

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0012

In re: Melanie H. Boynes,
Petitioner

Decision and Order

Appearances: Melanie H. Boynes, the Petitioner, *pro se*
Colleen A. Carroll, Esquire, Office of General Counsel, United States Department of
Agriculture, Washington, DC for the Respondent

Preliminary Statement

This action was initiated by Melanie H. Boynes seeking review of and requesting a hearing concerning the Administrator's determination that she and Steve Sipek are unfit to be licensed under the Animal Welfare Act ("AWA"). 7 U.S.C. §2131, *et seq.* The matter was set for an audio-visual hearing with the Petitioner appearing at a remote USDA site in Miami, Florida and the other parties appearing in the United States Department of Agriculture Courtroom in Washington, DC. At the hearing, the Agency called five witnesses. Ms. Boynes called one witness and made an unsworn statement in her own behalf.¹ Forty-eight agency exhibits and fifteen Petitioner exhibits were admitted.²

Following the hearing, both parties submitted post hearing briefs and the matter is now ripe for disposition.

¹ References to the transcript of the proceeding will be indicated as Tr. And the page number.

² Agency exhibits are identified as RX-1 through RX-48; Petitioner's exhibits are identified as PX-1 through PX-15. The Petitioner also submitted three photographs with her post hearing brief.

Statutory and Regulatory Framework

Section 2133 of the AWA provides:

The Secretary shall issue licenses to dealers and exhibitors upon application therefore in such form and manner as he may prescribe.... 7 U.S.C. §2133.

Section 2151 provides:

The Secretary is authorized to promulgate such rule, regulations, and orders as he may deem necessary in order to effectuate the purposes of this chapter. 7 U.S.C. §2151.

The Regulations require:

Any person operating or intending to operate as a ...exhibitor...must have a valid license...The applicant shall provide the information requested on the form...9 C.F.R. §2.1(a);

and

A license will not be issued to any applicant who:...(2) Is not in compliance with any of the regulations or standards in this subchapter. 9 C.F.R. §2.11(a).

The power to require and issue licenses under the Animal Welfare Act includes the power to deny a license and to disqualify a person from being licensed. The Regulations provide that an initial application for an Animal Welfare Act license will be denied if the applicant is unfit to be licensed and the Administrator determines that issuance of the Animal Welfare Act license would be contrary to the purposes of the Act. *In re Amarillo Wildlife Refuge, Inc.*, 67 Agric. Dec. 175 (2008); *In re Animals of Montana, Inc.*, 68 Agric. Dec. 92 (2009).

Discussion

At issue in this action is whether the Administrator, acting through the Eastern Regional Director, Animal Care, Animal and Plant Health Inspection Service (APHIS),

United States Department of Agriculture (USDA) was justified in denying Petitioner's application for an Animal Welfare Act license on the basis that the applicant (a) failed to provide all requested information on the application form; (b) that Mr. Sipek was believed to be exhibiting regulated animals without having a valid license to do so and had expressed an intention to continue to routinely declaw large felids contrary to appropriate veterinary care standards; and (c) that issuance of a license would be contrary to the purposes of the Act given Mr. Sipek's history of animal care and his stated intention to deviate from appropriate veterinary care in the future. RX-21.

Melanie Boynes alone appealed that determination. In a letter to the Hearing Clerk dated October 1, 2010, she addressed that portion of the denial based upon the incompleteness of the application indicating that she provided complete information under the advisement and guidance of Dr. Guy [Gaj] and Inspector Megan Adams. Second, she indicated that Mr. Sipek is **required** (emphasis hers) by the Florida Fish and Wildlife Conservation Commission, as was she, to exhibit their animals in order to maintain their Florida Class I Wildlife license. Last, she questioned how she could be found unfit to be licensed based upon Mr. Sipek's history of animal care, non-compliance with regulations, and stated intention to continue his practice of declawing large felids. She concluded her letter indicating that she was doing everything required to obtain the license which she was aware that she needed. Docket Entry 3.

On the basis of the evidence before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. Melanie Boynes is an individual with a mailing address in Loxahatchee, Florida.

