

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 Broadway
Albany, New York 12233-1550

In the Matter of the Alleged Violations
of Article 13 of the New York State
Environmental Conservation Law
and Part 175 of Title 6 of
the Official Compilation of Codes, Rules and
Regulations of the State of New York

- by -

ANTHONY J. REALE,

Respondent.

Case No. R1-20070424-260

DECISION AND ORDER OF THE ACTING COMMISSIONER

December 1, 2010

DECISION AND ORDER OF THE ACTING COMMISSIONER

Respondent Anthony J. Reale (“respondent”) has for several years possessed a New York resident commercial lobster permit (permit no. 898) to take and land lobsters from the waters of Long Island Sound. On or about October 13, 2006, he applied to the New York State Department of Environmental Conservation (“Department”) to renew his permit for the 2007 calendar year. On or about December 29, 2006, the Department renewed respondent’s permit for the 2007 calendar year.

On June 15, 2007, Department staff issued a notice of intent to revoke respondent’s 2007 permit (the “notice”), effective July 6, 2007. The notice alleged that respondent had violated section 175.5(a)(1) of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”), by making “materially false or inaccurate” statements on his permit renewal application, and section 13-0329(1) of the Environmental Conservation Law (“ECL”), which requires that a person receiving a resident commercial permit to take and land lobsters must be “domiciled within” New York State.¹

By letter dated July 5, 2007, respondent requested a hearing pursuant to 6 NYCRR 175.5(c). The matter was referred to the Office of Hearings and Mediation Services on November 1, 2007. On January 22, 2008, Department staff filed a notice of motion for order without hearing. The motion was held in abeyance during settlement discussions between respondent and Department staff. The parties were unable to reach a resolution, and on January 27, 2009, Administrative Law Judge (“ALJ”) Maria E. Villa, to whom the matter had been reassigned, established a briefing schedule for the motion. Respondent, in his answer to the notice and affirmation in opposition to the motion, moved for summary judgment dismissing the enforcement matter.

In a ruling dated August 13, 2009 (the “Ruling”), the ALJ denied Department staff’s motion for order without hearing, as well as Department staff’s motion to clarify or strike affirmative defenses. Respondent’s motion for summary judgment was also denied. A hearing was held on December 9, 2009. Following the hearing, respondent moved to renew his motion for summary judgment dismissing the enforcement matter. Department staff also appealed from the ALJ’s May 6, 2010 letter ruling in which she ruled that various exhibits attached to staff’s closing brief would not be admitted into evidence.

The ALJ prepared a hearing report, a copy of which is attached, and recommends that staff’s causes of action be dismissed. I concur with the ALJ’s determination that the cause of action relating to respondent’s alleged violation of 6 NYCRR 175.5(a)(1) be dismissed. However, I conclude that Department staff met its burden of demonstrating that respondent was not domiciled within New York State and, accordingly, was not in compliance with ECL 13-0329(1). On that basis, I am directing that respondent’s resident commercial lobster permit no.

¹ The original staff caption referenced alleged violations of Article 11 and 6 NYCRR part 44. Because no violations of these provisions were set forth in the underlying papers, the caption has been modified to delete those references.

898 be revoked. I otherwise adopt the hearing report as my decision, subject to my comments below.

DISCUSSION

Applicable Standard

In this proceeding, Department staff bears the burden of proof on all charges and matters they affirmatively asserted in the instrument that initiated the proceeding, which in this case was the notice of intent to revoke respondent's 2007 permit (see 6 NYCRR 622.11[b][1]). Whenever factual matters are involved, the party bearing the burden of proof must sustain that burden by a preponderance of the evidence, unless a higher standard has been established by statute or regulation (see 6 NYCRR 622.11[c]). In this proceeding because no statute or regulation establishes a higher standard, the "preponderance of the evidence" standard applies.

First Cause of Action: Alleged Violation of 6 NYCRR 175.5(a)(1)

Section 175.5(a)(1) provides that the Department may revoke licenses or permits for "materially false or inaccurate statements in [an] application, supporting papers or required reports." Department staff contends that respondent violated 6 NYCRR 175.5(a)(1) by making a materially false or inaccurate statement when he checked "yes" in the circle next to the question "NYS Resident?" on the application to renew his resident commercial lobster permit (see Hearing Exhibit 17A). According to Department staff, respondent was in fact a permanent resident of, and domiciled in, the State of Florida at the time he completed and submitted the renewal application for a 2007 permit.

The meaning and scope of the term "resident" is critical to determining whether respondent violated the regulation. The term "resident" is not defined in 6 NYCRR part 175 or in the authorizing legislation. The courts have defined residence as "simply requir[ing] bodily presence as an inhabitant in a given place" (Matter of Newcomb, 192 NY 238, 250 [1908]). This is in contrast to "domicile," which is generally considered to be a more restrictive term. An individual may have more than one residence, but only one domicile. Residence means "living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home" (Matter of Newcomb, 192 NY 238, 250 [1908]).²

The Department has prepared a one-page instruction sheet for new applicants for marine resource permits, which applies to commercial lobster permits, among others (see Hearing Exhibit 18 [dated August 4, 2006]). The instruction sheet states that applicants "must maintain a

² Although courts have generally held that "residence" and "domicile" are not interchangeable terms (see Matter of Antone v General Motors Corp., 64 NY2d 20, 28 [1984]), courts, have interpreted the term "residence" to be synonymous with "domicile" in the construction of certain New York statutes (see, e.g., Lockwood Central School Dist. v Springs Union Free School Dist., 1 NY3d 385, 388 [2004][Education Law § 3202]; Matter of Hosley v Curry, 85 NY2d 447, 451 [1995][for certain provisions of the Public Officers Law, the term "resident" is "properly understood" to be synonymous with domicile]; In re Gifford's Will, 279 NY 470, 475 [1939][referencing statutes where the New York State legislature used "residence" as synonymous with "domicile"])). Under other statutes, the courts have held that the terms are not synonymous (see, e.g., Antone v General Motors Corp., 64 NY2d 20, 28-30 [1984][CPLR 202]

fixed, permanent and principal home or establishment in New York” (see id.). In listing applicant requirements, the instruction sheet states that applicant must provide “[p]roof of domicile or residence” (see id.). A New York State motor vehicle driver’s license or a current voter registration card, for example, is listed as demonstrating proof of residency or domicile.³ The use of the word “or” in “residence or domicile,” as referenced in the instruction sheet, may suggest that “domicile” and “residence” are not meant to be synonymous. However, at the concluding portion of the instruction sheet, residency is defined as “that place where a person maintains a fixed, permanent and principal home (regardless of where temporarily located), such as where a person is registered to vote.” This terminology is often used in defining “domicile” (see Lockwood, at 388; Unanue v Unanue, 141 AD2d 31, 35 [2d Dept 1988]). The record does not reflect that respondent was provided with the instruction sheet when he received the permit renewal application form for 2007 (see Hearing Transcript, at 81-82) and, accordingly, he may not have been familiar with those instructions.

