

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

TAESOON PARK,

Petitioner,

vs.

Case No. 20-4559

FLORIDA FISH AND WILDLIFE
CONSERVATION COMMISSION,

Respondent.

_____ /

RECOMMENDED ORDER

The final hearing in this matter was conducted before Administrative Law Judge Jodi-Ann V. Livingstone of the Division of Administrative Hearings (DOAH), on December 7, 2020, by Zoom Conference.

APPEARANCES

For Petitioner: Michael P. Haymans, Esquire
Michael P. Haymans Attorney at Law, P.A.
215 West Olympia Avenue
Punta Gorda, Florida 33950

For Respondent: Rhonda E. Parnell, Esquire
Florida Fish and Wildlife Conservation Commission
620 South Meridian Street
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STATEMENT OF THE ISSUE

Whether Petitioner's application for renewal of his license to possess class III wildlife for exhibition or public sale (class III license) should be granted.

PRELIMINARY STATEMENT

On September 18, 2020, the Florida Fish and Wildlife Conservation Commission (Respondent or FWC) denied Taesoon Park's (Petitioner) application to renew his class III license, through the issuance of a Notice of Denial (Notice). The Notice provided the following as the factual basis for the denial:

FWC received the first verified report of a tegu near your facility on June 29, 2016. FWC has received 220 reports since that time of verified and/or credible non-native wildlife in the immediate vicinity of the facility known as "Iguanaland," of which you are the owner and license holder. This total includes 176 non-native tegus and 9 individuals of other non-native species, including iguana and monitor species, that were either captured by FWC and the surrounding community members or were found dead on the road.

These non-native species are not present in significant numbers in any location in the surrounding area apart from outside of your facility. These escaped non-native species from your facility have contributed to the establishment of a breeding population of tegus which are detrimental to the native wild animal life of the local area. FWC staff have captured tegus in this area near your facility in all age classes, including hatchlings, and have necropsied a captured female tegu with developed egg follicles, providing evidence that breeding is occurring in this population.

On or about July 26, 2019, during an unannounced inspection, the FWC inspector discussed the presence of tegus and other non-native reptiles in the area surrounding your facility. You accepted responsibility for the escape of these species from your facility and the likelihood your employees caused these escapes to occur some years prior.

On or about September 2, 2020, you stated to FWC law enforcement that two crocodile monitors escaped from your facility in mid-August 2020, likely through an opening in an enclosure where the wire was not concreted in. On or about August 24, 2020, one crocodile monitor of several feet in length was located on the adjoining property where it caused injury to the property owner's pets. A biologist with FWC responded to the property, identified the animal as a crocodile monitor, and euthanized it. On or about September 2, 2020, you were issued a notice to appear for a criminal violation of rule 68A-6.009, F.A.C.

Petitioner timely filed a Petition for Administrative Hearing and Respondent transmitted the matter to DOAH on October 14, 2020, for the assignment of an administrative law judge to conduct the requested hearing.

A Notice of Hearing by Zoom Conference and Order of Pre-hearing Instructions were issued on October 22, 2020. The Order of Pre-hearing Instructions required, among other things, that the parties prepare a pre-hearing stipulation that shall disclose “[a] list of the names and addresses of all witnesses (except for impeachment witnesses) to be called at the hearing by each party, with expert witnesses being so designated[.]” Prior to the hearing, the parties submitted a Joint Pre-hearing Stipulation (Stipulation), which included a list of three witnesses for Petitioner and three for Respondent. The Stipulation did not identify any expert witnesses for either party.

The final hearing was convened on December 7, 2020, by Zoom Conference. Petitioner testified on his own behalf and presented the testimony of Mark A. Mitchell, DVM, MS, PhD, DECZM (Dr. Mitchell), and Sean Michael Perry, DVM (Dr. Perry). Petitioner tendered Dr. Perry as an expert in reptile behavior and sexual behavior in reptilians. Respondent

objected to Petitioner's tender of Dr. Perry as an expert witness, based on Petitioner's failure to disclose him as such in any communication between the parties. Respondent made the same objection and argument regarding Dr. Mitchell. The undersigned sustained the objections. Dr. Perry and Dr. Mitchell were allowed to testify as lay witnesses, but were not accepted as experts. Petitioner did not offer any exhibits.

Respondent called Robert O'Horo, an FWC investigator; Daniel Quinn, an FWC biologist; and John Conlin, an FWC lieutenant, as witnesses. Respondent's Exhibits 1 through 9 were admitted into evidence.

At the close of the hearing, the parties requested an extended deadline of 30 days following DOAH's receipt of the hearing transcript to file post-hearing submittals.¹ A one-volume Transcript of the final hearing was filed with DOAH on December 14, 2020. Respondent timely submitted a Proposed Recommended Order. Petitioner's Proposed Recommended Order was two days late. Both submittals were duly considered in preparing this Recommended Order.

All references to the Florida Statutes and the Florida Administrative Code are to the 2020 versions.

FINDINGS OF FACT

1. Respondent is a state agency authorized to exercise the executive and regulatory powers of the state of Florida with respect to wild animal life and fresh water aquatic life. *See Fla. Const. Art. IV, § 9.*

¹ By agreeing to an extended deadline for post-hearing submissions beyond ten days after the filing of the transcript, the parties waived the 30-day timeframe for issuance of the Recommended Order. *See Fla. Admin. Code R. 28-106.216.*

2. Petitioner holds a class III license which authorizes him to possess class III wildlife for exhibition or sale.²

3. Petitioner is the owner and license holder authorized to maintain a facility called Iguanaland, located in Punta Gorda, Florida.

4. Iguanaland is a reptile facility that has as its goal the preservation of certain species and the conservation of endangered species.

5. Petitioner is a respected member of a community of individuals who keep, and make serious efforts to breed, reptiles in captivity. He is widely known for holding one of the largest collection of reptiles in the United States. Petitioner's facility has been successful with reproducing reptile species, adding to the diversity within the captive reptile population.

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.

7. Petitioner maintains temporary living quarters on the facility's grounds to host graduate students conducting research.

8. Petitioner has never been disciplined by Respondent; he has not received a written or verbal warning. Respondent's witness, Investigator O'Horo, testified that, "anything that's still caged [at Petitioner's facility] is being taken care of" and that he has been "impressed with the husbandry³ aspect."

9. Petitioner maintains several species of reptilians at Iguanaland, including lizards, snakes, and chelonians.

² Class I wildlife is wildlife which, because of its nature, habits, or status, shall not be possessed as a personal pet; class II wildlife is wildlife considered to present a real or potential threat to human safety; class III wildlife is all other wildlife not included in Class I or Class II. See § 379.3762(2), Fla. Stat.

³ "Husbandry" generally refers to the care, food, and shelter that is provided to the reptilians.

10. Monitor lizards include a wide class of lizard species. Monitor lizards, in general, are primarily carnivores, eating mostly animal matter. They are typically between one and nine feet long.

11. In July 2020, Petitioner had possession of three crocodile monitor lizards. Crocodile monitor lizards are an uncommon type of monitor lizard. They are known for having extremely long tails relative to their body length and uniquely shaped heads.

12. Petitioner commissioned a construction worker to build an enclosure for the crocodile monitor lizards, in accordance with FWC requirements. This included a request to fortify the bottom of the crocodile monitor lizards' wired enclosure with cement. Unfortunately, the construction worker failed to cement a space of approximately one foot along the barrier of the enclosure.

13. Petitioner testified that he inspected the enclosure several times, and failed to notice the gap. Investigator O'Horo also inspected the enclosure and did not notice the gap.

14. In August 2020, two of Petitioner's three crocodile monitor lizards escaped from Iguanaland, through the opening in the enclosure.

15. One of the two escaped crocodile monitor lizards injured two pet dogs at a neighboring property. The crocodile monitor lizard was euthanized to prevent further issue.

16. For the period of June 2016 through November 2020, FWC staff members received reports of sightings of over 100 non-native tegus and other reptilians within a half-mile radius of Petitioner's facility.

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.

CONCLUSIONS OF LAW

18. DOAH has jurisdiction over the parties and the subject matter of this cause pursuant to sections 120.569 and 120.57(1), Florida Statutes.

19. Respondent denied the renewal of Petitioner's class III license for several alleged violations of FWC rules. The denial is tantamount to revoking the license. The parties properly stipulated that Respondent bears the burden of proving the violations by clear and convincing evidence. *See Ferris v. Turlington*, 510 So. 2d 292, 295 (Fla. 1987) (establishing clear and convincing evidence standard for license revocation proceedings); *Dubin v. Dep't of Bus. Reg.*, 262 So. 2d 273, 274 (Fla. 1st DCA 1972) ("refusal to renew a license to a person who has once demonstrated that he possesses the statutory prerequisites to licensure cannot be used as a substitute for a license revocation proceeding.").

20. The clear and convincing standard of proof has been described by the Florida Supreme Court as follows:

Clear and convincing evidence requires that evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)); *see also In re Henson*, 913 So. 2d 579, 590 (Fla. 2005).

21. Respondent is the state agency with exclusive jurisdiction to regulate wild animal life and fresh water aquatic life, including the possession of reptilians. *See Fla. Const. Art. IV, § 9.*

22. Florida Administrative Code Rule 68A-6.009(1) provides that “[n]o 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.”

23. Any condition which results in wildlife escaping from its enclosure is a violation of rule 68A-6.009(1). *See Fla. Admin. Code R. 68A-6.018(1).*

Petitioner admits that two crocodile monitor lizards escaped from his facility in August 2020. The condition which resulted in the escape of these crocodile monitor lizards is a violation of rule 68A-6.009(1).

24. FWC’s Notice of Denial sets forth the following ultimate findings of fact:

The conditions which have resulted in the escape of non-native species of tegus, iguanas, and other reptiles from your facility, including the escape of two crocodile monitors in mid-August 2020, constitute a violation of subsection 68A-6.009(1), F.A.C. Violations of subsection 68A-6.009(1), F.A.C., relate to the possession of captive wildlife. In addition, 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 [class III license] will result in the continued endangerment of the health, safety or welfare of wild animal life and the public.

25. Respondent proved, by clear and convincing evidence, that two crocodile monitor lizards escaped from Petitioner’s facility as a result of the condition of the enclosure, which is a violation of rule 68A-6.009(1).

26. Respondent, however, did not prove that conditions at Petitioner’s facility allowed the escape of tegus, iguanas, or any reptilian besides the two crocodile monitor lizards.

27. Respondent did not offer argument in its Proposed Recommended Order that Petitioner had knowledge of the escaped non-native species from

his facility or that he failed to act to mitigate the danger to local wildlife and to the public. Further, Respondent does not argue that renewing Petitioner's class III license will result in the continued endangerment of the health, safety, or welfare of wild animal life or the public. Moreover, Respondent did not prove these things by clear and convincing evidence.

28. Florida Administrative Code Rule 68-1.010(2) sets forth grounds for revoking or denying the renewal of class III licenses and provides, in pertinent part:

(2) 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.

(b) *The licensee, permittee or other holder of authorization failed at any time to comply with chapters 369, 379 or 828, F.S., or the rules of the Commission or other laws or rules relating to the subject matter of the license, permit, or other authorization.*

(c) The licensee, permittee or other holder of authorization has submitted materially false information in any previously submitted or pending application or supporting documentation relating to the application, or documentation or reports required by the license, permit or authorization.

(d) The licensee, permittee or other holder of authorization is conducting activities under the license, permit or authorization in a manner that endangers the health, safety or welfare of the

public, wild animal life, fresh water aquatic life or marine life. (emphasis added).

29. Rule 68-1.010(2) clearly provides that FWC shall deny the renewal of licenses of licensees who failed to comply with FWC rules. Rule 68-1.010(3), however, allows FWC to deviate from the mandatory denial upon consideration of mitigating and aggravating factors which are set forth as follows:

- (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.

30. Under the facts found herein, the penalty to be imposed on Petitioner is mitigated by the factors set forth in rule 68-1.010(3).

Severity of Conduct and Danger to the Public

31. The escape of the crocodile monitor lizards was not due to flippant negligence by Petitioner. Instead, an oversight by a construction worker left an unintentional, small gap through which the monitor lizards escaped.

Petitioner credibly testified that he inspected the enclosure on several occasions, but did not notice the small opening. FWC Investigator O'Horo also inspected the enclosure and failed to notice the opening, confirming that Petitioner's failure to detect the small opening was understandable and excusable. Although the escape of the monitor lizard led to two dogs being harmed, the *conduct* that led to the escape was not severe.

Prior Violations/Related Violations in Other Jurisdictions

32. Petitioner has no prior violations. He has never been disciplined by FWC for anything outside of the allegations set forth in this case and has not received so much as a prior verbal warning from FWC. There is nothing in the record to indicate that Petitioner committed any violations in other jurisdictions.

Attempts to Correct/Prevent Violations

33. It is not clear from the record that Petitioner immediately addressed the opening that caused the crocodile monitor lizards to escape, but Petitioner has, historically, addressed every concern brought to him by FWC. Investigator O'Horo testified that in 2019, he noticed a bit of rust at the base of a monitor's cage. He brought it to Petitioner's attention, who immediately had it addressed. On another occasion, Investigator O'Horo told Petitioner that he believed the glass on an enclosure was too thin. Similarly, Petitioner addressed this concern by choosing not to utilize that cage.

Other Factors

34. Petitioner is an important member of the reptile conservation community. Petitioner's facility is essential to the conservation and preservation of endangered reptile species. Petitioner's conservation efforts are widely known and respected. Petitioner provides opportunities for students and veterinarians to conduct research on rare, endangered species of reptiles. Petitioner convincingly showed that he is an asset to the community.

Conclusion

35. Consideration of the mitigating and aggravating factors above weigh in favor of granting Petitioner's renewal application.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Fish and Wildlife Conservation Commission enter a final order approving Petitioner's renewal application, subject to such reasonable terms and conditions as FWC deems appropriate.

DONE AND ENTERED this 10th day of February, 2021, in Tallahassee, Leon County, Florida.



JODI-ANN V. LIVINGSTONE
Administrative Law Judge
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Filed with the Clerk of the
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this 10th day of February, 2021.

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.