

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0156

In re:

CASEY G. LUDWIG,

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 involves a petition for a hearing (“Petition”) filed by pro se petitioner Casey G. Ludwig (“Petitioner”) upon objection to the United States Department of Agriculture’s (“USDA”; “Respondent”) denial of his application for an exhibitor’s license under the Animal Welfare Act, 7 U.S.C. §§2131 et seq. (“AWA” or “the Act”).

The AWA vests USDA with the authority 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 the Animal Plant Health Inspection Service (“APHIS”), an agency of USDA. APHIS is the agency tasked to issue licenses under the AWA.

This matter is ripe for adjudication, and this Decision and Order¹ is based upon the documentary evidence, as I have determined that summary judgment is an appropriate method for disposition of this case.

II. ISSUE

The primary issue in controversy is whether, considering the record, summary judgment may be entered in favor of USDA and Petitioner's request for a hearing may be dismissed.

III. PROCEDURAL HISTORY

On December 2, 2011, Petitioner applied to APHIS for an animal exhibitor's license under the Act. Petitioner had held AWA license # 35-C-0290 until it expired on November 18, 2011. By letter dated December 15, 2011, APHIS denied Petitioner's application. On January 9, 2012, Petitioner filed with the Hearing Clerk for the Office of Administrative Law Judges ("OALJ") ("Hearing Clerk") a petition objecting to APHIS' denial and requested a hearing before OALJ.

By Order issued February 16, 2012, I set a schedule for the exchange and filing of evidence by the parties. On April 3, 2012, Respondent APHIS filed a motion for summary judgment, together with supporting affidavits and documentation. Subsequently, Petitioner contacted my staff, requesting that a hearing date be set. On May 31, 2012, I held a telephone conference with Petitioner and counsel for Respondent, and summarized that conversation in an Order issued on that date. I deferred ruling on Respondent's motion, pending submissions by Petitioner, and I extended the time within which Petitioner could respond to the motion.

On June 21, 2012, Petitioner filed a response to Respondent's motion.

¹ In this Decision and Order, documents submitted by Petitioner shall be denoted as "PX-#" and documents submitted by Respondent shall be denoted as "RX-#".

IV. SUMMARY OF THE EVIDENCE

Petitioner held an exhibitor's license as an individual doing business as Lakewood Zoo . until the license expired on November 18, 2011. RX-1. A letter dated December 1, 2011, informed Petitioner that his AWA license was no longer valid because APHIS did not receive his renewal documents and applicable fees before the license expiration date. RX-1.

On December 2, 2011, Petitioner applied for a new license under the AWA. RX-3., APHIS denied the license application, concluding that Petitioner was not compliant with laws enacted by the State of Wisconsin pertaining to possession and exhibition of wild animals. RX-4; Declaration of Elizabeth Goldentyer. Petitioner fell into violation with state law by failing to hold a valid state-issued Captive Wild Animal Farm License ("CWAFL") from 2008 until January 27, 2012. Id. In his application for an AWA license, Petitioner included species that would require the possession of a CWAFL. RX-3.

As an additional reason for denying Petitioner's application, APHIS found that Petitioner had made false statements to the Wisconsin Department of Natural Resources ("DNR") on or about May 12, 2011 when he represented that the bears in Petitioner's possession were not a species native to Wisconsin, and therefore were not subject to DNR's regulation. Petitioner further represented that he did not have any native species at his premises, despite DNR's confirmation that in addition to the bears, raccoons, foxes, and wolves were present at Petitioner's facility. See, Declaration of Dr. Goldentyer.

Dr. Goldentyer further concluded that Petitioner's activities combined with a history of non-compliance with the AWA, demonstrated that Petitioner is unfit to be licensed. See, Declaration of Dr. Goldentyer. Petitioner was charged by the State of Wisconsin with possessing live captive wild animals without a license on September 10, 2011. RX-2 at 25. On March 13,

2009, Petitioner had entered a no contest plea on a previous charge by the State of Wisconsin of possessing live captive wild animals without a license. RX 5 at 3.

The President of the United State Zoological Association, Joe Schriebvogel, wrote a letter dated June 20, 2012 (“PX-1”), in which Mr. Schriebvogel explained that Petitioner brought to his premises Siberian Bears, which Petitioner believed were not covered by the license requirements of the AWA as they are not one of the sixteen sub-species of bears found in the United States. Mr. Schriebvogel asked that Petitioner be licensed so that the animals he keeps do not have to be relocated.

Petitioner submitted a summary of witnesses and evidence (“PX-2”), in which he offered to provide evidence that he has held a DNR license since January, 2012, and could explain the lapse of his license. He also wanted to offer evidence that the operations of his facility were being re-organized and were operating under a Board of Directors to a non-profit organization that anticipates applying for a new conditional use permit and all required licenses.