At the hearing, Department staff testified that, for purposes of marine resource licenses and permits, the term “residency” is typically seen as being synonymous with the term “domicile” (see Hearing Transcript, at 83). Nevertheless, on the application form itself, the question posed is phrased solely in terms of an applicant’s residency. Though the word “domiciled” appears in the statute establishing permitting requirements (see ECL 13-0329), “domicile” or “domiciled” is not mentioned in the question or in any other section of the application form, nor is there any indication on the form that the question is meant to refer to one’s permanent and principal home.

Respondent maintains that he is a resident of New York State, and proffered evidence in this proceeding in support of that position. He holds a valid New York State driver’s license, and he generally resides at least for a time in New York State each year (at his niece’s residence). Respondent provided certain indicia of residency, and accordingly, respondent’s “check-off” on the 2007 application form that he was a New York State resident did not constitute a materially false or inaccurate statement in violation of 6 NYCRR 175.5(a)(1). Even if respondent is domiciled in a state other than New York, he could still be a resident of New York State. Based on the record before me, Department staff did not demonstrate by a preponderance of evidence that respondent was not a resident of New York State.

Second Cause of Action: Alleged Noncompliance with ECL 13-0329(1)

Department staff also alleges that respondent was in violation of ECL 13-0329. That statute provides, in pertinent part, that “[a]ny person domiciled within the state [of New York] may take and land lobsters . . . from the waters of the state” (emphasis added), subject to first obtaining a permit from the Department. Department staff contends that only a domiciliary of New York is entitled to obtain a resident commercial lobster permit, and because respondent is

³ The instruction form also references the following documentation that may be provided as proof of residency or domicile: New York State motor vehicle driver’s license or New York State motor vehicle non-driver’s identification; New York State income tax form IT-201 or W-2 form from the previous year; current voter registration card; and New York State vehicle registration, among other records (see Hearing Exh 18).

domiciled in the State of Florida, he is not authorized to hold or possess such a permit.⁴ Accordingly, Department staff maintains that respondent was not in compliance with ECL 13-0329(1).

As noted, ECL 13-0329 uses the more restrictive term “domiciled” (ECL 13-0329[1]: [a]ny person domiciled within the state may take and obtain lobsters; ECL 13-0329[2][a]&[d]: “[a] person not domiciled”), rather than “residency” or “resident.”⁵ The determination of an individual’s domicile is based on conduct manifesting an intent to establish a permanent home with permanent associations in a given locality (see Matter of Clute v Chu, 106 AD2d 841, 843 [3d Dept 1984]). In proceedings addressing the issue of domicile, factors supporting domicile in one state are balanced against factors supporting domicile in another, and the significance of some factors are, as a matter of law, given greater weight than others (see Matter of Estate of Trowbridge, 266 NY 283, 289 [1935]; see also In re Lamouette’s Will, 195 Misc 907, 908-909 [Sur Ct 1949]). Among the criteria considered are length of residence in a state; oral or written declarations; leasing, buying, or building a home; location of one’s place of worship and club memberships; places where one maintains a bank account; places where one performs his or her civic responsibilities (including voting); the state where one’s car is registered; and the state that issued one’s driver’s license (see, e.g., Unanue v Unanue, 141 AD2d 31, 40 [2d Dept 1988][listing factors to be considered in determining domicile]; Matter of Gray v Tax Appeals Tribunal, 235 AD2d 641, 643 [3d Dept 1997][intent regarding domicile “frequently determined by looking at the acts of the party claiming domicile”]); Wilke v Wilke, 73 AD2d 915, 917 [2d Dept 1980][“(w)hile so-called ‘formal declarations’ of domicile such as voter registration or motor vehicle registration have lost their importance in recent years as courts have recognized their self-serving nature, the ‘informal declarations’ and acts of the person have been greater recognition in resolving the question of domicile”]; see also Chappelle v Beacon Communications Corp., 863 F Supp 179, 182 [SDNY 1994][reviewing factors relating to whether an individual was domiciled in New York or California, including leases, personal bank account, driver’s license and car registration, and state and federal tax returns]).

In this proceeding, Department staff presented considerable evidence in support of its position that respondent was not domiciled in New York State at the time that he submitted his permit application renewal in 2006 or thereafter in 2007 during the term of the permit. The record demonstrates that respondent was involved in numerous personal and professional matters in the State of Florida, including, for example, the following:

- respondent’s wife and daughter reside in Florida;
- respondent purchased a home in Florida in 2004;

⁴ Although the permit is referred to as a “resident commercial lobster permit,” the statutory requirement, as noted, limits the permit to persons domiciled within New York State.

⁵ In contrast to ECL 13-0329(1) which references “any person domiciled,” other statutory provisions in Article 13 employ the term “resident” and “nonresident” (see, e.g., 13-0313[1], 13-0325[4][c], and 13-0341[6]). I need not reach any conclusion in this decision as to the issue whether the use of the term “resident” or “nonresident” in those provisions should be considered equivalent to “domiciliary” or “nondomiciliary.”

--respondent applied for a homestead exemption for his Florida residence (see Hearing Exh 26 [Affidavit of Judy Norton, Senior Supervisor in the Exemptions Department of the Hillsborough County Property Appraiser's Office, Florida, sworn to April 22, 2009], ¶ 3 ["Mr. Reale signed a homestead exemption application stating that 10537 Greencrest Drive, Tampa, Florida . . . was his primary residence as of January 1, 2006 and that he was a permanent resident of the State of Florida"]); see also Exh A to Hearing Exh 26 [respondent's application for ad valorem tax exemption from the Florida Department of Revenue signed December 1, 2005, where respondent stated that he became a "permanent resident" of Florida on January 1, 2002 and the declaration of domicile is noted as "Res. date"]);

--respondent is president of multiple businesses in Florida (see Hearing Exhs 23, 24, and 27 ¶ 8);

--when respondent sustained an injury in 2006 in Ohio, respondent returned to his residence in Florida, and not to New York, for long term recuperation; and

--respondent listed his Florida address as his home address on his federal individual income tax returns (see Hearing Exh 27).

Respondent, however, contended that he was domiciled in New York and offered certain indicia as proof of his domiciliary status in New York State, including, for example, the following:

--respondent held residential real estate property in New York State until the end of 2004, and he generally returns to New York State on a regular basis where he stays with his niece;

--respondent is the sole owner and operator of Annie Lobster Corp., a New York corporation (see Hearing Exhibits 27 [¶ 8], 34 and 35); and

--respondent has a valid New York State driver's license.

In evaluating respondent's documentation, he falls short of establishing that he was domiciled in New York. First, although possessing a valid driver's license is a factor to be considered, it is not determinative of domicile (see Unanue v Unanue, 141 AD2d 31, 40 [2d Dept 1988]). Furthermore, respondent also holds a Florida driver's license (see Hearing Transcript, at 166-67; see also Exh A to Hearing Exh 26). Second, although he returns to New York at some times during the year and stays with his niece, he lives with his wife in Florida. In addition, respondent filed no tax returns in New York State during 2006 or 2007 (see Hearing Exh 27 ¶ 3). The record does not indicate that he owns or leases any real property (see Hearing Exh 27, ¶ 5), or paid property taxes, in New York State during 2006 or 2007. He had no vehicles registered in New York State in 2006 and 2007 (see Hearing Exh 28). Respondent indicated that the New York bank account that he uses is through his company, Annie Lobster Corp. (see Hearing Exh 27, ¶ 9C). Respondent sold his New York lobster boat and business in early 2007. Respondent

notes that he was registered to vote, as of 2009, in Suffolk County, New York. However, this fact is not relevant to the 2006-2007 time period in question.

Considering the entire course of conduct, I find that a preponderance of evidence supports the conclusion that respondent was domiciled in Florida and not domiciled in New York State both during the term of the 2007 permit and at the time that he filed a renewal application in 2006. Accordingly, respondent, as a nondomiciliary of New York State, was not eligible to obtain and hold a resident commercial lobster permit pursuant to ECL 13-0329(1).

The ALJ also noted that Department staff produced no evidence to show that respondent did “take and land” lobsters during the 2007 licensing period, and, as a result, did not find that respondent violated ECL 13-0329(1). Based on the record before me, I concur with the ALJ’s determination that respondent did not take and land, or attempt to take and land, lobsters during 2007. Respondent sold his boat in January 2007, and there is no indication that he had lobstered in the weeks prior to that sale (see Hearing Transcript, at 118), or thereafter.⁶ However, the fact that no lobsters were taken and landed, or no attempt was made to take and land lobsters, does not support dismissing this cause of action.

Respondent contends that, because of the determination in the Second Circuit decision in Connecticut ex rel. Blumenthal v Crotty, 346 F3d 84 (2d Cir 2003), the nonresident lobster requirements set forth in ECL 13-0329(2)(a) are unconstitutional. In respondent’s view, the entire statute fails as it now only provides for the permitting of New York residents/domiciliaries. He contends that the requirements of ECL 13-0329 cannot be applied until the State Legislature enacts a constitutionally adequate law allowing for licensure of non-resident/non-domiciliary lobstermen. Department staff disputes respondent’s argument, noting that what was at issue in the federal litigation was language in the statute prohibiting lobstermen not domiciled within the State from lobstering in New York waters near Fishers Island. Staff noted that, subsequent to the Second Circuit’s decision, New York is no longer enforcing that geographical prohibition.

Respondent’s argument that, as a result of the Second Circuit decision, the statutory scheme that distinguishes between domiciliaries and nondomiciliaries has been declared unconstitutional, must fail. That argument is not supported by the rationale in the court’s decision (see ALJ Ruling on Motion for Order Without Hearing, Respondent’s Cross-Motion to Dismiss and Motion to Strike or Clarify Affirmative Defenses, August 13, 2009 [“Ruling on Motion for Order Without Hearing”], at 13-14). The Second Circuit’s decision was directed to the geographical limitation imposed on the lobstering activities of non-domiciliaries, rather than the general distinction between domiciliary and non-domiciliary permitting requirements (see Connecticut ex rel. Blumenthal, at 99 [issue of conserving Fishers Island lobsters]; Weinberg,

⁶ Department staff state that respondent had obtained authorization from the Department in 2006 to have another individual tend his lobster traps due to an injury. The dates of the authorization included the period from December 18, 2006 until one hour after sunset on January 17, 2007 (see Hearing Exh 12 [letter dated December 15, 2006 from Gordon Colvin, Director, Marine Resources of the Department’s Division of Fish, Wildlife & Marine Resources to Anthony Reale]; affidavit of Kim McKown sworn to on January 16, 2006, ¶ 10, at 3-4 [indicating correction of date in December 15, 2006 letter]). As noted, the record does not reflect whether any lobstering occurred during the period January 1 through January 17, 2007, or any later time in calendar year 2007.

Practice Commentaries, McKinney's Cons Laws of NY, Book 17 ½, ECL 13-0329, at 83). Accordingly, respondent's argument is rejected.⁷

In sum, respondent Anthony Reale was not domiciled in New York State either at the time that he applied to renew his commercial lobsterman permit for 2007 or during the permit's term. He therefore was not in compliance with the requirements of ECL 13-0329(1) and was not entitled to possess or hold a resident commercial lobster permit. Pursuant to 6 NYCRR 175.5(a)(4), non-compliance with any provision of the ECL is a ground for revocation of this permit. Accordingly, I hereby grant Department staff's request that respondent's permit no. 898 be revoked.

Appeal from the ALJ's May 6, 2010 Letter Ruling

Following the hearing, Department staff submitted a closing brief dated April 9, 2010, to which various exhibits were appended. Respondent, by e-mail dated April 19, 2010, objected to the receipt of many of the exhibits. By letter ruling dated May 6, 2010, ALJ Villa concluded that receipt of the objected exhibits would prejudice respondent and that they would not be received into the record. Furthermore, the ALJ stated that Department staff had failed to make a showing why the documents were not provided in discovery or produced at hearing, as the documents were available prior to the date when the hearing was held.

