

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SHERRIE WENTWORTH,

Petitioner,

vs.

Case No. 18-1114

FLORIDA FISH AND WILDLIFE  
CONSERVATION COMMISSION,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on May 1, 2018, by video teleconference at sites in Tallahassee and Daytona Beach, Florida, before Francine M. Ffolkes, a designated Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Christopher Block, Esquire  
Block Law Firm, PLLC  
Post Office Box 560618  
Rockledge, Florida 32956

For Respondent: Brandy Elaine Elliott, Esquire  
Florida Fish and Wildlife  
Conservation Commission  
Farris Bryant Building  
620 South Meridian Street  
Tallahassee, Florida 32399-1600

## STATEMENT OF THE ISSUES

The issues to be determined in this case are whether Petitioner, Sherrie Wentworth (Petitioner), is entitled to approval of her applications to renew her Wildlife Rehabilitation Permit, and her License to Possess Class III Wildlife for Exhibition or Public Sale.

## PRELIMINARY STATEMENT

Petitioner applied for renewal of her Wildlife Rehabilitation Permit on November 3, 2017, and for renewal of her License to Possess Class III Wildlife for Exhibition or Public Sale on January 8, 2018. Respondent, Florida Fish and Wildlife Conservation Commission (Respondent), denied both applications for renewal on January 31, 2018. The denials alleged a series of violations of captive wildlife laws in the years 2015 and 2017. Petitioner timely challenged the denials and her challenge was referred to DOAH. An administrative hearing was scheduled by video teleconference for May 1, 2018. The parties filed their joint pre-hearing stipulation on April 19, 2018, and timely pre-filed their exhibits.

At the hearing, Petitioner presented the testimony of Veterinarian Dr. Kim Castro; Miriam Lundell, director of the Chase Academy; Donna Bloom, a volunteer at the East Coast Wildlife Rehabilitation Center (East Coast); and she testified on her own behalf. Petitioner's Exhibits 1 through 12 were admitted

into evidence. Respondent presented the testimony of Captive Wildlife Section Supervisor Clint Deskins; Reserve Officer Steven K. Grigg; and Captive Wildlife Investigator J. Scott Wilkenson. Respondent's Exhibits 1 through 7 were admitted into evidence.

No transcript of the proceeding was filed with DOAH. Proposed recommended orders were filed by the parties, and they were considered in the preparation of this Recommended Order.

#### FINDINGS OF FACT

The following Findings of Fact are taken from the parties' joint pre-hearing stipulation, and the direct evidence adduced at the hearing.

#### Stipulated Facts

1. Petitioner pled no contest and had adjudication withheld on the following seven captive wildlife violations on April 28, 2015:

a. Possession of Class I Wildlife (a tiger) without a required permit (a violation of section 379.3761, Florida Statutes).

b. Failure to have a required permit for the importation of non-native species of wildlife (a tiger) (a violation of section 379.231(1)).

c. Failure to possess the required financial responsibility for Class I Wildlife (a tiger) (a violation of Florida Administrative Code Rule 68A-6.0024(3)).

d. Maintaining Class I Wildlife (a tiger) on less than five acres (a violation of rule 68A-6.003(2)(c)2.a.).

e. Personal possession of Class II Wildlife (a coyote) without a required permit (a violation of section 379.3762).

f. Unsafe housing of Class II Wildlife (a coyote) (a violation of rule 68A-6.0023(2)).

g. Not having caging of proper size for Class II Wildlife (a coyote) (a violation of rule 68A-6.003(2)(c)4.b.).

2. Two warnings were issued by Respondent to Petitioner on September 20, 2017, for the following two captive wildlife violations:

a. Failure to keep complete accurate records of squirrels entering the facility (a violation of Florida Administrative Code Rule 68A-9.006(4)(b)).

b. Failure to maintain a daily log of animals entering the rehabilitation facility (specifically to log a hawk taken in on September 14, 2017) (a violation of rule 68A-9.006(5)(e)).

3. No additional adjudications or violations were entered against Petitioner between April 29, 2015, and September 19, 2017, that served as a basis for the denial at issue.

4. There were no errors or omissions in the renewal applications at issue and there have been no previous errors or omissions in previous applications submitted by Petitioner that serve as a basis for the denial at issue.

5. There have been no material changes to the criteria used to evaluate the issuance of the two licenses at issue since 2015.

