

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

AWA Docket No. D-09-0139

In re: KATHY JO BAUCK, an individual  
doing business as  
PUPPY'S ON WHEELS, also known as  
"PUPPIES ON WHEELS" and  
"PICK OF THE LITTER,"

Respondent

**DECISION AND ORDER**

This action was initiated on June 22, 2009 by the Administrator of the Animal and Plant Health Inspection Service by the filing of an Order to Show Cause as to Why Animal Welfare Act License 41-B-0159 Should Not Be Terminated. The Respondent, through her counsel filed an Answer styled as "Return to Order to Show Cause as to Why Animal Welfare Act License Should Not Be Terminated" on July 15, 2009.

On August 13, 2009, the Administrator filed a Motion for Summary Judgment and on September 15, 2009, the Respondent responded with "Respondent's Return to Complainant's Motion for Summary Judgment."

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 order revocation of the Respondent's license with a period of disqualification as set forth in the Order which is a part of this Decision.

## Discussion

The Animal Welfare Act (the Act) 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).<sup>1</sup> The power to require and to issue licenses under the Act includes the power to terminate a license and 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) has alleged that the Respondent is unfit to be licensed as a dealer under the Animal Welfare Act based upon evidence that the Respondent (the individual) was found guilty by Minnesota courts on two occasions of criminal charges, the first being pursuant to an *Alford* plea to a single misdemeanor count of practicing veterinary medicine without a license or temporary permit<sup>2</sup> and the second, a jury conviction of four misdemeanor counts of animal cruelty or torture.<sup>3</sup>

In her Answer, the Respondent has admitted being convicted on both occasions,<sup>4</sup> but asserts that her *Alford* plea in the first case did not pertain to animal cruelty or ownership, neglect or welfare of animals and seeks to avoid responsibility in the second case by alleging that she was the victim of exogenous artifice and trick, fraud and misrepresentation of a malicious employee of the Respondent who was also acting as an agent and employee of Companion Animal Protection Society and who deliberately,

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

<sup>2</sup> *State of Minnesota v. Kathy Jo Bauck*, 56-CR-08-1131.

<sup>3</sup> *State of Minnesota v. Kathy Jo Bauck*, 56-CR-08-2271.

<sup>4</sup> Respondent’s Return ¶ 14-17; 21-25.

intentionally and cruelly deprived an English Mastiff of food and water for the purpose of the destruction of the Pick of the Litter Kennel business. Even assuming *pro arguendo* that the conviction pursuant to her *Alford* plea did not pertain either to animal cruelty or to transportation, ownership, neglect or welfare of animals, the second case presents an insurmountable obstacle for the Respondent to overcome.

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:

(4) Has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty, within one year of application, or after one year if the Administrator determines that the circumstances render the applicant unfit to be licensed.

....

(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.

As the second conviction clearly comes within either, if not both, of the above provisions, it is necessary to examine whether the Respondent may: (a) preterm her obligation to supervise her employees and avoid liability by passing the responsibility onto another more directly culpable of misconduct or, (b) whether strict liability should

be imposed using the doctrine of *respondeat superior*. One has to look no further than Section 2139 of the Animal Welfare Act (AWA) to find those answers.

Section 2139 (7 U.S.C. §2139) provides:

When construing or enforcing the provisions of this chapter, the act, omission, failure of any person acting for or employed by ....a dealer...within the scope of his employment or office, shall be deemed the act, omission, failure of such ...dealer...as well as such person.

The Respondent questions the appropriateness of a motion for summary judgment and insists that a hearing is clearly mandated by the Regulation cited as it indicates that a license may be terminated “after a hearing in accordance with the applicable rules of practice.” 9 C.F.R. §2.12. The Petitioner’s argument, while ostensibly logical, is without merit as despite what is argued 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 based upon prior criminal convictions. *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 Kathy Jo Bauck is an individual who has a mailing address in New York Mills, Minnesota.
2. The Respondent operates a regulated business as a dealer under the Animal Welfare Act and has been licensed under the Act and Regulations for many years, holding Animal Welfare License No. 41-B-0159.
3. The Respondent does or has done business under the names of “Puppy’s on Wheels” and “Pick of the Litter” or “Pick of the Litter Kennels.”
4. On or about May 19, 2008, the Respondent was 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. Attachment B, OSC.
5. On or about March 29, 2009, the Respondent was 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. Attachment D, OSC. 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. Attachment E, OSC.

### **Conclusions of Law**

1. The Secretary has jurisdiction in this matter.
2. The Respondent, having been found guilty of a single criminal misdemeanor count of torturing a Mastiff between the dates of May 14 and May 24, 2008 by the Otter Tail District Court, Criminal Division, Seventh Judicial District of the State of Minnesota in 56-CR-08-2271 is found to be unfit to hold an Animal Welfare Act license. 7 C.F.R. §2.11(a)(4) and (6); and §2.12.
3. The Respondent, having been found guilty by a jury verdict in the Otter Tail County District Court, Criminal Division, Seventh Judicial District of the State of Minnesota, of a misdemeanor count pertaining to animal cruelty and torture in the case of *State of Minnesota v. Kathy Jo Bauck*, 56-CR-08-2271 is found to be unfit to hold an Animal Welfare Act license. 7 C.F.R. §2.11(a)(4) and (6); and §2.12.

### **Order**

1. Respondent's Animal Welfare Act License No. 41-B-0159 is terminated.
2. The Respondent is disqualified for a period of 2 years from becoming licensed under the Animal Welfare Act or otherwise obtaining, holding, or using an Animal Welfare Act license, directly or indirectly through any corporate or other device or person.
3. 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.  
September 29, 2009

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**PETER M. DAVENPORT**  
Administrative Law Judge

Copies to:     Babak Rastgoufard, Esquire  
                  Zenas Baer & Associates

Hearing Clerk's Office  
U.S. Department of Agriculture  
1400 Independence Avenue SW  
Room 1031, South Building  
Washington, D.C. 20250-9203  
202-720-4443  
Fax:           202-720-9776