

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CARLA SANTANGELO,

Petitioner,

vs.

Case No. 15-5654

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION,

Respondent.

_____ /

RECOMMENDED ORDER

The final hearing in this case was held by video teleconference on May 17, 2016, at sites in Tallahassee and West Palm Beach, Florida, before Bram D. E. Canter, Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Raymond M. Masciarella II, Esquire
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North Palm Beach, Florida 33408

For Respondent: Ryan Smith Osborne, Esquire
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Conservation Commission
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STATEMENT OF THE ISSUE

The issue for determination in this case is whether
Petitioner is entitled to a Captive Wildlife Game Farm License

from the Florida Fish and Wildlife Conservation Commission ("FWC").

PRELIMINARY STATEMENT

On May 15, 2015, Petitioner submitted an application for a Captive Wildlife Game Farm License to FWC. On August 6, 2015, FWC sent written notice to Petitioner that her application was denied. Petitioner filed a petition to challenge the denial of her application and the matter was referred to DOAH to conduct an evidentiary hearing.

At the final hearing, Petitioner testified on her own behalf. Petitioner's Exhibits 1 and 2 were admitted into evidence. Exhibit 2 was not admitted for the truth of the matters asserted. FWC presented the testimony of Lt. Loren Lowers. FWC attempted to present the testimony of Investigator Jamie Holcomb by telephone, but there was no notary public present with the witness to administer the oath as required by Florida Administrative Code Rule 28-106.213(5)(b). Therefore, Mr. Holcomb's testimony was not permitted.

The one-volume Transcript of the final hearing was filed with DOAH. The parties submitted proposed recommended orders that were considered in the preparation of this Recommended Order.

FINDINGS OF FACT

The Parties

1. Petitioner, Carla SantAngelo, is a natural person who resides at 5260 Bluff Hammock Road, Lorida, Highlands County, Florida.

2. FWC was created pursuant to Article IV, section 9 of the Florida Constitution, to "exercise the regulatory and executive powers of the state with respect to wild animal life and fresh water aquatic life." FWC has exclusive jurisdiction to regulate the possession, sale, and display of captive wildlife in Florida.

The Application

3. Petitioner's application lists the location of the proposed game farm as 5260 Bluff Hammock Road, Lorida, which is also her residential address. Petitioner proposed to rear, possess, exhibit, and sell fallow deer, sika deer, axis deer and blackbuck antelope, all of which are designated by the FWC as Class II Wildlife.

4. Florida Administrative Code Rule 68A-6.0022(5) establishes the criteria for obtaining a permit to possess Class II wildlife. It provides in pertinent part:

(a) Age Requirement: Applicants to possess Class I or Class II wildlife shall be at least 18 years of age.

(b) Applicants shall not have been convicted of any violation of captive wildlife regulations or venomous reptile or

reptile of concern regulations involving unsafe housing of wildlife or that could potentially endanger the public; any violation involving the illegal commercialization of wildlife; any violation involving cruelty to animals; or any violation involving importation of wildlife within three (3) years of the date of application.

* * *

(d) Experience and examination requirements for Class II permits:

1. Applicants may qualify for a permit for Class II wildlife by documenting one year of experience (to consist of no less than 1000 hours) as defined in subparagraphs 68A-6.0022(5)(c)1.-4., F.A.C.

5. It was stipulated by the parties that Petitioner satisfied the requirements in rule 68A-6.0022(5).

6. In its letter of denial, the reason given by FWC for denying Petitioner's application was "FWC has reason to believe you were operating the illegal game farm with your husband."

7. Petitioner's husband, Daniel SantAngelo, is the president of Okeechobee Outfitters. He was charged and convicted of operating a game farm at 5260 Bluff Hammock Road without a license. The date of his conviction is not in the record, but is likely sometime in 2015.

8. Okeechobee Outfitters was not charged or convicted of operating a game farm without a license.

9. Petitioner was formerly the vice president, director, secretary, and treasurer of Okeechobee Outfitters. Her corporate functions included disbursing checks on behalf of the corporation, acting as secretary, cooking, answering phone calls, answering e-mails, cleaning, paying electric bills, and booking hunts.

10. FWC asserted that Petitioner's position and activities with the corporation were tantamount to her personal possession of Class II wildlife without a permit.

11. Daniel SantAngelo owns the property located at 5260 Bluff Hammock Road. Okeechobee Outfitters owns property at 5229 Bluff Hammock Road, Highlands County, Florida, and a site located at Brighton Seminole Indian Reservation, Okeechobee County, Florida.

12. Petitioner has no ownership interest in any property owned by Okeechobee Outfitters.

13. Petitioner is not a shareholder of Okeechobee Outfitters.

CONCLUSIONS OF LAW

14. All persons who 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.

15. As the applicant for the permit, Petitioner bears the burden of proving entitlement to the permit by a preponderance of

the evidence. See Fla. Dep't of Child. & Fams. v. Davis Family Day Care Home, 160 So. 3d 854, 856 (Fla. 2015).