6. Petitioner admits that squirrels were not properly logged into Petitioner's records at the time of the September 20, 2017, warning violations.

March 2015

7. In March 2015, then Captive Wildlife Investigator Steven Grigg responded to an anonymous complaint about a tiger at East Coast. See Resp. Ex. 4. Investigator Grigg testified that prior to that time Petitioner had expressed interest in getting a tiger, and he advised her regarding the necessary steps to obtain a Class I Wildlife permit that would allow her to possess a tiger. He was aware that the Class I Wildlife permit was denied in July 2014. Petitioner acquired the tiger while the Class I Wildlife permit application was pending, and she continued to possess the tiger for several months after being denied.

8. At first, Petitioner denied having a tiger on the premises. The tiger was an approximately 200-pound female for which, in March 2015, Petitioner neither had the Class I Wildlife permit, nor did she have financial responsibility coverage and five acres for exclusive use. In addition, the non-native tiger was imported from outside the state without the necessary importation permit. Investigator Grigg issued Petitioner four

separate citations related to unlawful possession of the tiger. See Stipulated Fact No. 1.

9. Possession of a tiger without the necessary license and financial responsibility is a serious safety concern, both for the safety of the public and the person in possession of the animal. Possession of a tiger without having five acres of land on which no other use is taking place is necessary to ensure a buffer between the tiger and the public. East Coast sits on 2.5 acres, and Petitioner leased an adjacent 2.5 acres. See Pet. Ex. 2. Petitioner testified that she thought she had the necessary five acres for possession of the tiger. However, an examination of the lease for the adjacent property shows that there was a home with a couple residing there.

10. Possession of a non-native tiger without the necessary import permit is a potential danger to native species of wildlife. Species outside of Florida may carry diseases not present in Florida wildlife. Bringing these species into the state without the necessary precautions associated with proper permits places native wildlife at risk. In addition, Petitioner kept the tiger at East Coast where injured and sick wildlife were also present.

11. During the investigation of Petitioner's facility in March 2015, Investigator Grigg also discovered that she was keeping a coyote as a pet without a proper permit. Investigator

Grigg cited Petitioner for keeping a Class II animal without the proper permit, and for housing the coyote in a cage that was neither the correct size nor the minimum necessary strength. See Stipulated Fact No. 1.

12. A coyote is a Class II animal—the second most dangerous type of animal in Florida. Possession of a coyote without the necessary permit is a serious safety concern for the public. Petitioner's housing of the coyote in caging that was not as strong as the law requires also posed a danger to the public.

13. Also during the March 2015 visit, Investigator Grigg discovered that Petitioner was keeping a red fox—a Class III animal—as a pet without a permit. Investigator Grigg issued a warning to Petitioner although he could have issued her a citation. He also issued Petitioner a warning for housing the fox in caging that was less than the minimum size required. Petitioner testified that she applied to Respondent and was granted a variance for the size of the cage for the red fox. September 2017

14. On September 20, 2017, Captive Wildlife Investigator J. Scott Wilkenson conducted an unannounced compliance inspection of Petitioner's facility. See Resp. Ex. 7. Petitioner had not entered approximately 60 squirrels into the facility logs as required by her Wildlife Rehabilitation Permit. That permit

stated "[c]omplete, accurate written records shall be kept by the permittee . . . ." and "[a]ll permittees shall keep a log on each animal entering the facility for treatment . . . ." Petitioner testified that she entered the squirrels into a daily log, but she did not show proof of such a log to Investigator Wilkenson at the time of the inspection. Volunteer Donna Bloom testified that neither written nor electronic logs were provided to Investigator Wilkenson at the time of the inspection.

Investigator Wilkenson issued a warning to Petitioner for the failure to enter the 60 squirrels into her facility logs as required by the law and her permit.

15. At the September 2017 inspection, Investigator Wilkenson also noted that Petitioner did not enter record of a hawk into a daily log as required by Petitioner's Wildlife Rehabilitation Permit in effect at the time. The Wildlife Rehabilitation Permit stated that "[a]ll permittees shall keep a log on each animal entering the facility for treatment. The log shall include a record of the animals' treatment, condition, and disposition." Petitioner offered into evidence a record that purported to be the daily log reflecting the intake of the hawk. See Pet. Ex. 12. Investigator Wilkenson testified that he initially requested these documents but that they were not immediately available at the facility during his on-site inspection. Investigator Wilkenson issued Petitioner a warning



for the failure to enter the hawk into a daily log as required by her permit.

