

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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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.

AWA No. D-09-0139

COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT

Complainant, the Administrator of the Animal and Plant Health Inspection Service ("APHIS"), respectfully submits this motion for summary judgment, pursuant to 7 C.F.R. § 1.143. Based upon the pleadings and the evidence submitted in the above-captioned matter, summary judgment should be granted and a judgment and order should be issued terminating Animal Welfare Act license number 41-B-0159, issued to "KATHY BAUCK". Additionally, a judgment and order should be issued finding that respondent Kathy Jo Bauck d/b/a Puppy's On Wheels, a/k/a "Puppies On Wheels" and "Pick of the Litter" (hereinafter "respondent" or "Bauck"), who has violated State laws and regulations pertaining to "animal cruelty" and to the "transportation, ownership, neglect, or welfare of animals," is unfit to be licensed under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) (the "Act" or "AWA") and the Regulations and Standards issued pursuant to the Act (9 C.F.R. §§ 1.1-3.142)

(the "regulations" or "AWA regulations"), and that allowing respondent Bauck to retain an AWA license would be contrary to the purposes of the Act. Respondent's Animal Welfare Act license (license number 41-B-0159, issued to "KATHY BAUCK") should be terminated and respondent should be disqualified from obtaining an Animal Welfare Act license for a period of no less than two years, pursuant to sections 2133 and 2151 of the Act and sections 2.11 and 2.12 of the regulations. 7 U.S.C. §§ 2133, 2151; 9 C.F.R. §§ 2.11, 2.12.

Based upon the pleadings and the other evidence that has been submitted, the only issues to be resolved are questions of law. The material facts in this case are not in dispute, and summary judgment can be achieved by relying upon the pleadings, matters incorporated by reference in the pleadings, facts of which the Administrative Law Judge may take official notice, and the other evidence that has been submitted, such as declarations and admissions.

Background and Facts

Between April 2008 and May 2009, respondent Kathy Jo Bauck has been the defendant in two criminal prosecutions against her by the State of Minnesota. See Order to Show Cause [hereinafter "OSC"] ¶ 1; Respondent's Return to OSC [hereinafter "Resp. Ret." or "answer"] ¶ 4 (admitting allegations). Both of these prosecutions involved allegations against Bauck of animal cruelty and torture, and of practicing veterinary medicine without a license or permit, in violation of various Minnesota statutes. See OSC ¶ 2; Resp. Ret. ¶ 5. In the first action, State of Minnesota vs. Kathy Jo Bauck, 56-CR-08-1131 (the "1131 case"), respondent pled guilty (in response to six charges against her) to one gross misdemeanor count of practicing veterinary medicine without having first secured a veterinary license or temporary permit, in violation of Minn. Stat. § 156.10. See OSC ¶¶ 3, 11-19; Resp. Ret. ¶¶ 6, 14-20 (admitting material allegations). In the second action, State of Minnesota vs. Kathy Jo Bauck, 56-CR-08-

2271 (the "2271 case"), respondent was convicted by a jury on four counts, all pertaining to animal cruelty or torture; specifically, one gross misdemeanor count of "Mistreatment of Animal—Torture" and three misdemeanor counts of "Mistreatment of Animal—cruelty" and "Mistreatment of Animal—Torture", all in violation of Minn. Stat. § 343.21. See OSC ¶¶ 4, 20-30; Resp. Ret. ¶¶ 7, 21-26 (admitting material allegations).¹ Three of these four counts were vacated. See OSC ¶ 28.

These material facts are not in dispute. They have been admitted by respondent in her answer, and, as these undisputed facts demonstrate, respondent has violated State laws and regulations pertaining to "animal cruelty" and to the "transportation, ownership, neglect, or welfare of animals." 9 C.F.R. §§ 2.11(a)(4); 2.11(a)(6).

The Act provides that the "Secretary shall issue licenses to dealers and exhibitors . . . in such form and manner as he may prescribe." 7 U.S.C. § 2133. As the Judicial Officer has repeatedly held, this statutory "power to require and issue licenses under the Animal Welfare Act includes the power to terminate a license and to disqualify a person from becoming licensed." In re Animals of Montana, Inc., 68 Agric. Dec. ____, ____, 2009 WL 624354, at *2 (U.S.D.A. March 10, 2009) (opinion of Judicial Officer) (collecting cases). Sections 2.11(a) and 2.12 of the AWA regulations specify the bases for terminating AWA licenses and disqualifying a person from becoming licensed. 9 C.F.R. §§ 2.11(a), 2.12.

