STATE OF FLORIDA
FISH AND WILDLIFE CONSERVATION COMMISSION

TAESOON PARK,

Petitioner,

DOAH Case No. 20-4559

v. **FWC Case No. 20-0100**

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 Taesoon Park (Petitioner or Park). The Petitioner challenged the Commission's denial of his applications for a license to Possess Class III Wildlife for Exhibition or Public Sale.

STATEMENT OF THE ISSUE

WHEREAS Park received notification from the Commission that his application for a license to Possess Class III Wildlife for Exhibition or Public Sale was denied. The Notice indicated that the basis for the denial was that Mr. Park allowed Class III wildlife to escape his facility, "Iguanaland", in violation of Rule 68A-6.009 Florida Administrative Code (F.A.C.).

Petitioner disputed the denial and petitioned for a formal administrative hearing. The matter was referred to the Division of Administrative Hearings (DOAH) on October 14, 2020. The Administrative Law Judge (ALJ) assigned to the matter held a hearing on December 7, 2020.

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DIVISION OF
ADMINISTRATIVE HEARINGS

After the hearing, the ALJ issued a Recommended Order suggesting that the agency reverse its Notice of Denial and issue a final order renewing the license for Class III Wildlife for Exhibition or Public Sale with reasonable conditions.

In response, Respondent filed ten 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:

RESPONDENT'S EXCEPTION 1-

1. FWC takes exception to paragraph 4. *Iguanaland is a reptile facility that has as its goal the preservation of certain species and the conservation of endangered species.* This is irrelevant to the issuance of a Class III Wildlife for Exhibition or Public Sale (ESC). He has no Florida endangered reptile species in his facility as defined in Rule 68A-27. Petitioner never testified that his goal was the preservation and conservation of endangered species. Counsel for Petitioner often included endangered species into his questions of witnesses but that is not testimony and is not substantial evidence. T128-129 L25-3.

Ruling:

The ALJ heard, reviewed and weighed all the evidence presented to conclude that while there was a violation certain factors mitigated in his favor and the license should be granted. The

ALJ concluded, based on the evidence presented, part of the purpose behind the Iguanaland facility was the preservation and conservation of certain species. While the Petitioner did not testify about the purpose of the facility, that statement was supported by a couple of the witnesses offered on behalf of Mr. Park. For example, Dr. Mitchell offered some testimony on the issue.

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.

While FWC argues that the purpose of the facility is not relevant to the issuance of the Class III license, the ALJ argued that it was a factor the agency should have considered as mitigation for the violations. To that extent it is relevant and helps to provide some context to the ALJ's conclusions.

Accordingly, Exception 1 is DENIED.

RESPONDENT'S EXCEPTION 2-

2. FWC takes exception to paragraph 6. *Petitioner partakes in cooperative trading with zoological institutions. He helps to facilitate research on hard-to-come-by reptilians. His facility greatly contributes to the preservation of endangered reptile species. It is the only facility in the United States that has the capacity to successfully breed reptilians on a large scale.* This is irrelevant to the issuance of a Class III Wildlife for Exhibition or Public Sale (ESC). He has no Florida endangered reptile species in his facility as defined in Rule 68A-27. Mr. Park has no license for Florida listed endangered species and counsel for the Petitioner claiming he has endangered species is not testimony and is not substantial evidence, therefore it should be disregarded. The Court's ruling that Petitioner "is the only facility in the United States that has the capacity to successfully breed reptilians on a large scale" is just not true. There are many zoos and facilities in the United States that have the capacity to breed reptiles on a large scale. Petitioner certainly isn't the only breeding facility that can breed reptiles on a large scale. For example, Reptile Industries (likely the largest reptile breeder in the world, located in Naples, FL), dwarfs Petitioner's operations in terms of size, cleanliness, and security.

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 did not comply with the essential requirements of law.

While FWC argues that the purpose of the facility is not relevant to the issuance of the Class III license, the ALJ argued that it was a factor the agency should have considered in mitigating the violations and should have issued the license. To that extent it is relevant and helps to provide some context to the ALJ's conclusions. Moreover, the Respondents reference to Reptile Industries in Naples FL in the Exception is not appropriate at this stage of the proceedings. That evidence should have been provided during the hearing but was not. Accordingly, Exception 2 is DENIED.

RESPONDENT'S EXCEPTION 3-

3. FWC takes exception with paragraph 17. *Although Respondent proved that non-native tegus and other reptilians were spotted and captured in the vicinity surrounding Iguanaland it offered no competent substantial evidence that the large population of tegus and other reptilians in the area surrounding Petitioner's facility was caused by Petitioner.* This finding is not based on competent substantial evidence. The Captive Wildlife Report, Exhibit 4, that was stipulated to by the Petitioner states in part: *For the last decade, Mr. Park has bred a wide variety of lizards at this facility. The neighbors have been dealing with escaped animals, including harmful tegus, during much of that time. Mr. Park has previously admitted to me that his facility is the source of these lizards.* T33 L2-10. Daniel Quinn testified that Mr. Park had tegus on his property. Ex, 5, and Ex 6 list the various non-native reptiles that have been captured or sighted around petitioners property including GPS coordinates; T29 L8 through T 44 L 17; Ex 9 part 1 video states at 18: 56 - 20: 09 that Mr. Park still has tegus at Iguanaland. T 86 L 14 – 20 - Investigator O'Horo testified that there are no other facilities near Iguanaland that could be the source of the reptiles.

Daniel Quinn testified that he received 20 to 30 reports of non-native wildlife. T28- 29 L 14-2. The testimony of Daniel Quinn listed all "other" species captured around his facility with GPS coordinates. T 38-44 L 11-7 (Ex 5 and 6). Daniel Quinn testified that the "other" species were captured within 1/2 mile of Petitioner's facility. T 40 L 4-13. Daniel Quinn testified that it was not likely these "other" species were migrating to Petitioner's facility. T 53 L 2-20 exhibits and testimony are substantial competent evidence that contradicts the findings of fact that non-native species that surround Petitioner's property is not caused by Petitioner. The Petitioner's own stipulated admission that the tegu problem stems from his property, is a direct contradiction to the court's findings. The severity of the conduct is of strict liability and has nothing to do with negligence of the owner and there is no excuse available for an escape of wildlife. FWC and the Petitioner have been dealing with his tegu problem for years and there have been admissions by the Petitioner of such prior violations.

Ruling:

Part of the reason for the Respondent's denial of the license was that a large population of tegus had established in an area surrounding the Petitioner's facility. Respondent argued that the population started from tegus that escaped from Petitioner's facility. Respondent relies on a statement in FWC's incident report where Investigator O'Horo states that he talked to Mr. Park who admitted, sometime in the past, that he is responsible for some of the tegus around his facility. Investigator O'Horo testified at the hearing but did not raise the issue during his testimony. Respondent solely relies on that statement in the incident report. The ALJ did not find that clear and convincing. Petitioner did not state that during the hearing. Petitioner on the other hand, stated that he often gets people who can no longer care for their pet lizards, such as tegus, who come to the facility and ask him to take them off their hands. Petitioner argued that the

colony was likely the result of those pet owners releasing the tegus into the wild when the Petitioner would not accept them. The ALJ heard and reviewed all the evidence presented and found that the Respondent had failed to prove that the tegu colony was established by tegus escaped from Iguanaland. The ALJ seemed to find Petitioner's explanation more persuasive. 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.

RESPONDENT'S EXCEPTION 4-

4. FWC takes exception to Paragraph 26. This Conclusion of Law must be rejected as Petitioner admitted his facility was the source of the tegus as stated in Exhibit 4, that was stipulated to by the Petitioner. Exhibit 4 states in part: *For the last decade, Mr. Park has bred a wide array of lizards at this facility. The neighbors have been dealing with escaped animals, including harmful tegus, during much of that time. Mr. Park has previously admitted to me that his facility is the source of these lizards.* Ex 5, and Ex 6 list the various non-native reptiles that have been captured or sighted around Petitioner's property including GPS coordinates; T29 L 8 through T44 L17; Ex 9 part 1 video states at 18:56 – 20:09 that Mr. Park still has Tegus at Iguanaland. T86 L14-20 Investigator O'Horo testified that there are no other facilities near Iguanaland that could be the source of the reptiles.

