

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WILLIAM HACKETT,

Petitioner,

vs.

Case No. 20-0753

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION,

Respondent.

_____ /

RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings ("DOAH") for final hearing by Zoom conference on July 23 and August 13, 2020.

APPEARANCES

For Petitioner: William Hackett, pro se
419 Southard Street
Key West, Florida 33040

For Respondent: Brandy Elaine Elliott, Esquire
Florida Fish and Wildlife Conservation
Commission
620 South Meridian Street
Tallahassee, Florida 32399

STATEMENT OF THE ISSUES

Whether the vessel ("Imagine") owned by Petitioner, William Hackett ("Petitioner"), is a "derelict vessel" within the meaning of section 823.11, Florida Statutes (2019); and, therefore, subject to the provisions of sections 376.15(3), 823.11, 705.101(3), and 705.103, Florida Statutes.

PRELIMINARY STATEMENT

By letter dated January 8, 2020, Respondent, Florida Fish and Wildlife Conservation Commission ("FWC"), notified Petitioner that a vessel owned by him, "Imagine," was derelict upon the public waters of the State in violation of section 823.11; and, therefore, subject to the provisions of sections 376.15, 823.11, 705.101(3), and 705.103.

Dissatisfied with the decision, Petitioner timely requested a formal administrative hearing. Subsequently, FWC referred the matter to DOAH to assign an administrative law judge to conduct the final hearing. On March 10, 2020, the undersigned set the final hearing for April 20, 2020. On April 7, 2020, the parties filed a joint motion to continue the final hearing based on issues regarding the novel Coronavirus ("COVID-19"). On April 9, 2020, the undersigned entered an Order granting the motion and resetting the final hearing for July 23, 2020.

The final hearing was partially held on July 23, 2020, by Zoom conference with both parties present. However, due to technical difficulties, the hearing was terminated and rescheduled for August 13, 2020. The hearing concluded on August 13, 2020, with both parties present. At the hearing, Petitioner testified on his own behalf and did not offer any exhibits into evidence. FWC presented the testimony of FWC Officer Glen Way. FWC's Exhibits 1, 2(a) through 2(g), 3(a) through 3(f), 5, 7(a) through 7(k), and 8 were received into evidence.

A court reporter was present at the hearing, but no transcript was filed at DOAH. FWC timely filed a proposed recommended order, which was given consideration in the preparation of this Recommended Order. Petitioner did not file a proposed recommended order. Unless otherwise indicated, all statutory references are to the 2019 Florida Statutes.

FINDINGS OF FACT

1. On January 4, 2020, Officer Glen Way, a sworn FWC law enforcement officer, was on water patrol in an FWC patrol vessel within the public waters of Key West Harbor in Monroe County, Florida, when he observed a vessel (a 32-foot 1967 Hatteras known as "Imagine") sunken and nearly 90% submerged. There were no persons on board and the vessel looked abandoned. The electrical, propulsion, steering systems, and engines were well under sea water and inoperable. Based on his investigation, Officer Way concluded that the vessel suffered a severe marine casualty, had been discarded as sunk with no intrinsic value, and was derelict. His investigation further revealed that the vessel was owned by Petitioner.

2. On January 8, 2020, Officer Way spoke with Petitioner and explained to him the derelict vessel process. That same day, Officer Way emailed Petitioner an Acknowledgement of Receipt of Documentation Related to A Derelict Vessel Determination.

3. Subsequently, Petitioner had the vessel raised from being sunken and tied to a commercial salvage barge with a crane. Although the vessel was no longer sunk, it had been sunk for over two months and Officer Way observed that no corrective action had been taken by Petitioner to correct the systems.

4. Significantly, Officer Way observed that the vessel's propulsion and steering systems were still inoperable, the onboard engine was substantially corroded, and marine growth was visible along the waterline of the entire vessel. In addition, windows were boarded up with plywood, blocking the ability to safely navigate or operate the vessel upon the water. Officer Way also observed a 25-horsepower outboard motor affixed to the transom of the vessel. However, Officer Way persuasively and credibly testified that a 25-horsepower outboard motor is insufficient to propel the vessel safely upon the public waters of the State of Florida. In sum, the vessel was still wrecked, junked, substantially dismantled, and derelict.

5. Subsequently, on July 28, 2020, and at 8:30 a.m. on August 13, 2020, Officer Way observed that the vessel was again sunk, inoperable, abandoned, left, wrecked, junked upon the public waters of the State, and derelict. The vessel has no intrinsic value.

6. At the hearing on August 13, 2020, Petitioner candidly acknowledged that the vessel was again sunk and not operational.

CONCLUSIONS OF LAW

7. DOAH has jurisdiction over the parties and subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes.

8. This is a de novo proceeding intended to formulate final agency action. *Fla. Dep't of Transp. v. J.W.C. Co., Inc.*, 396 So. 2d 778, 785 (Fla. 1st DCA 1981).

9. Pursuant to sections 823.11 and 376.15, FWC is designated as the State agency empowered to relocate, remove, or cause to be relocated or removed, any "derelict vessel" from the public waters of the State of Florida. All costs incurred to remove or relocate the vessel may be recovered against the owner. § 823.11(3)(b), Fla. Stat.

10. Pursuant to section 823.11(1)(b)1., a "derelict vessel" includes a vessel "that is left, stored, or abandoned" in a "wrecked, junked, or substantially dismantled condition upon any public waters of this state."

11. In addition, section 705.101(3) defines "abandoned property" as "all tangible personal property that does not have an identifiable owner and that has been disposed on public property in a wrecked, inoperative, or partially dismantled condition or has no intrinsic value to the rightful owner. The term includes derelict vessels as defined in s. 823.11."

12. Section 705.103 provides a procedure for abandoned property.

13. Turning to the instant case, the persuasive and credible evidence adduced at hearing demonstrates, as detailed above, that the subject vessel is currently sunken upon the public waters of the State of Florida in a wrecked,

inoperative, and substantially dismantled condition. The persuasive and credible evidence adduced at hearing demonstrates that the vessel is derelict and abandoned.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Fish and Wildlife Conservation Commission enter a final order finding Petitioner's vessel, "Imagine," derelict under section 823.11, abandoned under chapter 705, and subject to the provisions of sections 376.15(3), 823.11, 705.101(3), and 705.103.

DONE AND ENTERED this 28th day of August, 2020, in Tallahassee, Leon County, Florida.



DARREN A. SCHWARTZ
Administrative Law Judge
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Filed with the Clerk of the
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this 28th day of August, 2020.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.