As part of its reply brief, Department staff appeals from the ALJ's May 6, 2010 ruling sustaining respondent's objection to the receipt of certain exhibits appended to Department staff's closing brief. The ALJ authorized respondent to reply to Department Staff's appeal. On June 2, 2010, respondent filed its reply. On its appeal, Department staff contends that many of the excluded documents are "certified" and, therefore, should be admitted and made part of the record. The submission of new evidence in closing briefs in the Department's administrative proceedings generally is not allowed (see, e.g., 6 NYCRR 624.8 [a][6][briefs in hearings on permit applications "must not refer to or contain any evidentiary material outside of the record"]). Accordingly, I affirm the ALJ's ruling. I recognize that Department staff voiced specific concerns about respondent's timeliness in meeting discovery demands (see, e.g., Letter dated April 20, 2010 from Department staff attorney Megan J. Joplin, Esq., to ALJ Villa [noting that respondent had failed to provide W-2 forms and 1099 forms that he was ordered to produce]). I also recognize Department staff's willingness to reopen the evidentiary hearing to address matters relating to the proffered exhibits. However, based on my review of the excluded, late-filed exhibits, I concur with the ALJ that the exhibits are of limited probative value and several are duplicative of information already in the record.

⁷ Other sections of ECL 13-0329 establish various requirements for persons not domiciled within New York (see, e.g., 13-0329[2][b]&[d]), which among other things establish differing licensing fees for non-domiciliaries; see also ALJ Ruling on Motion for Order Without Hearing, at 14 [noting limits of the Second Circuit decision]).

NOW, THEREFORE, having considered these matters and being duly advised, it is **ORDERED** that:

- I. Respondent Anthony Reale's post-hearing motion to dismiss the causes of action set forth in Department staff's notice of intent to revoke respondent's 2007 resident commercial lobster permit is granted in part and denied in part.
- II. Department staff's first cause of action regarding respondent's alleged violation of 6 NYCRR 175.5(a)(1) by making a materially false or inaccurate statement is dismissed.
- III. Respondent is adjudged to have violated ECL 13-0329(1), by holding New York resident commercial lobster permit no. 898 during 2007 without being a domiciliary of the State of New York.
- IV. Respondent Anthony Reale's resident commercial lobster permit no. 898 is hereby revoked, and respondent shall surrender the permit to Department staff at the address referenced in paragraph VI of this order.
- V. The May 6, 2010 ruling of Administrative Law Judge Maria Villa excluding certain exhibits contained in the closing brief of Department staff is affirmed.
- VI. All communications from respondent Anthony Reale to the Department concerning this order shall be made to:

Megan J. Joplin, Esq.
Assistant Regional Attorney, Office of General Counsel
New York State Department of Environmental Conservation, Region 2
47-40 21st Street
Long Island City, New York 11101-5407

- VII. The provisions, terms, and conditions of this order shall bind respondent Anthony Reale, his heirs, successors, and assigns, in any and all capacities.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

/s/
By: _____
Peter M. Iwanowicz
Acting Commissioner

Dated: December 1, 2010
Albany, New York

TO:

(via certified mail, return receipt requested):

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155-C South Country Road, 2nd Floor
P.O. Box 489
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Anthony J. Reale
10 Overlook Drive
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Anthony J. Reale
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(via intra-agency mail):

Megan J. Joplin, Esq.
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ANTHONY J. REALE,

Respondent.

Case No. R1-20070424-260

HEARING REPORT

-by-

/s/

Maria E. Villa
Administrative Law Judge

November 3, 2010

BACKGROUND

On June 15, 2007, the Department of Environmental Conservation (“Department”) issued a Notice of Intent to Revoke Permit (the “Notice”), effective July 6, 2007, to Respondent, Anthony J. Reale (“Respondent”). The Notice stated that Respondent violated Environmental Conservation Law (“ECL”) Section 13-0329 and Section 175.5(a)(1) (“Materially False or Inaccurate Statements”) of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (“6 NYCRR”). Specifically, Department Staff contended that

[u]pon information and belief, on or about October 13, 2006, in the State of New York, Anthony J. Reale (“Respondent” or “Respondent Reale”) violated Section 13-0329 of the ECL and 175.5 of 6 NYCRR in that Respondent made materially false or inaccurate statements in Respondent’s 2007 application for renewal of a New York State Department of Environmental Conservation Commercial Lobster Permit, Number 898. Specifically, Respondent falsely claimed to be a New York State resident on the NYSDEC Application for Permit Renewal – Year 2007 when Respondent Reale checked the “yes” box for New York State residency on the aforementioned application. Upon information and belief, Respondent was in fact a permanent resident of the State of Florida at the time he completed the aforementioned New York State application. The materially false or inaccurate statements in the application and supporting documentation are grounds for permit revocation pursuant to Section 175.5(a)(1) of 6 NYCRR.

Notice, at pp. 1-2 (complete copy attached as Exhibit 3 to Respondent’s March 6, 2009 Combined Answer to the Notice of Intent/Complaint and Affirmation in Opposition to Department Staff’s Motion for Order Without Hearing). The Notice went on to state that

During the 2007 license year, Respondent Reale violated ECL 13-0329, which states, in part, “any person domiciled within the state may take and land lobsters (*Homarus americanus*) from the waters of the state or land lobsters in the state taken elsewhere upon first obtaining a permit from the department.” Respondent Reale is not domiciled in the State of New York but is domiciled in the State of Florida. Respondent Reale claimed January 1, 2002 as the date he last became a “permanent resident of Florida” on his Florida Department of Revenue Original Application for Ad Valorem Tax Exemption for the 2006 tax year. Respondent Reale affirmed Florida state residency on the aforementioned application with the following statement “I am a resident of the State of Florida and I own and occupy the property described above.” Noncompliance

with any provision of the ECL, any other State or Federal laws or regulations of the Department directly related to the permitted activity is grounds for permit revocation pursuant to Section 175.5(a)(4) of 6 NYCRR.

Notice, at p. 3. By letter dated July 5, 2007, Respondent requested a hearing, pursuant to Section 175.5(c) of 6 NYCRR.

Department Staff's October 30, 2007 statement of readiness, pursuant to Section 622.9 of 6 NYCRR, was filed with the Department's Office of Hearings and Mediation Services on November 7, 2007. The matter was assigned to administrative law judge ("ALJ") Richard R. Wissler, and on January 22, 2008, Department Staff filed a notice of motion for order without hearing.¹ The motion, dated January 17, 2008, included a memorandum of law in support, as well as the January 16, 2008 affirmation of Megan J. Joplin, Esq. (the "Joplin Affirmation"). The affidavits of Kim McKown, a Biologist 2 in the Crustacean Investigations Unit of the Department's Bureau of Marine Resources (the "McKown Affidavit"), and Gerard Carpenter, a Region 1 Police Investigator (the "Carpenter Affidavit"), sworn to January 16 and January 17, 2008, respectively, accompanied the motion.

