

OFFICE OF ADJUDICATIONS

IN THE MATTER OF

**: SUSPENSION OF SAFE
BOATING CERTIFICATE
DEP # 06-006**

DONALD L. CHARLTON

:

AUGUST 29, 2006

FINAL DECISION

A hearing was held on August 28, 2006 at the DEP Marine Headquarters in Old Lyme regarding the suspension of the Safe Boating Certificate of Donald L. Charlton. General Statutes §15-140q. Present were: Mr. Charlton, his attorney Nicholas Gorra, and DEP ENCON Police, Officer James Kane and Sergeant Ryan Healy. Also in attendance was Kathryn Keenan of the DEP Boating Division.

During a July 29, 2006 boating safety enforcement action being conducted with Officer Kane at the Niantic River Launch in Waterford, Sergeant Healy observed a small white Boston Whaler traveling from the River toward the launch. When the boat was driven to the dock, Mr. Charlton was questioned and performed field sobriety tests under the instruction of Officer Kane. Mr. Charlton was subsequently arrested for boating while intoxicated. §15-133(d). A Notice of Suspension was mailed to Mr. Charlton on August 17, 2006, advising him of the September 2, 2006 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. Charlton was operating the vessel. Sergeant Healy observed Mr. Charlton driving the boat in a circle approximately fifty yards away from the docks/launch. Mr. Charlton acknowledges he was behind the wheel, but maintains the boat was idling and not in motion. Section 15-133(d) defines “operate” for the purposes of §15-140q as the vessel being “underway or aground and not moored, anchored or docked”. A vessel is “underway” when it is not moored, anchored, made fast to the shore, or aground”. §15-127.
- (2) Mr. Charlton was placed under arrest.
- (3) The results of two timely breath tests indicated that at the time of operation, Mr. Charlton had an elevated blood alcohol content.
- (4) There was probable cause to arrest Mr. Charlton for operating a vessel while under the influence of intoxicating liquor.

CONCLUSION AND ORDER

There is probable cause to suspend the Connecticut Safe Boating Certificate of Donald L. Charlton and it is hereby ORDERED suspended for a period of not more than *ninety (90) days, effective **September 2, 2006 through November 30, 2006.***

Entered as a final order of the Commissioner of Environmental Protection by:

/s/ J Deshais
Janice B. Deshais, Hearing Officer

PARTY LIST

Final Decision in the matter of Donald L. Charlton, Ref. #06-006
(Suspension of Safe Boating Certificate)

PARTY

REPRESENTED BY

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