 A.2d at 208 (citing Liberty Mut. Ins. Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). The Court's review is limited to questions of law and "a determination of whether there is any legally competent evidence to support the agency's decision." See id. at 208 (citing Barrington Sch. Comm., 608 A.2d at 1138). A complete record is paramount to this analysis.

The record in the instant matter is materially deficient. No recording exists, which is a violation of § 16(k). As no recording exists, neither party could order a transcript of the proceedings. Without a transcript, this Court cannot determine whether the Decision—purported to be "[b]ased on all of the facts, circumstances, and evidence presented"—is supported by any legally competent evidence. Decision 7; see Envtl. Scientific Corp, 621 A.2d at 208. An analysis of the factors identified in the Licensing Regulations that are to be considered when deciding an applicant's appeal is absent from the Decision; yet, Mr. Sullivan contends that he testified to each factor at length. The purpose of the recording requirement is to facilitate this Court's appellate review of the administrative proceedings; here, no such review can be conducted.

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stenographer would be present and that if he cancelled the Hearing within 24 hours, he would be responsible for the cost associated with providing a stenographer.

The Hearing Officer exceeded his statutory authority when he allowed the Hearing to go forward without a stenographer or electronic recording device present. See § 42-35-15(g)(2). The Decision, thus, was rendered upon unlawful procedure. See § 42-35-15(g)(3). Because a transcript of the proceedings is entirely absent from the record, this Court is unable to determine whether the Decision was "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]" See § 42-35-15(g)(5). As such, this Court vacates the Decision and remands this matter to the AAD for a de novo hearing consistent with this opinion. On remand, the Hearing Officer is directed to ensure that the hearing is conducted in accordance with all AAD Rules of Procedure, including § 16(k) and its recording requirement.

IV

Conclusion

The Court finds that RIDEM has waived any challenges to this Court's jurisdiction on the basis of improper service of process. RIDEM entered a general appearance and thus submitted itself to this Court's jurisdiction. As such, RIDEM's motion to dismiss is denied. Additionally, the Court finds that the failure to record the Hearing was a violation of statutory procedure that substantially impaired the Court's ability to consider Mr. Sullivan's appeal and thus substantially prejudiced Mr. Sullivan's rights. As such, the Decision is vacated and remanded for a new hearing consistent with this decision. The parties shall confer and submit and order for entry consistent with this decision.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Peter K. Sullivan v. Rhode Island Department of Environmental Management
CASE NO:	C.A. No. PC-2016-2165
COURT:	Providence County Superior Court
DATE DECISION FILED:	May 19, 2017
JUSTICE/MAGISTRATE:	Van Couyghen, J.
ATTORNEYS:	
For Plaintiff:	Peter K. Sullivan, *Pro Se*
For Defendant:	Gary Powers, Esq.