Argument

The material facts here are uncontroverted and the law is clear: violations of State laws pertaining to animal cruelty and torture, and to the transportation, ownership, neglect or welfare of animals, warrant termination of respondent's AWA license and her disqualification from obtaining an AWA license for a period of not less than 2 years. Based upon respondent's

¹ The jury verdict forms from the "2271" case appear as Attachment D to the OSC. See OSC ¶ 25; Resp. Ret. ¶ 24.

admissions in her answer, as well as the pleadings, matters incorporated by reference in the pleadings, facts of which the Administrative Law Judge may take official notice, and the other evidence that has been submitted, such as declarations and admissions, this case can be resolved without a hearing, as there are no issues of material fact.

I. Summary Judgment Is the Appropriate Means for Terminating Respondent's AWA License Based on Her Prior Criminal Convictions for Animal Cruelty and Torture and Other Minnesota Animal Laws.

The Judicial Officer has "repeatedly found summary judgment appropriate in cases involving the termination and denial of Animal Welfare Act licenses based upon prior criminal convictions." Animals of Montana, 68 Agric. Dec. at ____, 2009 WL 624354, at *7 (collecting cases). Here, there are no issues of material fact and a summary judgment terminating respondent's AWA license and disqualifying her from obtaining an AWA license for a period of no less than 2 years is warranted in law and justified by the evidence. As the Judicial Officer has stated, "[h]earings are futile where, as in the instant proceeding, there is no factual dispute of substance." Id. (citing Veg-Mix, Inc. v. United States Dep't of Agric., 832 F.2d 601, 607 (D.C. Cir. 1987)).

The "1131" case. Respondent does not dispute that on or about April-May 2008 she was charged with having committed no fewer than five violations of Minnesota state law pertaining to the improper administration of veterinary services to animals and charged with having committed no fewer than one violation of Minnesota state law pertaining to animal cruelty (State of Minnesota vs. Kathy Jo Bauck, 56-CR-08-1131) and that in response to these allegations, respondent pled guilty to one count² of practicing veterinary medicine without

² In the statement of probable cause that accompanied the complaint and summons, the Deputy Sheriff for the County of Otter Tail, Minnesota, noted that "[i]n an interview conducted by Investigator Earl Fleck of the Office of the Attorney General on July 21, 2006, with the defendant [Bauck], she admitted she had performed tail dockings on

having first secured a veterinary license or temporary permit, in violation of Minn. Stat. § 156.10. OSC ¶¶ 11-14; Resp. Ret. ¶¶ 14-17. As a result of her guilty plea, respondent, as admitted in her answer, was sentenced to 120 days in the Otter Tail County Jail (with 110 days stayed for two years, provided certain other conditions were met, 5 days served with credit and 40 hours of community service work to be performed for the balance of 5 days) and ordered to pay a fine of \$900. OSC ¶¶ 16, 18; Resp. Ret. ¶¶ 18-19. Respondent was also ordered to be placed on informal, unsupervised probation and ordered to cease all practices that would be considered veterinary practice. OSC ¶¶ 16-19; Resp. Ret. ¶ 19. These facts are not in dispute. They have been admitted by respondent in her answer and are supported by the documentary evidence attached to the Order to Show Cause, the authenticity of which respondent does not dispute. See, e.g., Resp. Ret. ¶ 16.

The "2271" case. Likewise, respondent does not dispute that in March-May 2009, she was charged with having committed no fewer than six violations of Minnesota state law pertaining to animal cruelty and torture (State of Minnesota vs. Kathy Jo Bauck, 56-CR-08-2271) and that a jury hearing her case found respondent guilty on four counts of violating Minnesota state laws pertaining to animal cruelty and torture, of which three of these counts were vacated. OSC ¶¶ 20-29; Resp. Ret. ¶¶ 21-25. As a result of her conviction, respondent, as admitted in her answer, was sentenced to 90 days in the Otter Tail County Jail (with 70 days stayed for one year, provided certain other conditions were met) and ordered to pay a fine of \$1000 (with \$500 suspended). OSC ¶¶ 26, 29; Resp. Ret. ¶ 25. Respondent was also placed on formal, supervised probation, was ordered to complete 80 hours of community service work, and ordered to allow, so as long as respondent was continuing to work with animals, certain

puppies she owned, performed Cesarean sections on dogs she owned, performed hernia repairs on puppies or dogs she owned and removed dew claws on puppies or dogs she owned, and vaccinations to puppies after she sold them." OSC Att. A at p. 3.

inspections of her property. Id. These facts are likewise not in dispute. They have been admitted by respondent in her answer and are also supported by the documentary evidence attached to the Order to Show Cause, the authenticity of which respondent does not dispute. See, e.g., id.

