

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWA Docket No. D-10-0014

In re: PINE LAKE ENTERPRISES, INC.,

Petitioner

DECISION AND ORDER

This action was initiated on October 16, 2009 by the Petitioner by the filing of a Demand for a Fitness Hearing with regard to the denial of an Animal Welfare Act license by Elizabeth Goldentyer, DVM, Director of the Eastern Region, United States Department of Agriculture (USDA) Animal and Plant Inspection Service (APHIS) Animal Care. The Respondent, through counsel filed a Response to the Request for Hearing indicating that Summary Judgment would be appropriate means of resolving the issues.

On December 17, 2009, Administrative Law Judge Jill S. Clifton conducted a teleconference with the parties and scheduled an oral hearing in the case to commence on March 31, 2010 in Fargo, North Dakota. In the same Order, Judge Clifton directed that any Motion for Summary Judgment by the Respondent should be filed on or before January 11, 2010 and that the Petitioner should file a Response by February 1, 2010. The Motion for Summary Judgment was filed on January 11, 2010 and the Petitioner's Response was filed on February 1, 2010.

As I find that there is no issue of material fact in dispute, I will grant the Administrator's Motion for Summary Judgment and on the record before me will affirm the denial of the Petitioner's application for an Animal Welfare Act license as set forth in the Order which is a part of this Decision.

Discussion

The Animal Welfare Act (the Act or AWA) provides that the Secretary shall issue licenses to dealers and exhibitors upon application in such form and manner as the Secretary may prescribe (7 U.S.C. §2133).¹ The power to require and to issue licenses under the Act includes the power to disqualify a person from being licensed. *In re: Amarillo Wildlife Refuge, Inc.* 68 Agric. Dec. ____ (2009); *In re: Loreon Vigne*, 67 Agric. Dec. ____ (2008); *In re: Mary Bradshaw*, 50 Agric. Dec. 499, 507 (1991). In this action, the Administrator of the Animal and Plant Health Inspection Service (APHIS) believed that the application for a license was an attempt to circumvent the then impending termination of Kathy Bauck's AWA license No. 41-B-0159,² and the resulting disqualification period and on that basis determined that the Petitioner was unfit to be licensed as a dealer under the Act. In reaching its conclusion, APHIS looked at the timing of the application, the affiliation of the applicant corporation with Puppy's on Wheels and Kathy Bauck, the information contained in the application, the existing ownership interests at the address set forth in the application which was the same as that of Kathy Bauck's business, and the fact that Pine Lake Enterprise Inc. did not appear to be

¹ “. . . Provided that no license shall be issued until the dealer or exhibitor shall have demonstrated that his facility complies . . . “

² On September 29, 2009, I granted the Administrator's Motion for Summary Judgment in AWA Docket No. D-09-0139, terminated Kathy Bauck's AWA license and disqualified her for a period of two years from being relicensed. That decision was affirmed by the Judicial Officer on December 2, 2009, *In re: Kathy Bauck, an individual, d/b/a Puppy's on Wheels, a/k/a "Puppies on Wheels" and "Pick of the Litter"* 68 Agri. Dec. ____ (2009) and the case is now currently pending before the United States Court of Appeals for the Eighth Circuit.

authorized to do business in Minnesota, among other things. Docket Entry 1, Goldentyer denial letter dated September 28, 2009 attached to Demand for Fitness Hearing. Exhibit 1A, Motion for Summary Judgment.³ Since the institution of this action, additional reasons upon which a denial might be based have come to light and have been included in the documentation submitted in support of the Motion for Summary Judgment filed by the Administrator.

The exhibits submitted by the Administrator in support of the Motion for Summary Judgment clearly document the relationship between the applicant Pine Lake Enterprise Inc. as a successor entity of Pick of the Litter, Puppies on Wheels, Puppy's on Wheels at the same address as that of Kathy Bauck and the entities named against whose operation(s) the disciplinary action was taken. Although the AWA License No. 41-B-0159 was issued to Kathy Bauck, filings with the Minnesota Secretary of State from 1994 indicate that both Kathy Bauck and her husband Allan Bauck intended to or had conducted business under the assumed name of Pick of the Litter. Ex. 2, SJM. Pick of the Litter, Inc. was incorporated on March 4, 2003, with Allan and Kathy Bauck both as directors. Ex 3, SJM. Pick of the Litter, Inc. amended its articles of incorporation to change its name to Puppies on Wheels on August 22, 2008 and five days later filed an additional amendment to change the name to Puppy's on Wheels. Ex. 5,6, SJM. On October 9, 2009, a date a month after initiating the application for an AWA License in the name of Pine Lake Enterprise Inc.,⁶ a further amendment to the articles of incorporation was filed with the Minnesota Secretary of State's Office changing the name of Puppy's on Wheels to Pine Lake Enterprises Inc. Ex. 1A, 7, SJM.

³ References to the Motion for Summary Judgment and the Exhibits will hereafter be cited as Ex. SJM.

⁶ This delay provided the basis by APHIS to conclude that Pine Lake was not qualified to do business in Minnesota.

Even were Pine Lake Enterprises Inc. not a successor in interest to an entity against whom disciplinary action was brought, the record also reflects that Allan Bauck has engaged in regulated activities for which an AWA license is required without having first obtained that license by selling hundreds of dogs for resale as pets or for breeding purposes in his name. Ex. 8, H-M, SJM. While it is possible for Allan Bauck to take the position that the sales were legitimately made under Kathy Bauck's license; however, such a position would be an implicit acknowledgment that Allan Bauck was operating as an agent, employee or alter-ego of Kathy Bauck and that the application by him was an attempt to circumvent any disqualification affecting her or the entities that she operated.

Section 2.11 of the Regulations (9 C.F.R. §2.11) authorizes denial of a license for a variety of reasons, including:

(a) A license will not be issued to any applicant who:

(6) Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that issuance of a license would be contrary to the purposes of the Act.

Section 2.12 (9 C.F.R. §2.12) provides:

A license may be terminated during the license renewal process or at any other time for any reason that an initial license application may be denied pursuant to §2.11 after a hearing in accordance with the applicable rules of practice.

The Petitioner suggests that the only basis for the denial of an AWA license to the Petitioner is that Allan Bauck is the spouse of Kathy Bauck and that such a rationale harkens back to the misogynous laws prevalent during the infancy of the United States. It also questions the appropriateness of a motion for summary judgment and insists that at a

minimum it is entitled to a fitness hearing to determine its ability to carry out the provisions of the Act. The Petitioner's argument, while ostensibly logical, is without merit as despite what is suggested as being the clear mandate of the regulation, the Judicial Officer, speaking for the Secretary, has repeatedly held motions for summary judgment appropriate in cases involving the termination and denial of Animal Welfare Act licenses. *In re: Amarillo Wildlife Refuge, Inc., supra; In re Loreon Vigne, supra, In re: Mark Levinson*, 65 Agric. Dec. 1026, 1028 (2006). The Judicial Officer has also held that hearings are unnecessary and futile when there is no factual dispute of substance. *In re: Animals of Montana*, 68 Agric. Dec. ____ (2009), 2009 WL 624354 at *7 citing *Veg-Mix, Inc. v. United States Dep't of Agric.*, 832 F. 2d 601, 607 (D.C. Cir. 1987).

Accordingly, based upon the record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. The Respondent Pine Lake Enterprises Inc. is a Minnesota corporation with a mailing address in New York Mills, Minnesota.
2. The corporation previously did business under the names of "Puppy's on Wheels" and "Pick of the Litter" or "Pick of the Litter Kennels," all names also used by Kathy Bauck, an individual against whom disciplinary action was brought in AWA Docket No. D-09-0139 for being found guilty pursuant to her *Alford* plea by the Otter Tail County District Court, Criminal Division, Seventh Judicial District of the State of Minnesota, of one misdemeanor count of practicing veterinary medicine without a license in *State of Minnesota v. Kathy Jo Bauck*, 56-CR-08-1131 on May 19, 2008. Kathy Bauck was also found guilty by a jury verdict in the Otter Tail County District Court, Criminal Division,

Seventh Judicial District of the State of Minnesota, of four misdemeanor counts pertaining to animal cruelty and torture in the case of *State of Minnesota v. Kathy Jo Bauck*, 56-CR-08-2271 on or about March 29, 2009. On or about May 1, 2009, the Respondent was sentenced in 56-CR-08-2271 to be confined in the county jail for a period of 90 days (with 70 days suspended for a period of one year with specified conditions), to pay a fine of \$1,000 (of which \$500 was suspended), to be placed on formal supervised probation, to complete 80 hours of community service, and to allow inspections of her property as long as she was continuing to work with animals. On the same date, three of the four counts were vacated, leaving only Count 5 which involved torture of a Mastiff between the dates of May 14 and 24, 2008. *In re: Kathy Bauck, et al.*, 68 Agric. Dec. ____ (2009).

3. Pine Lake Enterprises Inc. is a successor in interest to entities operated by Kathy Bauck in the above cited disciplinary action, has the same address, and at the time of application was not authorized to do business in the state of Minnesota.

4. Allan Bauck is the spouse of Kathy Bauck and previously worked as an officer, agent, employee, or co-owner of the business operated by Kathy Bauck.

5. Allan Bauck either sold numerous dogs for resale use as pets or breeding purposes on behalf of Kathy Bauck or engaged in the unlicensed sale of the animals without being properly licensed under the AWA as a dealer.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Issuance of an AWA license to Pine Lake Enterprises Inc., a successor in interest to entities previously found to be unfit to hold an Animal Welfare Act license by the Secretary would be contrary to the purposes of the Act. 9 C.F.R. §2.11(a)(6).
3. Denial of the AWA license would be appropriate to anyone who had engaged in the unlicensed sale of dogs for resale as pets or breeding purposes in violation of Federal regulations pertaining to the transportation, ownership, neglect, or welfare of animals. 9 C.F.R. §2.11(a)(6).

Order

1. The denial of the application of Pine Lake Enterprises Inc. is **AFFIRMED**.
2. This Decision and Order shall become final without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to Section 1.145 of the Rules of Practice (7 C.F.R. §1.145).

Copies of this Decision and Order will be served upon the parties by the Hearing Clerk.

Done at Washington, D.C.
February 4, 2010

PETER M. DAVENPORT
Acting Chief Administrative Law Judge

Copies to: Babak Rastgoufard, Esquire
Zenas Baer & Associates