

**STATE OF FLORIDA
FISH AND WILDLIFE CONSERVATION COMMISSION**

JAMES HAMMONDS,

Petitioner,

DOAH Case No. 19-6307

19-6326

v.

FWC Case No. 19-0040

**FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION,**

Respondent.

_____ /

FINAL ORDER

THIS CAUSE came before the Florida Fish and Wildlife Conservation Commission (Commission) on a Petition for a formal administrative hearing (Petition) filed by James Hammonds (Petitioner or Hammonds). The Petition challenged the Commission's denial of his license applications for a Game Farm and Class III Wildlife for Exhibition or Public Sale.

STATEMENT OF THE ISSUE

WHEREAS Hammonds received notification from the Commission that his applications for a license for a Game Farm and Class III Wildlife for Exhibition or Public Sale were denied. The Notice indicated that the basis for the denial was that Mr. Hammonds sold wildlife, a Capuchin monkey to an unlicensed entity in violation of Rule 68A-6.0023(7) Florida Administrative Code (F.A.C.). The notice also stated that Mr. Hammonds unlawfully transferred a Macaque monkey in violation of section 379.3762 F.S.

Petitioner disputed those denials and petitioned for a formal administrative hearing. The matter was referred to the Division of Administrative Hearings (DOAH). The Administrative Law Judge (ALJ) assigned to the matter held a hearing on May 14, 2020.

After the hearing, the ALJ issued a Recommended Order finding for Mr. Hammonds. The ALJ's order suggested that the agency reverse its Notice of Denial and issue a final order renewing the licenses for a Game Farm and Class III Wildlife for Exhibition or Public Sale.

In response, Respondent filed six exceptions to the Recommended Order. Exceptions are governed by section 120.57(1)(k) which provides:

120.57 Additional procedures for particular cases:

(1) *ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.*

...

(k) The presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and recommended disposition or penalty, if applicable, and any other information required by law to be contained in the final order. All proceedings conducted under this subsection shall be de novo. The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

The exceptions are as follows:

Exception 1-

1. FWC takes exception to paragraph 7. "Mr. Hammonds had a few conversations with Ms. Brown and her assistant Manny Ortiz about the sale". Investigator O'Horo testified that he was entertainer Chris Brown's employee. (T75 L4-11) The significance is that Mr. Hammonds knew that Chris Brown was purchasing the animal and not Kristina Brown and Mr. Hammonds deliberately falsified the records of sale.

Ruling:

The ALJ heard, reviewed and weighed all the evidence presented to conclude there was not a violation. "The Commission did not prove that Ms. Brown did not hold a Florida permit to own wildlife". Paragraph 6. The ALJ concluded, based on the evidence presented, that Mr. Hammonds did not deliberately falsify the records of sale.

It is well settled that findings of fact in an administrative law judge's recommended order may not be rejected or modified unless the agency states with particularity in its final order that the findings were not based upon competent substantial evidence or that the proceedings on which the findings are based did not comply with the essential requirements of law s. 120.57(1)(b), Fla.Stat. (2019); Gross v. Dep't of Health, 819 So.2d 997, (Fla. Dist. Ct. App. 2002) McDonald v. Department of Banking and Finance, 346 So.2d 569 (Fla. 1st DCA 1977); Lewis v. Department of Professional Regulation, 410 So.2d 593 (Fla. 2d DCA 1982).

When determining whether to reject or modify findings of fact in a recommended order, the agency is not permitted to weigh the evidence, judge the credibility of the witnesses, or interpret the evidence to fit its ultimate conclusions. Gross v. Dep't of Health, at 1002–03

Respondent has not shown that the ALJ's findings were not based upon competent substantial evidence. Respondent is seeking to have the evidence presented reviewed and reconsidered which is inappropriate with exceptions.

Accordingly, Exception 1 is DENIED.

Exception 2-

2. FWC takes exception with paragraph 9. "The Commission did not prove the Bristers' did not hold a Florida permit to own wildlife." The Bristers' did not own the wildlife and is only responsible for the transportation of the animal. Investigator O'Horo testified that they do not hold a FL permit transfer wildlife in FL nor to own wildlife. Investigator O'Horo testified that in order to possess and transport a Capuchin monkey in the state of FL you must have a Class II ESC permit. (T-76- 77 L 23-16) FWC never contended that the Bristers' owned the Capuchin monkey, just that you must have a Class II license in order to possess and transport the animal to

FL. The fact that the Bristers' did not own the animal is irrelevant as both the parties testified that Bristers' transported the animal in Florida.

