

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 12-0296
)
Jeffrey W. Ash, an individual d/b/a)
Ashville Game Farm; and Ashville Game)
Farm, Inc., a New York corporation,))
Respondents) **Remand Order**

PROCEDURAL HISTORY

On March 16, 2012, Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this proceeding by filing a Complaint. The Administrator instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; the regulations and standards issued under the Animal Welfare Act (9 C.F.R. § 1.1-3.142) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary of Agriculture Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Administrator alleges: (1) from approximately June 2007 to January 2012, Ashville Game Farm, Inc., operated as an “exhibitor,” as that term is defined in the Animal

Welfare Act and the Regulations, without an Animal Welfare Act license, in willful violation of 9 C.F.R. § 2.1(a); and (2) during the period July 3, 2007, through January 10, 2012, Jeffrey W. Ash and Ashville Game Farm, Inc., willfully violated the Regulations as specified in paragraphs 5 through 26 of the Complaint.¹ The Administrator seeks an order:

(1) requiring Mr. Ash and Ashville Game Farm, Inc., to cease and desist from violating the Animal Welfare Act and the Regulations; (2) assessing civil penalties against Mr. Ash and Ashville Game Farm, Inc.; (3) suspending or revoking Animal Welfare Act license number 21-C-0256, which was allegedly held by Mr. Ash until February 18, 2010; and (4) suspending or revoking Animal Welfare Act license number 21-C-0359, which allegedly has been held by Mr. Ash since approximately April 2010.² On April 9, 2012, Mr. Ash and Ashville Game Farm, Inc., by and through their attorney, Robert M. Winn, filed an Answer and Request for Hearing in which they denied the material allegations of the Complaint.

¹Compl. at 2-8 ¶¶ 4-26.

²Compl. at 1 ¶ 1 and at 9.

On March 22, 2013, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] issued a Decision and Order: (1) dismissing the allegations against Ashville Game Farm, Inc., because the Hearing Clerk failed to serve Ashville Game Farm, Inc., with the Complaint; (2) finding the order of suspension or revocation of Animal Welfare Act license numbers 21-C-0256 and 21-C-0359 sought by the Administrator in the instant proceeding was rendered moot by the order issued in *In re Jeffrey W. Ash*, ___ Agric. Dec. ___ (Sept. 14, 2012), terminating Animal Welfare Act license number 21-C-0359; (3) finding the order that Mr. Ash cease and desist violations of the Animal Welfare Act and the Regulations sought by the Administrator in the instant proceeding would appear to be of limited utility because Mr. Ash can no longer legally operate and is no longer in business as both his New York State license and his Animal Welfare Act licenses have been revoked; and (4) finding assessment of a civil penalty against Mr. Ash sought by the Administrator in the instant proceeding is not necessary to advance the purposes of the Animal Welfare Act as Mr. Ash has been precluded from exhibiting animals and effectively put out of business.³

On March 29, 2013, the Administrator filed Complainant's Petition for Appeal [hereinafter Appeal Petition] requesting that I vacate the Chief ALJ's Decision and Order and remand the case for further proceedings in accordance with the Rules of Practice. On

³Chief ALJ's Decision and Order at 3.

April 24, 2013, Mr. Ash filed Response to Appeal by Complainant requesting that I deny the Administrator's Appeal Petition, and on April 26, 2013, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

DISCUSSION

Based upon a careful consideration of the record, I vacate the Chief ALJ's Decision and Order and remand this proceeding to the Chief ALJ for further proceedings in accordance with the Animal Welfare Act and the Rules of Practice.

The record establishes that the Hearing Clerk served Ashville Game Farm, Inc., with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter no later than April 26, 2012.⁴ Therefore, I conclude the Chief ALJ's dismissal of the Complaint as to Ashville Game Farm, Inc., based upon the Hearing Clerk's purported failure to serve Ashville Game Farm, Inc., with the Complaint, is error.

Moreover, the order issued in *In re Jeffrey W. Ash*, __ Agric. Dec. __ (Sept. 14, 2012), does not render the instant proceeding moot. The order issued in *In re Jeffrey W. Ash*, __ Agric. Dec. __ (Sept. 14, 2012), terminating Animal Welfare Act license number 21-C-0359, merely invalidates Animal Welfare Act license number 21-C-0359 and does not prevent Mr. Ash from applying for and obtaining another Animal Welfare Act license.

⁴Memorandum to the File dated April 26, 2012, signed by L. Eugene Whitfield, Hearing Clerk.

In the instant proceeding, the Administrator seeks suspension or revocation of Mr. Ash's Animal Welfare Act licenses. Unlike termination of an Animal Welfare Act license, suspension of a person's Animal Welfare Act license bars that person from becoming licensed during the period of suspension and revocation of a person's Animal Welfare Act license bars that person from obtaining an Animal Welfare Act license at any time in the future.⁵

For the foregoing reasons, the following Order is issued.

ORDER

1. The Chief ALJ's Decision and Order, filed March 22, 2013, is vacated.
2. This proceeding is remanded to the Chief ALJ for further proceedings in accordance with the Animal Welfare Act and the Rules of Practice.

Done at Washington, DC

May 3, 2013

William G. Jenson
Judicial Officer

⁵9 C.F.R. §§ 2.10(a)-(b), .11(a)(3).