

3-31-03

FILED  
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DIVISION OF  
ADMINISTRATIVE  
HEARINGS

STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

MICHAEL M. SINGER,  
  
Petitioner,  
  
vs.  
  
TIMOTHY AND HOPE DELONG AND  
DEPARTMENT OF ENVIRONMENTAL  
PROTECTION,  
  
Respondents.

OGC CASE NO. 01-0927  
DOAH CASE NO. 01-3327

JVL-CWS

**ORDER DENYING MOTION TO REOPEN  
CASE AND REMAND TO THE DIVISION  
OF ADMINISTRATIVE HEARINGS**

This matter came on for consideration by the Secretary of the Department of Environmental Protection ("DEP") pursuant to a "Motion to Have the Department Return the Underlying Action for Further Proceedings" filed by the *pro se* Petitioner, Michael M. Singer ("Singer"). For purposes of this Order, Singer's Motion will be treated as a Motion to Reopen the Case and Remand to the Division of Administrative Hearings ("Motion"). Responses in opposition to the Motion were timely filed on behalf of DEP and Timothy and Hope DeLong ("DeLongs"). The following material facts and procedural matters are undisputed.

In 2001, Singer challenged DEP's actions in acknowledging that the Delongs' proposed single-family dock structure in Palm Beach County was exempt from environmental resource permitting requirements and issuing a related consent to use sovereign submerged lands underlying Lake Worth. DEP subsequently forwarded the

matter to the Division of Administrative Hearings (“DOAH”) for a formal administrative hearing. A DOAH final hearing was commenced by Administrative Law Judge Charles Stampelos in November of 2001. However, before the final hearing was completed, Singer’s Motion to Disqualify Judge Stampelos was granted and the case was reassigned to Administrative Law Judge John G. Van Laningham (“ALJ”).

The ALJ subsequently scheduled the DOAH final hearing to be reconvened on August 8, 2002. On August 7, 2002, Singer filed a motion to withdraw his petition for administrative hearing. Singer’s motion to withdraw his petition was granted by the ALJ and the case was then closed by DOAH. On August 26, 2002, the ALJ entered an order reopening the case for the limited purpose of consideration of the DeLongs’ motion for attorney’s fees and costs to be assessed against Singer. An evidentiary hearing was subsequently held by the ALJ on the attorney’s fees and costs issues. On March 31, 2003, the ALJ entered a Recommended Order wherein he recommended that DEP enter a final order denying the DeLongs’ motion for attorney’s fees and costs.

On May 12, 2003, DEP entered a Final Order adopting the Recommended Order and denying the DeLongs’ motion for attorney’s fees and costs. This DEP Final Order was not appealed by the DeLongs or by Singer. Singer is now attempting to have the case reopened and remanded to DOAH for a formal hearing on the merits of his claims challenging DEP’s dock exemption determination and related authorization for the DeLongs to use sovereign submerged lands.

I conclude, however, that the doctrine of “administrative finality” precludes me from reopening this case and remanding it to DOAH for a formal hearing on the merits five months after the agency Final Order was entered. See People’s Gas System v.

Mason, 187 So.2d 335, 339 (Fla. 1966) (concluding that orders of administrative agencies must eventually pass out of the agencies' control and become final and no longer subject to modification). Accord Austin Tupler Trucking, Inc. v. Hawkins, 377 So.2d. 679 (Fla. 1979); Department of Environmental Protection v. Brotherton and Sportman's Lodge Development Corp., ER FALR 97:172 (Fla. DEP 1997).

I am aware that the case law of Florida gives a state agency limited authority to reopen a previously closed case where there is a "substantial change of conditions" or other "extraordinary circumstances." However, Singer's Motion does not contain any allegations of a purported substantial change of conditions since the Final Order was entered in this case. Moreover, I do not view the matters set forth in this Motion to rise to the level of extraordinary circumstances. Rather, the subject Motion appears to essentially restate the same claims made by Singer in this case prior to the voluntary withdrawal of his petition for administrative hearing in August of 2002.

It is therefore ORDERED that Singer's Motion to Reopen Case and Remand to DOAH is DENIED.

Any party to this proceeding has the right to seek judicial review of this Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the appropriate District Court of Appeal.

The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 24 day of October, 2003, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION

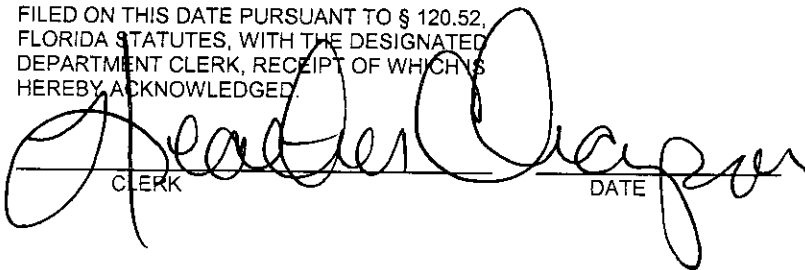


DAVID B. STRUHS

Secretary

Marjory Stoneman Douglas Building  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,  
FLORIDA STATUTES, WITH THE DESIGNATED  
DEPARTMENT CLERK, RECEIPT OF WHICH IS  
HEREBY ACKNOWLEDGED.



CLERK

DATE

10/27/03

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order has been sent by United States Postal Service to:

Kirk Friedland, Esquire  
Flagler Drive, Suite 505  
West Palm Beach, FL 33401

Michael M. Singer  
695 Lakeside Harbor  
Boynton Beach, FL 33435

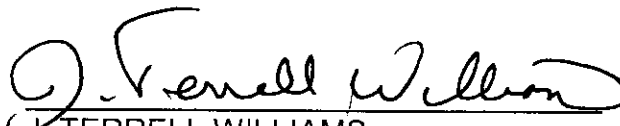
Ann Cole, Clerk and  
John G. Van Laningham, Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, FL 32399-1550

and by hand delivery to:

Francine M. Ffolkes, Esquire  
Department of Environmental Protection  
3900 Commonwealth Blvd., M.S. 35  
Tallahassee, FL 32399-3000

this 27<sup>th</sup> day of October, 2003.

STATE OF FLORIDA DEPARTMENT  
OF ENVIRONMENTAL PROTECTION



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