

OFFICE OF ADJUDICATIONS

IN THE MATTER OF

**: BOATING DIVISION/
SUSPENSION OF SAFE
BOATING CERTIFICATE
DEP INCIDENT NO. 07-6763**

RICHARD G. BARTLEY

: AUGUST 24, 2007

FINAL DECISION

A hearing was held on August 22, 2007, at the Department of Environmental Protection (DEP) Headquarters in Hartford regarding the suspension of the above-named operator's safe boating certificate. General Statutes §15-140q. In attendance were Steven R. Smart, acting as attorney for Mr. Richard G. Bartley, Officer Stephen J. Stanko, representing the DEP Environmental Conservation (EnCon) Police, and Kathryn Keenan of the DEP Boating Division and Janice Deshais of the DEP Office of Adjudications who were both observing the proceedings. (See Appendix)

Mr. Bartley was arrested on July 14, 2007. General Statutes §15-133(d). A Notice of Suspension was mailed to Mr. Bartley on July 17, 2007, advising of his right to a hearing prior to the effective date of the suspension to determine probable cause for said suspension. Notice of Hearing was issued to Mr. Bartley on August 2, 2007. Notice of a continuance was mailed to Mr. Smart as attorney for Mr. Bartley on August 2, 2007 advising him that the suspension, if affirmed, would be effective on the date of the final decision.

FINDINGS OF FACT

1. A vessel (Connecticut Registration No. CT 8357 BB), operated solely by Mr. Bartley, was observed on Candlewood Lake in the area of Danbury, New Fairfield, and Brookfield by Officers Stephen Stanko and Christopher Dwyer of the EnCon Police at approximately 2053 hours. Officers Stanko and Dwyer were in a DEP patrol boat patrolling the area in response to a complaint about a vessel operating erratically in the vicinity of New Fairfield. During the course of the patrol, the officers observed Mr. Bartley's vessel underway approaching their position. Mr. Bartley initiated contact with the officers on the patrol boat by waving to them. After initiating contact with the officers, Mr. Bartley stumbled and his vessel stalled. The vessel's momentum carried it closer to the patrol boat. Officer Stanko observed Mr. Bartley attempting to re-start the vessel. Mr. Bartley appeared to fumble with his controls and seemed confused to Officer Stanko. The patrol boat was pulled alongside Mr. Bartley's vessel and Officer Stanko spoke to

- Mr. Bartley. Mr. Bartley exhibited signs of intoxication, including grogginess and slurred speech. After failure of a battery of field sobriety tests, Mr. Bartley was placed under arrest. As noted on the chemical alcohol test report (CTR) admitted into evidence, Mr. Bartley was advised of his right to an attorney and refused. He was also informed of the consequences of refusal or failure of a chemical alcohol test. Mr. Bartley was given two separate alcohol breath tests within two hours of his initial arrest. The second test was 35 minutes after the first. The results of both tests showed an elevated blood alcohol content (BAC) of 0.156 of 1%. The legal limit is 0.08 of 1% BAC. Mr. Bartley, who is over the age of 21, was subsequently issued a misdemeanor summons (#MB 330291) charging him with Boating Under the Influence Alcohol/Drugs. He was released after signing a \$500 non-surety bond agreeing to appear in Danbury Superior Court.¹
2. Through his attorney, Mr. Bartley did not offer any evidence disputing the fact that he was arrested or the results of the blood alcohol tests administered to him. There is no evidence disputing the timeliness of those tests or that he was operating the vessel at the time it was stopped. Counsel for Mr. Bartley noted as issues as for my consideration (1) the officer's probable cause to board the boat Mr. Bartley was operating and (2) the sufficiency of the advisement regarding Mr. Bartley's right to refuse a chemical alcohol test and the consequences of such a refusal.

CONCLUSIONS OF LAW

To suspend a safe boating certificate under the provisions of §15-140q, I must find that: (1) that the peace officer had *probable cause to arrest* Mr. Bartley for operating his vessel under the influence of intoxicating liquor or drugs, or both, while Mr. Bartley had an elevated blood alcohol content, (2) that Mr. Bartley was operating the vessel, (3) that he was placed under arrest, and (4) that he submitted to a timely chemical test that showed he was operating that vessel with an elevated blood alcohol content. If these questions are answered affirmatively, then I am required to affirm the operator's suspension.

