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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN RE THE MATTER OF)
SEA VENTURE ISLAND, INC.)
d.b.a. SPLASH ISLAND,)
CRM PERMIT NO. SMS 99-X-289 (Amended))
_____)

Civil Action No. 01-0273E
**ORDER DENYING
CRM'S MOTION TO
DISMISS PETITION FOR
JUDICIAL REVIEW**

I. PROCEDURAL BACKGROUND

This matter came before the court on June 14, 2001, in Courtroom 223 A at 1:30 p.m. on Respondent's Motion to Dismiss. Wesley M. Bogdan, Esq. appeared on behalf of the Petitioner, CNMI WINDSURFING ASSOCIATION. Assistant Attorney General Ramona V. Manglona, Esq., appeared on behalf of the Respondent, COASTAL RESOURCE MANAGEMENT. The Court, having heard the arguments of counsel and being fully informed of the proffered arguments now renders its written decision.

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FOR PUBLICATION

1 **II. ISSUES PRESENTED FOR REVIEW**

2 1. Whether an appeal from a Coastal Resource Management final decision is governed by the
3 Administrative Procedures Act, 1 CMC § 9112 or by the Coastal Resource Management Act, 2 CMC
4 § 1541(b).

5 2. Whether Petitioner CNMI WINDSURFING ASSOCIATION has been sufficiently misled
6 into believing that their actions sufficed for a timely appeal such that this Court may retain
7 jurisdiction and not dismiss the appeal as untimely.

8
9 **III. FACTS**

10 Respondent Coastal Resource Management (hereinafter CRM) issued a written decision,
11 regarding a permit for the relocation of Splash Island, on April 12, 2001. The Petitioner, CNMI
12 WINDSURFING ASSOCIATION (hereinafter WA) was notified of the decision the same day.
13 CRM Acting Administrator, Joaquin D. Salas sent another letter to WA five days later on April 17.
14 This letter stated, “I apologize that it (a previous letter) did not include a notice informing you of
15 your rights should you object to the decision. Therefore, this is to officially inform you that if you
16 are aggrieved by this decision, you may seek judicial review in accordance with 1 CMC 9112 (b).”
17 (Pet’r Mem. in Opp’n to Dismiss, Ex. A)

18 1 CMC § 9112 (b) states, “A person suffering legal wrong because of agency action, or
19 adversely affected or aggrieved by agency action, is entitled to judicial review of the action within **30**
20 [*emphasis added*] days thereafter in the Commonwealth Superior Court.” WA filed its action for
21 judicial review twenty eight days later on May 10, 2001. WA’s petition was timely filed under 1
22 CMC § 9112 (b).

23 CRM argues that the appeal is not governed by 1 CMC § 9112 (b), but rather by 2 CMC §
24 1541 (b). This statute states in relevant part, “Within **20** [*emphasis added*] days after the final
25 decision of the board, a person aggrieved may appeal the decision to the Commonwealth Trial
26 Court.” Under this statute, WA had twenty days after April 12, 2001, or until May 2, 2001 to file.

1 CRM argues that WA's petition was late because it was filed on May 10, 2001, eight days after the
2 due date.

3 4 IV. ANALYSIS

5 6 A. *Governing Statute*

7 Counsel for WA conceded on oral argument that 2 CMC § 1541(b) governs. Nonetheless,
8 in an effort to judicially settle this case for future litigants, the Court finds it necessary to work
9 through the relevant analysis. Therefore, the first issue that the Court will address is whether an
10 appeal from a Coastal Resource Management final decision is governed by the Administrative
11 Procedures Act, 1 CMC § 9112 or by the Coastal Resource Management Act, 2 CMC § 1541(b).
12 The APA and specific statutes permitting judicial review of administrative agency decisions either
13 work in conjunction with one another or the specific statute excludes applicability of the APA. In
14 re Hafadai Beach Hotel Extension, 4N.M.I. 44 (1993); *see, eg., Nevada v. Watkins*, 914 F.2d
15 1541, 1563 (9th Cir. 1990) (Review under APA if not provided for in statutes) *citing* Clemson v.
16 Brock, 806 F. 2d 1402, 1407 (9th Cir. 1986).