2. Steve Sipek is an individual with a mailing address in Loxahatchee, Florida. Mr. Sipek, also sometimes known as Steve Hawks Tarzan, has been involved with exotic animals, including lions, tigers, and leopards for over 42 years.³ Tr. 114-117; RX-5.

3. Mr. Sipek previously applied for an Animal Welfare Act license in 2005. RX-1. Three pre-license inspections were conducted, with each identifying deficiencies that needed corrective action. The third inspection was terminated by Mr. Sipek and no license was issued to him as minimum standards were never met. Tr. 58; RX-2-11.

4. Steve Sipek has continuously exhibited large felids without an Animal Welfare Act license in violation of the AWA and its regulations.⁴ RX-2-4, 6-7, 11-13. By letter dated January 10, 2008, Sipek received a Warning Notice for operating as a Class C Exhibitor without a USDA license in violation of the AWA. RX-13. Sipek and Boynes admit that they exhibit animals despite not having a license, but claim that exhibiting is required in order to maintain their Florida license. Docket Entry 3; Tr. 106-107, 129-130.

5. Steve Sipek is licensed by the State of Florida Fish and Wildlife Conservation Commission to exhibit "Felidae."⁵ RX-18.

6. The record does not contain the original license application submitted by Ms. Boynes; however, at some date prior to August 24, 2010 she applied for an Animal Welfare Act license in her individual capacity as an exhibitor. Tr. 51. Her application triggered a pre-license inspection which was conducted on August 24, 2010 by Animal

³ Mr. Sipek testified that he performed the role of Tarzan in movies and thrasonically recounted an anecdote of being rescued by a lion during the filming of one episode. Tr. 122.

⁴ Evidence of Mr. Sipek's exhibiting animals includes admissions to APHIS inspectors and investigators. Tr. 58-61, 65; RX-2, 4-7, 11. Although somewhat dated and not contemporaneous with the current application, 2005-2009 visitor logs obtained from state inspections and reports from state regulators also appear in the record. RX-12, 24-35, 37-38, 44-45. The record also contains a photograph of signs advertizing "Tarzan's Big Cat Sanctuary." RX-2a-2b.

⁵ The Florida license appearing in the record is for 2008-2009; however, the October 13, 2010 letter implicitly indicates that it is still in force. RX-18.

Care Inspector Megan Adams and Animal Care Supervisor Gregory Gaj at the facility located in Loxahatchee, Florida where the animals were being kept. RX-20; Tr. 41-51, 72, 80, 100-111.

7. Six areas of concern were identified by the inspectors during the inspection, including adequate veterinary care,⁶ documentation of adequate experience and knowledge of the species being maintained, corrective actions needed for the indoor and outdoor housing facilities, review of the feeding protocol by the attending veterinarian,⁷ and sanitation. RX-20.

8. During the course of the inspection, questions were raised concerning the appropriateness of Ms. Boynes' application as an individual⁸ as the inspectors were informed that Steve Sipek owned both the real property and the animals. Tr. 47. As a result, Ms. Boynes was asked to correctly complete the application or update it to indicate who was truly involved in the business.⁹ Tr. 51.

9. The subject of the practice of routinely declawing large felids for handling purposes was also discussed with Steve Sipek by Dr. Gaj. Mr. Sipek indicated that declawing was necessary for his safety and then expressing an intention to continue the practice even though Dr. Gaj advised him that routine declawing of the felids for handling purposes was contrary to accepted veterinary care under USDA standards. RX-17, 20, Tr. 44-48.

⁶ See, 9 C.F.R. §2.40.

⁷ *Id.*

⁸ During the inspection it was indicated that Mr. Sipek owned the property and the animals and that Ms. Boynes could not "do the business without him." Tr. 47

⁹ While Steve Sipek refers to a "show" and the pre-license inspection discussions concern operation of a "business," Ms. Boynes suggests in her brief that their facility is only a residence for two adults, three exotic cats and a domestic cat. Tr. 47, 51, 130, Petitioner's Post hearing brief, p. 1; Docket entry 21.

10. On August 27, 2010, APHIS received a “revised” application from Melanie Boynes and Steve Sipek dated August 24, 2010 which in block 8 of the AHIS Form 7003-A indicated the form of business as being a partnership.¹⁰ Block 2 of the form which calls for business names contains only the word “same.” Block 7 which calls for the nature of the business has no entry. The application was signed by Melanie Boynes as “Co-Owner.” RX-19.

