

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) Docket No. 11-0012  
 )  
Melanie H. Boynes, )  
 )  
Petitioner ) **Decision and Order**

**PROCEDURAL HISTORY**

A partnership consisting of two partners, Melanie H. Boynes and Steve Sipek, submitted an application, dated August 24, 2010, for a license under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act], to the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator]. On September 16, 2010, the Administrator denied the partnership's Animal Welfare Act license application. On October 12, 2010, Ms. Boynes instituted the instant proceeding by filing a request for a hearing for the purpose of showing why the partnership's August 24, 2010, application for an Animal Welfare Act license should not be denied. On November 2, 2010, the Administrator filed a response to Ms. Boynes' request.

On May 24, 2011, Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] conducted an audio-visual hearing in accordance with the

rules of practice applicable to this proceeding<sup>1</sup> at which Ms. Boynes appeared in Miami, Florida, and the Administrator appeared in Washington, DC. Ms. Boynes appeared pro se. Colleen A. Carroll, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the Administrator. Ms. Boynes called one witness and provided an unsworn statement in her own behalf, and the Administrator called five witnesses.<sup>2</sup> The Chief ALJ admitted 15 exhibits introduced by Ms. Boynes and 48 exhibits introduced by the Administrator.<sup>3</sup>

On August 4, 2011, after Ms. Boynes and the Administrator filed post-hearing briefs, the Chief ALJ issued a Decision and Order in which the Chief ALJ: (1) affirmed the Administrator's determination that the partnership was unfit to be licensed under the Animal Welfare Act; (2) affirmed the Administrator's September 16, 2010, denial of the partnership's Animal Welfare Act license application; and (3) disqualified Ms. Boynes from obtaining, holding, or using an Animal Welfare Act license for a period of 1 year.

On September 1, 2011, Ms. Boynes appealed the Chief ALJ's Decision and Order to the Judicial Officer, and on September 12, 2011, the Administrator filed "Respondent's Response to Petition for Appeal." On September 15, 2011, the Hearing Clerk transmitted

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<sup>1</sup>The rules of practice applicable to this proceeding are 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].

<sup>2</sup>Transcript references are designated as "Tr."

<sup>3</sup>Ms. Boynes' exhibits are identified as PX 1 through PX 15. The Administrator's exhibits are identified as RX 1 through RX 48.

the record to the Office of the Judicial Officer for consideration and decision. Based upon a careful consideration of the record, I adopt, with minor changes, the Chief ALJ's August 4, 2011, Decision and Order as the final agency decision.

## **DECISION**

### **Statutory and Regulatory Framework**

Sections 3 and 21 of the Animal Welfare Act provide:

#### **§ 2133. Licensing of dealers and exhibitors**

The Secretary shall issue licenses to dealers and exhibitors upon application therefore in such form and manner as he may prescribe[.]

#### **§ 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. §§ 2133, 2151.

The regulations and standards issued under the Animal Welfare Act<sup>4</sup> provide:

#### **§ 2.1 Requirements and application.**

(a)(1) Any person operating or intending to operate as a . . . exhibitor . . . must have a valid license . . . . The applicant shall provide the information requested on the application form[.]

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<sup>4</sup>The regulations and standards issued under the Animal Welfare Act [hereinafter the Regulations and Standards] are set forth in 9 C.F.R. §§ 1.1-3.142.

**§ 2.11 Denial of initial license application.**

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

(1) Has not complied with the requirements of §§ 2.1, 2.2, 2.3, and 2.4 and has not paid the fees indicated in § 2.6;

(2) Is not in compliance with any of the regulations or standards in this subchapter;

. . . .

(5) Is or would be operating in violation or circumvention of any Federal, State, or local laws; or

(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 the issuance of a license would be contrary to the purposes of the Act.

(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. §§ 2.1(a)(1), .11(a)(1)-(2), (5)-(6), (b).

The power to require and issue licenses under the Animal Welfare Act includes the power to deny licenses and to disqualify persons from being licensed.<sup>5</sup> The Regulations and Standards provide an initial application for an Animal Welfare Act license will be denied if the applicant is unfit to be licensed and the Administrator determines that

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<sup>5</sup>*In re Animals of Montana, Inc.*, 68 Agric. Dec. 92, 94 (2009); *In re Amarillo Wildlife Refuge, Inc.*, 68 Agric. Dec. 77, 81 (2009); *In re Loreon Vigne*, 67 Agric. Dec. 1060, 1062 (2008).

issuance of the Animal Welfare Act license would be contrary to the purposes of the Animal Welfare Act.