On April 1, 2008, the matter was re-assigned to ALJ Mark D. Sanza. On April 7, 2008, ALJ Sanza advised the parties that he had recused himself, and that the case had been assigned to ALJ Maria E. Villa. The parties engaged in settlement discussions, which were unsuccessful, and on December 18, 2008, the ALJ issued a letter ruling addressing Respondent's motion to compel discovery, and Department Staff's motion for a protective order, which had been held in abeyance pending a possible resolution of the matter.

On January 27, 2009, the ALJ set a briefing schedule for Department Staff's motion for order without hearing, and on March 10, 2009, Respondents timely filed a combined answer to the Notice, as well as the Affirmation of J. Lee Snead, Esq. ("Combined Answer") in opposition to the motion for order without hearing. The Combined Answer sought summary judgment in favor of Respondent based upon the analysis set forth in Respondent's second affirmative defense, which asserted that ECL Section 13-0329(1) (which deals with resident commercial lobstering licenses) was unconstitutional. Respondent asserted that "neither 'residency' nor 'domicile' status in New York is a constitutionally allowable fact to determine whether a commercial lobster license should be issued. As such, Summary Judgment as a matter of law in favor of Respondent dismissing this enforcement matter is warranted." Combined Answer, ¶ 85.

By letter dated February 2, 2009, Department Staff sought leave to reply to any arguments raised by Respondent concerning the constitutionality of ECL Section 13-0329. Leave was granted by letter dated February 6, 2009, and subsequently, on March 16, 2009,

¹ Section 622.12(a) of 6 NYCRR states that in lieu of, or in addition to, a complaint, Department Staff may make a motion for an order without hearing.

Department Staff sought leave to respond to certain other points raised in the Combined Answer. By letter dated March 18, 2009, the ALJ granted Department Staff's request, and on May 5, 2009, Department Staff filed the reply affirmation of Megan J. Joplin, Esq. (the "Joplin Reply Affirmation"), which included the affidavit of Judy Norton, sworn to April 22, 2009 (the "Norton Affidavit"). As part of that filing, Department Staff sought clarification of certain of Respondent's affirmative defenses, or, in the alternative, that those defenses be stricken, through the affirmation of Megan J. Joplin, Esq. ("Clarification Affirmation").

Respondent requested an extension of time to reply, which was granted on May 5, 2009. On June 8, 2009, Respondent filed the affirmation of J. Lee Snead, Esq. ("Respondent's Reply Affirmation") in opposition to the motion to strike. On July 1, 2009, Respondent filed the June 29, 2009 sur-reply affirmation of J. Lee Snead, Esq. in Opposition to the Motion to Strike (the "Sur-Reply Affirmation"). Department Staff did not object to the filing of the Sur-Reply Affirmation, which included a copy of a document obtained by Respondent as part of a request pursuant to the New York Freedom of Information Law.

In a ruling dated August 13, 2009 (the "Ruling"), the ALJ denied Department Staff's motion for order without hearing, as well as Department Staff's motion to clarify or strike affirmative defenses. Matter of Reale, ALJ's Ruling on Motion for Order Without Hearing, Respondent's Cross-Motion to Dismiss, and Motion to Strike or Clarify Affirmative Defenses at 19, 2009 N.Y. Env. LEXIS 56, * 47 (Aug. 13, 2009). Respondent's motion for summary judgment dismissing this enforcement matter was also denied. Id. The Ruling stated that, pursuant to Section 622.12(e) of 6 NYCRR, the following facts had been established:

1. Respondent, Anthony J. Reale, applied for a commercial lobstering permit, No. 898.
2. Respondent is the President of Annie Lobster Corp., a New York corporation.
3. Respondent holds a valid New York State driver's license, and a Florida non-resident driver's license.
4. After sustaining an injury in 2006, Respondent sought and obtained authorization from the Department to have Michael Ciulla tend his traps. The authorizations included the periods from August 14, 2006 to September 12, 2006; October 2, 2006 to November 1, 2006; November 16, 2006 to December 16, 2006; and December 18, 2006 to January 17, 2007. Id. at 18-19; * 46-47.

Following further discovery, the hearing took place on December 9, 2009, at the Department's Region 1 offices in Stony Brook, New York. At the hearing, Department Staff was represented by Megan J. Joplin, Esq., Assistant Regional Attorney. Department Staff called three witnesses: Gerard Carpenter, an investigator in the Department's Region 1 Stony Brook office; and Kim McKown and Debra Barnes, both Biologists 2 in the East Setauket office in Region 1. Respondent did not appear at the hearing, and was represented

by his counsel, J. Lee Snead, Esq., 155-C South Country Road, Bellport, New York. Respondent called two witnesses: Michael Ciulla and Robert Whelan.

The parties submitted closing briefs dated April 9, 2010, and reply briefs dated May 14, 2010. As part of its reply brief, Department Staff appealed the ALJ's May 6, 2010 ruling sustaining Respondent's objection to the receipt of the exhibits proffered in Department Staff's closing brief. Accordingly, that appeal is referred to the Acting Commissioner for his consideration in his Decision and Order in this matter.

By letter dated May 17, 2010, the ALJ authorized Respondent to respond to Department Staff's appeal. On June 2, 2010, Respondent filed a sur-reply brief. By letter dated June 7, 2010, Department Staff objected to Points I through IV of Respondent's sur-reply, arguing that those portions of the sur-reply were unauthorized and contained argument beyond Respondent's reply to Department Staff's appeal. Department Staff requested that those points be stricken from the record.

Department Staff's request is granted, and only Respondent's arguments with respect to the appeal have been considered. Nevertheless, as discussed below, because Department Staff did not establish the violations alleged by a preponderance of the evidence, the relief sought by Department Staff cannot be granted.

DISCUSSION AND RULING

Section 13-0329(1) of the ECL provides that any person domiciled within the State may take and land lobsters from the waters of the State, or land lobsters in the State taken elsewhere, upon first obtaining a permit from the Department. Department Staff's motion for order without hearing in lieu of complaint alleged that Respondent violated that provision by making a material false statement in his application for a commercial lobster permit by checking "Yes" in answer to the question "NY Resident?" on his 2007 renewal application. Carpenter Affidavit, ¶ 6; Exhibit C; Exhibit 17A. Department Staff stated that the license was issued on or about December 29, 2006 for the 2007 calendar year.²

Department Staff's first cause of action alleged

one count of making materially false or inaccurate statements on Respondent's application for renewal of a New York State Department of Environmental Conservation Commercial Lobster Permit, Number 898, in violation of 13-0329 of the ECL and Part 175 of 6 NYCRR.

