

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RACHEL ARNOTT

Petitioner,

vs.

Case No. 15-3948

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION,

Respondent.

_____ /

RECOMMENDED ORDER

On December 8, 2015, this case was heard in Kissimmee, Florida, by D. R. Alexander, the assigned Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Rachel Arnott, pro se
8520 Sioux Trail
Kissimmee, Florida 34747-1531

For Respondent: Ryan Smith Osborne, Esquire
Florida Fish and Wildlife
Conservation Commission
620 South Meridian Street
Tallahassee, Florida 32399-1600

STATEMENT OF THE ISSUE

The issue is whether Petitioner's applications to renew her Licenses to Possess Class II and III Wildlife for Exhibition or Public Sale should be approved.

PRELIMINARY STATEMENT

On June 11, 2015, Respondent, Florida Fish and Wildlife Conservation Commission (Commission), issued its Notice of Denial advising Petitioner that her applications for two licenses to possess wildlife for exhibition or public sale were denied because: (1) on April 24, 2015, she was adjudicated guilty in Osceola County Court of maintaining captive wildlife in unsanitary conditions, a violation of section 379.401(7), Florida Statutes (2015); and (2) during inspections of her captive wildlife facility in February and July 2014, numerous violations of Commission rules were observed but were never corrected. Petitioner timely requested a hearing, and the matter was referred by the Commission to DOAH to conduct a hearing on the dispute.

At the hearing, Petitioner testified on her own behalf and presented one witness. Petitioner's Composite Exhibit 1 was accepted in evidence. The Commission presented the testimony of three witnesses. Commission Exhibits A through F and H through K were accepted in evidence. On February 15, 2015, Respondent supplemented the record with documents related to an issue raised by Petitioner for the first time at hearing.

A one-volume Transcript of the hearing has been prepared. The parties filed proposed recommended orders (PROs), which have been considered in the preparation of this Recommended Order.

After Respondent filed its PRO, Petitioner filed a response to the PRO, which is not authorized by the rules, and it has been disregarded.

FINDINGS OF FACT

1. The Commission is the state agency that has exclusive jurisdiction to regulate the possession, sale, and display of captive wildlife in Florida.

2. Before moving to her current residence in Kissimmee, Petitioner resided in Tampa, where she possessed a bobcat kitten and a kinkajou, a small rain forest creature. In May 2012, she advised the Commission by email that she intended to move to Central Florida. She requested that the Commission provide her with copies of rules that would apply if she kept a bobcat inside her new residence. In response to that request, the Commission provided her with copies of all applicable rules. She was also told that, in order to secure the bobcat, she would have to install chain link on her windows and a secondary safety entrance to the home. These features are necessary in order to ensure public safety.

3. On an undisclosed date, Petitioner moved to a 2,000 square-foot home located at 8520 Sioux Trail, Kissimmee, where she established a captive wildlife facility. Later, she acquired two more bobcats, which she intended to use for presentations and educational shows in the Central Florida area.

For that purpose, she formed Florida's C.L.A.W.S., an unincorporated organization that exhibits and sells wildlife at local events in Central Florida to educate the public about, and raise money for, the care of her animals. Her full-time vocation, however, is a tattoo artist, which requires that she work around 60 hours per week, often late into the night and during the early morning hours.

4. "Captive wildlife" species are listed in Florida Administrative Code Rule 68A-6.002. The rule establishes three classes of captive wildlife: I, II, and III. Each requires a license issued by the Commission. Until it expired on March 5, 2015, Petitioner possessed a Class II license, issued on March 14, 2014, which allowed the exhibition and sale of Felidae (the family of cats). Until it expired on June 10, 2015, she also possessed a Class III license, first issued on June 3, 2011, which allowed the exhibition and sale of mammals, birds, reptiles, amphibians, and conditional species. By holding these licenses, she was responsible for the care of the captive wildlife at her facility. The instant case involves her applications to renew the two licenses.

5. After her licenses expired and the two applications for renewal denied, on July 1, 2015, a Notice to Relinquish Wildlife was issued by the Commission. In response to that order, Petitioner moved her Class II and III captive wildlife to a

friend's facility, where they remain pending the outcome of this proceeding. Currently, she keeps only dogs and cats at her home.