As in Animals of Montana, or any of the cases cited therein,³ summary judgment is the appropriate means for terminating Bauck's license based on her undisputed violations of Minnesota State laws and regulations pertaining to animal cruelty and to the transportation, ownership, neglect, or welfare of animals. See Animals of Montana, 68 Agric. Dec. at ___, 2009 WL 624354, at *7; see also, e.g., In re Amarillo Wildlife Refuge, Inc., 68 Agric. Dec. ___, ___ 2009 WL 248415, at *1-2 (U.S.D.A. Jan. 6, 2009) (opinion of Judicial Officer) (granting administrator's motion for summary judgment to terminate AWA license based on criminal conviction for violations of the Endangered Species Act, notwithstanding licensee's request for an oral hearing). Specifically, here, there is no material dispute that respondent pled guilty to practicing veterinary medicine without a license (the "1131" case) nor any material dispute that respondent was convicted and found guilty by a jury of animal cruelty, specifically, "Mistreatment of Animal—Torture, in violation of Minn. Stat. § 343.21, Subd. 1 and 9(a)" (the "2271" case). OSC ¶¶ 20-29; Resp. Ret. ¶¶ 21-25; OSC Att. D.⁴

³ In re Amarillo Wildlife Refuge, Inc., 68 Agric. Dec. ___, 2009 WL 248415 (U.S.D.A. Jan. 6, 2009) (opinion of Judicial Officer) (license termination); In re Loreon Vigne, 67 Agric. Dec. ___, 2008 WL 511321 (U.S.D.A. Nov. 18, 2008) (opinion of Judicial Officer) (license termination); In re Mark Levinson, 65 Agric. Dec. 1026, 2006 WL 2685397 (U.S.D.A. Sept. 11, 2006) (opinion of Judicial Officer) (denial of license application).

⁴ Subdivision 1 (entitled, "Torture") of section 343.21 (entitled, "Overworking or mistreating animals; penalty") of the Minnesota statute provides that, "[n]o person shall overdrive, overload, torture, cruelly beat, neglect, or unjustifiably injure, maim, mutilate, or kill any animal, or cruelly work any animal when it is unfit for labor, whether it belongs to that person or to another person." Subdivision 9 (entitled, "Penalty") provides, "(a) Except as otherwise provided in this subdivision, a person who fails to comply with any provision of this section is guilty of a misdemeanor. A person convicted of a second or subsequent violation of subdivision 1 or 7 within five years of a previous violation of subdivision 1 or 7 is guilty of a gross misdemeanor."

Respondent does not -- and cannot -- dispute these facts, or the fact that she violated Minnesota State laws and regulations pertaining to animal cruelty and to the transportation, ownership, neglect, or welfare of animals. Instead, respondent attempts: (1) to suggest that her guilty plea in the "1131" case should be discounted because, despite her plea, she never "admit[ted] guilt" (see, e.g., Resp. Ret. ¶¶ 6, 17); (2) and in regards to her criminal conviction in the "2271" case, attempts to shift responsibility upon others for her conviction. See, e.g., Resp. Ret. ¶¶ 22, 26. Neither argument has merit.

Respondent cannot escape the effects of her guilty plea in the "1131" case on the grounds that "she plead guilty [to one count of practicing veterinary medicine without a license in response to a six-count complaint and summons and finding of probable cause]⁵ on an Alford basis." Resp. Ret. ¶ 6. Respondent's argument (that somehow a guilty plea based on North Carolina v. Alford, 400 U.S. 25 (1970), in which respondent avers she did not "admit" guilt should render her immune from the provisions of 9 C.F.R. §§ 2.11, 2.12) has no merit. Bauck's guilty plea is simply that -- a guilty plea. At most, and viewed in a light most favorable to respondent, it could be viewed as akin to a plea of nolo contendere or no contest. Minnesota, the state in which Bauck entered her plea, however, does not recognize a plea of no contest (see Minn. R. Crim. P. 14.01 (listing permitted pleas)) and, moreover, Minnesota courts have made little distinction between a plea of nolo contendere and a conviction or guilty plea. See, e.g., State v. Edmison, 398 N.W.2d 584, 588 (Minn. Ct. App. 1986). More importantly, the AWA regulations make no distinction between a plea of nolo contendere and a conviction or guilty

