

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

February 27, 2015

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

**DENIAL OF JACQUELINE GARDNER'S REQUEST FOR TRANSFER OF AN OFFSHORE
MOORING PERMIT (PERMIT NO. RMO10837) HELD BY EARL EDWARDS (DECEASED)**

BACKGROUND:

Earl Edwards held an offshore mooring permit, Permit No. RMO10837 (permit), at the Nawiliwili Small Boat Harbor (Nawiliwili SBH) on the Island of Kauai. Mr. Edwards moored his vessel, known as "RAVE," at the Nawiliwili SBH.

Mr. Edwards passed away on April 14, 2014. After Mr. Edward's' passing, Ms. Gardner expressed to DOBOR that she wanted to keep the RAVE at the Nawiliwili Small Boat Harbor and have the permit transferred to her. She claims that he transferred a 50% interest in the vessel to her prior to his death; however, the only documents Ms. Gardner provided to DOBOR were her affidavit stating that that Mr. Edwards had transferred 50% ownership of the vessel to her in 2011 and an insurance document showing that she and Mr. Edwards were both named as insureds for a vessel that is presumably the RAVE.

DOBOR informed Ms. Gardner that the requested transfer of the permit was not allowed by DOBOR's rules.

DISCUSSION:

The permit held by Mr. Edwards expired on May 31, 2014. The permit was not renewed prior to its expiration and an extension was not requested.¹ Permits have to be timely renewed. § 13-231-5(a), Hawaii Administrative Rules, provides:

The department may issue or reissue a use permit of all types, including but not limited to commercial use permits, catamaran registration certificates, and mooring permits, for any period up to, by not exceeding one year. Upon expiration of the period stated therein, the use permit and all rights of the permittee shall automatically terminate. No type of use permit shall be renewed unless all the conditions or covenants of the original issuance, including he

¹ Mr. Edwards paid his offshore mooring fees monthly. No permit fees have been paid to DOBOR for the offshore mooring permit since Mr. Edwards' death. Consequently, the requirement of prompt monthly payment offshore mooring fees was not met, and would be an additional basis for the permit not being renewed.

requirement of prompt monthly payment of charges in advance, have been met and the rules governing small boat harbors and navigable waters managed of the department of land and natural resources have been fully complied with.

There is currently a wait list for offshore moorings at the Nawiliwili SBH. If an offshore mooring permit for Nawiliwili SBH is not renewed in a timely manner, the permit expires and the offshore mooring is offered to the next person on the wait list. The RAVE is currently moored in a Nawiliwili SBH offshore mooring berth without a permit.²

Even if the permit had not expired, DOBOR's rules do not allow the permit to be transferred to Ms. Gardner. Transfers of use permits (including offshore mooring permits) are generally prohibited unless there is an applicable extension. HAR § 13-231-13(a) provides, in relevant part:

No use permit shall be transferable, so that whenever a permittee parts with possession or transfers title to or interest in the vessel identified in the permit to another person by any arrangement, the use permit shall expire except as provided herein with respect to the original permittee. The new possessor, transferee, or owner shall have no right to use the space covered by the use permit.

Ms. Gardner cites HAR § 13-231-13(b)(2) in asking for the permit to be transferred. HAR § 13-231-13(b)(2) provides:

A principal owner of a vessel may retain a berth or mooring space if that owner acquires the interest of one or more co-owners because a co-owner has died or moved out of the State[.]

Ms. Gardner claims that she is a co-owner of the RAVE, and that in 2011, Mr. Edwards transferred a 50% interest in the vessel to her. However, there are no documents that show that ownership of the vessel was ever properly transferred to Ms. Edwards prior to the passing of Mr. Edwards. The vessel was registered as a United States Coast Guard (USCG) documented vessel and a review of the USCG documented vessel database showed that the vessel was registered to only Mr. Edwards. Ms. Gardner's name was not present in the database as a co-owner. She admits that she is not currently listed as an owner of the RAVE on any vessel registration documents.

Ms. Gardner offers her affidavit and an insurance certificate as "proof" of her ownership of the RAVE. However, the insurance certificate was issued in May 30, 2014, more than a month after Mr. Edwards' death. It only refers to Mr. Edwards and Ms. Gardner as the insureds, but does not explain if or how Ms. Gardner owns an interest in the RAVE. The only other "proof" of Ms. Gardner's ownership of the RAVE is her affidavit, wherein she states:

² DOBOR notified Ms. Gardner that the RAVE is moored at the Nawiliwili SBH without a permit. Fees for mooring without a permit continue to accrue.

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Earl Edward (“Mr. Edwards”), co-owner of the [RAVE], transferred a 50% interest in the [RAVE] to me in 2011 in exchange for maintenance and upgrading work I performed for the [RAVE]. ... Due to oversight by Mr. Edwards, I am not currently listed as an owner of the [RAVE] on registration documents associated therewith.

A self-serving statement, without more, is insufficient evidence of ownership of the RAVE.

No other exception in HAR §13-231-13 applies to allow the permit transfer that Ms. Gardner is seeking.

Moreover, assuming for the sake of discussion that Mr. Edwards transferred a 50% interest in the vessel to Ms. Gardner and the permit had not expired, she is still not entitled to the permit because a permit may be immediately terminated if a change in ownership of a vessel moored in a DOBOR offshore mooring area was not timely communicated to DOBOR. HAR § 13-231-15. HAR § 13-231-15 provides in part:

(a) The owner of any vessel moored, stored, or left in a small boat harbor or offshore mooring area shall notify the department in writing within seven days if:

* * * *

(2) All or any interest in the vessel is transferred to another person or persons
....

(b) The new possessor or owner of any interest in any vessel moored in a small boat harbor or offshore mooring area shall within seven days after acquiring the same, inform the department in writing concerning the acquisition. ...

(c) Evidence of any wilful misstatement or omission of fact regarding the ownership of a vessel moored in a state boat harbor or offshore mooring area, or regarding transfer of ownership of a corporation or other business entity to which a mooring permit, commercial use permit, catamaran registration certificate, or other permit has been issued, including failure to notify the department of a change of ownership, shall be cause for immediate termination of all permits and catamaran registration certificates held by the parties involved, and may be a bar against the issuance of any permit or catamaran registration certificates in the future.

Both Mr. Edwards and Ms. Gardner failed to inform DOBOR of the transfer of 50% interest in the RAVE to Ms. Gardner. Their failure to notify DOBOR of a change in ownership of the RAVE is cause for the permit to be immediately terminated.

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RECOMMENDATION:

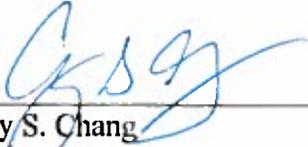
1. That the Board deny Ms. Gardner's request for the transfer of an offshore mooring permit, Permit No. RMO10837.

Respectfully submitted,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL



Carty S. Chang
Interim Chairperson and Member