17 Unlike 2 CMC § 1541 (b), the APA is a regulation of general applicability. 2 CMC §
18 1541 (b) is a specific statute that was passed by the legislature to govern appeals from a Coastal
19 Resource Management final decision. This indicates that the legislature intended 2 CMC §
20 1541(b) to govern appeals because the language of 2 CMC § 1541(b) specifically addresses the
21 Coastal Resource Management appeals process.

22 Accordingly, the Court must adhere to and apply the statutory language of 2 CMC §
23 1541(b) to the present appeal because the legislature specifically mandated a standard of review
24 which would otherwise not be applicable under the APA. Hafadai Beach Hotel Extension,
25 4N.M.I. 43 (1993); Nansay Micronesia Corp. v. Govendo, 3 N.M.I. 18 (1992). *See also* Songao
26 v. Commonwealth, 4 N.M.I. 186-189 (1994) (The court must look to the relevant statute to
27 determine the scope, if any, of judicial review of an administrative agency's action.)

1 **B. Jurisdiction**

2 The next issue the Court must address is whether the Court has jurisdiction to hear WA’s
3 appeal. The basic principle regarding jurisdiction is that, “It is the local laws and constitution of a
4 forum that consign jurisdiction in a court over an agency action.” In re Hafadai Beach Hotel
5 Extension, 4N.M.I. 40 (1993); *citing* Restatement (Second) of Judgements § 11 (1982); Charles
6 Koch, Jr., Administrative Law and Practice §§ 8.46-8.48 (1985 and 1990 Supp.)

7 Having previously determined that the governing statute is 2 CMC § 1541 (b), the Court
8 must now look to 2 CMC § 1501, *et seq.*, to see if the enabling legislation provides a jurisdictional
9 grant of authority for the trial court to review appeals. The CNMI Supreme Court has provided
10 the answer to this question by stating that 2 CMC § 1541 (b) has granted authority to the trial court
11 to review decisions made by the Coastal Resource Management Board. In re Hafadai Beach Hotel
12 Extension, 4N.M.I. 40 (1993).

13 Thus, case law and the relevant statute itself provides this Court with jurisdiction to hear
14 the present case. However, the more troublesome inquiry is whether, as Respondent CRM
15 contends, WA’s untimely appeal has deprived the Court of its jurisdiction.

16
17 **C. Untimely Filing**

18 The time limit within which to file a notice of appeal is usually considered to be
19 “mandatory and jurisdictional.” Hernandez-Rivera v. INS, 630 F. 2d 1352, 1354 (9th Cir. 1980)
20 *citing* Unites States v. Robinson, 361 U.S. 220, 229, 80 S.Ct. 282, 288, 4 L. Ed. 2d 259 (1960).
21 The rationale behind the rule cutting off the right to appeal after the specified deadline is “to set a
22 definite point of time when litigation shall be at an end, unless within that time the prescribed
23 application has been made; and if it has not, to advise prospective appellees that they are freed of
24 appellant’s demands.” Hernandez-Rivera v. INS, 630 F. 2d 1352, 1354 (9th Cir. 1980) *citing*
25 Matton Steamboat Co. v. Murphy, 319 U.S. 412, 415, 63 S.Ct. 1126, 1128, 87 L.Ed. 1483
26 (1943).

1 In Vlaicu, the Immigration Judge sent a letter to the petitioner that was misleading as to the
2 deadline for an appeal. Moreover, as the reviewing panel noted, “[n]or would petitioner have
3 been quickly disabused of their misimpression if they had consulted the regulations, because the
4 regulations do not speak with one voice.” Vlaicu, 998 F. 2d at 760. The court found for the
5 petitioner because “It was not unreasonable for the petitioners to conclude that they would comply
6 with the requirements for appeal [by following the instructions of the letter].” Id. at 760.