Joplin Affirmation, ¶ 29. Department Staff's second cause of action alleged

² Pursuant to Section 13-0328(2)(b) of the ECL, for the period beginning January 1, 2000 through December 31, 2011, only persons who were issued a commercial lobster permit in the previous year are eligible for such permits. This is informally referred to as the "lobster license moratorium." McKown Affidavit, ¶ 6.

one count of non-compliance with the ECL by not being domiciled in New York State as required by the terms of his resident commercial lobster license, Permit Number 898, in violation of 13-0329 of the ECL and Part 175 of 6 NYCRR.

Id., ¶ 30. Department Staff requested a finding of liability, and an order revoking Respondent's resident lobster license, No. 898. Department Staff stated that it was not seeking a civil penalty, although it maintained that "any lobster obtained pursuant to permit number 898 was obtained unlawfully." Memorandum of Law, at 7-8. Department Staff requested further that the order require Respondent to surrender his license.

Second Cause of Action

As a threshold matter, Respondent argued that Department Staff failed to show that he violated Section 13-0329 of the ECL, because there was no evidence that he took or landed lobsters during the 2007 licensing period. Department Staff responded that whether he lobstered during that period was irrelevant. Nevertheless, Respondent's liability for the allegations in Department Staff's second cause of action is predicated on a violation of Section 13-0329. Consequently, that cause of action is discussed at the outset.

At the hearing, Respondent's witness, Michael Ciulla, testified that Respondent was injured in 2006, and after that time, "that was it, he never showed back up . . . [w]e made it until the next January of 2007 and the boat and business were sold. So he never came back out on the boat." Transcript (hereinafter "Tr.") at 114-115. Mr. Ciulla testified that Respondent would be in New York in the winter and spring months, and in the summertime, they would work seven days a week, "[b]ut that was the only time you could make any money for that business, in those times." Tr. at 117-118. According to the witness, "the real bang time" for lobstering was between July 1 and August 31, and in November "the boat wouldn't be going out anyway, so there was no lobstering going on anyway. It's deadsville." Tr. at 118. Mr. Ciulla testified that he himself was no longer a lobsterman, and had been employed as a painter for the past three years. Tr. at 107-108.

Kim McKown, Department Staff's witness, testified that the Department obtains information through surveys from permit holders at the time of license renewal as to "how many pots did they fish the previous year and what their landings were, the amount that they harvested in pounds the previous year and where they fished it and type of gear." Tr. at 28-29; Exhibits 2A through 2E (Resident Commercial Lobster Surveys). Although Department Staff introduced Respondent's Resident Commercial lobster surveys for the years 2002, 2003, 2004, 2005 and 2006, no surveys were introduced for 2007. Exhibits 2A – 2E.

Prior to the hearing, Respondent submitted an affidavit, sworn to December 8, 2009 (the "Reale Affidavit"), in which he stated that he did not file a New York State income tax return for the years 2006 and 2007 because he did not earn income in New York in either of

those years, and thus was not required to file. Reale Affidavit (Exhibit 27), ¶ 3. Respondent stated that

the business I own and operate in New York – Annie Lobster Corp. – an “S” corporation wholly owned by me – and which would pay me any income I might earn there, did not generate enough a [sic] profit in either 2006 or 2007 to make payments to me as is noted in the New York State corporate tax filings I made for those years.

Id. Respondent noted that prior to his accident in 2006, he routinely traveled to New York in March and April to prepare for lobstering, and actively lobstered from May to October. Id., ¶ 9A. According to Respondent, he would also routinely travel to New York to spend Christmas and New Year’s Day with his niece, Theresa Whelan, and her husband, Robert Whelan.

Pursuant to Section 622.11(b)(1) and (c) of 6 NYCRR, Department Staff bears the burden of proof with respect to all charges, by a preponderance of the evidence. The testimony of Mr. Ciulla was un rebutted, and supports the conclusion that Respondent did not engage in lobstering during the relevant period. In order to find a violation of Section 13-0329, the evidence must demonstrate that a respondent performed an act prohibited by the statute, or failed to perform a duty the statute requires. In this case, there is insufficient evidence to find that Respondent violated Section 13-0329 of the ECL, because he did not take or land lobsters during 2007. As a result, that portion of the cause of action seeking revocation based upon Section 175.5(a)(4) of 6 NYCRR (noncompliance with any provision of the ECL) has not been established by a preponderance of the evidence, and the second cause of action must be dismissed. As a result, there is no need to reach Respondent’s constitutional arguments with respect to that provision of the ECL. See Matter of Reale, supra, at 14, * 33 (noting that Respondent’s constitutional arguments may be rendered academic depending upon the outcome of the hearing).

First Cause of Action

Department Staff alleged further that Respondent violated Part 175 of 6 NYCRR because he checked “yes” in response to the “NY Resident?” question on the renewal application for a 2007 resident lobster license. Department Staff has the burden to show that Respondent made a materially false or inaccurate statement, within the meaning of Section 175.5(a)(1) of 6 NYCRR. That provision states that the Department may revoke licenses or permits “for a period of time it deems appropriate, after taking into consideration all relevant circumstances. The grounds for revocation include: (1) materially false or inaccurate statements in the application, supporting papers or required reports; . . .”³

³ In a criminal proceeding before the Suffolk County Court, Respondent was charged under indictment with the crime of offering a false instrument for filing in the first degree in violation of Section 175.35 of the State Penal Law, claiming to be a “resident” of New York State in order to secure a commercial lobster permit. People v. Reale, Case No. 1729-2008 (Feb. 26, 2009) (Weber, J.C.C.), at 1. The court noted that “residence”

The word “domicile” does not appear on the renewal application, and that document does not include instructions to applicants for a renewal of their permits as to the definition of “resident,” or “domicile,” or draw any distinction between a resident and a domiciliary. Exhibit 17A. Department Staff’s witness, Ms. Barnes, testified that renewal applicants are not required to provide proof of domicile or residence, but are required only to check “yes” or “no” on the form.⁴ Tr. at 102, 104. An applicant must affirm, under penalty of perjury,

[t]hat all the information I have given in obtaining this permit is true. I furthermore affirm that I am aware of the applicable Sections of the Environmental Conservation law and the Official Compilation of Codes, Rules and Regulations of the State of New York and fully understand them. I understand violations of these laws and regulations may subject me to criminal and civil penalties including fine, imprisonment, revocation of license or a combination of any of these penalties.

Exhibit 17A. This notation appears immediately above the line for the applicant’s signature. Id.