6. When the Kissimmee facility was fully operational, Petitioner had more than 30 animals/reptiles, including foxes, bobcats, skunks, snakes (non-venomous), tegu lizards, and a kinkajou. All of these species are listed as captive wildlife in rule 68A-6.002.

7. On February 25, 2014, an announced, routine inspection of Petitioner's facility was conducted by Captive Wildlife Investigator Damon Saunders. This type of inspection is required when a new facility is established. During the inspection, Investigator Saunders observed seven rule infractions, which are noted in his report and depicted in photographs taken that day. See Resp. Ex. C and D. Overall, he found the condition of the facility to be "substandard."

8. The documented violations on February 25, 2014, are as follows:

a. There was no safety entrance for the bobcat enclosure, as required by rule 68A-6.003(1)(a);

b. There was rusting that affected the structural integrity of the bobcat enclosure, in violation of rule 68A-6.0023(5)(e);

c. Weld spots on the east side of the bobcat enclosure were coming undone due to

corrosion in violation of rule 68A-6.0023(2)(b), which requires caging or enclosures to be sufficiently strong to prevent escape and to protect the caged animal from injury;

d. The kinkajou was housed in a bird cage, in violation of rule 68A-6.004, which requires a cage size of six feet by eight feet, and six feet high;

e. There was no record for the source of acquisition for her reticulated python, which is required by rule 68A-6.0023(6);

f. A microchip passive integrated transponder (PIT) tag was not detected for the reticulated python; a PIT tag is required by rule 68-5.001(3)(e)2.; and

g. The fox and various reptile enclosures had dirty water bowls, in violation of rule 68A-6.0023(5)(b), which requires water containers being used to be clean.

9. At the end of the inspection, Investigator Saunders met with Petitioner and identified each infraction he observed; he explained how each should be corrected; and he told her that she had 30 days, or until March 27, 2014, to correct the violations. She was also given a copy of the Commission's captive wildlife rules, with the violated rules highlighted. Although Investigator Saunders observed several other violations that day, they were not noted on his inspection report because he knew the facility had just been established, and he wished to give Petitioner additional time in which to get her facility operating in accordance with all rules.

10. On July 28, 2014, or approximately five months later, an unannounced, follow-up inspection was conducted by Captive Wildlife Investigators Steven McDaniel and Rick Brown. The purpose of the inspection was to determine if the violations observed on February 25, 2014, had been corrected. The inspection was purposely delayed until July, rather than 30 days after the first inspection, so that Petitioner would have adequate time to take corrective action. Petitioner complained that the inspection occurred when she just awoke around 10:20 a.m., after a long night at work and before she had time to clean the facility. For obvious reasons, however, the Commission does not give licensees advance warning of follow-up inspections.

11. During the inspection, the investigators noted that Petitioner had six foxes, three bobcats, two skunks, a kinkajou, a reticulated python, and several nonvenomous snakes. With the exception of the safety entrance for the exterior bobcat cage, Petitioner acknowledged that none of the violations observed during the first inspection had been corrected. The investigators found some wildlife living in outdoor cages or other enclosures, while others, including two skunks, a bobcat, a kinkajou, a reticulated python, and several reptiles, were living in her home. Investigator McDaniel testified that "it looked as if very little had been done" and characterized the

condition of the wildlife as "mediocre to poor." Investigator Brown noted that there was an "extreme" lack of care of the wildlife, the violations were "serious," and they were having an adverse impact on the health and well-being of the wildlife.

12. The investigators observed a number of rule violations, which are listed in their Inspection Report and depicted in photographs taken that day. See Resp. Ex. E and F. The rule violations are summarized below:

- a. The outer safety door for the cage containing two bobcats was unsecured, in violation of rule 68A-6.0023(2)(b), which requires the cage to be sufficiently strong to prevent escape;
- b. There was standing, stagnant water in the bobcat shelter, in violation of rule 68A-6.0023(1), which requires wildlife to be maintained in sanitary conditions;
- c. Both the bobcats' water container and water in the container were dirty, in violation of rule 68A-6.0023(5)(b), which requires water containers being used to be clean and requires clean drinking water to be provided daily;
- d. There were large amounts of old and fresh fecal matter throughout the bobcat cage, in violation of rule 68A-6.0023(5)(d), which requires fecal waste to be removed daily from inside, under, and around cages and stored or disposed of in a manner which prevents noxious odors or pests; and carrion flies were evident on the fecal matter;
- e. The bobcat cage floor had not been raked every three days, as required by rule 68A-6.0023(5)(e);

- f. The rust in the bobcat cage that was observed during the February 25 inspection was still evident and excessive, in violation of rule 68A-6.0023(5)(e), which requires any surface of a cage or enclosure that may come into contact with animals to be free of excessive rust that prevents the required cleaning or that affects the structural strength;
- g. The broken welds on parts of the cage panel walls on the bobcat cage observed during the February 25 inspection had not been repaired, in violation of rule 68A-6.0023(2)(b), which requires caging or enclosures to be sufficiently strong to prevent escape and to protect the caged animal from injury;
- h. The cage for the two foxes measured ten feet by five feet, two inches by six feet, and did not meet the caging requirements of eight feet by six feet by six feet specified in rule 68A-6.004(4)(h)2.a.;
- i. A fox was found in a small kennel cage inside Petitioner's home under veterinary care for an injured foot in violation of rule 68A-6.0041(2), which requires animals being temporarily housed in smaller cages for veterinary care to be in cages no smaller than that required for the caged animal to stand up, lie down, and turn around without touching the sides of the enclosure or another animal;
- j. Digging was observed between outdoor fox cages exposing the bottom apron in violation of rule 68A-6.003(1)(b)1., which requires the bottom apron to be buried to prevent injury to the captive wildlife in the enclosure;
- k. Two snakes in the bull/gopher snake family were observed in their own cages without water and a ball python was observed in a glass cage without water in violation

of rule 68A-6.0023(5) (b), which requires that clean drinking water be provided daily;

l. The ball python was in a glass cage with shed skin and old fecal matter; there were two Machlot's pythons in a large cage that was littered with excessive old fecal matter and old shed skins; a boa constrictor cage had old fecal matter in it; the reticulated python cage had old fecal matter and shed skins throughout the cage; the tegu lizard cage had old feces; all in violation of rule 68A-6.0023(5) (d), which requires fecal material to be removed daily, and rule 68A-6.0023(5) (e), which requires hard floors within cages or enclosures to be cleaned a minimum of once weekly;

m. The kinkajou was still housed in the bird cage, which was too small; there was no water or food present; the floor of the cage was covered in old fecal matter; and Petitioner admitted that the cage had not been cleaned in four days. These conditions violated rule 68A-6.0023(5) (b) and (c), which requires the animals to be provided clean drinking water and food;

n. The third bobcat was being housed inside Petitioner's house in a spare bedroom lacking a safety entrance as required by rule 68A-6.003(1) (a); the two doors leading into the room were hollow-core doors and not of sufficient strength, and there was no required wire or grating covering the windows, in violation of rule 68A-6.003(3) (e), which requires potential escape routes to be equipped with wire or grating of not less than 11.5-gauge chain link or equivalent;

o. Two skunks were housed in a spare bedroom that adjoined the bobcat cage room; the floor was covered in mainly old, but some new, smeared fecal matter; there were no water bowls; the bathroom window was open and only covered by the typical bug screen

associated with household windows; all in violation of rule 68A-6.0023(5)(d), which requires cages and enclosures to be ventilated to prevent noxious odors, and rule 68A-6.003(3)(h), which requires the room to be constructed of materials of not less than 14-gauge wire or strength equivalent and the escape routes to be secured;

p. Petitioner was unable to provide records of acquisition of any animals in her possession, as required by rules 68A-6.0023(6) and 68-5.001(3)(e).6.; and

q. Petitioner's Critical Incident Disaster Plan was only partially completed, in violation of rules 68A-6.0022(7) and 68-5.001(3)(e)5.

Each of these violations is substantiated by clear and convincing evidence.

13. At the conclusion of the inspection, Petitioner was given another copy of the Commission's rules, with the violated rules highlighted; she was told how each infraction should be corrected; she was asked if she had any questions regarding the violations; and she was given another copy of the first inspection report. A new 30-day deadline was established for correcting all violations except the source of acquisition and critical incident plan, for which she was given 60 days to take corrective action. However, no follow-up inspections were made.

14. Petitioner contends that if the follow-up inspection on July 28, 2014, was made later than 10:30 a.m., she would have had time to feed and water the wildlife and clean their cages.

However, the amount and appearance of the feces, the presence of snake skins, and the appearance of dirty water bowls in the enclosures indicates that the enclosures had not been cleaned for an extended period of time.

15. During the first inspection, Petitioner identified the source of acquisition of all wildlife, except the reticulated python. After the first inspection, Petitioner acquired a boa constrictor, two Macklot's pythons, four tegus, two carpet pythons, one gopher snake, one bull snake, four sulcatta tortoises, one blue tongue skink (lizard), and one Central American wood turtle. However, she was unable to produce acquisition paperwork for any captive wildlife. She blamed this on the fact that many of her wildlife were donated to her or purchased at exhibitions, apparently meaning that the names of the donors or sellers were unknown. Acquisition information is essential, as the Commission uses these records to combat the illegal trafficking of wildlife.

16. Petitioner blamed many of the facility violations on a lack of financial resources and personal issues in her life that arose in 2014, leaving her with little time or resources to comply with Commission rules. She pointed out that an injury to one of the foxes required an expenditure of almost \$2,000.00 in one month alone, which drained her resources; her father was diagnosed with a terminal illness and passed away a short time

later; and her fiancée required two surgeries, which prevented him from assisting her in caring for the wildlife. She also testified that she was working 60-hour weeks as a tattoo artist to support herself, which left very little time to care for the wildlife. Given these time constraints, it is surprising that she continued to acquire even more wildlife after the first inspection was made. While Petitioner maintains that the exhibition and sale of animals is intended to support her facility, it is apparent that whatever money was generated by that activity is insufficient to adequately care for the wildlife. In sum, Petitioner contends that many of the violations are unwarranted or simply technical violations of the rules, or other circumstances prevented her from taking corrective action and maintaining the facility in accordance with Commission rules. The evidence belies this contention.

17. Although the Commission presented evidence of alleged violations of United States Department of Agriculture rules observed during an inspection by that agency on June 30, 2015, for which warnings were issued, these violations were not cited in the Notice of Denial as a basis for denying the applications and have been disregarded by the undersigned. See, e.g., Chrysler v. Dep't of Prof'l Reg., 627 So. 2d 31, 34 (Fla. DCA 1993) (matters not charged in an administrative action cannot be considered as violations). Likewise, Petitioner's contention

that the Commission failed to act on her applications within 90 days, raised for the first time during her testimony, has been disregarded as being untimely. See also § 120.60(1), Fla. Stat.

18. Although each infraction noted during the second inspection constituted a violation of state law, a criminal citation for only three violations was issued and reported to the local State Attorney's Office. These included a failure to correct the violations noted during the February inspection; maintaining captive wildlife in unsanitary conditions; and improper caging for Class II wildlife. However, the State Attorney decided to prosecute Petitioner for all violations. On July 28, 2014, criminal charges were filed in County Court. On advice of her counsel, on April 24, 2015, Petitioner pled guilty to all charges and was adjudicated guilty of maintaining captive wildlife in unsanitary conditions in violation of section 379.401(7). Besides having a fine imposed, Petitioner was placed on probation for six months and required to perform community service. Under the terms of her probation, she was ineligible to possess Class I or II wildlife for the duration of her six-month probation period.

19. Just before her criminal case was concluded, Petitioner filed applications to renew her licenses. A major impediment to approving them is a Commission rule that requires

denial of an application if the applicant has been adjudicated guilty of a violation of any provision of chapter 379. See Fla. Admin. Code R. 68-1.010(2). The same rule provides, however, that denial is not automatic, as the Commission is required to consider nine factors when determining whether to approve or deny an application. See Fla. Admin. Code R. 68-1.010(5)(a)-(i). After considering each relevant factor, the Commission issued its Notice of Denial on June 11, 2015. Petitioner then requested a hearing.

20. Petitioner unquestionably cares for wildlife and would never intentionally harm them through inattention or lack of care. However, due to personal and financial issues, and full-time employment outside her home that consumes much of her time, she is unable to comply with Commission rules for operating a captive wildlife facility. There is clear and convincing evidence to support the Commission's denial of the applications.

CONCLUSIONS OF LAW

21. In this case, Petitioner seeks renewal of her Class II and III licenses. As such, she has the burden of proving entitlement to licensure by a preponderance of the evidence. See Fla. Dep't of Children & Families v. Davis Family Day Care Home, 160 So. 3d 854, 856 (Fla. 2015) (Canady, J., dissenting). Assuming, however, that the Commission bears the burden of showing by clear and convincing evidence that Petitioner is

unfit for licensure, the Commission has met this standard of proof. See, e.g., State Dep't of Banking & Fin. v. Evans, 540 So. 2d 884, 886 (Fla. 1st DCA 1989) (refusal to renew a license to a person who has once demonstrated that he possesses the statutory prerequisites to licensure cannot be used as a substitute for a license revocation proceeding).

22. All individuals that have or possess captive wildlife for the purpose of public display or public sale must have a license from the Commission. See § 379.3761(1), Fla. Stat. All wild animal life includes captive wildlife.

23. Rule 68-1.010(2)(a) provides that an application "for any license . . . shall, when the factors enumerated in subsection (5) warrant denial, be denied" if the applicant has "received an adjudication other than acquittal or dismissal of any provision of chapter 379" Because of Petitioner's adjudication of guilt, these factors come into play.

24. The factors enumerated in subsection (5) are as follows:

- (a) The severity of the conduct;
- (b) The danger to the public created or occasioned by the conduct;
- (c) The existence of prior violations of Chapter 379, F.S., or the rules of the Commission;
- (d) The length of time a licensee or permittee has been licensed or permitted;

(e) The effect of denial, suspension, revocation or non-renewal upon the applicant, licensee, or permittee's existing livelihood;

(f) Attempts by the applicant, licensee or permittee to correct or prevent violations, or the refusal or failure of the applicant, licensee or permittee to take reasonable measures to correct or prevent violations;

(g) Related violations by an applicant, licensee or permittee in another jurisdiction;

(h) The deterrent effect of denial, suspension, revocation or non-renewal;

(i) Any other mitigating or aggravating factors that reasonably relate to public safety and welfare or the management and protection of natural resources for which the Commission is responsible.

25. The evidence supports a conclusion that Petitioner's lack of care of the animals was "severe" or "extreme"; her failure to meet standards pertaining to adequate caging of bobcats presents a danger to the public; with one exception, she failed to correct the violations noted at the February 2014 inspection; Petitioner's failure to secure a license in this proceeding will not affect her primary livelihood; there is no evidence that Petitioner undertook any meaningful efforts to correct the violations; there is no record of any violations in other jurisdictions; there is no evidence one way or the other that a non-renewal of the licenses will serve as a deterrent to

other applicants; and while Petitioner's financial and personal problems encountered during 2014 are a mitigating factor, at the same time, the Commission extended by approximately four months the time for her to correct the February 2014 violations. When weighing these factors as a whole, the Commission's denial of the applications should be sustained.

26. In her PRO, Petitioner acknowledges for the first time that she is not attempting to reinstate her licenses. Instead, she asks for a second chance to "start over, and reapply as a new license holder." She represents that this would require her to complete 1,000 hours of hands-on training for the Class II Felidai and 500 hours of hands-on training with Class III mammals, reptiles, and conditional species. She also represents that she will employ a professional company to design and build new enclosures for all of the species. This case, however, is limited to consideration of Petitioner's applications to renew her Class II and III licenses. The resolution of the case in the Commission's favor does not bar Petitioner from reapplying for another license at a later date.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Florida Fish and Wildlife and Conservation Commission enter a final order denying Petitioner's applications for Class II and III Wildlife licenses.

DONE AND ENTERED this 26th day of February, 2016, in Tallahassee, Leon County, Florida.



D. R. ALEXANDER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of February, 2016.

COPIES FURNISHED:

Eugene Nichols "Nick" Wiley, II, Executive Director
Florida Fish and Wildlife
Conservation Commission
620 South Meridian Street
Tallahassee, Florida 32399-1600
(eServed)

Rachel Arnott
8520 Sioux Trail
Kissimmee, Florida 34747-1531
(eServed)

Ryan Smith Osborne, Esquire
Florida Fish and Wildlife
Conservation Commission
620 South Meridian Street
Tallahassee, Florida 32399-1600
(eServed)

Harold G. "Bud" Vielhauer, General Counsel
Florida Fish and Wildlife
Conservation Commission
620 South Meridian Street
Tallahassee, Florida 32399-1600
(eServed)

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days of the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will render a final order in this matter.