

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

RACHEL ARNOTT,

Petitioner,

vs.

DOAH Case No. 15-3948

FWC Case No. 15-0031

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION,

Respondent.

_____ /

FINAL ORDER

An Administrative Law Judge (ALJ) with the Division of Administrative Hearings (DOAH) on February 26, 2016, submitted a recommended order (RO) to the Florida Fish and Wildlife Conservation Commission (FWC or Commission), in the above captioned proceeding. A copy of the RO is attached hereto as Exhibit A. The RO indicates that copies were sent to counsel for FWC and Petitioner, pro se, RACHEL ARNOTT (Arnott). Neither party filed exceptions to the RO. This matter is now before the FWC for final agency action.

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.

STANDARD OF REVIEW OF DOAH RECOMMENDED ORDER

Section 120.57(1)(1), Florida Statutes, prescribes that an agency reviewing a recommended order may not reject or modify the findings of fact of an ALJ, "unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based on competent substantial evidence." § 120.57(1)(1), Florida Statutes (2015); *Charlotte County v. IMC Phosphates Co.*, 18 So.3d 1089 (Fla. 2d DCA 2009). The term "competent substantial evidence" does not relate to the quality, character, convincing power, probative value or weight of the evidence. Rather, "competent substantial evidence" refers to the existence of some evidence (quantity) as to each essential element and as to its admissibility under legal rules of evidence. See e.g., *Scholastic Book Fairs, Inc. c. Unemployment Appeals Commission*, 671 So.2d 287, 289 n.3 (Fla. 5th DCA 1996).

A reviewing agency may not reweigh the evidence presented at a DOAH final hearing, attempt to resolve conflicts therein, or judge the credibility of witnesses. See e.g., *Rogers v. Dept. of Health*, 920 So.2d 27, 30 (Fla. 1st DCA 2005); *Dunham v. Highlands County Sch. Bd.*, 652 So.2d 894 (Fla. 2d DCA 1995). These evidentiary-related matters are within the province of the ALJ, as the "fact-finder" in these administrative proceedings. See e.g., *Tedder v. Fla. Parole Commission*, 842 So.2d 1022, 1025

(Fla. 1st DCA 2003); *Heifetz v. Dept. of Bus. Regulation*, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985). Also, the ALJ's decision to accept the testimony of one expert witness over that of another expert is an evidentiary ruling that cannot be altered by a reviewing agency, absent a complete lack of any competent substantial evidence of record supporting this decision. See, e.g., *Peach River/Manasota Regional Water Supply Authority v. JMC Phosphates Co.*, 18 So. 3d 1079, 1088 (Fla. 2d DCA 2009); *Collier Med. Ctr. v. State Dept. of HRS*, 462 So.2d 83, 85 (Fla. 1st DCA 1985). Therefore, if the DOAH record discloses any competent substantial evidence supporting a challenged factual finding of the ALJ, the agency is bound by such factual finding in preparing its Final Order. See e.g., *North Port, Fla. v. Consolidated Minerals*, 645 So.2d 485, 487 (Fla. 2d DCA 1994).

Section 120.57(1)(1), Florida Statutes, authorizes an agency to reject or modify an ALJ's conclusions of law and interpretations of administrative rules "over which it has substantive jurisdiction." See *Barfield v. Dept. of Health*, 805 So.2d 1008 (Fla. 1st DCA 2001); *L. B. Bryan & Co. v. Sch. Bd. Of Broward County*, 746 So.2d 1194 (Fla. 1st DCA 1999); *Deep Lagoon Boat Club, Ltd. V. Sheridan*, 784 So. 2d 1140 (Fla. 2d DCA 2001). If an ALJ improperly labels a conclusion of law as a finding of fact, the label should be disregarded and the item treated as though it were actually a conclusion of law. See, e.g.,

Battaglia Properties v. Fla. Land and Water Adjudicatory Commission, 629 So.2d 161, 168 (Fla. 5th DCA 1994). Neither should the agency label what is essentially an ultimate factual determination as a "conclusion of law," however, in order to modify or overturn what it may view as an unfavorable finding of fact. See, e.g., *Stokes v. State Bd. of Prof. Engineers*, 952 So.2d 1224 (Fla. 1st DCA 2007).