The ALJ's conclusion that Bristers' had a USDA Class T permit which entitled them to transport wildlife within the state of Florida should be rejected. For the purposes of rule 68A-6.0023(7) F. A. C., the Bristers' needed a license to possess wildlife within the state of Florida. Investigator O'Horo provided testimony that the Bristers' were unlicensed. (T 76-77 L23-16) Mr. Hammonds transfer of the Capuchin monkey to the Bristers' was therefore unlawful. The ALJ references the commissions definition under rule 68A-1.004 (21), F.A.C. to suggest the Bristers' met the definition of "common carrier". However, the ALJ misinterprets the commission's definition. Rule 68A-1.004(21), F. A. C., reads fully:

(21) Common carrier - Railroad companies, airlines, water carriers, express companies, stage or bus companies, persons or companies operating stages, buses or airplanes or any such person, firm, or Corporation Certified as a common carrier by the appropriate state of or federal agency.

The USDA's issuance of a Class T permit for the transportation of wildlife is not recognized under the commission's rule as "a person, firm, or corporation certified as a common carrier by the appropriate state or federal agency."

Ruling:

As noted above, it is well settled that findings of fact in an administrative law judge's recommended order may not be rejected or modified unless the agency states with particularity in its final order that the findings were not based upon competent substantial evidence or that the proceedings on which the findings are based did not comply with the essential requirements of law. Again, Respondent is suggesting that we review and reconsider the evidence presented which is inappropriate at this stage of the proceedings.

Respondent has not shown that the ALJ's findings were not based upon competent substantial evidence or that the findings are based did not comply with the essential requirements of law. Accordingly, Exception 2 is DENIED.

Exception 3-

3. FWC takes exception to paragraph 23, 24, and 25. Petitioner admits that a Macaque monkey is a Class II animal. (T. 46 L 10-13). Petitioner admits he brokered the transaction of the Macaque monkey and brought the 2 parties together and the exchange took place on his property. (T. 40- 43 L1 -13). Petitioner admits that he was paid for the transaction. (T. 47 L 2-24) the Commission has substantive jurisdiction over interpretation of its administrative rules. Investigator O'Horo testified that in order to possess and transport a Capuchin monkey in the state of Florida you must have a Class II ESC permit (T-76 dash 77 L 23-16).

Ruling:

The ALJ heard all the evidence presented and found that Mr. Hammonds never possessed the Macaque monkey. He also concluded that possession does not include brokering or facilitating A wildlife exchange, "To transfer the Macaque monkey, Mr. Hammonds would have had to possess or control it. The individual who brought the monkey in the carrier and the person who received it were the people who had possession and control of the monkey." Paragraph 25.

As noted above, findings of fact in an administrative law judge's recommended order may not be rejected or modified unless the agency states with particularity in its final order that the findings were not based upon competent substantial evidence or that the proceedings on which the findings are based did not comply with the essential requirements of law. Respondent has not shown that the ALJ's findings were not based upon competent substantial evidence.

Accordingly, Exception 3 is DENIED.

Exception 4-

4. FWC takes exception to paragraph 19. Investigator O'Horo testified that Brister's did not have a FL permit. Florida Statutes section 379.3762 (1) states "*it is unlawful for any person or persons to possess any wildlife as defined in this act, whether native to Florida or not until she or he has obtained a permit as provided by this section from the Fish and Wildlife Conservation Commission*". Rule 68A- 6. 003(1) also states: "*Except as otherwise provided in this title no person shall possess any native or non-native wildlife in captivity except as authorized by permit issued in accordance with section 379.376 one or three 79 .3762, F. S., and as provided in this chapter.*" the ALJ's conclusion that the Bristers' "had a USDA Class T permit which entitled them to transport wildlife within the state of Florida should be rejected. The Bristers were not permitted to possess or transport the capuchin monkey throughout Florida as they did when they transported the monkey to the ultimate buyer, Chris Brown in California. Additionally, the ALJ misinterprets 68.1.004(21) which states: *common carrier - road companies, airlines , water carriers, express companies, stage were bus companies, persons or companies operating stages, buses or airplanes, or any such persons firm, or Corporation Certified as a common carrier by the appropriate state or federal agency.* The ALJ's conclusion that the Federal USDA permit is the only permit that is needed is misplaced and should be rejected as it totally ignores section 379.3762 and has acquired a required permit from FWC.

