

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Notice of Intent to Revoke the Commercial Pesticide Certification issued pursuant to Environmental Conservation Law ("ECL") Article 33, Title 9, and Part 325 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("6 NYCRR")

- to -

GARRY DOCTOR,

Certificant.

Appearances

Rebecca Denué, Esq.
Senior Attorney
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233

Garry Doctor, Pro Se
3649 Barnes Avenue
Bronx, New York 10467

ORDER OF DISPOSITION OF THE ADMINISTRATIVE LAW JUDGE

Proceedings

On April 23, 2009, staff of the Division of Solid and Hazardous Materials of the New York State Department of Environmental Conservation ("Department staff") served Certificant, Garry Doctor, ("Certificant") with a Notice of Intent to Revoke his Commercial Pesticide Certification (Certificate No. C2837028), pursuant to ECL 33-0909(1)(b) and 6 NYCRR 325.13, upon Department staff's determination that Certificant had been convicted of a felony. In particular, Department staff alleged that Certificant had been convicted of one count of Penal Law Section 130.65, Sexual Abuse in the First

Degree, a class D felony. On April 28, 2009, Certificant requested a hearing in the matter.

Conference calls were held on July 7 and July 21, 2009, with Certificant and Rebecca Denué, Esq., representing the Department, to discuss the scheduling of a hearing. On July 28, 2009, I was advised by Paul Keefe, Esq., a staff attorney with the Community Service Society in New York City that he, on behalf of the Society, would be representing Certificant in the matter. Subsequent conference calls regarding the matter were held with the Department and Mr. Keefe on September 2, 2009; November 4, 2009; and January 13, 2010.

On January 28, 2010, Department staff filed an amended Notice of Intent to Revoke alleging the felony conviction, as in the first notice, but adding two additional grounds for revocation. These grounds alleged that Certificant had "violated 6 NYCRR 325.7(b), for applying pesticides without the proper Category 7F certification," and "6 NYCRR 325.23(a), for providing the services of commercial application of pesticides without registering a business." Inasmuch as these allegations exceeded the scope of their retainer agreement with Certificant, on February 3, 2010, Paul Keefe, Esq., on behalf of the Community Service Society, withdrew from any further representation of Certificant. A subsequent conference call was held with Certificant and Ms. Denué of Department staff on March 10, 2010.

By motion for order without hearing, dated May 26, 2010, Department staff sought to revoke Certificant's commercial pesticide certification alleging that he had (Count 1) violated ECL 33-1301(8) and 6 NYCRR 325.7(b) by applying pesticides at various restaurants in Brooklyn, New York, without the required Category 7F, food processing, commercial pesticide applicator certification; (Count 2) violated ECL 33-1301(8-a) and 6 NYCRR 325.23(a) for making various commercial pesticide applications without being affiliated with any registered business; and (Count 3) violated ECL 33-1205(1) for failing to file an annual report for the year 2009. The motion was personally served on Certificant on June 3, 2010. Certificant failed to answer the motion or otherwise respond to it. The motion was assigned to Chief Administrative Law Judge ("ALJ") James McClymonds. Upon his review of the motion and its supporting documents, the Chief ALJ issued a summary report finding that Department staff had established the violations alleged in Counts 1 and 3, but dismissing the violation alleged in Count 2.

By memorandum dated July 14, 2010, Alexander B. Grannis, Commissioner of Environmental Conservation, delegated decision making authority on the motion for order without hearing to Louis A. Alexander, Assistant Commissioner for Hearings and Mediation Services. On July 21, 2010, Assistant Commissioner Alexander adopted the Chief ALJ's summary report as his decision in the matter and issued an order granting Department staff's motion, finding Certificant in violation of those provisions of the ECL and 6 NYCRR as found by the Chief ALJ, and revoking Certificant's commercial pesticide certification, Certificate No. C2837028.

On August 29, 2010, Certificant was personally served with the Assistant Commissioner's order.

Order of Disposition

Inasmuch as Certificant's commercial pesticide certification has been revoked by the Department, the instant matter is dismissed as moot. The hearing record in this matter is hereby closed.

_____/s/_____
Richard R. Wissler
Administrative Law Judge

Dated: February 2, 2011
Albany, New York