

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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DANIEL RATHGABER,

Plaintiff,

-against-

THE TOWN OF OYSTER BAY, and STEVEN L.
LABRIOLA, individually and as the Town Clerk,

Defendants.

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**MEMORANDUM OF
DECISION AND ORDER**
06 CV 5450 (ADS)(WDW)

APPEARANCES:

WILLIAM J. EPPIG, ESQ.

Attorney for the Plaintiffs
1175 Montauk Highway
West Islip, New York 11795

GREGORY J. GIAMMALVO

TOWN ATTORNEY FOR THE TOWN OF OYSTER BAY

54 Audrey Avenue
Oyster Bay, New York 11771

By: Donna Swanson, Assistant Town Attorney
Frank Scalera, Deputy Town Attorney

SPATT, District J.

Daniel Rathgaber (the “plaintiff”) brings this action against the Town of Oyster Bay (the “Town”), and Steven L. Labriola (“Labriola”) (collectively the “defendants”), alleging that the Town’s licensing provisions for commercial shellfishing violate the Equal Protection Clause and Due Process Clause of the Fourteenth Amendment to the United States Constitution. The plaintiff seeks a

preliminary injunction directing the Town Clerk to issue a shellfishing license to the plaintiff during the pendency of this action.

This matter is respectfully referred to United States Magistrate Judge William D. Wall to hold a hearing for the purpose of resolving all questions of fact and law relating to the plaintiff's request for a preliminary injunction directing the Town to issue a license to him, and to issue a report and recommendation to that effect pursuant to Rule 72(b) of the Federal Rules of Civil Procedure.

SO ORDERED.

Dated: Central Islip, New York
October 13, 2006

/s/ Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge