

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

KIMBERLY KIEHL,

Petitioner,

vs.

Case No. 21-2980

FLORIDA FISH AND WILDLIFE  
CONSERVATION COMMISSION,

Respondent.

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RECOMMENDED ORDER

Pursuant to notice, a final hearing in this cause was held in Tallahassee, Florida, via Zoom video conference on December 1, 2021, before Linzie F. Bogan, Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner:     Kimberly Kiehl, pro se  
                          4655 Poplar Court  
                          Lakeland, Florida 33810

For Respondent:    Rhonda E. Parnell, Esquire  
                          Florida Fish and Wildlife  
                          Conservation Commission  
                          Farris Bryant Building  
                          620 South Meridian Street  
                          Tallahassee, Florida 32399

STATEMENT OF THE ISSUE

Whether Petitioner's application for a license to possess Class II wildlife for personal use should be approved.

## PRELIMINARY STATEMENT

By letter dated August 25, 2021, the Florida Fish and Wildlife Conservation Commission (FWC or Commission) notified Kimberly Kiehl (Petitioner) that her application for a license to possess Class II wildlife for personal use had been denied. Petitioner timely requested a hearing to contest the denial and the matter was referred to DOAH to conduct a disputed-fact hearing.

At the hearing, Petitioner testified on her own behalf and also offered testimony from Kadir Olav. FWC called the following witnesses: Damon Saunders, an investigator with FWC; and John Conlin, the administrative lieutenant for FWC's captive wildlife offices. FWC Exhibits 1 through 4 were received into evidence. There were no exhibits admitted into evidence on behalf of Petitioner. The proceedings were recorded and a transcript of the disputed-fact hearing was ordered.

By agreement, the parties were given 20 days after the filing of the transcript in which to file proposed recommended orders. The Transcript was filed on January 10, 2022. Each party timely filed its Proposed Recommended Order, and the same were considered in preparing this Recommended Order.

## FINDINGS OF FACT

1. FWC is the state agency with exclusive jurisdiction to regulate all wild animal life in Florida. *See* Art. IV, § 9, Fla. Const.<sup>1</sup>

2. All persons who possess captive wildlife for the purposes of “personal possession” must have a license from FWC. *See* § 379.3762(1), Fla. Stat.

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<sup>1</sup> All references to the Florida Constitution, Florida Statutes, and Florida Administrative Code are to the 2021 version, unless otherwise indicated.

3. By rule promulgated by FWC, categories of wildlife for which a license is required are broken down into three classes. *See Fla. Admin. Code R. 68A-6.002.* Generally, a person cannot possess Class I animals as personal pets unless they came into their possession prior to 1988. Class I animals include 24 different species generally considered extremely dangerous, and include wildlife such as chimpanzees, gorillas, orangutans, baboons, leopards, jaguars, tigers, bears, rhinoceros, elephants, hippopotamuses, crocodiles, and Komodo dragons. *See Fla. Admin. Code R. 68A-6.002(1)(a).*

4. Class II animals include 38 different species that may, with a proper license, be possessed as personal pets or for commercial purposes. Class II animals have the potential to cause harm but not to the extent of Class I animals and include wildlife such as servals, Howler monkeys, Patas monkeys, Vervet monkeys, Macaques, bobcats, wolves, wolverines, honey badgers, and alligators. *See Fla. Admin Code R. 68A-6.002(1)(b).*

5. Class III animals include wildlife not listed as Class I or II. *See Fla. Admin. Code R. 68A-6.002(1)(c).*

6. On or about March 17, 2021, Petitioner submitted to the Commission an Application for License to Possess Wildlife for Personal Use (application). Petitioner submitted the application so as to secure a permit to possess a serval, which is categorized as Class II wildlife. The application contains an attestation section which states:

I swear and affirm that the information provided is true and correct. I agree to adhere to the provisions of Chapter 379 Florida Statutes, and the rules and regulations of the Commission pertaining to the possession of wildlife. I understand that my wildlife facilities are subject to inspection by Commission personnel as required by Florida Statute.

Petitioner signed and dated the application as required.