16. Although Petitioner meets the qualifications set forth in rule 68A-6.0022(5), FWC contends that Florida Administrative Code Rule 68-1.010 must also be considered and it provides a separate ground for denial of the application.

17. Rule 68-1.010(5) establishes factors to be considered by FWC in determining whether to deny a license:

- (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 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.

18. FWC relies primarily on factor (c) above, the existence of prior violations of chapter 379, Florida Statutes, or the rules of the Commission. FWC contends that Petitioner, through her position with Okeechobee Outfitters, possessed wildlife without a permit in violation of FWC rules.

19. Petitioner argues that rule 68A-6.0022, rather than any provision of rule 68-1.010, is controlling based on the legal principal that a specific rule covering a particular subject matter controls over a general rule covering the same subject in general terms. See Storemel v. Columbia Cnty., 930 So. 2d 742 (Fla. 1st DCA 2006). However, rule 68-1.010 clearly incorporates the eligibility requirements of rule 68A-6.0022. See Fla. Admin. Code R. 68-1.010(1)(b). Statutes and rules must be construed together to harmonize the statutes and give effect to the Legislature's intent. Bd. of Trustees, Jacksonville Police & Fire Pension Fund v. Lee, 189 So. 3d 120, 126 (Fla. 2016). Reading rule 68-1.010 in pari materia with rule 68A-6.0022 shows a clear intent to apply the factors in rule 68-1.010(5) in reviewing an application for a license in addition to the eligibility requirements in rule 68A-6.0022.

20. Although 68-1.010(5)(c) is applicable, the record evidence does not support FWC's contention that Petitioner had

prior violations of chapter 379 or the rules of the Commission. In essence, FWC is asserting that, if it had brought a case against Petitioner for illegally possessing Class II wildlife, as it did against her husband, FWC would have been able to obtain a conviction against her. However, no case was brought against Petitioner and it cannot simply be presumed that she would have been convicted in a criminal proceeding for illegally possessing wildlife.

21. FWC argues that Okeechobee Outfitters is an alter ego of Petitioner based on her positions and functions at the corporation, citing Dania Jai-Alai Palace, Inc. v. Sykes, 450 So. 2d 1114 (Fla. 1984). However, piercing the corporate veil to establish personal liability requires a showing that the corporation was a mere device or sham to accomplish some ulterior purpose, or is a mere instrumentality or agent of another corporation or individual owning all or most of its stock, or where the purpose is to evade some statute or to accomplish some fraud or illegal purpose. Id. at 1117-18. The record evidence does not support any of these requirements for making a corporate officer personally liable.

22. Furthermore, any attempt to deny a license based on an alleged past violation of law, as opposed to an actual criminal conviction or administrative determination of violation, begs the question of when the applicant will be afforded due process to

contest the charge of a past violation. FWC suggests that it can convert a licensing proceeding like the present one, in which the applicant has the burden to demonstrate by a preponderance of the evidence that the applicant is entitled to the license, into an enforcement proceeding in which FWC has the burden to prove by clear and convincing evidence that the applicant violated the law in the past.

23. Even if this were allowable, FWC would not have met its burden in this case to show that Petitioner violated the law in the past by possessing wildlife without a license.

24. FWC also asserts that Petitioner's application can also be denied for her noncompliance with rule 68-1.010(2)(c), which pertains to the failure to comply with requirements of a previously-issued license. Although Petitioner has no previously-issued license, FWC states in its proposed recommended order (but without reliance on any evidence presented at the final hearing) that FWC interprets this rule to apply even to persons who have not been issued licenses. FWC states that this interpretation is reasonable because, otherwise, FWC could not consider past violations when determining whether to grant a license.

25. The construction of a rule by an agency charged with the rule's administration should not be overturned unless clearly erroneous. Humana, Inc. v. Dep't of Health & Rehab. Servs., 492

So. 2d 388 (Fla. 4th DCA 1986). In this case, the FWC's interpretation of rule 68-1.010(2)(c) is clearly erroneous because it conflicts with the plain language of the rule, which expressly applies to persons who have been issued licenses.

26. Petitioner proved her entitlement to the game farm license.

27. FWC complains that if it is determined that Petitioner is entitled to a license under these circumstances, persons will be encouraged to possess wildlife without a license and only apply for a license after they are caught. However, this case does not involve a person who was shown to have possessed wildlife without a license prior to her application.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Florida Fish and Wildlife Conservation Commission issue the Captive Wildlife Game Farm License to Petitioner.

DONE AND ENTERED this 30th day of June, 2016, in
Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of June, 2016.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.