

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 13-0293
)
Lancelot Kollman, a/k/a)
Lancelot Ramos,)
)
Petitioner) **Decision and Order**

PROCEDURAL HISTORY

Lancelot Kollman submitted to the Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter APHIS], an application, dated May 20, 2013, for an exhibitor's license under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]. By letter dated July 2, 2013, APHIS denied Mr. Kollman's Animal Welfare Act license application on the ground that Mr. Kollman had previously held an Animal Welfare Act license which the Secretary of Agriculture revoked effective October 19, 2009.

On July 22, 2013, Mr. Kollman instituted this proceeding by filing a Petition for Review and Request for Hearing [hereinafter Petition] in accordance with the regulations promulgated under the Animal Welfare Act (9 C.F.R. §§ 1.1-2.133) [hereinafter the Regulations] and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice]. Mr. Kollman seeks reversal of APHIS's denial of his May 20, 2013, Animal Welfare Act license application.

On August 12, 2013, APHIS filed Respondent's Response to Request for Hearing stating this proceeding is appropriate for adjudication by way of summary judgment or decision on the record.

On February 7, 2014, APHIS filed Respondent's Motion for Summary Judgment, and, on March 14, 2014, Mr. Kollman filed Petitioner's Verified Memorandum in Opposition to Respondent's Motion for Summary Judgment and Alternative Cross Motion for Summary Judgment.

On April 3, 2014, Administrative Law Judge Janice K. Bullard [hereinafter the ALJ] issued a Decision and Order Granting Summary Judgment¹ in which the ALJ: (1) found Mr. Kollman previously held Animal Welfare Act license number 58-C-0816; (2) found the Secretary of Agriculture revoked Mr. Kollman's Animal Welfare Act license; (3) found APHIS denied Mr. Kollman's May 20, 2013, Animal Welfare Act license application for good cause; (4) entered summary judgment in favor of APHIS; and (5) affirmed APHIS's denial of Mr. Kollman's May 20, 2013, Animal Welfare Act license application.²

On May 8, 2014, Mr. Kollman filed Petitioner's Petition for Appeal of Order Granting Summary Judgment [hereinafter Appeal Petition], and on May 27, 2014, APHIS filed Respondent's Response to Petition for Appeal. On May 30, 2014, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

¹The ALJ filed the April 3, 2014, Decision and Order Granting Summary Judgment with the Hearing Clerk on April 4, 2014.

²ALJ's Decision and Order Granting Summary Judgment at 6.

DECISION

Statutory and Regulatory Framework

The Animal Welfare Act authorizes the Secretary of Agriculture to issue licenses to dealers and exhibitors, upon application, in such form and manner as the Secretary of Agriculture may prescribe (7 U.S.C. § 2133) and to promulgate such rules, regulations, and orders as the Secretary of Agriculture may deem necessary in order to effectuate the purposes of the Animal Welfare Act (7 U.S.C. § 2151).

The Regulations preclude issuance of an Animal Welfare Act license to any person who has had an Animal Welfare Act license revoked, as follows:

§ 2.10 Licensees whose licenses have been suspended or revoked.

....

(b) Any person whose license has been revoked shall not be licensed in his or her own name or in any other manner; nor will any partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, be licensed.

§ 2.11 Denial of initial license application.

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

....

(3) Has had a license revoked or whose license is suspended, as set forth in § 2.10[.]

9 C.F.R. §§ 2.10(b), .11(a)(3).

Discussion

The ALJ correctly concluded that the sole issue in this proceeding is whether APHIS properly denied Mr. Kollman's May 20, 2013, Animal Welfare Act license application. APHIS denied Mr. Kollman's application on the ground that Mr. Kollman previously held an Animal

Welfare Act license (Animal Welfare Act license number 58-C-0816), which the Secretary of Agriculture revoked effective October 19, 2009,³ and Mr. Kollman admits he formerly held Animal Welfare Act license number 58-C-0816 which the Secretary of Agriculture revoked effective October 19, 2009.⁴ The Regulations provide that an Animal Welfare Act license will not be issued to an applicant who has had an Animal Welfare Act license revoked.⁵ Therefore, I adopt as the final order in this proceeding the ALJ's April 3, 2014, Decision and Order Granting Summary Judgment in which the ALJ found the material facts in this proceeding are not in dispute, entered a summary judgment in favor of APHIS, and affirmed APHIS's denial of Mr. Kollman's May 20, 2013, Animal Welfare Act license application.

Mr. Kollman's Appeal Petition

Mr. Kollman raises five issues in his Appeal Petition. First, Mr. Kollman, citing 9 C.F.R. § 2.11(b), contends he is entitled to a hearing regarding APHIS's denial of his May 20, 2013, Animal Welfare Act license application (Appeal Pet. at 9-10).