7. By correspondence dated April 14, 2021, the Commission notified Petitioner that her application could not be processed until the \$140 application fee was paid.

8. By inference, it appears as though Petitioner paid the application fee, since the Commission, by correspondence dated May 27, 2021, informed Petitioner that additional information was needed in order to process her application. Among other things, the Commission requested that Petitioner provide the following:

Documentation of experience for Class II Felidae is missing or incomplete. Applicant must demonstrate/document one year of experience (to consist of not less than 1,000 hours) in the care, feeding, handling, and husbandry of the species for which the permit is sought, or other species in the same biological family that are similar in size, characteristics, care and nutritional requirements. Documentation of experience must include specific date(s), time(s) and location(s) where experience was obtained and a detailed description of the type of experience obtained.

Letters of reference for Class II Felidae are missing or incomplete. Two letters of reference must be provided from individuals having personal knowledge of the applicant's stated experience. One letter of reference must be from someone licensed by the Commission for wildlife of the same family and the same or higher class for which you are seeking authorization or a representative of a professional organization or governmental institution. Examples of such organizations or institutions include, but are not limited to, Universities, Public Service Agencies, Zoological Associations, Herpetological Societies and veterinarians. No more than one letter of reference may be from a family member of the applicant.

9. Although the date of submission is not apparent from the evidence presented during the final hearing, Petitioner, in support of her application,

eventually submitted “documentation of experience” forms which purportedly reflect dates, hours worked, and a description of the work performed with servals from February 6, 2020, through February 14, 2021.

10. At some point in the process, Petitioner also submitted letters of reference from Kadir Olav and Tyler Funk. The letter from Kadir Olav is dated February 22, 2021, and the letter from Tyler Funk is dated March 14, 2021.

11. Tyler Funk stated the following in the letter of reference submitted in support of Petitioner’s application:

To whom it may concern,

I recommend Kimberly Kiehl to get her wildlife license as she has always been incredibly good with animals. As long as I can remember she found and rehabilitated stray animals so that they could be adopted out.

She has a degree as she went to school to be a veterinary assistant. She is exceptionally good with animals and seems to be very knowledgeable in the subject.

If you have any question, please feel free to contact me.

Thank you,

Tyler W. Funk

12. Mr. Olav stated the following in his letter of reference:

To whom it may concern. I am recommending that Kimberly Schaff Kiehl be approved for the Class 2 Wildlife Permit. I know her very well and I know that she has well over the 1000 hours of experience necessary. She has helped partake in the caring of my animals on countless occasions and absolutely deserves a permit of her own. I cannot think of someone I know that is more deserving. I know she has all the skills and resources required to do a

fantastic job with her future animals. I of course have a license of my own please feel free to contact me if you have any questions. Thank you!

Sincerely,

Kadir Olav

13. Damon Saunders is an investigator for the Commission and is assigned to the office in Titusville, Florida. Investigator Saunders is a sworn law enforcement officer and has worked for the Commission since 2004.

14. Investigator Saunders performs annual license holder inspections as part of his duties, and sometime around mid-November 2020 he met with Mr. Olav for an inspection. At the time of the inspection, Mr. Olav held a Class II personal pet license for a pet serval.

15. During his meeting with Mr. Olav, Investigator Saunders, in addition to verifying that Mr. Olav still possessed a serval, reminded Mr. Olav that his Class II license was about to expire and that “he needs to get on the ball and reapply so he didn’t have a lapse in his licensure.” Despite the warning, Mr. Olav allowed his Class II personal pet license to lapse on November 29, 2020.

16. As previously noted, Mr. Olav’s letter of reference is dated February 22, 2021, which is nearly three months after his Class II license expired. Given Investigator Saunders’ credible testimony that in November 2020 he reminded Mr. Olav of the imminent expiration of his Class II license, it is reasonable to infer that when Mr. Olav authored his letter of reference, he knew that he no longer held a valid Class II license. Therefore, when Mr. Olav stated in his letter of reference that “I of course have a license of my own,” this statement, which was offered in support of Petitioner’s application, had the effect of conveying information that was false, misleading, and inaccurate.

17. Landon Ailstock works for the Commission as a captive wildlife investigator, and his duties include assisting with the Class II licensure process. On July 1, 2021, Investigator Ailstock sent the following email to Petitioner:

Ms. Kiehl,

Per our conversation, please provide the following information:

\* What location(s) your Class II experience was obtained at. Additionally, how many servals you were working with at those facilities.

\* Provide clarification as to your major or college coursework. (Individuals who[se] college coursework was in a biological science can potentially be exempt from providing experience hours).

\* Attached to this email is your experience log for servals. Please provide further details regarding the descriptions in your log.

Once this information is received, your application should be complete.

18. On July 11, 2021, Petitioner sent the following email in response to Investigator Ailstock's request for additional information:

Landon,

I have received all of my Class II experience at Kadir Olav's residence. His address is 2928 Blooming Alamanda Loop, Kissimmee, FL. He has 2 servals and 4 Savannahs that I did my hours with.

I also received my Vet Teck license back in 1988 at MerryField School. The address is 5040 NE 13 Ave., Ft. Lauderdale, FL 33334. Attached is some of the experience that Kadir presented to me in my learning so that I can receive my wildlife license.

Thank you,

Kimberly Kiehl

19. As previously noted, Petitioner submitted, as part of her application, a log sheet showing what are purportedly practical experience hours secured between February 6, 2020, and February 14, 2021. According to Petitioner, her practical experience garnered during this period totals 1,015.50 hours, and each hour earned was done so while working with Mr. Olav. When Petitioner informed Investigator Ailstock that she received “all” of her Class II experience at Kadir Olav’s residence, it was Petitioner’s intent to receive credit for the entirety of the 1,015.50 hours. By the time Mr. Olav’s license expired on November 29, 2020, Petitioner had, however, acquired only 719.50 hours, which is short of the 1,000 hours needed in order to satisfy the licensure requirements. Because Petitioner did not acquire “all” (i.e. at least 1,000) of her required hours from Mr. Olav, given that his license expired on November 29, 2020, her statement to the Commission that she had done so was false, misleading, and inaccurate.

20. Because Mr. Olav was known by the Commission to own at least one serval, the Commission, once Mr. Olav’s license expired, attempted over the course of several months to contact him in an effort to garner information about the status of his animal(s). On July 9, 2021, Investigator Saunders was finally able to personally meet with Mr. Olav, and his body camera recorded the encounter.

21. At the beginning of the interaction between Mr. Olav and Investigator Saunders, Mr. Olav explained that his serval had died. Investigator Saunders entered Mr. Olav’s home and verified that the serval was not present. While the two were exiting the home, Mr. Olav initiated the following exchange:

Mr. Olav: Back whenever everything was still pretty good, I had a friend of mine who was interested in getting her license.



Invest. Saunders: Kimberly?

Mr. Olav: Yeah, cause I just ... searched through my emails to see, like uh, why I haven't heard anything ... like in regards to her ... . So, I typed in Florida Fish and Wildlife in my email and I saw a bunch of stuff like your email, I saw something from someone else asking for my phone number, or something like that. And then I was thinking like crap, I didn't check the date on that so I don't know how long ago that was, but would they still allow me to be a reference at this point ... since that was months ago?

Invest. Saunders: I'll have to get back with them. You may not be eligible to be a reference, but it depends.

Mr. Olav: Cause at that time I still had the serval. That was a long time ago. That was around the time, I think the last time I saw you.

Invest. Saunders: Oh, so you were just being a reference? She didn't actually come here to get hours with you?

Mr. Olav: No, I mean, no, no. She has ... I know her personally.

Invest. Saunders: She's got her own experience?

Mr. Olav: Yeah, yeah, exactly. I was just being a reference.

Invest. Saunders: So, she's not trying to get hours from you?

Mr. Olav: No, no, no ... . But yeah, that was when I still had like servals here and everything, and I offered to be a reference. But I don't know what's going on with my - - I never renewed because of what happened. So, I don't know if I can even still -

Invest. Saunders: When did the cat die?

Mr. Olav: It's been months. Yeah, it's been awhile. Maybe about two months - - maybe two or three months. Something like that, yeah.

22. Soon after meeting with Mr. Olav, Investigator Saunders contacted Investigator Ailstock, provided him with a copy of the body camera recording, and informed him of the statements made by Mr. Olav about Petitioner.

23. Because of the apparent conflict between the statements of Petitioner and Mr. Olav, the Commission ceased its evaluation of Petitioner's application, and by correspondence dated August 25, 2021, informed Petitioner of its intent to deny her application as stated below:

Submitted with your application were experience hours obtained with servals at 2928 Blooming Alamanda Loop, Kissimmee, Florida, with Kadir Olav. The hours ranged from February 6, 2020, through February 14, 2021. According to Captive Wildlife records, Mr. Olav has not had an active license for servals since November 29, 2020. Additionally, when Captive Wildlife staff contacted Mr. Olav to confirm your experience, he stated he was to be used as a reference but was not responsible for your hours of experience.

The experience hours you have submitted in your application do not coincide with Mr. Olav's statement or licensure. The FWC has determined you submitted materially false information when applying for your [personal pet license].

Submission of false information to FWC constitutes ground for denial under Rule 68-1.010(1)(a) and (b), Florida Administrative Code ... .

Your application for a PPL contains false information and therefore is denied.

## CONCLUSIONS OF LAW

24. DOAH has jurisdiction over the parties and subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2020). *See also* Fla. Admin. Code R. 68-1.008(5)(c)3.

25. As the applicant for a Class II license, Petitioner bears the ultimate 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).

26. FWC has the burden of proving, by a preponderance of the evidence, that Petitioner violated certain statutes and rules, and is, thus, unfit for a Class II license. *See Davis Family Day Care Home*, 160 So. 3d at 856.

27. Section 379.303(1), Florida Statutes, provides as follows:

The commission shall promulgate rules defining Class I, Class II, and Class III types of wildlife. The commission shall also establish rules and requirements necessary to ensure that permits are granted only to persons qualified to possess and care properly for wildlife and that permitted wildlife possessed as personal pets will be maintained in sanitary surroundings and appropriate neighborhoods.

28. Florida Administrative Code Rule 68A-6.004 provides, in part, as follows:

(1) Permits to possess wildlife in captivity, issued pursuant to Section 379.3761 or 379.3762, F.S., and the provisions of this chapter, shall authorize the keeping of captive wildlife, of the type and number specified in applications approved by the Commission, in accordance with law and Commission rules. Captive wildlife maintained under permit shall, unless otherwise authorized, be maintained only at the facility specified in the permit application and approved by the Commission.

(2) Qualification requirements for a permit to possess Class I or Class II wildlife:

All applicants shall qualify for permits as follows:

(a) Age Requirement: Applicants to possess Class I or Class II wildlife shall be at least 18 years of age.

(b) Applicants shall not have been convicted of any violation of captive wildlife regulations or venomous reptile or reptile of concern regulations involving unsafe housing of wildlife or that could potentially endanger the public; any violation involving the illegal commercialization of wildlife; any violation involving cruelty to animals; or any violation involving importation of wildlife within three (3) years of the date of application.

(c) Experience Requirement for Class I permits:

1. Applicants shall demonstrate no less than one (1) year of substantial practical experience (to consist of no less than 1000 hours) in the care, feeding, handling and husbandry of the species for which the permit is sought, or other species, within the same biological family (except crocodylians which shall be in the same biological order; ratites which shall be in the same biological sub-order; and cougars, panthers or cheetahs which shall remain at the genus level), which are substantially similar in size, characteristics, behavior, habits, care and nutritional requirements to the species for which the permit is sought.

2. For purposes of demonstrating compliance, applicants shall submit documentation of such experience, including:

a. A description of the specific experience acquired.

b. The dates and times the experience was obtained and the specific location(s) where acquired.

c. References of no less than two (2) individuals, no more than one of which may be a relative of the applicant, having personal knowledge of the applicant's stated experience. One of these references must be licensed by the commission for wildlife of the same family and the same or higher class for which the applicant is seeking authorization or a representative of a professional organization or governmental institution. Examples of such organizations or institutions include, but are not limited to, universities, public service agencies, zoological associations, herpetological societies and veterinarians.

d. Additional documentation may include records of prior permits for the keeping of captive wildlife, employment records, and any other competent documentation of the requisite experience.

3. Documented educational experience in zoology or other relevant biological sciences, obtained at the college or technical school level or above, may substitute for up to six months or 500 hours of the required experience.

4. Providing false information to document the applicant's experience, by the applicant or any reference, is prohibited as provided in Sections 837.012 and 837.06, F.S.

(d) Experience and examination requirements for Class II permits:

1. Applicants may qualify for a permit for Class II wildlife by documenting one year of experience (to consist of no less than 1000 hours) as defined in subparagraphs 68A-6.004(2)(c)1.-4., F.A.C., above. If the applicant is unable to document such experience, as an alternative, the applicant may take a written examination.

29. Section 379.3503 provides as follows:

A person who swears or affirms to any false statement in any application for a license or permit provided by this chapter commits a Level Two violation under s. 379.401, and any false statement contained in any application for such license or permit renders the license or permit void.

30. Florida Administrative Code Rule 68-1.010(1) provides, in part, as follows:

The following shall apply to all licenses, permits or other authorizations in addition to requirements specific to individual licenses.

(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.

(b) Failure of the applicant to meet eligibility requirements or criteria for issuance of the license, permit or other authorization.

31. As noted in the Findings of Fact, Kadir Olav submitted on behalf of Petitioner information that was false, misleading, and inaccurate, and the same was therefore submitted in violation of rule 68-1.010(1)(a).

32. As noted above, rule 68A-6.004(2)(c)2.c. provides, in part, that at least one of an applicant's references with personal knowledge of the applicant's stated experience, "must be licensed by the commission for wildlife of the same family and the same or higher class for which the applicant is seeking authorization." Petitioner suggests that this requirement be interpreted such

that a reference need not be licensed during the entirety of the period during which an applicant seeks credit.

33. It has long been recognized that one of the canons of statutory construction requires a court to avoid a literal interpretation of statutory language that would result in an absurd or ridiculous conclusion. *See State v. Sullivan*, 95 Fla. 191 (Fla. 1928).

34. Section 379.303 ensures that captive wildlife is properly cared for, and the public appropriately protected, by authorizing the Commission to establish rules and requirements that ensure that only qualified persons are in possession of regulated wildlife. One of the ways of achieving this goal is by requiring that the person seeking a Class II license be properly supervised while obtaining substantial practical experience or, alternatively, that an applicant successfully complete a written examination. It would be absurd, and indeed inconsistent with the stated legislative goals, to embrace an interpretation of rule 68A-6.004(2)(c)2.c. that would allow an individual, such as Mr. Olav, to continue to serve as the “reference with a license” for periods during which the individual was not licensed.

35. As noted in the Findings of Fact, Petitioner’s representation to the Commission that she “received all of [her] Class II experience at Kadir Olav’s residence” is false, misleading, and inaccurate, because Petitioner acquired only 719.50 hours of substantial practical experience by the time Mr. Olav’s license expired on November 29, 2020. The fact that Petitioner might not have known about the status of Mr. Olav’s license when she submitted her application is immaterial and irrelevant since the framework for evaluating an application for a Class II license does not allow an applicant to circumvent licensing requirements by claiming a lack of knowledge. Simply stated, it was Petitioner’s obligation to verify the truth and accuracy of all information related to her application before submitting the information to the Commission.


36. Petitioner failed to meet her ultimate burden of persuasion.

37. Accordingly, it is appropriate to deny Petitioner's application for a Class II license to possess Class II wildlife for personal possession. *See Fla. Admin. Code R. 68-1.010(1)(e)*(authorizing the Commission to "deny applications for any license, permit or other authorization" based on a "[f]ailure by the applicant at any time to comply with chapters 369, 379 or 828, F.S., or the rules of the Commission ....").

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Florida Fish and Wildlife Conservation Commission issue a final order denying Petitioner Kimberly Kiehl's application for a license to possess Class II wildlife for personal possession.

DONE AND ENTERED this 1st day of February, 2022, in Tallahassee, Leon County, Florida.



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LINZIE F. BOGAN  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
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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.