16. Petitioner and her recordkeeper, Ms. Bloom, admitted that the manual daily logs were not on-site during the September 20, 2017, inspection because Ms. Bloom took them home to enter into the computer. She testified that Hurricane Irma had impacted electricity at the facility and delayed entry of the manual daily logs into the computer.

17. The Wildlife Rehabilitation Permit recordkeeping requirements are necessary to ensure permittee accountability. Records quickly show investigators what animals are on the permittee's property and their condition. Accurate records ensure that Respondent is able to carry out its constitutional responsibility regarding the care of wildlife for protection of both the public and the animals.

#### Other Aggravating Evidence

18. Investigator Grigg testified that over the years he repeatedly advised and warned Petitioner that it was necessary to follow the captive wildlife laws, including maintaining complete and accurate records. Investigator Grigg's interactions with Petitioner showed him that she would intentionally and with knowledge violate the captive wildlife laws for as long as she could before getting caught. Her actions left him concerned that she is not willing to comply with the captive wildlife laws. In

addition, Petitioner has expressed to him that she does not have time to follow the rules and that Respondent's legal requirements impede her ability to care for the animals. Both Investigators Grigg and Wilkenson testified that Petitioner should reduce the number of species she intakes at the facility.

#### Mitigating Evidence

19. Petitioner testified that she opened East Coast in approximately January 2012, giving up her prior profession as a licensed pilot and investing approximately \$100,000. Petitioner testified that her facility is the only rehabilitation center open 24 hours a day, seven days a week and year-round for injured animal intake. She testified that she takes animals that other centers will not and will travel from the center in Volusia County to Flagler County to pick up injured animals. She believes her operations provide a needed benefit to the community in Volusia and Flagler Counties.

20. Ms. Lundell testified that the Chase Academy has 52 autistic children. The Academy partners with East Coast in an educational program for the students. Petitioner brings in the animals and educates the students about caring for and handling injured wildlife and wildlife in general.

21. Petitioner testified that in September 2017, there was power loss and damage at East Coast caused by Hurricane Irma. Despite the situation, she testified that East Coast was the only

rehabilitation center open and taking calls to pick up injured animals. She testified that she logged animals manually using paper forms, but on the date of Respondent's inspection, the paper forms were in the possession of Ms. Bloom, who was transferring the forms to Petitioner's electronic records system at home where there was power. However, Petitioner was unable to produce the paper forms at the time of Investigator Wilkenson's inspection or at any time thereafter.

#### CONCLUSIONS OF LAW

22. DOAH has jurisdiction over the parties and the subject matter of this proceeding. See § 120.569 and 120.57(1), Fla. Stat. (2018). Respondent is the agency with exclusive jurisdiction to regulate all wild animal life in Florida. See Art. IV, § 9, Fla. Const. All wild animal life includes captive wildlife. See Miramar v. Bain, 429 So. 2d 40 (Fla. 4th DCA 1983).

23. Florida Administrative Code Rule 68-1.010(2)(a) requires that Respondent deny an application for a license if the "[a]pplicant has received an adjudication other than acquittal or dismissal of any provision of Chapter 379, F.S., or rules of the Commission," when the factors enumerated in subsection (5) warrant denial. Because Petitioner pled no contest and had adjudication withheld on seven captive wildlife violations, these factors must be considered.

24. Subsection (5) of rule 68-1.010 requires that Respondent consider the following factors when determining whether to deny renewal of any license or permit:

- (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, Fla. Stat., 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. An applicant has the ultimate burden of persuasion to prove entitlement to a license regardless of which party bears the burden of presenting certain evidence. See Dep't of Banking

& Fin. v. Osborne Stern & Co., 670 So. 2d 932, 934 (Fla. 1996). Respondent has the burden of proving by a preponderance of the evidence that the applicant violated certain statutes and rules and is thus unfit for licensure. See Dep't of Child. & Fams. v. Davis Fam. Day Care Home, 160 So. 3d 854, 856 (Fla. 2015).