⁵ The complaint and summons and finding of probable cause alleged that respondent had committed no fewer than five violations of Minnesota state law pertaining to the improper administration of veterinary services to animals and no fewer than one violation of Minnesota state law pertaining to animal cruelty. See OSC Att. A. In the statement of probable cause that accompanied the complaint and summons, the Deputy Sheriff for the County of Otter Tail, Minnesota, noted that Bauck admitted to performing surgeries, such as Cesarean sections and hernia repairs, on puppies or dogs she owned. OSC Att. A at p. 3

plea. See 9 C.F.R. §§ 2.11(a)(4), 2.11(a)(6), 2.12. Notably, respondent does not (and cannot) dispute the fact that her guilty plea in the "1131" case resulted in respondent being sentenced to 120 days in the Otter Tail County Jail (with 110 days stayed for two years, provided certain other conditions were met, 5 days served with credit and 40 hours of community service work to be performed for the balance of 5 days) and ordered to pay a fine of \$900. See OSC ¶ 15; Resp. Ret. ¶ 18. Thus, there is no dispute that as a result of her guilty plea, Bauck was convicted and sentenced. Accordingly, for purposes of terminating her AWA license, it is irrelevant that Bauck "plead guilty on an Alford basis."

Likewise, respondent cannot escape the effects of having been convicted, by a jury sitting in the County of Otter Tail, District Court, Seventh Judicial District, Criminal Division, of "Mistreatment of Animal—Torture" by suggesting that others are to blame for her actions and conviction. Specifically, respondent attempts to escape the effects of her conviction in the "2271" case by attempting to suggest that someone else is to blame and that it was not even the State of Minnesota that convicted her of animal cruelty and torture. Specifically, Bauck avers that she was convicted due to the "deliberate willful and wanton acts" of another and, moreover, "denies . . . that the charges in Otter Tail County Court File 56-CR-08-2271 were the results of actions taken by Otter Tail County but rather the actions taken by a vigilante . . . so as to skirt the Fourth Amendment privileges enjoyed by Bauck and allow the fabrication of evidence." Resp. Ret. ¶¶ 22, 26. Respondent's claim -- that evidence was fabricated and others are to blame -- is belied by respondent's admissions and the unconverted evidence that respondent was convicted and sentenced to animal cruelty by the State of Minnesota. Specifically, respondent was found guilty by a jury of "Mistreatment of Animal—Torture, in violation of Minn. Stat. § 343.21, Subd. 1 and 9(a), against a Mastiff, on or between May 14 and

24, 2008, in Otter Tail County, as charged in Count 5 of the Complaint.” OSC Att. D; OSC ¶¶ 22-29; Resp. Ret. ¶¶ 23-25. Despite respondent’s suggestions to the contrary, respondent cannot relitigate her criminal conviction. See, e.g., Amarillo Wildlife, 68 Agric. Dec. at ___, 2009 WL 248415, at *8 (rejecting “attempt to relitigate [respondent’s] criminal conviction in this forum”).⁶ Accordingly, respondent cannot escape the effects of her guilty plea in the “2271” case or attempt to shift responsibility upon others for her conviction of animal torture.

There is no factual dispute of substance and, as a result, summary judgment is the proper means for terminating respondent’s AWA license based on her prior criminal convictions for animal cruelty and other Minnesota animal laws.

II. Respondent’s violations of Minnesota Animal Cruelty and Other Animal Laws Necessitate and Justify Termination of Her AWA License.

Respondent’s violations of Minnesota laws and regulations pertaining to “animal cruelty” and to the “transportation, ownership, neglect, or welfare of animals,” and, in particular, her criminal conviction in the “2271” case, require termination of her AWA license. The facts here strongly support terminating respondent’s AWA license and disqualifying respondent from obtaining an AWA license for no less than two years. To do otherwise would be to ignore completely the criminal manner in which respondent was convicted of running her AWA-licensed kennel, and would entirely undermine the State of Minnesota’s criminal prosecution and conviction of respondent. Moreover, insuring the “humane care and treatment” of animals is one of the hallmark purposes of the Act and animal torture (or cruelty) at an AWA-licensed facility is wholly (and clearly) inconsistent with this fundamental purpose of the Act.

⁶ Unlike criminal trials, in which the burden of proof is obviously “beyond a reasonable doubt,” the standard of proof in matters before the Secretary is “preponderance of the evidence.” See, e.g., In re Lorenza Pearson, 68 Agric. Dec. ___, ___, 2009 WL 2134028, at *28 (U.S.D.A. July 13, 2009) (opinion of Judicial Officer) (collecting cases).

A. Prior criminal convictions of animal cruelty authorize the termination of an AWA license.

The Judicial Officer has repeatedly upheld the termination (and denial) of Animal Welfare Act licenses based upon prior criminal convictions for animal cruelty and/or for the unlawful transportation, ownership, neglect or welfare of animals. See, e.g., Animals of Montana, 68 Agric. Dec. at ____, 2009 WL 624354, at *7 (collecting cases). Sections 2.11 and 2.12 of the regulations authorize the termination of an AWA license in several instances, including where the licensee has: (1) 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 the past year; (2) pled nolo contendere (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty outside of the past year, if the Administrator of APHIS determines that the circumstances render the licensee unfit to be licensed; (3) 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 (4) is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act. See 9 C.F.R. §§ 2.11(a); 2.12.⁷ Here, any one of these bases authorizes and justifies termination of respondent's AWA license.

B. Respondent's conviction for animal cruelty warrants termination of her AWA license.

The undisputed facts establish that respondent has operated her AWA-licensed kennel in a criminally-improper manner. In the "2271" case, respondent was found guilty on four counts of animal cruelty. Although respondent avers that three of these counts were vacated

⁷ Section 2.12 of the regulations (9 C.F.R. § 2.12) states that "[a] license may be terminated . . . at any . . . time for any reason that an initial license application may be denied pursuant to § 2.11. . ." Section 2.11(a) of regulations (9 C.F.R. § 2.11(a)) lists several bases upon which a "license will not be issued."

because they were “redundant,” this assertion is belied by the evidence. Specifically, respondent was found guilty on counts 3, 4, 5 and 6, but counts 3, 4 and 6 were vacated. Respondent attempts to argue these counts were vacated because they were duplicative of count 5. Count 5, however, pertains to events involving a “Mastiff” that took place “between May 14 and 24, 2008,” while the counts 3, 4 and 6 pertain to events that took place on various dates ranging from April 18, 2008 to May 29, 2008. See OSC Att. C. Thus, counts 3, 4 and 6 are not “redundant” of count 5, despite respondent’s arguments to the contrary.

Nevertheless, even assuming, arguendo, that the counts were duplicative or redundant, there is no dispute that in the “2271” case, respondent was found guilty (and convicted and sentenced) on count 5 (“Mistreatment of Animal—Torture”), and that this count was not vacated. OSC ¶¶ 20-29; Resp. Ret. ¶¶ 21-25; OSC Att. D. The jury verdict form for count 5 reads as follows: “We, the Jury, find the Defendant, Kathy Jo Bauck, as to the charge of Mistreatment of Animal—Torture, in violation of Minn. Stat. § 343.21, Subd. 1 and 9(a), against a Mastiff, on or between May 14 and 24, 2008, in Otter Tail County, as charged in Count 5 of the Complaint **Guilty.**” OSC Att. D.⁸ The exact criminal offense, of which respondent was found guilty, is explained in the statement of probable cause that accompanied the complaint:

“On May 14, 2008, Smith was directed by another worker [at Bauck’s facility] to take an emaciated male Mastiff out of his cage and put in another. The dog had bloody sores on his front elbows, and the left elbow had what appeared to be a chunk of flesh about an inch wide and three inches long torn off of it, revealing a bloody hole about an inch deep in scar tissue. Defendant [Bauck] ripped the hanging chunk of dead flesh off the dog with her hand when it was pointed out to her. Defendant [Bauck] told worker Larry that the dog needed a shot of ‘pen gen’ meaning penicillin antibiotic combination. Smith also pointed out to Defendant [Bauck] that the dog had a snotty nose as well. After a week, there had

⁸ The complaint to which this jury verdict form refers states as follows: “That between May 14, 2008, and May 24, 2008, within the County of Otter Tail, one Kathy Jo Bauck, the defendant, did torture, neglect or unjustifiably injure, maim, mutilate or kill any animal whether it belongs to that person or another person, specifically, a Mastiff.” OSC Att. C.

still been no weight gain on the English Mastiff and on May 24, 2008, Smith heard another worker refer to the dog as 'still seizing.' At around 12:21 p.m., Smith noted the dog was lying on the ground with blood and saliva spilling out of its mouth. Smith learned that the dog had been seizing all day. Defendant [Bauck] said that Alan [Bauck] had to put the dog down and told workers to find him immediately. Defendant [Bauck] also had Smith get the Shih Tzu with the injured eye in a pen so that Alan [Bauck] could kill that dog as well..."

OSC Att. C.

Under Minnesota State law, respondent's actions constitute animal torture. See Minn. Stat. § 343.21. Nothing, however, can be further from the purposes of the Act than for animal or torture cruelty to take place at an AWA-licensed facility. Accordingly, those individuals⁹ who have been found guilty of animal cruelty (especially animal cruelty at an AWA-licensed facility) are simply unfit to be licensed. One of the Congressionally-stated purposes of the Act is "to insure that animals . . . are provided humane care and treatment . . . [and] to assure the humane treatment of animals . . . in commerce." 7 U.S.C. § 2131. In enacting (and subsequently amending) the Act, Congress has recognized the importance of ensuring the humane care and treatment of animals. For instance, in 1970, Congress amended the Act and changed its popular name from the "Laboratory Animal Welfare Act" to the "Animal Welfare Act of 1970". In so doing, Congress, among other things, also: expanded the definition of animal, to include animal exhibitors and dealers; strengthened the Secretary's enforcement power by broadening the definition of "commerce" and the Secretary's investigatory powers; and strengthened the Secretary's enforcement power by increasing penalties for certain violations.

⁹ See also 7 U.S.C. § 2139, 9 C.F.R. §§ 2.9-2.11 (establishing principal-agent relationship and extending licensing sanctions to directors, officers and agents); Amarillo Wildlife, 68 Agric. Dec. at ___, 2009 WL 248415, at *7 (upholding license denial under circumstances that would circumvent an order terminating an AWA license).

See Animal Welfare Act of 1970, Pub. L. No. 91-579, 84 Stat. 1560.¹⁰ In the House Report¹¹ that accompanied the Animal Welfare Act of 1970, Congress made the following findings:

“

GENERAL STATEMENT

“This bill represents a continuing commitment by Congress to the ethic of kindness to dumb animals.

“Beginning with the legislation passed in 1966 (Public Law 89-544), the United States Government has implemented a statutory mandate that small helpless creatures deserve the care and protection of a strong and enlightened public. This bill strengthens the administration of that Act, and it expands the perimeters of its protection to more animals and to more people who handle, exhibit, buy or sell, or transport them or who use them in the pursuit of medical and scientific knowledge.

“It reflects the philosophy of caring for animals enunciated by W. D. Hoard in 1885 who said: ‘The stupid brutishness of men who are too ignorant of their own interests to be gentle and humane finds, at last, sharp punishment, for God, ever just to the least of his creatures, denies such men profit or prosperity and thereat all good men say, ‘Amen!’”

H.R. Rep. 91-1651, at 1 (1970).

Because insuring that animals are provided humane care and treatment is a pillar of the AWA, respondent’s conviction in the “2271” case of “Mistreatment of Animal—Torture” requires termination of her AWA license. Allowing respondent (or any licensee convicted of animal torture) to retain her AWA license would simply eviscerate the entire statutory scheme upon which the Act is based and allow licensees to profit from criminal activity. See also Decl. of Elizabeth Goldentyer, D.V.M. (attached hereto) [hereinafter “Goldentyer Decl.”].

In addition, failing to terminate respondent’s license would undermine the State of Minnesota and send a signal to state and local governments that the federal government turns a

¹⁰ Congress most recently amended the AWA on June 18, 2008, when civil penalty for violations of Act was increased to \$10,000. See Food, Conservation, and Energy Act of 2008, Pub. L. 110-246, Title IX, § 14214, 122 Stat. 2228 (2008).

¹¹ The report of the House was the only report to accompany Pub. L. No. 91-579.

blind eye to their efforts to combat animal cruelty and torture. See also *id.* at ¶ 17. On the other hand, terminating respondent's license would be consistent with the Act, which, in addition to being enacted to insure the human care and treatment of animals, requires the Secretary to "cooperate with Federal departments, agencies, or instrumentalities concerned with the welfare of animals" and explicitly authorizes the Secretary "to cooperate with the officials of the various States or political subdivisions thereof in carrying out the purposes of this chapter and of any State, local, or municipal legislation or ordinance on the same subject." 7 U.S.C. § 2145(a), (b) (emphasis added); see also Goldentyer Decl. at ¶¶ 3-8. Indeed, in the proposal to amend the regulations to add section 2.12, APHIS stated that, "We believe that persons who have violated any Federal, State, or local laws or regulations pertaining to animal cruelty, negligence, transportation, ownership, neglect, or animal welfare would be unfit for a license under our regulations." Animal Welfare; Inspection, Licensing, and Procurement of Animals, 65 Fed. Reg. 47908, 47911 (Aug. 4, 2000); see also Goldentyer Decl. ¶¶ 7-8. Here, as a result of how respondent operated her kennel, the State of Minnesota charged and, in May 2009, convicted respondent of animal torture. Additionally, after reviewing the evidence gathered by the State, APHIS has determined that respondent is unfit to maintain her AWA license and that allowing respondent to maintain an AWA license would be inconsistent with the Act. See Goldentyer Decl. ¶¶ 11, 15-17.¹² As a result, terminating respondent's AWA license is consistent with the Act and consistent with the notion of cooperative enforcement by and between APHIS and the State of Minnesota, of laws pertaining to "animal cruelty" and to the "transportation, ownership, neglect, or welfare of animals."

¹² Even without APHIS having made these determinations, respondent's conviction of animal torture in May 2009 is, in and of itself, a sufficient basis for terminating respondent's AWA license. See 9 C.F.R. §§ 2.11(a)(4), 2.12 (authorizing the termination of an AWA license on several bases, including solely on the basis of an animal cruelty conviction within the past year).

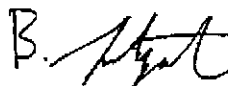
Any individual who is convicted of animal torture at an AWA-licensed facility should not be eligible to maintain an AWA license, without at least some minimally-adequate period of disqualification. Here, respondent's violations of Minnesota laws and regulations pertaining to "animal cruelty" and to the "transportation, ownership, neglect, or welfare of animals," and, in particular, her criminal conviction in the "2271" case, require terminating her AWA license and disqualifying respondent from obtaining an AWA license for no less than two years. See Goldentyer Decl.

Conclusion

For the foregoing reasons, complainant's motion for summary judgment should be granted and a judgment and order should be issued terminating Animal Welfare Act license number 41-B-0159, issued to "KATHY BAUCK", and disqualifying respondent from obtaining an Animal Welfare Act license for a period of no less than two years, pursuant to sections 2133 and 2151 of the Act and sections 2.11 and 2.12 of the regulations. 7 U.S.C. §§ 2133, 2151; 9 C.F.R. §§ 2.11, 2.12.

August 13, 2009

Respectfully submitted,



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

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.

AWA No. D-09-0139

**DECLARATION OF ELIZABETH GOLDENTYER, D.V.M., IN SUPPORT OF
COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT**

I declare that my name is Elizabeth Goldentyer, I am over the age of eighteen and I am fully competent to make this declaration. I know each of the facts set forth herein based on personal firsthand knowledge:

1. I am the Eastern Regional Director of Animal Care, Animal and Plant Health Inspection Service ("APHIS"), United States Department of Agriculture ("USDA"). I have held this position for the past 12 years. I have been employed with the USDA for the past 21 years and, during this entire time, have been involved with what is today known as the Animal Care division of APHIS. As Eastern Regional Director, one of my duties is to manage the implementation and enforcement of the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) (the "Act" or "AWA"), and the regulations and standards issued pursuant to the Act (9 C.F.R. §§ 1.1-3.142) (the "regulations" or "AWA regulations"), as to animal dealers. I make this

declaration in support of complainant's motion for summary judgment in the above-captioned matter, in which complainant seeks to terminate the Animal Welfare Act license issued to Kathy Jo Bauck d/b/a Puppy's On Wheels, a/k/a "Puppies On Wheels" and "Pick of the Litter" (hereinafter "Bauck"), AWA license number 41-B-0159, issued to "KATHY BAUCK", based on Bauck's criminal conviction in State of Minnesota vs. Kathy Jo Bauck, 56-CR-08-2271.

2. In State of Minnesota vs. Kathy Jo Bauck, 56-CR-08-2271, Bauck was tried and convicted of violating various Minnesota state laws pertaining to animal cruelty and torture, notably in count 5, of violating Minn. Stat. § 343.21, Subd. 1 and 9(a) "Mistreatment of Animal—Torture."

3. Many states, such as State of Minnesota, have their own laws and regulations pertaining to the humane treatment and/or welfare of animals, some of which overlap with the AWA and/or AWA regulations. In light of this, the AWA requires the Secretary to "cooperate with Federal departments, agencies, or instrumentalities concerned with the welfare of animals" and explicitly authorizes the Secretary "to cooperate with the officials of the various States or political subdivisions thereof in carrying out the purposes of this chapter and of any State, local, or municipal legislation or ordinance on the same subject." 7 U.S.C. § 2145(a), (b).

4. One reason APHIS will cooperate with States is because agency resources are limited and APHIS can inspect facilities only a limited number of times. For instance, in the Eastern Region, which covers those states east of Mississippi river, there are approximately 4,048 facilities licensed under the AWA and approximately 48 Animal Care Inspectors and/or Veterinary Medical Officers to inspect those facilities.