7 In the present case, CRM Acting Administrator, Joaquin D. Salas sent a letter to Petitioner
8 WA five days after a Coastal Resource Management board final decision. This letter stated, “I
9 apologize that it (a previous letter) did not include a notice informing you of your rights should you
10 object to the decision. Therefore, this is to *officially* [emphasis added] inform you that if you are
11 aggrieved by this decision, you may seek judicial review in accordance with 1 CMC 9112 (b).”
12 [emphasis added]

13 1 CMC § 9112 (b) allows thirty days to file a petition for judicial review. Acting on reliance
14 from the “official notice,” Petitioner WA filed its petition twenty eight days later. However, as the
15 Court determined *supra*, 2 CMC § 1541 (b), not 1 CMC § 9112 (b) governs appeals from a CRM
16 final decision. Thus, by following the directions as stated in the CRM letter, Petitioner WA actually
17 filed its petition eight days late under the 20 day time limit as imposed by the controlling statute- 2
18 CMC § 1541 (b). This presents a situation that is factually similar to Shamsi and Vlaicu in that
19 Petitioner WA, like the petitioners in the stated cases, acted in reliance and was misled by
20 information furnished by a government agency.

21 CRM argues that Shamsi and Vlaicu are “clearly” distinguishable because the governing
22 statute for appealing a CRM final decision is clear and unambiguous as to the correct filing
23 deadline. While CRM’s assertion regarding the lack of ambiguity in the statute is well taken, the
24 assertion misses the fundamental point here. Namely, that Petitioner WA was directed by the
25 CRM Acting Administrator, on behalf of the government agency, Coastal Resource Management,
26 to pursue its appeal under 1 CMC § 9112 (b) not 2 CMC § 1541 (b). Surely, the potential appellant
27 who is furnished with a letter from the CRM Acting Administrator, acting on behalf of the Coastal
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1 Resource Management Board, is justified in concluding that he or she need only comply with the
2 statute provided within the letter.

3 It is worth noting that Petitioner WA was in literal compliance with the 30-day appeal period
4 as set forth under 1 CMC § 9112 (b) by filing its petition within 28 days. This would be a
5 markedly different situation if WA was untimely in filing under 1 CMC § 9112 (b). In that
6 situation, the causal connection between CRM’s misleading information and the untimely filing
7 would not be present.

8 Further, the language of 1 CMC § 9112 (b) would not put a reader on notice that they were
9 complying with the wrong statute. The statute itself states, “A person suffering legal wrong
10 because of agency action, or adversely affected or aggrieved by agency action, is entitled to judicial
11 review of the action within **30** (*emphasis added*) days thereafter in the Commonwealth Superior
12 Court.” Since Petitioner WA believed that they suffered a “legal wrong” because of an “agency
13 action,” namely the Coastal Resource Management Agency, Petitioner WA could reasonably
14 believe by reading the statute that they were complying with the correct filing date for an appeal.

15 While it is true that one, who decides to follow a schedule of his own devising, for reasons
16 of his own invention, has no legitimate complaint when the tribunal adheres to the rules, here,
17 Petitioner WA was adhering to the incorrect instruction sent by the very agency which now seeks
18 dismissal for failing to follow the correct procedures. The irony is readily apparent. Further, the
19 notice of appeal instructions was no less misleading to Petitioner WA as the appeal forms were in
20 Shamsi, or the letter sent to the petitioner in Vlaicu.

21 This Court, as did the court in Shamsi and Vlaicu, concludes that the present factual
22 situation is a unique circumstance in that it presents one of the “rare occasions” when an appellate
23 tribunal has jurisdiction to hear an otherwise untimely appeal because the petitioner has been
24 misled by the information furnished by the court or by a government agency. Shamsi v. INS, 998
25 F.2d 761 (9th Cir. 1993); Vlaicu v. INS, 998 F. 2d 761 (9th Cir. 1993).

V. CONCLUSION

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For the foregoing reasons, Respondent CRM'S Motion to Dismiss is **DENIED**.

So ORDERED this 21st day of June 2001.

/s/
DAVID A. WISEMAN, Associate Judge