UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 13-0293

In re:

LANCELOT KOLLMAN, also known as
LANCELOT RAMOS,

Petitioner.

DECISION AND ORDER GRANTING SUMMARY JUDGMENT

I. INTRODUCTION

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes ("the Rules"), set forth at 7 C.F.R. subpart H, apply to the adjudication of the instant matter. The case was initiated by Lancelot Kollman, also known as Lancelot Ramos ("Petitioner"), who filed with the Hearing Clerk for the Office of Administrative Law Judges ("OALJ"; "Hearing Clerk") a petition for review of the denial of his application for an exhibitor's license under the Animal Welfare Act, 7 U.S.C. §§2131 et seq. ("AWA"; "the Act") by the Administrator of the Animal Plant Health Inspection Service ("APHIS"), an agency of the United States Department of Agriculture ("USDA").

The AWA authorizes USDA through APHIS to regulate the transportation, purchase, sale, housing, care, handling and treatment of animals subject to the Act. Pursuant to the AWA, persons who sell and transport regulated animals, or who use animals for research or exhibition, must obtain a license or registration issued by the Secretary of the USDA. 7 U.S.C. §2133. Further, the Act authorizes USDA to promulgate appropriate regulations, rules, and orders to promote the purposes of the AWA. 7. U.S.C. §2151. The Act and regulations fall within the enforcement authority of APHIS, which is also tasked to issue and renew licenses under the AWA.

This Decision and Order[1] is based upon the pleadings, documentary evidence, and arguments of the parties.

II. ISSUE

The primary issue in controversy is whether, considering the record, summary judgment may be entered in favor of Respondent USDA and APHIS' denial of Petitioner's license application be affirmed.

III. PROCEDURAL HISTORY

On May 2, 2005, USDA filed a complaint against Petitioner, alleging violations of the AWA. On July 22, 2005, Petitioner filed an answer, which did not address the allegations of the complaint, but did request a hearing. On April 12, 2007, USDA moved for the adoption of a decision by reason of admission of facts, which under the Rules, results in default. See, 9 C.F.R. §§ 1.136; 1.139. On May 9, 2007, Chief Administrative Law Judge Peter M. Davenport issued a Default Decision and Order against Petitioner. Petitioner sent correspondence to OALJ generally denying the complaint's charges. The correspondence was deemed timely request for an appeal of the Default Decision and Order. On October 2, 2007, the Judicial Officer for the Secretary of USDA affirmed Judge Davenport's Decision and Order. Petitioner appealed that determination to the United States Court of Appeals for the Eleventh Circuit, which issued a Decision and Order affirming the Judicial Officer's decision on April 7, 2009.

On May 20, 2013, Petitioner filed an application with APHIS for an exhibitor's license under the AWA. By letter dated July 2, 2013, APHIS denied the application. On July 22, 2013, Petitioner filed a petition for review of the denial. On February 7, 2014, Respondent USDA moved for the entry of summary judgment. On March 26, 2011, Respondent filed an objection to the motion.

[1] In this Decision and Order, documents submitted by Petitioner with his petition shall be denoted as "PX-#"; documents submitted by Petitioner with his objection shall be denoted at "POX-#"; and documents submitted by Respondent shall be denoted as "RX-#".

IV. SUMMARY OF THE EVIDENCE[2]

1. Admissions

In his Petition for Review, Petitioner admitted that his previously held AWA license number 58-C-0816 had been revoked.

2. Documentary Evidence

PX-1; 2; POX-9; 10: Portions of the "Animal Care Inspection Guide" and Appendix 1, Inspection Requirements

PX-3; 4; POX-11; 12: Correspondence regarding Petitioner's credentials

PX-5; POX-13: Arrest Report

PX-6; POX-14; 15: RX-1; RX-4; RX-5: Petitioner's AWA license application and correspondence

PX-7: Denial by USDA dated July 2, 2013

POX-1: Petitioner's affidavit and third party testimonials

POX-2: Affidavit of Thomas B. Schotman, D.V.M.

POX-3-8; RX-3: Pleadings and evidence relating to initial complaint

V. DISCUSSION

Summary judgment is proper where there exists "no genuine issue as to any material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). An administrative law judge may enter summary judgment for either party if the pleadings, affidavits, material obtained by discovery or other materials show that there is no genuine issue as to any material fact. Veg-Mix, Inc. v. United States Dep't of Agric., 832 F.2d 601, 607 (D.C. Cir. 1987) (affirming the Secretary of Agriculture's use of summary judgment under the Rules and rejecting Veg-Mix, Inc.'s claim that a hearing was required because it answered the complaint with a denial of the allegations).