Ruling:

In paragraph 19 the ALJ found that the Commission did not prove that the transfer of the Capuchin monkey from Mr. Hammonds to the Bristers for transfer to Nevada is unlawful. Again, findings of fact in an administrative law judge's recommended order may not be rejected or modified unless the agency states with particularity in its final order that the findings were not

based upon competent substantial evidence or that the proceedings on which the findings are based did not comply with the essential requirements of law. Here the Respondent fails to identify the legal basis for the exception.

Accordingly, Exception 4 is DENIED.

Exception 5-

5. FWC takes exception to Paragraphs 20- 25. The Court uses 68A -6.0023(7) as the basis for no possession or control of the monkey occurred. The Court ignored the proper rule 68A-6.001 (9). The court concludes the petitioner was not in “possession” of the Macaque monkey and therefore there is no violation. Petitioner admits he brokered the transaction at the macaque monkey and brought the 2 parties together on the exchange took place on his property. (T. 40- 43 L. 1-13) petitioner admits he was paid for the transaction. (T. 47 L 2 - 24) Petitioner states that he completed the transfer form as required by rule that indicates he had possession and inventory was transferred. (T 42 L 8-10). Rule 68A-6.0023 (in part) states: *(6) no person shall possess any wildlife requiring a permit for personal use, or any wildlife for sale or exhibition, without documentation of the source and supplier of such wildlife. Possessors of such wildlife must maintain an accurate record of changes in inventory including acquisition and sales or transfers of all wildlife births and deaths. Such records shall be open to inspection upon request by Commission personnel. (a) Records of births or deaths must include the date of the birth or death and the quantity and species of each birth or death. For purposes of this section “birth” shall be defined as the initial hatch or live birth date for the clutch or litter. (b) Records of acquisition must include the date of acquisition; quantity and species of wildlife required; name and complete address of the supplier a permit or license identification number of the supplier where applicable.*

Mr. Hammonds was not a Class II permit holder, which he legally needs to be in order to transfer a macaque monkey from one entity to another entity. Mr. Hammonds was aware of his of this rule requirement or he would not have completed the transfer form or accepted payment. The ALJ in paragraph 23 of the Recommended Order concludes the Commission's Rule 68A-1.004 (57), F.A.C. does not include "facilitating or brokering a wildlife exchange as possession." This conclusion does not comport with the Commission's interpretation of the prohibition of buy, sale or transfer under rule 68A-6.0023(6), F.A.C. Additionally, Rule 68A-6.001 (9) states: *(9) Sale/ sell - the transfer of property or other things to a buyer for an agreed price. The term shall include all lesser acts related thereto, such as attempting to sell, offering to sell, to barter, exchange, trade, or auction.* Being a middleman or broker is not permitted pursuant to 68A- 6.0023 or 68A-6.001. FWC considers a broker to be a lesser act in selling wildlife to an entity that is not authorized to possess the species. An individual takes part in sale of wildlife in a broker capacity but is not qualified for possession of the wildlife. The Commission has substantive jurisdiction over interpretation of its administrative rules and the ALJ's interpretation should be rejected. The broker and the potential buyer must hold the proper permit for the animal that he is brokering, in this case a Class II permit. Mr. Hammonds attempted to sell the macaque as he bought as he brought the parties together, the transfer occurred on his property, he was paid for the transaction, and he completed the sell of an animal form.

In paragraphs 24 and 25, the ALJ states that if Mr. Hammonds quote never "possessed" the macaque, he could not have transferred or sold it. The ALJ concludes the commission's rules do not address "transfer". This conclusion should be rejected as rules 68A-6.001(9), F.A.C. does not "transfer" in the context of the sale of wildlife.

Ruling:

In several of these exceptions including Exception 5, Respondent does not agree with the ALJ's interpretation of the agency rules applicable to this case.

An administrative law judge's recommended order may not be rejected or modified unless the agency states with particularity in its final order that the proceedings on which the findings are based did not comply with the essential requirements of law. In this Exception, Respondent argues that the Final Order should reject the ALJ's interpretation of certain provisions of Chapter 68A and give deference to the agency's interpretation. Respondent just makes a blanket statement but fails to provide any authority or precedent to support that position.

While historically courts have recognized and granted some deference to an agency's interpretation of its own rule such a deference was not absolute. *Gross v. Dep't of Health*, 819 So.2d 997, (Fla. Dist. Ct. App. 2002). Moreover, recent changes to the Florida Constitution have limited and in effect eliminated that deference:

Section 21. Judicial interpretation of statutes and rules.—In interpreting a state statute or rule, a state court or an officer hearing an administrative action pursuant to general law may not defer to an administrative agency's interpretation of such statute or rule, and must instead interpret such statute or rule de novo. Article V Section 21 Florida Constitution.

Here the Respondent disagrees with the ALJ's interpretation of 68A-6.001(9), F.A.C. The Respondent merely states that staff of FWC would interpret be ruled differently. That is not adequate grounds to overturn the ALJ's conclusions of law.

Accordingly, Exception 5 is DENIED.

Exception 6-

6. FWC takes exception to Paragraphs 25. The ALJ site 68 eight 1.004(7) as a definition of sale however this is incorrect as (7) refers to antlered deer. 68A-1 .004 (71) refers to sale and

states: (71) *Sell- the transfer of property or other things to a buyer for an agreed price. The term shall include all lesser acts related thereto, such as attempting to sell, offering to sell, to barter, exchange, or trade.* Additionally, the ALJ misconstrues the rule and states there is no definition of transfer. However, the rule specifically states all lesser acts related thereto, such as attempting to sell, offering to sell, to barter, exchange, or trade. Being a middleman or broker is not permitted pursuant to 68A-6 .0023 or 68A 6.001. FWC considers a broker to be a lesser act in selling wildlife to an entity that is not authorized to possess the species. An individual that takes part in sale of wildlife in a broker capacity but is not qualified for possession of the wildlife with the proper permit is in violation of FWC rules and licensing requirements. The Commission has substantive jurisdiction over interpretation of its administrative rules and the ALJ's interpretation should be rejected.

Ruling:

Again, an administrative law judge's Recommended Order may not be rejected or modified unless the agency states with particularity in its final order that the proceedings on which the findings are based did not comply with the essential requirements of law. In this Exception Respondent argues that the Final Order should reject the ALJ's interpretation of certain provisions of Chapter 68A and give deference to the agency's interpretation. Respondent just makes a blanket statement but fails to provide any authority or precedent to support that position. As stated in the ruling on Exception 5, while historically courts have recognized and granted some deference to an agency's interpretation of its own rule such a deference was not absolute. Gross v. Dep't of Health, supra. Moreover, Article V Section 21 of the Florida Constitution eliminated that deference.

The ALJ's *de novo* interpretation of Rules 68A-6 .0023 and 68A-6.001 control in this instance.

Accordingly, Exception 6 is DENIED.

CONCLUSIONS OF LAW

Upon review of the record, the Commission makes the following legal conclusion:

As Executive Director of the Commission or his designee, the undersigned has jurisdiction over this subject matter and authority to enter a final order pursuant to Rule 68-1.009, Florida Administrative Code, and the Commission's Delegation of Authority, dated February 14, 2013, and in accordance with Section 120.57(2), Florida Statutes.

ORDER

WHEREFORE, the Administrative Law Judge's Recommended Order is adopted, and the Respondent shall renew the licenses for a Game Farm and Class III Wildlife for Exhibition, or Public Sale and this matter is closed.

DONE AND ORDERED in Tallahassee, Florida this 28th day of August, 2020.



Thomas H. Eason

Thomas H. Eason, Ph.D.
Assistant Executive Director
Florida Fish and Wildlife Conservation
Commission

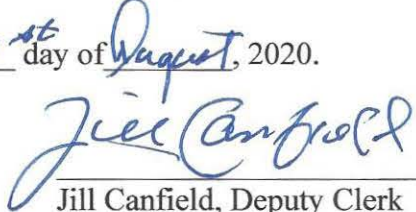
Filed with the Commission
This 31st day of August, 2020

ATTEST:

Hollie Weathersbee
Hollie Weathersbee, Agency Clerk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Final Order has been furnished by US mail Sean P. Flynn, Esq., 2200 Manatee Avenue West, Bradenton, Florida 34025, and electronically to office@941legal.com., david@fltrialcounsel.com., and to Rhonda Parnell, Assistant General Counsel, Florida Fish and Wildlife Conservation Commission, at rhonda.parnell@myfwc.com; on this 31st day of August, 2020.



Jill Canfield, Deputy Clerk
Florida Fish and Wildlife Conservation
Commission
620 South Meridian Street
Tallahassee, Florida 32399
(850) 487-1764



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 Section 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 and Wildlife Conservation Commission, Legal Office, and the appropriate District Court of Appeal within thirty (30) days for 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 fee required by law.