

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the Invasive
Species Citation Issued to Ryan N. Grubba

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came before Administrative Law Judge Eric L. Lipman on July 3, 2012 for a telephone Pre-Hearing Conference and evidentiary hearing.

Ryan N. Grubba, the licensee and motorist, appeared on his own behalf and without counsel. No one appeared on behalf of the Minnesota Department of Natural Resources (Department).

Because there was no appearance by the Department, the licensee-motorist moved for a default judgment under Minn. R. 1400.6000. Following the 10 business day response period provided by rule, the hearing record closed on July 17, 2012.

STATEMENT OF THE ISSUE

1. Whether Mr. Grubba transported his boat on a public roadway without first removing or opening the boat's drain plug, in violation of Minn. Stat. § 84D.10, subdivision 4?

Because no one appeared on behalf of the Department at the Pre-Hearing Conference and evidentiary hearing, the hearing record does not contain substantive evidence that Mr. Grubba violated 84D.10. Accordingly, the Administrative Law Judge recommends that the Commissioner DISMISS the citation.

FINDINGS OF FACT

1. On May 14, 2012, Mr. Grubba was issued Citation 127741 by Conservation Officer Kevin Neitzke. The citation asserted violation of Minn. Stat. 84D.10, subdivision 4.¹

2. Mr. Grubba timely appealed the citation.²

¹ Citation 118480.

² *Id.*

3. On June 11, 2012, a Notice of Pre-Hearing Conference and Notice of Hearing was mailed to the home addresses of the licensee-motorist and the Conservation Officer.³

4. The Notice of Hearing indicated that a Pre-Hearing Conference and evidentiary hearing would be held in this matter on July 3, 2012 by way of telephone conference call.⁴

5. The Notice and Order for Hearing and states, in part, that the “decision in this case will be based only on factual information or evidence that is part of the hearing record.”⁵

6. No one appeared at the July 3, 2012 conference on behalf of the Department. No request was made for a continuance, nor was any communication received by the undersigned from the Department in advance of the Pre-Hearing Conference.

7. During the period in which Mr. Grubba’s motion to dismiss was under consideration, Officer Nietske telephoned the undersigned and informed him that the Department would not be submitting a written request seeking a new hearing date.⁶

Based upon these Findings, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Natural Resources have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 84D.13, subd. 8 and 116.072, subd. 6.

2. The Department bore the burden of proof to establish that Mr. Grubba violated Minn. Stat. § 84D.10.⁷

3. Having offered no evidence in support of its claim, the Department did not establish that Mr. Grubba violated Minn. Stat. § 84D.10.

³ See, Affidavit of Denise Collins (June 11, 2012).

⁴ Notice of and Order for a Prehearing Conference and Hearing, at 2.

⁵ *Id.*, at 3.

⁶ See, Minn. R. 1400.6000 (“A default occurs when a party fails to appear without the prior consent of the judge at a prehearing conference, settlement conference, or a hearing or fails to comply with any interlocutory orders of the judge”); Minn. R. 1400.6600 (Parties who wish to contest a motion to dismiss “must file a written response with the judge and serve copies on all parties, within ten working days after it is received”).

⁷ Minn. R. 1400.7300, subp. 5 (“The party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard”).

4. Dismissal of the Citation is the appropriate result.⁸

Based upon the Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge respectfully recommends that the Commissioner of Natural Resources DISMISS Citation 127741.

Dated: July 25, 2012

s/Eric L. Lipman
ERIC L. LIPMAN
Administrative Law Judge

Reported: Digitally recorded.

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6 (e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The final order of the Commissioner may be appealed pursuant to Minn. Stat. §§ 14.63 - 14.69.

⁸ See, Department's Final Order, *In the Matter of Charpentier*, OAH Docket No. 8-2000-22275-2 (June 18, 2012) (Department Citation 118480).