Ms. Barnes was questioned concerning a document entitled “Instructions for All New Resident Applicants” (emphasis in original). That document states that applicants for Marine Resource Permits must provide “Proof of domicile or residence,” and notes that “[r]esidency is that place where a person maintains a fixed, permanent and principal home (regardless of where temporarily located), such as where a person is registered to vote.” Exhibit 18. According to the witness, “[f]or the purposes of our licenses and permits, we typically equate residency as being synonymous with domicile, so the term is used interchangeably throughout the form.” Tr. at 83.

Ms. Barnes testified that this document is not provided to applicants, such as Respondent, who are seeking a permit renewal. Tr. at 75, 81. The document is dated “8/4/06,” and a subsequent revision dated 7/3/07 adds instructions for applicants using a post office box. Exhibits 18, 19. Both documents note that “[t]he preferred proof of identity/address will be a valid New York State driver’s license.” Exhibits 18, 19. It is undisputed that Respondent has a valid New York State license. The record does not reflect that this document was provided to Respondent at the time he sought to renew the permit.

Gerard Carpenter, Department Staff’s witness, stated that after being notified by members of the public that Respondent was no longer living in New York but was having

and “domicile” were distinct terms, found that the indictment was based, in part, upon insufficient evidence with respect to whether Respondent was domiciled in New York State, and dismissed the indictment. Id., at 2.

⁴ On the application for a license renewal for calendar year 2004, Respondent checked the “Yes” response to the question concerning residency. On the 2005 and 2006 renewal applications, the “NY Resident?” question was left blank. Exhibits 17B, 17C and 17 D.

Mr. Ciulla tend his traps,⁵ Department Staff undertook an investigation into “the Respondent’s current state of residence.” Tr. at 135. Department Staff took the position that Respondent is not domiciled in New York, but in fact is a Florida domiciliary. As discussed in detail in the ruling in Matter of Reale, Department Staff offered evidence to show, among other things, that Respondent owns a home in Florida, that his wife and daughter reside in Florida, and that he applied for and received a homestead exemption in that State. In addition, Department Staff offered evidence that Respondent does not own any property in New York State, has registered a vehicle in Florida, and owns coin-operated laundries there. Respondent countered that his business, Annie Lobster Corp., is a New York corporation, that he holds a New York State driver’s license, and that he returns to New York and stays with his niece and her husband at their home in Mt. Sinai.

Respondent noted that he possesses no other resident driver’s license for any other state, and that from 1998 through 2006, he lobstered in New York State, except for the period in 2006 when, due to an injury, he received permission from the Department for Mr. Ciulla to tend his traps. According to Respondent, he is the president of Annie Lobster Corp., a New York corporation that has filed corporate tax returns for the years 2000 through 2008, and maintains a bank account in New York State. Respondent asserted that, while the corporation does not hold the license at issue,

it clearly is worthless without the license, and as a closely held corporation, is in fact the means by which Mr. Reale made his living in New York. Clearly, the filing of tax returns from that company with the State of New York, both during and after the period identified by the Department is significant evidence of Respondent’s ongoing ties to the State – a matter which bears on his continuing domicile in New York.

Respondent’s Reply Brief, at 2.

In his answer, Respondent affirmatively asserted that he is a resident of and a domiciliary of the State of New York, and denied that he is domiciled in Florida. Combined Answer, ¶ 2. According to the Reale Affidavit, Respondent has “always fully intended to both maintain domicile in the State of New York, and to return eventually to New York in my retirement . . . [i]n filling out any application form, in any year, it has been my belief that I was fully complying with the requirements that the Department made of me in identifying where I was a resident.” Reale Affidavit, ¶ 11. Respondent maintained that he is a resident of both New York State and Florida. Combined Answer, at ¶¶ 3, 48, and 49. Respondent argued that checking “Yes” in the box on the 2007 commercial lobster permit application,

⁵ After sustaining an injury in 2006, Respondent sought and obtained authorization from the Department to have Mr. Ciulla tend his traps. The authorizations include the periods from August 14, 2006 to September 12, 2006; October 2, 2006 to November 1, 2006; November 16, 2006 to December 16, 2006; and December 18, 2006 to January 17, 2007. McKown Affidavit, ¶ 11; Exhibit A; Carpenter Affidavit, ¶ 8; Exhibits 4-12. According to Department Staff, Respondent’s correspondence to the Department during these time periods was from the State of Florida, and Respondent indicated that he would be rehabilitating from his injury there.

which asks only whether the applicant is a resident of the State of New York, is not a material misrepresentation as to Respondent's domicile, and therefore not a violation of ECL Section 13-0329.

While Respondent is charged with knowledge of the statute, there is no showing that he was provided with anything other than the application at the time he sought to renew his lobster license, and that document asks only if he was a New York resident. Department Staff did not offer anything beyond the proof submitted on the motion for order without hearing with respect to this point, and under the circumstances, did not establish by a preponderance of the evidence that Respondent made a material misrepresentation. Respondent noted that the word "domicile" does not appear in Department Staff's first cause of action, arguing that revocation is not appropriate "if what was at issue was whether he was a 'resident' of New York." Respondent's Reply Brief, at 12. Moreover, Respondent's residence in Florida would not necessarily preclude his status as a New York domiciliary.

While the instruction sheet for new applicants refers to "domicile," it also appears to use the term interchangeably with "residence," which is consistent with Ms. Barnes's testimony that the term residency is synonymous with domicile, in Department Staff's view. Tr. at 83. This is at odds with the established legal principle that an individual may have more than one residence, but only one domicile. See Matter of Newcomb's Estate, 192 N.Y. 238, 250 (1908) (person may have two places of residence, but only one domicile); Matter of Urdang, 194 A.D.2d 615, 615 (2nd Dept. 1993) (burden is on party seeking to establish change of domicile). In any event, as noted above, it has not been shown that the instruction sheet was ever provided to Respondent, and that instruction sheet, on its face, indicates that it is provided to new applicants, not to those seeking renewal.

It cannot be said, on this record, that Department Staff has shown that Respondent made a material misrepresentation, and therefore, Department Staff's first cause of action should be dismissed.

CONCLUSION

The causes of action against Respondent should be dismissed.