26. Respondent proved that in addition to the violation outlined in Stipulated Fact No. 1, Petitioner also violated section 379.3762(1) by keeping a red fox without the proper license. The red fox was kept in a cage less than the minimal size required, which is a violation of rule 68A-6.0023(2). See Finding of Fact No. 13; Resp. Ex. 4.

27. Respondent proved that Petitioner's violations of the law in 2015 were severe. Petitioner's failure to follow the captive wildlife laws could have had serious consequences for public safety, her own safety, the welfare of the animals in her care, and the welfare of populations of Florida's native animals. Petitioner's actions were intentional and with knowledge that she was violating the captive wildlife laws. She repeatedly did so for as long as she could before getting caught.

28. Rule 68-1.010(2)(c) requires that Respondent deny an application for a license if the applicant failed to comply with the provisions of subsection (3) in any previously issued license, when the factors enumerated in subsection (5) warrant denial.

29. Subsection (3) paragraph (a) of rule 68-1.010 requires licensees to maintain complete and correct written records as required by a license or permit issued by Respondent.

30. Subsection (3) paragraph (e) of rule 68-1.010 requires licensees to "[f]ully comply with Chapter 379, F.S., and the rules of the Commission."

31. Respondent proved that Petitioner's violations of the law in 2017 were severe. Petitioner had not entered approximately 60 squirrels into her facility logs as required by rule 68A-9.006(4)(b). Petitioner had not entered records of a hawk into a daily log as required by rule 68A-9.006(5)(e). See Resp. Ex. 7. The two violations committed by Petitioner in September 2017 were violations of laws necessary for ensuring licensee/permittee accountability. These violations in 2017, along with Petitioner's history of seven prior captive wildlife convictions and two warnings, showed her continued disregard of the captive wildlife laws.

32. In the years since Petitioner opened the East Coast facility, she has by her actions and words shown a disregard for the captive wildlife laws. In fact, she views them as an impediment to her ability to care for the animals. Based on the facts established in the final hearing, the length of time Petitioner has been licensed and the alleged effect on her livelihood are not compelling as mitigating factors.

33. Petitioner established that she provided a benefit to the community by accepting animals in need of rehabilitation and by providing educational programs to children at an autistic school using animals in her care. However, this benefit does not overcome the severity and ongoing nature of Petitioner's disregard for the captive wildlife laws.

34. Petitioner testified that in September 2017, there was power loss and damage at East Coast caused by Hurricane Irma. She testified that animals were logged manually using paper forms. However, on the date of Respondent's inspection, the paper forms were not on-site, were not produced during the inspection, and have not been produced at any time thereafter.

35. Respondent proved by a preponderance of the evidence that the factors in rule 68-1.010(5) warrant denial. Respondent proved that Petitioner is unfit for licensure.

36. Petitioner did not carry her burden of ultimate persuasion to show entitlement to renewal of her Wildlife Rehabilitation Permit and License to Possess Class III Wildlife for Exhibition or Public Sale.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Respondent enter a final order denying Petitioner's applications for renewal of her Wildlife

Rehabilitation Permit and License to Possess Class III Wildlife  
for Exhibition or Public Sale.

DONE AND ENTERED this 13th day of June, 2018, in  
Tallahassee, Leon County, Florida.



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FRANCINE M. FOLKES  
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 13th day of June, 2018.

COPIES FURNISHED:

Christopher Block, Esquire  
Block Law Firm, PLLC  
Post Office Box 560618  
Rockledge, Florida 32956  
(eServed)

Sherrie Wentworth  
2090 Halifax Drive  
Port Orange, Florida 32128

Tracey Scott Hartman, Esquire  
Florida Fish and Wildlife  
Conservation Commission  
Farris Bryant Building  
620 South Meridian Street  
Tallahassee, Florida 32399-1600  
(eServed)



Brandy Elaine Elliott, Esquire  
Florida Fish and Wildlife  
Conservation Commission  
Farris Bryant Building  
620 South Meridian Street  
Tallahassee, Florida 32399-1600  
(eServed)

Eric Sutton, Executive Director  
Florida Fish and Wildlife  
Conservation Commission  
Farris Bryant Building  
620 South Meridian Street  
Tallahassee, Florida 32399-1600  
(eServed)

Harold G. "Bud" Vielhauer, General Counsel  
Florida Fish and Wildlife  
Conservation Commission  
Farris Bryant Building  
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 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.