An agency's review of the legal conclusions in a recommended order is restricted to those that concern matters within the agency's field of expertise. See, e.g., *Charlotte County v. MC Phosphates Co.*, 18 So.3d 1089 (Fla. 2d DCA 2009); *G.E.L., Corp. v. Dept. of Environmental Protection*, 875 So.2d 1257, 1263 (Fla. 5th DCA 2004). An agency has the primary responsibility of interpreting statutes and rules within its regulatory jurisdiction and expertise. See, e.g., *Public Employees Relations Commission*, 467 So.2d at 989; *Fla. Public Employee Council*, 79, 646 So.2d at 816. Considerable deference should be accorded to these agency interpretations of statutes and rules within their regulatory jurisdiction, and such agency interpretations should not be overturned unless "clearly erroneous." See, e.g., *Falk*, 614 So.2d at 1089; *Dept. of Environmental Protection*, 477 So.2d at 534. Furthermore, agency interpretations of statutes and rules within their regulatory jurisdiction do not have to be the only reasonable

interpretations. It is enough if such agency interpretations are "permissible" ones. See. E.g., *Suddath Van Lines, Inc.*, 668 So.2d at 212.

Agencies do not have jurisdiction, however, to modify or reject rulings on the admissibility of evidence. Evidentiary rulings of the ALJ that deal with "factual issues susceptible to ordinary methods of proof that are not infused with [agency] policy considerations," are not matters over which the agency has "substantive jurisdiction." See, *Martuccio v. Dept. of Professional Regulation*, 622 So.2d 607, 609 (Fla. 1st DCA 1993); *Heifetz v. Dept. of Business Regulation*, 475 So.2d 1277, 1281 (Fla. 1st DCA 1985); *Fla. Power & Light Co. v. Fla. Siting Board*, 693 So.2d 1025, 1028 (Fla. 1st DCA 1997). Evidentiary rulings are matters within the ALJ's sound "prerogative...as the finder of fact" and may not be reversed on agency review. See, *Martuccio*, 622 So.2d 607, 609.

CONCLUSION

As Assistant Executive Director of the Commission, the undersigned has jurisdiction over this subject matter and authority to issue this final order pursuant to Rules 68-1.008 and 28-106.305, Florida Administrative Code; the Commission's Delegation of Authority dated September 14, 2013, in accordance with Section 120.57 (2), Florida Statutes; and the Delegation of

Authority to the Assistant Executive Director and the Chief of Staff, dated February 15, 2016.

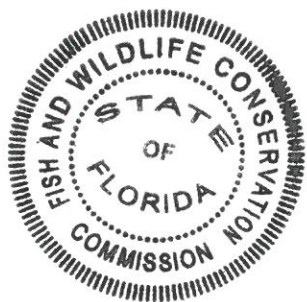
Having considered the applicable law and standards of review in light of the findings and conclusions set forth in the RO, and being otherwise duly advised,

It is therefore **ORDERED**:

A. The ALJ's RO (Exhibit A) is adopted and incorporated by reference herein and the findings of fact and conclusions of law set forth in the RO are hereby adopted.

B. Arnott's applications to renew her Licenses to Possess Class I and/or Class II Wildlife for Exhibition or Public Sale (Application ID 57038), and Class III Wildlife for Exhibition or Public Sale (Application ID 60680) are denied.

DONE AND ORDERED this 4th day of May, 2016, in Leon County, Florida.



Eric Sutton
Assistant Executive Director
Florida Fish and Wildlife
Conservation Commission

Filed with the Agency Clerk
This 6th day of May, 2016.

Attest: Kristina Butler
Agency Clerk

NOTICE OF APPELLATE RIGHTS

The foregoing constitutes final agency action in this matter. Any party adversely affected has the right to seek judicial review of this Final Order pursuant to § 120.68, Florida Statutes, and Rules 9.030(b)(1)(c) and 9.110, Florida Rules of Appellate Procedure. To initiate an appeal, a Notice of Appeal must be filed with the Florida Fish & Wildlife Conservation Commission, Legal Office, and the appropriate District Court of Appeal within thirty (30) days of the date this Final Order is filed with the Agency Clerk. The Notice filed with the District Court of Appeal must be accompanied by the appropriate filing fee required by law.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished via U. S. Postal Service to **RACHEL ARNOTT**, 8520 Sioux Trail, Kissimmee, Florida 34747-1531, this 6th day of May, 2016.

Copies provided electronically to:

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Agency Clerk