Ruling:

Exception 4, disagreeing with the findings in Paragraph 26 of the Recommended Order is almost identical to exception 3 and the same analysis applies here. Respondent, again, relies on a statement in FWC's incident report where Investigator O'Horo states that he talked to Mr. Park who admitted, sometime in the past, that he is responsible for some of the tegus outside his facility. Investigator O'Horo testified at the hearing but did not raise the issue during his testimony. Respondent is attempting to have the evidence re-weighed and reconsidered which is improper in the consideration of exceptions.

Accordingly, Exception 4 is DENIED.

RESPONDENT'S EXCEPTION 5-

5. FWC takes exception to paragraph 27. Exhibit four that was stipulated to by the petitioner states in part: *For the last decade, Mr. Park has bred a wide array of lizards at this facility. The neighbors have been dealing with escaped animals, including harmful tegus, during much of that time. Mr. Park has previously admitted to me that his facility is a source of those lizards.* The first report of tegus surrounding petitioner's property received by FWC was on June 29, 2016 (Ex 2) and has had prior knowledge for years of the non-native species surrounding his property. Petitioner admitted the crocodile monitors escaped his facility and injured the neighbor's dogs. Rule 68A-6.018 states that an escape is a violation of Rule 68A-6.009 and states that [an escape maybe a] manner which results in threats to public safety. Additionally, Exhibit 2, the Commission's Notice of Denial, articulated "your knowledge of the escaped non-native species from your facility and your failure to take action to mitigate the danger to local wildlife and to the public suggests that issuance of the ESC will result in the continued endangerment of public health, safety and welfare of wild animal life and the public."

Ruling:

In Exception 5, the Respondent disagrees with the findings in Paragraph 27 of the Recommended where the ALJ found that Respondent did not offer argument that the "Petitioner had knowledge of the escaped non-native species from his facility" or that he failed to act to mitigate the danger caused by any escape. Respondent is attempting to have the evidence re-weighed and reconsidered which is improper in the consideration of exceptions. While the first report of tegus surrounding Petitioner's property was received by Respondent in June of 2016, no action was taken by FWC at that time or subsequently.

Accordingly, Exception 5 is DENIED.

RESPONDENT'S EXCEPTION 6-

6. FWC takes exception to Paragraphs 29 and 30. The Court finds that the escape is a violation of 68A-6.009(1) and therefore is a violation of Rule 68-1.010(2)(a).

Rule 68-1.010(2)(a) states:

> *The Commission **shall revoke or deny the renewal of any license**, permit or other authorization based on any one or more of the following grounds:*
> *(a) The licensee, permittee or other holder of authorization has received a disposition other than acquittal or dismissal of any provision of chapters 369, 379 or 828, F.S., or rules of the Commission, or other similar laws or rules in this or any jurisdiction that relate to the subject matter of the license, permit or authorization. (emphasis added)*

However, the Court goes on to a faulty analysis of 68-1.010(3). Rule 68-1.010(3) states:

*Based upon consideration of aggravating or mitigating factors in an individual case, except for explicit statutory maximum and minimum penalty requirements, Commission **may** deviate from the licensure actions in subsections (1) and (2), above. The Commission **shall** consider as aggravating or mitigating factors the following:*

> *(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 public safety and welfare or the management and protection of natural resources for which the Commission is responsible. (emphasis added)

The Court first misstates the language in the Rule and states that it "allows FWC to deviate from the mandatory denial …". As stated above the Rule actually states the "Commission may deviate …". The Court reasoned that the Commission **must or shall** deviate from the licensure actions in the above subsections instead of **May**. This is a direct and incorrect reading of the plain language of the rule. The rule clearly gives the Commission discretion to deviate but is not compelled to do so. As the rule reads, if the Commission deviates, then it shall consider the factors listed. The Court in this recommended order, substituted shall for may and proceeded to consider the factors listed in the rule. This was an incorrect analysis. Shall is something that is mandatory but may indicates a choice is optional. In this case, due to the continued presence of tegus and other non-native species surrounding Petitioner's property the Commission opted not to deviate in its licensure requirements when the escapes occurred which was a clear violation of FWC rules and the Court found FWC proved by Clear and Convincing evidence. The mitigation/aggravation factor review is done by the agency when it made its decision, not by the Court in its review of the agency action. The Court does not have the authority to rewrite the rules to compel FWC to deviate when it clearly has the option not to deviate from the rules. Nor does the Court have the authority to compel the FWC

to deviate from its rules when the rule clearly states it **may** deviate. The Court attempts to obligate FWC into mitigating factors that FWC is not obligated to do by the plain meaning of the word may.

Ruling:

In Exception 6, 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 application of certain provisions of Chapter 68A. Respondent, in Exception 6, correctly argues that under Rule 68-1.010 (3) the agency *may* consider certain factors as mitigation for violations when considering ruling on a permit or license application. Whether to consider those factors and apply them in a decision on whether to grant or deny a license falls within the agency's sole discretion.

While there is some dispute as to the cause of the colony of tegus that have established around the Petitioner's facility, whether they were released there by former pet owners who could no longer take care of the animals or whether they escaped from the facility is in dispute. However, there is no dispute that two crocodile monitor lizards escaped from Petitioner's facility and harmed the neighbor's pets. The escape of the crocodile monitors is a clear violation of Rules 68A-6. 009(1) and Rule 68A.1-010(2) which provide that FWC shall deny the renewal of licenses of licensees who failed to comply with FWC rules.

The ALJ recognizes that any escape is a violation that can result in denial of a license. However, in this instance because she was persuaded that the Petitioner's purpose was the preservation and conservation of certain species that FWC should consider those, mitigating

factors and grant the license. The ALJ was also persuaded that the violation was not severe and that the lack of previous notice of a violation at the facility should also be taken into consideration as a mitigating factor. Here the agency decided not to deviate from the license denial requirements of Rule 68A-6.009(1) under the circumstances. The ALJ's opinion that the agency should have used its discretion and applied those mitigating factors is in error. Accordingly, Exception 6 is SUSTAINED.

RESPONDENT'S EXCEPTION 7-

7. FWC takes exception with Paragraph 31. Even if FWC was to accept the Court's interpretation that FWC *shall* deviate and consider the mitigation factors, the Court is incorrect in its conclusion related to the to the mitigation factor "severity of conduct and danger to the public". The "severity of conduct" is a factor of strict liability and the rule does not provide that the severity of the conduct can be mitigated due to simply the negligence of the owner as there is no rule or legally based excuse available for the escape of wildlife. In fact, FWC rules Petitioner violated clearly support this position:

> **Rule 68A-6.018 injuries, bites, and escapes** (1) any condition which results in wildlife escaping from its enclosure, cage, leash , or other constraint, or which results in injury to any person, **shall** be considered a violation of subsection 68A-6.009(1), F. A.C., hereof . (emphasis added).

FWC and the Petitioner had been dealing with his tegu problem for years and there have been admissions by the petitioner of such prior violations. Further the Court indicated that while the escape of the monitor lizard led to two dogs being harmed, the "conduct" that led to the escape was not severe. The Court ignores the fact that the full mitigation sentence in the rule is "severity of conduct in danger to the public." The Court ignores the fact that the escape is severe in and of

itself. It is not the result e.g. the harm to the dogs that may or may not be severe but the escape of wildlife that is severe in this case. However, the Petitioner provided testimony that the defense capabilities of some of his animals could harm a human in close proximity if the severity of the harm is at the factor to be considered. T 63 El 1- 3. Additionally, one of the other FWC rules that the Petitioner violated directly addresses public safety threats, therefore it cannot be used as a mitigation factor.

> **Rule 68A- 6. 009 General Regulations Governing Possession of Captive Wildlife.** (1) no person shall maintain captive wildlife in any unsafe or unsanitary condition, or in a manner which results in threats to the public safety, or the maltreatment or neglect of such wildlife.

As noted above in the Rules a violation of 68A-6.018 - an escape- shall be considered a violation of 68A-6 009(1). Rule 68A-6.009(1) discusses unsafe conditions and threats to public safety which are arguably both met with the escape of wildlife. Florida's public policy is to protect the public from wild animals, which are presumed to be dangerous. Someone who owns or keeps a wild animal is charged with the responsibility of protecting the public from danger and that liability continues even after the animal escapes. The Court's conclusion that the conduct of negligence should be mitigated is not supported by Commission rule, and additionally the Court failed to address the full mitigation factor by remaining silent as to the potential "danger to the public" regarding escaped wildlife.

Ruling:

Exception 7, as noted above, Exception 6 was sustained and the ALJ was in error when she mandated that the agency apply the mitigating factors set forth in Rule 68A-1.030(1) to grant the license. The Respondent did provide unchallenged evidence that there is an invasive species

problem in Florida related to escaped and released nonnative animals, including nonnative reptiles, which have established themselves in the wild and create harm to our native wildlife and habitats. T 91, L6-21. But again, the main issue here is that the crocodile monitor lizards escaped which is a violation of the rules and calls for denial of the license. FWC's decision not to apply mitigation factors to those violations falls within the agency's discretion.

Accordingly, Exception 7 is SUSTAINED.

RESPONDENT'S EXCEPTION 8-

8. FWC takes exception to Paragraph 32. Petitioner admitted his facility was the source of the tegus as stated in Exhibit 4, that was stipulated to by the Petitioner. Exhibit 4 states in part: *For the last decade, Mr. Park has bred a wide array of lizards at his facility. The neighbors have been dealing with escaped animals, including harmful tegus, during much of that time. Mr. Park has previously admitted to me that his facility is the source of the lizards.* Ex 5, and Ex 6 list the various non-native reptiles that have been captured or sighted around Petitioner's property including GPS coordinates; T 29 L8 through T 44 L 17; EX9 part 1 video states at 18: 56- 20: 09 that Mr. Park still has tegus at Iguanaland. T86L14- 20. Investigator O'Horo testified that there are no other facilities near Iguanaland that could be the source of the reptiles.

Ruling:

The ALJ accepted Petitioner's testimony that the invasive tegu problem surrounding Petitioner's property may not have resulted from tegus escaping from Iguanaland. The ALJ accepted the argument that the problem was not caused by escape but were placed there by pet owners who could no longer care for their reptiles. The ALJ held that the Respondent failed to provide clear and convincing evidence that the tegus escaped from the facility. The ALJ therefore concluded that since Petitioner had no other violations at the facility other than the

escaped crocodile monitor lizards. The ALJ used this to improperly mandate that the agency accept these mitigating factors for the violation of the escaped crocodile monitor lizards and issue the permit.

Accordingly, Exception 8 is SUSTAINED.

RESPONDENT'S EXCEPTION 9

9. FWC takes exception to Paragraph 34. The "Other" factors the Court considered are incorrect and completely based on Petitioner's own opinion of himself. His facility greatly contributes to invasive reptile issues surrounding his facility and causes the State to expend precious funds and time to remove and respond to animals that keep escaping from his facility. This is the exact opposite of helping to be a conservation partner. The Court inappropriately made a conclusion of law that the "Petitioner's facility is essential to the conservation and preservation of endangered reptiles" when what the Court intended is that it shall be considered a mitigating factor. Petitioner does not have a license to work with any Florida or Federally endangered species and his breeding facility does not provide a benefit to any Florida or Federally endangered species. Petitioner's only evidence related to endangered species was testimony related to a reptile species called the Cyclura rock iguana that are not native to Florida or the United States, and instead live throughout the Caribbean. T 142-143, 23-25, 1-6. The Commission provided evidence that we have an invasive species problem in Florida related to escaped and released nonnative animals, including nonnative reptiles, which have established themselves in the wild and create harm to our native wildlife and habitats. T 91, L6-21. The Commission does not, as a matter of fact or law, consider the Petitioner's activities related to the nonnative Cyclura rock iguana, something that could potentially result in another nonnative reptile escape, mitigation for the Petitioner's violations of Commission rule. Make no mistake,

Petitioner's goal is to make money breeding and selling lizards which is why he makes a serious effort to breed them - it is not conservation. The Court's finding that Petitioner is "an asset to the community" failed to appropriately consider his neighbors to his facility, whose property the escapes have been found on, and whose dogs have been injured as a result of such escapes. absolutely do not think he is good for their community since his lizards are running lose all through the area and have now injured their pets.

Ruling:

In Exception 9, the ALJ accepted Petitioner's self-serving testimony that the Petitioner is an important member of the reptile conservation community and essential to the conservation and preservation of certain species. The ALJ concluded that Petitioner is an asset to the community. The ALJ used this to improperly mandate that the agency accept these as mitigating factors for the violation and issue the permit.

The Respondent did provide unchallenged evidence that there is an invasive species problem in Florida related to escaped and released nonnative animals, including nonnative reptiles, which have established themselves in the wild and create harm to our native wildlife and habitats. T 91, L6-21. But again, the main issue here is that the crocodile monitor lizards escaped which is a violation of the rules and calls for denial of the license. FWC's decision not to apply mitigation factors to those violations falls within the agency's discretion.

Accordingly, Exception 9 is SUSTAINED.

RESPONDENT'S EXCEPTION 10.

10. An agency's construction of its governing statutes and rules will be upheld unless clearly ambiguous. The Commission has substantive jurisdiction over interpretation of its administrative rules and the Court's interpretation should be rejected. "Even before this new

constitutional provision we did not apply the deference principle to unambiguous statutes. See, e.g., *GTC, Inc. v. Edgar*, 967 So. 2d 781, 785 (Fla. 2007) ("[It is only] when a statutory term is subject to varying interpretations and . . . has been interpreted by the executive agency charged with enforcing the statute [that] this Court [would have] follow[ed] a deferential principle of statutory construction. . . ."). *Halifax Hosp. Med. Ctr. v. State*, 278 So. 3d 545, 547 n.2 (Fla. 2019). In this case, FWC interpretation of its rules should be given deference as there is no ambiguity in its rules.

Ruling:

In Exception 10, Respondent does not identify any paragraph or specific position the ALJ takes that Respondent disagrees with. The Respondent appears to take exception with the ALJ's finding that FWC should have found that certain mitigating factors existed for the violations and used those to grant the license with reasonable conditions. The ALJ cites the rule and seems to agree that is says "may" consider those mitigating factors but then finds that the agency should have applied those factors as mitigation for the violations. The Administrative Law Judge cites the severity of the violation, past violations, attempts to correct the violation and her opinion of Petitioner's standing in the reptile breeding and selling business as factors that FWC should have considered. As Respondent argues in the exception, the rule is unambiguous and the ALJ should have deferred to the agency's discretion. *See*, *Halifax Hosp. Med. Ctr. v. State*, 278 So. 3d 545, 547 n.2 (Fla. 2019).

Accordingly, Exception 10 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 October 2020, and in accordance with Section 120.57(2), Florida Statutes.

ORDER

WHEREFORE, the Administrative Law Judge's recommended disposition is rejected, and the Respondent's denial of Petitioner's license for a Class III Wildlife for Exhibition, or Public Sale is UPHELD and this matter is closed.

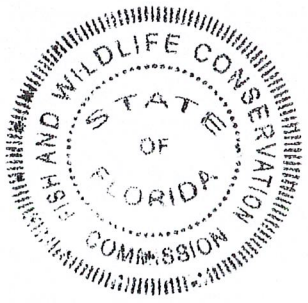
DONE AND ORDERED in Tallahassee, Florida this 30th day of April, 2021.

Thomas H. Eason Digitally signed by Thomas H. Eason Date: 2021.04.30 12:54:18 -04'00'

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

Filed with the Commission
This 30th day of April, 2021

ATTEST: Jill Canfield
Jill Canfield, Deputy Clerk



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above Final Order has been furnished by US mail to Michael Haymans, Esq., 215 West Olympia Avenue, Punta Gorda, Florida 33950 and electronically to michael@mphaymans.com and to Rhonda Parnell, Assistant General Counsel, Florida Fish and Wildlife Conservation Commission, at Rhonda.Parnell@myfwc.com on this 30th day of April, 2021.

FISH AND WILDLIFE CONSERVATION COMMISSION STATE OF FLORIDA

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 or 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.