[2] This summary judgment relies upon the pleadings and upon declarations and documentary evidence attached to the motions and objections filed by the Parties.

An issue is "genuine" if sufficient evidence exists on each side so that a rational trier of fact could resolve the issue either way, and a fact is "material" if under the substantive law it is essential to the proper disposition of the claim. Alder v. Wal-Mart Stores, Inc., 144 F.3d 664, 670 (10th Cir. 1998). The mere existence of some factual dispute will not defeat an otherwise properly supported motion for summary judgment because the factual dispute must be material. Schwartz v. Brotherhood of Maintenance Way Employees, 264 F.3d 1181, 1183 (10th Cir. 2001).

The usual and primary purpose of the summary judgment rule is to isolate and dispose of factually unsupported claims or defenses. Celotex Corp. v. Catrett, 477, U. S. 317, 323-34 (1986). If the moving party properly supports its motion, the burden shifts to the non-moving party, who may not rest upon the mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial. Muck v. United States, 3 F.3d 1378, 1380 (10th Cir. 1993). In setting forth these specific facts, the non-moving party must identify the facts by reference to affidavits, deposition transcripts, or specific exhibits. Adler, 144 F.3d at 671. The non-moving party cannot rest on ignorance of facts, on speculation, or on suspicion and may not escape summary judgment in the mere hope that something will turn up at trial. Conaway v. Smith, 853 F.2d 789, 793 (10th Cir. 1988). However, in reviewing a request for summary judgment, I must view all of the evidence in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co. Ltd. v.. Zenith Radio Corp., 475 U.S. 574 (1986).

I find that the record establishes no genuine issue of material fact, and that summary judgment is appropriate. The scope of my review in this matter is limited to the question of whether APHIS

properly denied Petitioner's 2013 application for an exhibitor's license under the AWA[3]. APHIS denied the license on the grounds that Petitioner's previous license was revoked.

The pertinent regulations state:

> **2.10 Licensees whose licenses have been suspended or revoked.**
>
> (b) Any person whose license has been revoked shall not be licensed in his or her own name or in any other manner; nor will any partnership, firm, corporation or other legal entity in which any such person has a substantial interest, financial or otherwise, be licensed.
>
> **2.11 Denial of initial license application.**
>
> (a) A license will not be issued to any applicant who:
> (3) Has had a license revoked or whose license is suspended, as set forth in §2.10...

Petitioner has admitted that his license was revoked. See, POX-1. His challenge to the revocation upon default was rejected by the United States Court of Appeals for the Eleventh Circuit. Petitioner did not seek review of that determination, and I am not in a position to review decisions made by that body. I accept the court's ruling as final. Accordingly, Petitioner's license was revoked. The language of the regulations prohibits the issuance of a license to a person whose AWA license was revoked. Although the regulations may produce harsh results, I have no authority to question their fairness or validity. I need not examine other regulations with specific temporal penalties to construe a clear and unambiguous ban on the issuance of a license to an applicant who has had a license revoked.

I find that APHIS denied Petitioner's application for an AWA license for good cause. Respondent's motion for summary judgment is hereby GRANTED.

[3] Because the instant Decision and Order is confined to that question, I decline to address Petitioner's other arguments involving APHIS' conduct and the impact of the license revocation on his livelihood, although I appreciate the considerable advocacy demonstrated by both counsel with respect to those issues.

VI. MIXED FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Secretary, USDA, has jurisdiction in this matter.
2. The material facts involved in this matter are not in dispute and the entry of summary judgment in favor of USDA is appropriate.
3. Petitioner held AWA license 58-C-0816.
4. Petitioner's AWA license was revoked when default judgment was entered against him in an enforcement action initiated by APHIS and inadequately defended by Petitioner.
5. Petitioner filed an application for a new AWA license.
6. APHIS denied the license because Petitioner had held a previous license that was revoked, pursuant to 9 C.F.R. §§2.10(b) and 2.11(a)(3).
7. Petitioner timely filed a petition for review of APHIS's denial of his license application.
8. APHIS denied Petitioner's application for good cause.

ORDER

APHIS's denial of petitioner's license application is hereby AFFIRMED.

This Decision and Order shall be effective 35 days after this decision is served upon the Respondent unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145.

So Ordered this 3rd day of April, 2014 in Washington, D.C.

[redacted]

Janice K. Bullard
Administrative Law Judge