5. In addition, it can, in some circumstances, be difficult for APHIS inspectors to discover instances of animal cruelty or torture. For example, APHIS inspectors will

typically only visit a facility once or twice a year, and such inspections are almost always dependent upon the licensee's cooperation and assistance. Thus, APHIS frequently cannot detect or document what happens at facilities when no APHIS inspector is present, or what happens at facilities when a licensee is uncooperative and/or refuses to grant APHIS access to all or part of a licensee's facility.

6. For these and other reasons, APHIS, as authorized by the AWA, will often cooperate with State officials in carrying out the purposes of the AWA. Amongst other things, one of the purposes of the AWA is "to insure that animals . . . are provided humane care and treatment . . . [and] to assure the humane treatment of animals . . . in commerce." 7 U.S.C. § 2131.

7. In August 2004, APHIS amended the AWA regulations to specifically empower the agency to deny or terminate an AWA license when, amongst other things, a person "has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty." 9 C.F.R. §§ 2.11(a)(4), 2.12. Additionally, APHIS amended the AWA regulations to specifically empower the agency to deny or terminate an AWA license when, amongst other things, a person "has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals." 9 C.F.R. §§ 2.11(a)(6), 2.12.

8. APHIS amended the AWA regulations because it believes that persons who have violated any Federal, State, or local laws or regulations pertaining to animal cruelty, negligence, transportation, ownership, neglect, or animal welfare are unfit for a license under the AWA.

9. I know Kathy Jo Bauck to be an Animal Welfare Act licensee who engages in AWA-regulated activities. I also know Kathy Jo Bauck to engage in these activities under various names, including "Kathy Jo Bauck", "Puppy's on Wheels", "Puppies on Wheels" and "Pick of the Litter", and to engage in these activities (and/or under these various names) with, amongst others, "Alan Bauck" and "Corinne Peters".

10. Earlier this year, I learned that a jury found Kathy Jo Bauck guilty of animal torture, specifically, "Mistreatment of Animal—Torture", in violation of Minn. Stat. § 343.21, Subd. 1 and 9(a).

11. Thereafter, I determined that respondent Kathy Jo Bauck, as well as her agents and entities through which she engages in AWA-regulated activities, are unfit to hold an AWA license based on Bauck's criminal violation of a State law aimed at protecting animals (Minn. Stat. § 343.21).

12. Specifically, Bauck violated Minn. Stat. § 343.21 by mistreating and torturing, as defined in Minn. Stat. § 342.21(a), a mastiff.

13. The jury hearing Bauck's criminal case also found Bauck guilty on three other counts of Minnesota state law, all of which pertained to animal cruelty and torture.

14. In committing these violations of Minnesota state laws pertaining to animal cruelty and torture, Bauck was also operating as a "dealer," as defined in the AWA, and used her AWA-licensed facility to illegally mistreat and torture a mastiff, amongst other things.

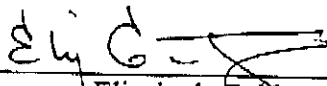
15. In light of these facts, I also determined that the issuance of a license to respondent Kathy Jo Bauck, or to any of her agents or to any of the entities through which she engages in AWA-regulated activities, would be contrary to the AWA's stated purpose of

ensuring the humane treatment of animals because respondent Kathy Jo Bauck used one of the privileges bestowed under the AWA (licensure) to harm animals.

16. Based on my experience administering the AWA, and given the seriousness of Kathy Jo Bauck's violations of Minnesota state laws, and the impact mistreatment of animals, specifically animal torture, has on the AWA, I believe a minimum two-year period of disqualification from licensure is appropriate for respondent Kathy Jo Bauck, her agents, and any entities in which they may hold a substantial interest, and is the minimally-sufficient amount of time necessary to ensure respondent Kathy Jo Bauck, her agents and entities through which she engages in AWA-regulated activities, abide by state (and other) laws enacted to protect animals.

17. In addition, a ruling that would allow respondent Kathy Jo Bauck to keep her AWA license without observing any disqualification period, even though she was found to have violated state laws pertaining to the protection and humane treatment of animals, would undermine APHIS's ability to work cooperatively with other agencies that are similarly responsible for implementing animal protection statutes, jeopardize the integrity of the U.S. Department of Agriculture's Animal Care Program, and send a message to respondent Kathy Jo Bauck, and other regulated persons, that there are no consequences under the AWA for persons who violate laws aimed at protecting animals.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on August 12, 2009.


Elizabeth Goldentyer, D.V.M.