There is no evidence disputing the facts that: (1) Mr. Bartley was operating his vessel on July 14, 2007; (2) Mr. Bartley was placed under arrest; and (3) Mr. Bartley submitted to a timely alcohol breath test that showed he was operating with an elevated blood alcohol content.

The "probable cause to arrest" element in §15-133q does not prescribe the *initial* investigative stop of the vessel. The statutory language of §15-133q narrowly limits the license suspension hearing to the four issues I have enumerated in the previous paragraph. The question of whether there were legal grounds for the initial stop, or in this case, the boarding of the vessel, is not part of this determination.² See *Fishbein v.*

¹ All facts are derived from (1) the incident report of Officer Stanko dated July 15, 2007, (2) the chemical alcohol test report dated July 14, 2007 (both admitted into the record at the hearing on August 22, 2007), and (3) the sworn testimony of Officer Stanko.

² It should be noted that written evidence and sworn testimony indicate that neither Officer Stanko nor Officer Dwyer took any overt action to hail or stop Mr. Bartley's vessel (e.g. no strobe lights or sirens were activated at the initial observation of Mr. Bartley's vessel). Mr. Bartley initiated contact. The vessel was only boarded after Officer Stanko spoke with Mr. Bartley and observed his grogginess and slurred speech.

Kozlowski, 252 Conn. 38, 48 (1999) (questions as to compliance with procedures by the police does not preclude the suspension of a license when the elements for an administrative decision regarding the suspension of that license have been demonstrated).

The basis of my decision is therefore, whether, subsequent to the observation of the vessel being operated by Mr. Bartley and his actions, Officer Stanko had probable cause to arrest him for operating that vessel while under the influence of intoxicating liquor or drugs, or both. Probable cause is an objective standard, and comprises such facts as would reasonably persuade an impartial and reasonable mind not merely to suspect or conjecture, but to believe an activity actually occurred. See, e.g., *State v. Spencer*, 268 Conn. 575 (2004).

This administrative record contains substantial evidence to support my findings of fact and the reasonable conclusions I draw from those facts.³ It is undisputed that Mr. Bartley was operating a vessel on July 14, 2007. Officer Stanko, a trained and experienced officer, observed behavior from Mr. Barley that indicated possible intoxication, including grogginess, slurred speech, and an inability to perform a battery of field sobriety tests. These observations were later confirmed when Mr. Bartley was given two timely blood alcohol tests that revealed he was intoxicated while operating that vessel. The CTR shows that Mr. Bartley had a blood alcohol content of .156 of 1% and .156 of 1%, respectively, in two separate tests given 35 minutes apart, which led to his arrest. In response to Mr. Smart's second concern, the CTR also clearly demonstrated that Mr. Bartley was correctly advised of all rights surrounding the test and any rights or consequences of refusal.

Having found in the affirmative on the four factors enumerated in General Statutes §15-140q, and, pursuant to the authority delegated to me by the Commissioner of Environmental Protection, §22a-2, **I find that the safe boating certificate of Richard G. Bartley should be suspended.**

ORDER

The safe boating certificate of **Richard G. Bartley** is hereby suspended for 90 days, ***effective August 24, 2007 through November 21, 2007.*** **Richard G. Bartley** is hereby **ordered to surrender his safe boating certificate**, by personal delivery or first class mail, to the Division of Boating, Department of Environmental Protection, 333 Ferry Road, Old Lyme, CT 06371-0280, ***within 2 days of receipt of this decision.***

Entered this 24th day of August, 2007, as a final order of the Commissioner of Environmental Protection by:

/s/ Kenneth M. Collette
Kenneth M. Collette
Hearing Officer

³ *Pizzo v. Commissioner of Motor Vehicles*, 62 Conn. App. 571, 577 (2001), quoting *Murphy v. Commissioner of Motor Vehicles*, 254 Conn. 333, 343 (2000) (standard of review of an administrative decision is whether there is substantial evidence in record to support agency's findings of fact and whether conclusions drawn from facts are reasonable).

Appendix

PARTY LIST

In the matter of Richard G. Bartley
(Suspension of Boating Certificate)
Incident No. 07-6763

PARTY

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REPRESENTED BY

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