The Regulations do not entitle an applicant to a hearing but merely provide that an applicant whose Animal Welfare Act license application has been denied may request a hearing, as follows:

³*In re Octagon Sequence of Eight, Inc.* (Decision as to Lancelot Kollman Ramos), 66 Agric. Dec. 1093 (2007), *aff'd sub nom. Ramos v. U.S. Dep't of Agric.*, 322 F. App'x 814 (11th Cir. 2009).

⁴Pet. ¶¶ 2-3 at 1-2.

⁵9 C.F.R. §§ 2.10(b), .11(a)(3).

§ 2.11 Denial of initial license application.

....

(b) An applicant whose license application has been denied may request a hearing in accordance with the applicable rules of practice for the purpose of showing why the application for license should not be denied. The license denial shall remain in effect until the final legal decision has been rendered. Should the license denial be upheld, the applicant may again apply for a license 1 year from the date of the final order denying the application, unless the order provides otherwise.

9 C.F.R. § 2.11(b). Mr. Kollman admits and the record clearly establishes that Mr. Kollman is an applicant who previously held an Animal Welfare Act license which the Secretary of Agriculture revoked effective October 19, 2009. The Regulations provide that an Animal Welfare Act license will not be issued to an applicant who has had a license revoked;⁶ therefore, APHIS's denial of Mr. Kollman's May 20, 2013, Animal Welfare Act license application was proper and there are no genuine issues of material fact to be heard.

The Rules of Practice do not specifically provide for the use or exclusion of summary judgment; however, I have consistently held that hearings are futile and summary judgment is appropriate in proceedings in which there is no factual dispute of substance.⁷ Therefore, I reject Mr. Kollman's contention that he is entitled to a hearing.

⁶9 C.F.R. § 2.11(a)(3).

⁷See *In re Hope Knaust*, ___ Agric. Dec. ___, slip op. at 8 (Apr. 9, 2014); *In re Pine Lake Enterprises, Inc.*, 69 Agric. Dec. 157, 162-63 (2010); *In re Kathy Jo Bauck*, 68 Agric. Dec. 853, 858-59 (2009), *appeal dismissed*, No. 10-1138 (8th Cir. Feb. 24, 2010); *In re Animals of Montana, Inc.*, 68 Agric. Dec. 92, 104 (2009). See also *Veg-Mix, Inc. v. U.S. Dep't of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987) (affirming the Secretary of Agriculture's use of summary judgment under the Rules of Practice and rejecting Veg-Mix, Inc.'s claim that a hearing was required because it answered the complaint with a denial of the allegations).

Second, Mr. Kollman contends he was denied due process in the administrative proceeding that resulted in revocation of his Animal Welfare Act license (Animal Welfare Act license number 58-C-0816). Mr. Kollman bases his contention that he was denied due process on the fact that the decision that resulted in revocation of his Animal Welfare Act license was a default decision. (Appeal Pet. at 10).

Mr. Kollman's contention that he was denied due process in *In re Octagon Sequence of Eight, Inc.* (Decision as to Lancelot Kollman Ramos), 66 Agric. Dec. 1093 (2007), *aff'd sub nom. Ramos v. U.S. Dep't of Agric.*, 322 F. App'x 814 (11th Cir. 2009), is an attempt to relitigate an issue that was previously adjudicated. In *In re Octagon Sequence of Eight, Inc.*, AWA Docket No. 05-0016, Mr. Kollman failed to file an answer denying or otherwise responding to the allegations of the complaint. The Rules of Practice (7 C.F.R. § 1.136(c)) provide that the failure to deny or otherwise respond to an allegation of a complaint shall be deemed, for purposes of the proceeding, an admission of the allegation. Further, pursuant to 7 C.F.R. § 1.139, the failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, constitutes a waiver of hearing. Accordingly, I adopted the material allegations of the complaint that related to Mr. Kollman as findings of fact and issued *In re Octagon Sequence of Eight, Inc.* (Decision as to Lancelot Kollman Ramos), 66 Agric. Dec. 1093 (2007), pursuant to the default provisions of the Rules of Practice.

Subsequently, Mr. Kollman filed a petition for rehearing in which he contended he had been denied due process. Citing *United States v. Hulings*, 484 F. Supp. 562 (D. Kan. 1980), I held the application of the default provisions of the Rules of Practice did not deprive Mr. Kollman of his rights under the Due Process Clause of the Fifth Amendment to the

Constitution of the United States.⁸

On appeal, Mr. Kollman raised the same due process issue he raised before me in his petition for rehearing. The United States Court of Appeals for the Eleventh Circuit affirmed *In re Octagon Sequence of Eight, Inc.* (Decision as to Lancelot Kollman Ramos), 66 Agric. Dec. 1093 (2007), and rejected Mr. Kollman's contention that he had been denied due process, as follows:

. . . . Upon review of the overall fairness of the proceedings in this case, the Judicial Officer's Decision and Order did not violate the principles of fundamental fairness embodied in the Due Process Clause of the Fifth Amendment to the United States Constitution, the Administrative Procedure Act, the AWA, and the USDA's own rules.