TO (via certified mail, return receipt requested):

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EXHIBIT CHART

Matter of Anthony J. Reale

December 9, 2009

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
1	Resume – Kim McKown	✓	✓	Department Staff	
2A	Resident Commercial Lobster Survey (2002)	✓	✓	Department Staff	
2B	Resident Commercial Lobster Survey (2003)	✓	✓	Department Staff	
2C	Resident Commercial Lobster Survey (2004)	✓	✓	Department Staff	
2D	Resident Commercial Lobster Survey (2005)	✓	✓	Department Staff	
2E	Resident Commercial Lobster Survey (2006)	✓	✓	Department Staff	
3	May 5, 2006 letter from Gordon Colvin, NYSDEC, to Anthony Reale	✓	✓	Department Staff	
4	July 1, 2006 letter from Anthony Reale to Kim McKown, NYSDEC	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
5	August 14, 2006 letter from Gordon Colvin, NYSDEC to Anthony Reale re: authorization to M. Ciulla	✓	✓	Department Staff	
5A	Fax transmission from Hillcrest Hospital re: authorization to release protected health information (signed August 14, 2006), with second page of handwritten notes and overnight mail envelope	✓	✓	Department Staff	
6	Commercial Lobster Temporary Medical Emergency Application (signed by Anthony Reale on August 24, 2006) – cover sheet indicates fax date of September 8, 2006	✓	✓	Department Staff	
7	Commercial Lobster Temporary Medical Emergency Application (signed by Anthony Reale on September 25, 2006)	✓	✓	Department Staff	
8	September 29, 2006 letter from Gordon Colvin, NYSDEC to Anthony Reale re: authorization to M. Ciulla	✓	✓	Department Staff	
9	Commercial Lobster Temporary Medical Emergency Application (signed by Anthony Reale on November 14, 2006)	✓	✓	Department Staff	
10	November 15, 2006 letter from Gordon Colvin, NYSDEC to Anthony Reale re: authorization to M. Ciulla	✓	✓	Department Staff	
11	Commercial Lobster Temporary Medical Emergency Application (signed by Anthony Reale on December 13, 2006)	✓	✓	Department Staff	
12	December 15, 2006 letter from Gordon Colvin, NYSDEC to Anthony Reale re: authorization to M. Ciulla	✓	✓	Department Staff	
13	March 22, 2006 press release: “DEC Announces Proposed Marine Crustacean Regulation Changes”	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
14	Press release: "DEC Announces Finalized Marine Crustacean Regulation"	✓	✓	Department Staff	
15	Resume: Debra A. Barnes	✓	✓	Department Staff	
16	July 1, 2006 letter from Anthony J. Reale to Kim McKown, NYSDEC, with attached fax from Orthopedic Associates of Northern Ohio, Inc.	✓	✓	Department Staff	Copy of Exhibit 4, with two pages of medical information attached
17A	2007 Permit Renewal Application	✓	✓	Department Staff	
17B	2006 Permit Renewal Application, with copy of driver's license attached	✓	✓	Department Staff	
17C	2005 Permit Renewal Application, with copy of driver's license attached	✓	✓	Department Staff	
17D	2004 Permit Renewal Application, with copy of driver's license attached	✓	✓	Department Staff	
18	Instructions For All New Resident Applicants (8/4/06)	✓	✓	Department Staff	
19	Instructions For All New Resident Applicants (7/3/07)	✓	✓	Respondent	
20	December 14, 1999 letter from Byron Young, Chief, Finfish and Crustaceans to New York resident commercial lobster permit holders	✓	✓	Respondent	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
21	Resume: Gerard Carpenter	✓	✓	Department Staff	
22	DMV Printout	✓	✓	Department Staff	
23	Fax cover sheet with attached printout (Environmental Protection Commission of Hillsborough County, Florida: SQG Verification Inspection Report)	✓	✓	Department Staff	
24	Printout: Florida Department of State Division of Corporations (Laundro Depot, Inc.; Laundro Depot II, Inc.; Laundro Depot III, Inc.; Laundro Depot IV, Inc.; Laundro Depot V, Inc.; The Sudsy Lobster Inc.; Bravo Brothers Inc.; Bravo Brothers II Inc.; Bravo Brothers III Inc.)	✓	✓	Department Staff	
25	Printout: Tax Rolls	✓	✓	Department Staff	
26	Fax cover sheet: Hillsborough County Property Appraiser, with attached Affidavit of Judy Norton, sworn to April 22, 2009	✓		Department Staff	Duplicate: Exhibit M (electronic signature), Carpenter Affidavit
27	Affidavit of Anthony J. Reale, sworn to December 8, 2009, with attached individual federal income tax returns for 2006 and 2007	✓	✓	Respondent	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
28	Application for Florida Driver License/ID Card	✓	✓	Department Staff	
29	December 8, 2009 letter from Sergeant Michael Esposito, Executive Officer, Pistol Licensing Bureau, Suffolk County Police Department, to G. Carpenter, NYSDEC	✓	✓	Respondent	
30	List of checks with copies of copies attached (Milligan Muller, CPAs)	✓	✓	Department Staff	
31	DMV Printout	✓		Department Staff	
32	Printout: Tax information (10 Falmouth Drive)	✓	✓	Respondent	
33	December 9, 2009 letter from Rose Ann Weis, Board of Elections, Suffolk County, to Lee Snead, Esq.	✓	✓	Respondent	
34	Federal S Corporation Income Tax Return for 2007 (Annie Lobster)	✓	✓	Respondent	
35	Federal S Corporation Income Tax Return for 2006 (Annie Lobster)	✓	✓	Respondent	
36	December 17, 2009 cover letter from Megan Joplin, Esq. to ALJ Villa, enclosing copy of envelope and certified mail return receipt	✓	✓	Department Staff	
37	2008 Permit Renewal Application, with attached surveys	✓	✓	Department Staff	Exhibit "F" to Department Staff's Closing Brief

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
38	Florida Statute, Title XXXVI, Chapter 607, Section 607.0501	✓	✓	Department Staff	Exhibit "K" to Department Staff's Closing Brief
39	Florida Statute, Title XXIII, Chapter 320, Section 320.01; Chapter 322, Section 322.01; Title XXVIII, Chapter 379, Section 379.101	✓	✓	Department Staff	Exhibit "L" to Department Staff's Closing Brief
40	LEXIS Printout: Florida Administrative Code, Title 12, Section 12D-7.007, with annotations	✓	✓	Department Staff	Exhibit "N" to Department Staff's Closing Brief
41	Florida Statute, Title XXVIII, Chapter 372, Section 372.001	✓	✓	Department Staff	Exhibit "R" to Department Staff's Closing Brief
42	Florida Statute, Title XXVIII, Chapter 372, Section 372.57	✓	✓	Department Staff	Exhibit "T" to Department Staff's Closing Brief