

OFFICE OF ADJUDICATIONS

IN THE MATTER OF

**: SUSPENSION OF SAFE
BOATING CERTIFICATE
DEP # 07-8927**

LUIS A. FELICIANO

: SEPTEMBER 20, 2007

FINAL DECISION

A hearing was held on September 18, 2007 at the DEP Headquarters in Hartford regarding the suspension of the Safe Boating Certificate of Luis Feliciano. General Statutes §15-140q. Present were: Mr. Feliciano and Officer Todd Chemacki and Officer Stanislaw Mieldzioc of the DEP Environmental Conservation (EnCon) Police. Also in attendance was Kathryn Keenan of the DEP Boating Division.

During an August 18, 2007 boating-safety patrol at the Niantic River Launch in Waterford, Officers Chemacki and Mieldzioc observed a small blue and white vessel approach the dock on the west side of the boat launch on the outside of the two docks at approximately 1800 hours. The operator of the vessel (later identified as Mr. Feliciano) did not stop his boat on the dock but let his boat run aground on the shore next to the dock. While questioning Mr. Feliciano about his boating trip, Officer Chemacki observed a plastic bag with many empty beer cans on Mr. Feliciano's vessel. Officer Chemacki also observed a strong odor of an alcoholic beverage coming from Mr. Feliciano, that he had slurred speech, and that he had bloodshot eyes. When questioned, Mr. Feliciano indicated that he had one or two beers that day. Mr. Feliciano was asked to perform a battery of field sobriety tests. These tests were conducted by Officer Mieldzioc and observed by Officer Chemacki. His performance during all three tests indicated failure. Mr. Feliciano was placed under arrest, read his Miranda rights, and transported to the Waterford Police Department for processing.

According to the Chemical Alcohol Test Report (CTR) admitted into evidence, Mr. Feliciano was advised of the consequences of failing a chemical alcohol test or refusing to submit to such a test. Mr. Feliciano was also advised that any actions taken to delay the test would constitute a refusal and result in the suspension of his safe boating certificate. Mr. Feliciano was given an opportunity to contact an attorney and refused. Mr. Feliciano was asked to provide a breath sample for the testing machine with three separate mouthpieces. Despite Mr. Feliciano's assertions to the contrary, there is substantial evidence in the record that Mr. Feliciano failed to provide an adequate breath sample and that the time for the machine to collect the sample expired. As a result it was determined that Mr. Feliciano refused to perform the test. Furthermore, in contrast to Mr. Feliciano's testimony, there is also substantial evidence that he was advised of the

consequences of a refusal to perform the test.¹ He was given an interim suspension notice and a summons to appear in New London Superior Court (GA 10) and released on a promise to appear. A Notice of Suspension was mailed to Mr. Feliciano on August 20, 2007, advising him of the September 22, 2007 effective date of the suspension of his Safe Boating Certificate and his right to a hearing prior to that date to determine probable cause for said suspension. §15-140q(g).

FINDINGS OF FACT

After a hearing limited to a determination of the following issues, I find as follows. §§15-133(d); 15-140q(g).

- (1) Mr. Feliciano was operating the vessel. Officers Chemacki and Mieldzioc observed Mr. Feliciano operating the vessel and Mr. Feliciano does not deny that he was operating the vessel.
- (2) Mr. Feliciano was placed under arrest.
- (3) The breath test was commenced within two (2) hours of Mr. Feliciano's operation of his vessel. Mr. Feliciano's failure to provide an adequate breath sample constituted a refusal.
- (4) There was probable cause to arrest Mr. Feliciano for operating a vessel while under the influence of intoxicating liquor based on the observations made by Officer Chemacki and the failure of three field sobriety tests conducted by Officer Mieldzioc and observed by Officer Chemacki.²

CONCLUSION AND ORDER

There is probable cause to suspend the Connecticut Safe Boating Certificate of Luis A. Feliciano and it is hereby ORDERED suspended for a period of *six (6) months, effective September 22, 2007 through March 22, 2008*. **Luis A. Feliciano** 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 as a final order of the Commissioner of Environmental Protection by:

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

¹ This is demonstrated through testimony received at the hearing as well as through written evidence on the CTR and the BUI 24-Hour License Revocation and Interim Certificate. The latter document was signed by both Officer Chemacki and Mr. Feliciano.

² Mr. Feliciano submitted for the record a letter dated October 20, 1992 that indicates the conditions consistent with degenerative disc disease. There is no evidence in the record that Mr. Feliciano provided any information about such a condition to Officers Mieldzioc or Chemacki when presented with an opportunity to do so. I find that this letter has limited relevance. Mr. Feliciano presented no evidence how this condition affected his performance on these field sobriety tests. It gives me no reason to alter my finding as to the probable cause to arrest Mr. Feliciano.

PARTY LIST

Final Decision in the matter of Luis A. Feliciano, DEP Incident No. 07-8927
(Suspension of Safe Boating Certificate)

PARTY

REPRESENTED BY

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(Via Certified Mail)

Himself

Department of Environmental Protection
Division of ENCON Police
333 Ferry Road
Old Lyme, CT 06371

Officer Todd Chemacki
Officer Stanislaw Mieldzioc

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Kathryn Keenan