Ramos v. U.S. Dep't of Agric., 322 F. App'x 814, 824 (11th Cir. 2009). Therefore, I reject Mr. Kollman's contention that he was denied due process in the administrative proceeding that resulted in revocation of his Animal Welfare Act license (Animal Welfare Act license number 58-C-0816).

Third, Mr. Kollman contends the Secretary of Agriculture is not authorized by the Animal Welfare Act to issue regulations which make revocation of an Animal Welfare Act license permanent with no opportunity for reinstatement (Appeal Pet. at 11-12).

The Animal Welfare Act provides the Secretary of Agriculture with broad authority to promulgate regulations as the Secretary deems necessary to effectuate the purposes of the Animal Welfare Act, as follows:

⁸*In re Octagon Sequence of Eight, Inc.* (Order Denying Pet. for Rehearing as to Lancelot Kollman Ramos), 66 Agric. Dec. 1283, 1288 (2007).

§ 2151. Rules and regulations

The Secretary is authorized to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this chapter.

7 U.S.C. § 2151. Mr. Kollman does not cite and I cannot locate any provision in the Animal Welfare Act that limits the Secretary of Agriculture's authority to promulgate regulations which make revocation of an Animal Welfare Act license permanent with no opportunity for reinstatement. Therefore, I reject Mr. Kollman's contention that the Secretary of Agriculture is not authorized by the Animal Welfare Act to issue regulations which make revocation of an Animal Welfare Act license permanent with no opportunity for reinstatement.

Fourth, Mr. Kollman contends there is nothing in the record suggesting he is not qualified to hold an Animal Welfare Act license (Appeal Pet. at 12-13).

Mr. Kollman admits and the record establishes that Mr. Kollman previously held an Animal Welfare Act license that the Secretary of Agriculture revoked. The Regulations provide that an Animal Welfare Act license will not be issued to any applicant who has had an Animal Welfare Act license revoked⁹ and any person whose Animal Welfare Act license has been revoked shall not be licensed.¹⁰ Therefore, I reject Mr. Kollman's contention that there is nothing in the record suggesting he is not qualified to hold an Animal Welfare Act license.

Fifth, Mr. Kollman contends 9 C.F.R. § 2.10(c) does not prohibit him from exhibiting animals as an employee of another person who holds an Animal Welfare Act exhibitor's license

⁹9 C.F.R. § 2.11(a)(3).

¹⁰9 C.F.R. § 2.10(b).

(Appeal Pet. at 13-16).

As an initial matter, Mr. Kollman's contention that 9 C.F.R. § 2.10(c) does not prohibit him from exhibiting animals as an employee of another person who holds an Animal Welfare Act license is not relevant to APHIS's denial of Mr. Kollman's May 20, 2013, Animal Welfare Act license application. Nonetheless, as Mr. Kollman requests an order allowing him to "present animals as an employee for a licensed exhibitor,"¹¹ I address Mr. Kollman's contention.

The Regulations prohibit any person whose Animal Welfare Act license has been revoked from exhibiting any animal, as follows:

§ 2.10 Licensees whose licenses have been suspended or revoked.

....

(c) Any person whose license has been suspended or revoked shall not buy, sell, transport, exhibit, or deliver for transportation, any animal during the period of suspension or revocation.

9 C.F.R. § 2.10(c). The plain language of 9 C.F.R. § 2.10(c) bars any person whose Animal Welfare Act license has been revoked from engaging in five enumerated activities with respect to animals. This bar applies without limitation to any person whose Animal Welfare Act license has been revoked and that person's employment by another person who holds an Animal Welfare Act license is not relevant to the applicability of the bar. Therefore, I decline to issue an order allowing Mr. Kollman to exhibit animals as an employee of another person who holds an Animal Welfare Act license.

Based upon my review of the record, I find no change or modification of the ALJ's April 3, 2014, Decision and Order Granting Summary Judgment is warranted. The Rules of

¹¹Pet. at 9.

Practice provide that, under these circumstances, I may adopt an administrative law judge's decision and order as the final order in a proceeding, as follows:

§ 1.145 Appeal to Judicial Officer.

....
(i) *Decision of the judicial officer on appeal.* If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum.

For the foregoing reasons, the following Order is issued.

ORDER

The ALJ's April 3, 2014, Decision and Order Granting Summary Judgment is adopted as the final order in this proceeding.

Done at Washington, DC

July 23, 2014

William G. Jenson
Judicial Officer