DISCUSSION

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); Federal Rule of Civil Procedure 56(c). 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 an issue of 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. Anderson v. Liberty Lobby, 477 U.S. 262 (1986).

I find that the record is sufficiently developed to conclude that entry of summary judgment in favor of Respondent is appropriate.

Pursuant to 9 C.F.R. §2.11(a) A license shall not be issued to any applicant who:

(5) Is or would be operating in violation or circumvention of any federal, State or local laws; or (6) Has made any false or fraudulent statements or provided any false or fraudulent records to the department of other government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal State or local laws or regulations pertaining to the transportation, ownership, neglect or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.

9 C.F.R. §§2.11(a)(5) and (6).

The record clearly establishes that Petitioner did not have the required State-issued license to possess some of the animals that he listed on his December 2, 2011 application to APHIS for a license under the AWA. In addition, in 2009, Petitioner pled no contest to a charge of possessing live captive wild animals without a license in October, 2008. Petitioner's violation of the State law meets the standard imposed by 9 C.F.R. §2.11(a)(5). His plea of no contest meets the standard imposed by 9 C.F.R. §2.11(a)(6).

I further find that the record is undisputed that Petitioner's repeated failure to comply with State law renders him unfit to be licensed. Petitioner's explanation that he misunderstood what was meant by the type of bears that would subject him to the jurisdiction of the Act is inconsistent with his list of animals on his license application dated December 2, 2011. However, according all benefit of the doubt to Petitioner, as required by the standards applicable to summary judgment, I find that the record fails to establish that the Petitioner made false or fraudulent statements, as contemplated by 9 C.F.R. §2.11(a)(6).

Although material facts are in dispute regarding whether Petitioner made false or fraudulent statements, the evidence of Petitioner's repeated State charges for failure to have a proper State license are sufficient to support APHIS' conclusions and the entry of summary judgment.

I find that APHIS' determination to deny Petitioner's application for a license under the AWA was a proper exercise of USDA's authority to regulate the AWA. Petitioner's contentions regarding attempts to reorganize his business on a non-profit model subject to a Board of Directors is laudable, but does not constitute a valid defense to his failure to comply with State law.

The evidence supports the disqualification of Petitioner for a period of one year, as determined by Dr. Goldentyer in her correspondence of December 15, 2011. RX-4. Any other entity that assumes responsibility for Petitioner's animals and facility would need to meet all State licensing requirements as well as qualify for a license under the AWA to possess and exhibit animals.

Summary judgment is hereby entered in favor of Respondent. No hearing in this matter is required.

V. FINDINGS OF FACT

1. Petitioner Casey G. Ludwig is an individual doing business as Lakewood Zoo and until November 18, 2011, held Animal Welfare Act license #35-C00290. RX-1.
2. Petitioner's license expired when he failed to timely submit an application to renew his license, together with applicable fees. RX-1.
3. On December 2, 2011, Petitioner filed an application for a new license with APHIS. RX-3.
4. Among the animals listed as in his possession on his application, Petitioner included five bears, as well as wild/exotic canines and felines. RX-3.
5. On March 13, 2009, Petitioner entered a plea of no contest to a charge of possessing live captive wild animals without a license in the State of Wisconsin. RX-5.
6. On December 6, 2011, Petitioner was again charged by the State of Wisconsin with possessing live captive wild animal without a license. RX. 2.
7. APHIS denied Petitioner's application by letter dated December 15, 2011. RX-4.

VI. CONCLUSIONS OF LAW

1. The Secretary, USDA, has jurisdiction in this matter.

2. The request for a hearing was timely filed, in compliance with 9 C.F.R. §2.11(b) and 7 C.F.R. § 1.141(a)
3. The material facts regarding Petitioner's compliance with State licensing requirements are not in dispute and the entry of summary judgment in favor of Respondent is appropriate with respect to his failure to comply with State laws regarding the possession of animals.
4. It is not necessary to conclude that Petitioner made false or fraudulent statements, as the undisputed evidence establishes that he failed to comply with State law.
5. Petitioner's plan to reorganize his business as a non-profit entity is not material to APHIS' determination.
6. APHIS' denial of a license to Petitioner pursuant to 9 C.F.R. §§2.11(a)(5) and (6) promotes the remedial nature of the AWA and is hereby AFFIRMED.
7. Petitioner's disqualification from applying for a license is appropriate.

ORDER

Summary Judgment is entered in favor of Respondent and Petitioner's request for a hearing is hereby DISMISSED.

Petitioner is hereby disqualified from obtaining an AWA license for a period of one year, commencing on the date that this Order becomes final. This Decision and Order shall be effective 35 days after this decision is served upon the Petitioner unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145.

So Ordered this 26th day of June, 2012 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge