

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

JAMES JABLON,

Petitioner,

vs.

Case No. 19-3505

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION,

Respondent.

_____ /

RECOMMENDED ORDER

On August 15, 2019, Administrative Law Judge Robert J. Telfer III, of the Florida Division of Administrative Hearings (Division), conducted a duly-noticed hearing in Tallahassee, Florida, pursuant to sections 120.569 and 120.57(1), Florida Statutes (2018).

APPEARANCES

For Petitioner: James Jablon, pro se
15297 Highfield Road
Brooksville, Florida 34604

For Respondent: Joseph Yauger Whealdon, Esquire
Florida Fish and Wildlife
Conservation Commission
620 South Meridian Street
Tallahassee, Florida 32399-1600

STATEMENT OF THE ISSUE

The issue to determine in this matter is whether Petitioner James Jablon's applications for a Personal Pet No Cost Permit

(PPNC) and Class III Exhibition and/or Sale License (ESC) should be denied for the reason stated in Respondent Florida Fish and Wildlife Conservation Commission's (FWC) Notice of Denial, dated May 24, 2019.

PRELIMINARY STATEMENT

On May 24, 2019, FWC issued a Notice of Denial to Mr. Jablon, denying his applications for a PPNC and ESC. The Notice of Denial stated that "[b]ased on your prior submission of materially false information, your applications have been denied[,]” and cited Florida Administrative Code Rule 68-1.010 as the basis for this decision.

On May 29, 2019, Mr. Jablon filed an Election of Rights and a Petition for Administrative Proceeding that disputed the Notice of Denial and requested an administrative hearing. On June 28, 2019, FWC filed a Request for Assignment of Administrative Law Judge and Notice of Preservation of Record with the Division.

Pursuant to a Notice of Hearing, the undersigned conducted a final hearing on August 15, 2019, in Tallahassee, Florida. At the hearing, Mr. Jablon testified on his own behalf, and the undersigned admitted Petitioner's Exhibits P1 through P4 into evidence. Respondent presented the telephonic testimony of Judith Watson, and the undersigned admitted Respondent's Exhibits R1 and R2 into evidence. Additionally, the undersigned admitted Joint Exhibit 1 into evidence.

The one-volume Transcript of this final hearing was filed on September 3, 2019. Both parties timely filed proposed recommended orders that the undersigned considered in the preparation of this Recommended Order.

All references are to the 2018 codification of the Florida Statutes unless otherwise indicated.

FINDINGS OF FACT

1. Mr. Jablon testified that he previously owned a male lion named Ed, and possessed the appropriate Class I Wildlife License. Ed then went to live at another wildlife facility near Gainesville.

2. Mr. Jablon testified that in July 2015, Judith Watson, who owned a wildlife sanctuary near Spring Hill, Florida, contacted him and asked him to live in a guest house at her wildlife sanctuary and inquired whether he could relocate Ed to her wildlife sanctuary.

3. Mr. Jablon stated that Ms. Watson had a female lion named Savannah, and it was his opinion that lions should live in a "group system" and not alone. Mr. Jablon testified that he then took steps to reacquire Ed from the Gainesville facility.

4. On October 19, 2015, Mr. Jablon applied for a Class I and/or Class II Wildlife for Exhibition or Public Sale (ESA), in the name of Wildlife Rehabilitation of Hernando, in which he sought a license to possess, inter alia, a lion. The State of

Florida classifies lions (*panthera leo*) as Class I wildlife. See Fla. Admin. Code R. 68A-6.002(1)(a)12.

5. Among the numerous requirements for an ESA are requirements for the facilities for the housing of Class I wildlife, "[i]n order to assure public safety." Fla. Admin. Code R. 68A-6.003(2). For example, Florida Administrative Code Rule 68A-6.003(2)(c)1. requires:

1. Property ownership/lease:

a. The facility shall be constructed on property owned or leased by the applicant. If leased[,] the lease shall be for a term of not less than one (1) year from date of application. Such lease shall be subject to initial and annual review and approval by the commission as a condition of said lease.

b. If the property is leased, the lessee must have exclusive rights to occupy, possess and use the property with no restrictions that could prevent the lessee from adhering to the eligibility requirements for licensure with no other in holdings or easements.

c. The existence of any such lease restrictions or termination of the lease shall result in the denial or revocation of the license or permit.

6. As part of his ESA application materials, Mr. Jablon provided a "Residential Lease Agreement," dated July 31, 2015, between Ms. Watson and "James Jablon/WROH," that generally stated that Ms. Watson agreed to rent to Mr. Jablon (and Wildlife Rehabilitation of Hernando) real property in Spring Hill, Florida, for a term of almost three months.

7. The Residential Lease Agreement contains the signatures of Mr. Jablon, and purportedly, Ms. Watson.

8. Thereafter, Mr. Jablon submitted to FWC a "License renewal correction update," dated November 16, 2015, in which he provided a "correction" to the lease term to show that it was for three years, and not almost three months. This "correction" contains the initials of Mr. Jablon, and purportedly, Ms. Watson.

9. At the final hearing, Mr. Jablon admitted that the signatures of Ms. Watson on the Residential Lease Agreement and the initials on the "License renewal correction update" were not those of Ms. Watson, but his.

10. Mr. Jablon testified that he signed Ms. Watson's signature and initials to these documents with Ms. Watson's permission. Mr. Jablon further testified:

We weren't really concerned about the legality of the lease, because neither one of us had any intention of enforcing the lease. I wasn't technically a tenant there leasing the property. I was over there to help her run that facility and work with her. So if you look at the lease, there's really nothing—it's basically the way it came in the package. . . . So, I mean, we didn't—we didn't care about the lease.

11. Ms. Watson testified that she never asked Mr. Jablon to create a lease for the Spring Hill property, never gave him permission to sign her name on a lease, and never gave him permission to sign a "License renewal correction update."

12. Ms. Watson, who testified that she was familiar with the requirements for an ESA for Class I wildlife, also testified, consistently with Mr. Jablon, that the two had discussed moving Ed to her property to live with Savannah.

13. The undersigned does not find Ms. Watson's testimony credible concerning the creation of a lease for the Spring Hill property. As an owner of a lion, who testified that she was familiar with the requirements for an ESA for Class I wildlife, Ms. Watson knew of rule 68A-6.003(2)(c)1.'s requirement that an ESA permittee must own or lease the property upon which the wildlife would reside. By asking Mr. Jablon to move Ed to her property to live with Savannah, the undersigned finds that Ms. Watson would have known of this requirement that Mr. Jablon either own or lease the property where Ed would live. As Mr. Jablon did not own Ms. Watson's Spring Hill property, the undersigned finds that Ms. Watson would have known that Mr. Jablon would need to lease the Spring Hill property to legally possess an ESA and locate Ed on the Spring Hill property.

14. However, the undersigned also finds, based on his own testimony, that Mr. Jablon falsified Ms. Watson's signature on the lease, as well as her initials on the "License renewal correction update," which he submitted to FWC as part of his ESA application. His explanation for doing so--that neither he nor Ms. Watson intended to enforce the lease and renewal documents--

further indicates to the undersigned that Mr. Jablon intended to submit materially false documents to FWC in the ESA application process.

15. On February 19, 2019, FWC received Mr. Jablon's application for a PPNC and ESC.

16. In its May 24, 2019, Notice of Denial, FWC stated:

On May 12, 2016, Ms. Watson provided a sworn statement to Investigator Chad Paul stating that the lease [submitted with the October 19, 2015, application for ESA] was a falsification. In comparing signatures from Ms. Watson over the years to the lease you submitted, FWC confirmed the signature did not belong to Ms. Watson.

17. The Notice of Denial further states, "[b]ased on your prior submission of materially false information, your applications [for a PPNC and ESC] have been denied."

18. The undersigned finds that competent, substantial evidence supports FWC's determination that Mr. Jablon submitted materially false information when he applied for an ESA in 2015.

CONCLUSIONS OF LAW

19. The Division has jurisdiction of the subject matter of this proceeding and of the parties, pursuant to sections 120.569 and 120.57, Florida Statutes.

20. FWC is the agency with exclusive jurisdiction to regulate all wild animal life in Florida. See Art. IV, § 9, Fla. Const. All persons who possess captive wildlife for the purpose

of public display or public sale must have a license from FWC.
See § 379.3761(1), Fla. Stat.

21. As the applicant for the PPNC and ESC, Mr. Jablon bears the burden of proving entitlement 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); Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 934 (Fla. 1996).

22. FWC has the burden of proving, by a preponderance of the evidence, that Mr. Jablon violated certain statutes and rules, and is thus unfit for the PPNC and ESC. See Davis Family Day Care Home, 160 So. 3d at 856.

23. Rule 68-1.010(1), which applies to all licenses, permits or other authorizations that FWC issues, states:

(1) The Commission shall deny applications for any license, permit or other authorization based upon any one or more of the following grounds:

(a) Submission by the applicant of false, misleading, or inaccurate information in the application or in any supporting documentation provided by the applicant or on behalf of the applicant relating to the license, permit, or other authorization, or omission of any information which has a false, misleading or inaccurate effect.

* * *

(f) Submission by the applicant of materially false information in any previously submitted or pending application or supporting documentation relating to the application.

24. The undersigned concludes that FWC has proved, by a preponderance of the evidence, that Mr. Jablon's falsification of Ms. Watson's signature on the Residential Lease Agreement and the initials on the "License renewal correction update," which Mr. Jablon submitted in support of his 2015 ESA application, constituted the submission of materially false information.

25. Rule 68-1.010(3) states that FWC may deviate from rule 68-1.010(1), and shall consider as aggravating and mitigating factors:

(a) The severity of the applicant, licensee, or permittee's conduct;

(b) The danger to the public created or occasioned by the conduct;

(c) The existence of prior violations of chapters 369, 379, or 828, F.S., rules of the Commission or other laws or rules relating to the subject matter of the license, permit, or other authorization sought;

(d) 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;

(e) Related violations by the applicant, licensee or permittee in another jurisdiction;

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

26. The undersigned concludes that none of the mitigating or aggravating factors contained in rule 68-1.010(3) apply to Mr. Jablon. The falsification of Ms. Watson's signature and initials as part of his ESA application, which Mr. Jablon submitted to the FWC, constitutes severe conduct in a necessarily highly regulated field. The danger in doing so is high, as Mr. Jablon sought the ESA to move a lion to property in which he had no valid claim to ownership or lease. FWC presented no evidence that Mr. Jablon had previously violated applicable statutes or rules. Neither party presented evidence of any attempts that Mr. Jablon made to correct or prevent violations, such as a retraction and resubmission of the Residential Lease Agreement with valid signatures.

27. The undersigned further concludes that the FWC's actions are warranted because the granting of Mr. Jablon's applications for the PPNC and ESC would validate an applicant's decision to submit false documents when seeking a license or permit.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, the undersigned RECOMMENDS that the Florida Fish and Wildlife Conservation Commission issue a final order denying Mr. Jablon's PPNC and ESC applications.

DONE AND ENTERED this 27th day of September, 2019, in
Tallahassee, Leon County, Florida.



ROBERT J. TELFER III
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 27th day of September, 2019.

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.