

STATE OF CONNECTICUT
DEPARTMENT OF ENVIRONMENTAL PROTECTION



OFFICE OF ADJUDICATIONS

IN THE MATTER OF : SUSPENSION OF SAFE
BOATING CERTIFICATE
DEP # 10-2404

RICHARD DAGON : JUNE 8, 2010

FINAL DECISION

A hearing was held on June 7, 2010 at the DEP Headquarters in Hartford regarding the suspension of the Safe Boating Certificate of Richard Dagon. General Statutes §15-140q. Present were: Mr. Dagon, Officer Edward Pyznar of the DEP Environmental Conservation (EnCon) Police, and Tim Delgado of the DEP Boating Division.

The following exhibits were admitted into evidence:

- DEP-1 – DEP Incident report and chemical test report
- DEP-2 – NOAA chart of Connecticut River
- DEP-3 – DEP Safe Boating Guide

Mr. Dagon was arrested on May 4, 2010. He was sent a notice of suspension on June 3, 2010 and provided with an opportunity for a hearing on June 7, 2010. He was instructed of the opportunity to request a continuance but decided to appear on June 7.

FINDINGS OF FACT

The following findings of fact are based on a review of the entire record of this proceeding, a determination of the credibility and the weight to be given to competing evidence, and on reasonable inferences drawn from the evidence.

1. On May 4, 2010, Officer Pyznar responded to a call regarding a boater operating erratically in the vicinity of the Great River Park Boat Launch in East Hartford. At least three witnesses informed Officer Pyznar that an adult male was operating a boat with three teenagers on board at speeds in excess of the posted no-wake zone and too close to the area from where the these witnesses were fishing, tangling their fishing lines. (Ex. DEP-1; test. 6/7/10, E. Pyznar¹)

¹ The testimony and proceedings in this matter were recorded. No written transcript has been prepared. The audio recording of this hearing is on file with the Office of Adjudications and is the official record of this proceeding.

2. Upon observing the vessel returning northbound on the river, Officer Pyznar attempted to get the operator's attention, drove north along the river, and observed the vessel turn around and head south toward the boat launch. Officers Pettus and Stone waited in the area of the launch for the vessel to return. Mr. Dagon was observed operating the boat by Officer Pyznar as he proceeded north on the Connecticut River past the boat launch and as he turned around and by Officers Pettus and Stone as he brought the vessel toward shore next to the boat launch. Mr. Dagon contends he was not operating the vessel but only trimmed the motor while approaching shore. Mr. Dagon produced no other corroborating evidence to dispute the officers' conclusion that he was operating the vessel. (Ex. DEP-1; test. E. Pyznar.)

3. The vessel was brought to shore at approximately 1700 hours. Officer Pyznar asked Mr. Dagon if he had consumed any alcohol on the vessel and he said "no." Mr. Dagon admitted later to having one beer while on the vessel. Officer Pyznar asked if there were any alcoholic beverages on the vessel and Mr. Dagon answered "no." Six full cans of beer were found on the vessel. The cans of beer belonged to Mr. Dagon. (Ex. DEP-1; test. E. Pyznar and R. Dagon.)

4. Officer Pyznar observed that Mr. Dagon had bloodshot eyes, slurred speech, and a moderate odor of an alcoholic beverage on his breath. Officer Pyznar performed three standard field sobriety tests in accordance with his training and certification in administering these tests. Mr. Dagon did not perform the tests to recognized standards and presented several clues of intoxication. Officer Pyznar's observation of Mr. Dagon, including his performance on the three field sobriety tests, provided him with probable cause to arrest Mr. Dagon. Officer Pyznar placed Mr. Dagon under arrest. (Ex. DEP-1; test. E. Pyznar.)

5. Officer Pyznar conducted two chemical alcohol tests by breath on Mr. Dagon using standard methods and equipment. These tests were initiated within two hours of Mr. Dagon operating the vessel. Mr. Dagon's first test indicated a blood alcohol content (BAC) of 0.142; the second test indicated a BAC of 0.131. Mr. Dagon had an elevated BAC at the time of operation. (Ex. DEP-1; test. E. Pyznar)

CONCLUSIONS OF LAW

To suspend a safe boating certificate under the provisions of §15-140q, I must find: (1) that the peace officer had probable cause to arrest Mr. Dagon for operating the vessel while under the influence of intoxicating liquor or drugs, or both, or while he had an elevated blood alcohol content; (2) that he was placed under arrest; (3) that he (A) refused to submit to such test or analysis, or (B) submitted to such test or analysis, commenced within two hours of the time of operation, and the results of such test or analysis indicated that at the time of the alleged offense that Mr. Dagon had an elevated blood alcohol content; and (4) that he was operating the vessel. If these questions are answered affirmatively, then I am required to affirm the operator's suspension.


There is no credible evidence disputing the facts that: (1) the officer had probable cause to arrest Mr. Dagon for operating his vessel under the influence of intoxicating liquor or drugs or both while Mr. Dagon had an elevated blood alcohol content; (2) Mr. Dagon was operating his vessel on May 4, 2010 and ceased operation at 1700 hours at the earliest; (3) Mr. Dagon was placed under arrest; and (4) the results of a chemical alcohol test initiated within two hours of operation indicated that he had an elevated BAC level at the time of operation.

Mr. Dagon testified that he was not operating the vessel that day. He presented no witnesses to testify in support of his contention. His credibility is impacted by his admitted dishonesty at the time of arrest. He admitted denying that there were alcoholic beverages on board the vessel when there were and they belonged to him. The arrest report admitted into evidence indicates he was also dishonest about his alcohol consumption that day and only admitted to consuming alcohol after being told that the officer observed the odor of an alcoholic beverage on his breath. Mr. Dagon did admit to being at the motor while approaching shore. Even viewed in the light most favorable to him, if this was the limit of his activity, it constitutes operation of the vessel. The definition of operate for the purposes of General Statutes § 15-140q provides that someone is operating a vessel when they are navigating or otherwise using a vessel and that vessel is underway or not moored anchored or docked. Mr. Dagon was bringing the boat into shore and his operation of the trim on the motor allowed the boat to continue into shore. Although admitted evidence and credible testimony from a veteran officer based on witness statements and his own observations indicate that Mr. Dagon operated the vessel more than he admits, this admitted activity alone constitutes operation of the vessel.

CONCLUSION AND ORDER

There is probable cause to suspend the Connecticut Safe Boating Certificate of Richard Dagon and it is hereby ORDERED suspended for a period of *ninety (90) days, effective June 8, 2010 through September 5, 2010*. If it is still in his possession, **Richard Dagon** 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:



Kenneth M. Collette, Hearing Officer

PARTY LIST

Final Decision in the matter of Richard Dagon, DEP Incident No. 10-2404
(Suspension of Safe Boating Certificate)

PARTY

REPRESENTED BY

Richard Dagon
108 Huckleberry Road
East Hartford, CT 06118
(Via Certified Mail)

Himself

Department of Environmental Protection
Division of ENCON Police
333 Ferry Road
Old Lyme, CT 06371
(Via E-mail)

Officer Edward Pyznar

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333 Ferry Road
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Tim Delgado