11. Although Ms. Boynes represented that she was a “co-owner” of the business and represented in her post hearing brief that the real estate is owned by both Steve Sipek and Melanie Boynes, the record before me contains no transfer documents of either the real estate upon which the facility is located or of the animals owned by Steve Sipek.¹¹ Petitioner’s Post Hearing Brief, p. 1, Docket entry 21.

12. On September 16, 2010, without any further pre-license inspection being conducted for the “revised” application, APHIS denied the joint application of Melanie Boynes and Steve Sipek on the grounds that (a) the applicants failed to provide all requested information on the application form; (b) that Mr. Sipek was believed to exhibiting regulated animals without having a valid license to do so and had expressed an intention to continue to routinely declaw large felids contrary to appropriate veterinary care standards; and (c) that issuance of a license would be contrary to the purposes of the Act given Mr. Sipek’s history of animal care and his stated intention to deviate from appropriate veterinary care in the future. RX-21.

¹⁰ Although APHIS considered the August 24, 2010 application to be a revision of the one that Ms. Boynes had submitted as an individual, it might also be considered a new application as it was for a partnership entity.

¹¹ Dr. Gaj’s testimony was that at least at the time of the pre-license inspection Steve Sipek was the owner of the cats and the property: “And the animals were owned by him. The property was owned by him. And Ms. Boynes could not do the business without him.” Tr. 47.

13. At the time of the pre-license inspection, Ms. Boynes indicated that she would try to convince Mr. Sipek to refrain from declawing animals in the future. Tr. 46. At the hearing, Steve Sipek testified that he had no intention of acquiring any more animals and that he would no longer declaw large felids. Tr. 124, 136.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. The APHIS Form 7003-A dated August 24, 2010 was incomplete; however, the technical deficiencies are susceptible to have been easily remedied had a pre-license inspection been conducted for the “revised” application¹² and are not considered sufficiently egregious as to warrant any period of disqualification.
3. The failure of Melanie Boynes and Steve Sipek, assuming *pro arguendo* that they are in fact co-owners as represented by Ms. Boynes, to achieve other minimum standards: (a) to demonstrate provisions for adequate veterinary care, (b) to provide documentation of adequate experience and knowledge of the species being maintained, (c) to implement the necessary corrective actions needed for both the indoor and outdoor housing facilities, (d) to document review of the feeding protocol by the attending veterinarian, and (e) to correct the identified deficient sanitation measures constitute grounds warranting denial of the license until such time as corrective action has been accomplished.
4. The continued exhibition of large felids by Steve Sipek without an AWA license and his practice of routinely declawing large felids for handling purposes despite being warned by both a number of veterinarians¹³ and USDA officials that it was not acceptable

¹² See footnote 3, *supra*.

¹³ At least two veterinarians were identified that declined to perform the operation; others may have been contacted before one that would perform the operation was located. Tr. 135.

veterinary care support the finding of unfitness made by Dr. Goldentyer. RX-16-17, Tr. 134-135, 9 C.F.R. §2.1(a); 9 C.F.R. §2.11(a)(2).

5. Given the circumstances of his history of animal care, non-compliance with the regulations, and intended refusal to discontinue practices contrary to USDA standards of accepted veterinary care, issuance of a license to a partnership in which Steve Sipek is a partner or principal would be contrary to the purposes of the Act.

Order

1. The determination of unfitness and denial of the license application of Melanie Boynes and Steve Sipek is **AFFIRMED**.

2. Melanie Boynes is disqualified for a period of one year from obtaining, holding, or using an Animal Welfare Act license directly or indirectly through any corporate or other device or person.

3. This Decision and Order shall become final without further proceedings 35 days from service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to Section 1.145 of the Rules of Practice. 7 C.F.R. §1.145.

Copies of this Decision and Order will be served upon the parties by the Hearing Clerk.

August 4, 2011

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Colleen A. Carroll, Esquire
Melanie Boynes

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue SW
Room 1031, South Building
Washington, D.C. 20250-9203
202-720-4443
Fax: 202-720-9776