### **Discussion**

At issue in this proceeding is whether the Administrator, acting through Dr. Elizabeth Goldentyer, Eastern Regional Director, Animal Care, Animal and Plant Health Inspection Service, United States Department of Agriculture, was justified in denying the partnership's August 24, 2010, application for an Animal Welfare Act license on the grounds that: (a) the partnership failed to provide all the information requested on the Animal Welfare Act license application form; (b) Mr. Sipek exhibited regulated animals without a valid Animal Welfare Act license; (c) Mr. Sipek had previously declawed large cats and stated he intended to continue to declaw large cats contrary to veterinary care standards; (d) the partnership was unfit to be licensed based upon Mr. Sipek's history of animal care, Mr. Sipek's non-compliance with the Regulations and Standards, and Mr. Sipek's stated intention to continue to declaw large cats; and (e) issuance of an Animal Welfare Act license to the partnership would be contrary to the purposes of the Animal Welfare Act (RX 21).

Ms. Boynes addressed the Administrator's denial of the partnership's application for an Animal Welfare Act license in a letter dated October 1, 2010, and filed with the Hearing Clerk on October 13, 2010. First, with regard to the partnership's incomplete application for an Animal Welfare Act license, Ms. Boynes stated the partnership

provided information on the application form based upon advice provided by Dr. Gregory Gaj, a supervisor employed by Animal Care, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter APHIS], and Megan E. Adams, an inspector employed by APHIS. Second, with respect to Mr. Sipek's exhibiting regulated animals without a valid Animal Welfare Act license, Ms. Boynes stated she and Mr. Sipek are required by the Florida Fish and Wildlife Conservation Commission to exhibit their animals in order to maintain their Florida Class I Wildlife license. Finally, Ms. Boynes questioned how she could be found unfit to be licensed based upon Mr. Sipek's history of animal care, Mr. Sipek's non-compliance with the Regulations and Standards, and Mr. Sipek's stated intention to continue declawing large cats.

### **Findings of Fact**

1. Melanie H. Boynes is an individual with a mailing address in Loxahatchee, Florida.
2. Steve Sipek is an individual with a mailing address in Loxahatchee, Florida.
3. Mr. Sipek, also known as Steve Hawkes Tarzan,<sup>6</sup> has been involved with exotic animals, including lions, tigers, and leopards for over 42 years (Tr. 114-17; RX 5).
4. Mr. Sipek previously applied for an Animal Welfare Act license in 2005 (RX 1). APHIS conducted three pre-license inspections and, in each inspection, identified deficiencies that required correction before an Animal Welfare Act license

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<sup>6</sup>Mr. Sipek testified that he performed the role of Tarzan in movies (Tr. 122).

could be issued. Mr. Sipek terminated the third inspection and no Animal Welfare Act license was issued to him as he was not in compliance with the Regulations and Standards. (Tr. 58; RX 2-RX 11.)

5. Mr. Sipek has frequently exhibited large cats without an Animal Welfare Act license, in violation of the Animal Welfare Act and the Regulations and Standards (RX 2-RX 4, RX 6-RX 7, RX 11-RX 13).<sup>7</sup> By letter dated January 30, 2008, Mr. Sipek received a Warning Notice for operating as a Class C Exhibitor without a USDA license, in violation of the Animal Welfare Act and the Regulations and Standards (RX 13). Mr. Sipek and Ms. Boynes admit they exhibit animals despite not having an Animal Welfare Act license, but claim exhibiting is required in order to maintain their Florida license (Letter from Ms. Boynes to the Hearing Clerk dated October 1, 2010; Tr. 106-07, 129-30).

6. Mr. Sipek is licensed by the State of Florida Fish and Wildlife Conservation Commission to exhibit “felidae” (RX 18).<sup>8</sup>

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<sup>7</sup>Evidence of Mr. Sipek’s exhibiting animals includes admissions to APHIS inspectors and investigators (Tr. 58-61, 65; RX 2, RX 4-RX 7, RX 11). Although somewhat dated and not contemporaneous with the current application, 2005-2009 visitor logs obtained from state inspections and reports from state regulators also appear in the record (RX 12, RX 24-RX 35, RX 37-RX 38, RX 44-RX 45). The record also contains photographs of signs advertizing “Steve Sipek’s Tarzan Big Cat Sanctuary” (RX 2a-RX 2b).

<sup>8</sup>The State of Florida Fish and Wildlife Conservation Commission license appearing in the record is for 2008-2009; however, Ms. Boynes’ October 1, 2010, letter to the Hearing Clerk implicitly indicates that the Florida license is still in force (RX 18).

7. The record does not contain the original Animal Welfare Act license application submitted by Ms. Boynes; however, prior to August 24, 2010, Ms. Boynes applied for an Animal Welfare Act license in her individual capacity (Tr. 51).

Ms. Boynes' Animal Welfare Act license application triggered a pre-license inspection which was conducted on August 24, 2010, by APHIS inspector Megan E. Adams and APHIS supervisor Dr. Gregory Gaj at the facility in Loxahatchee, Florida, where the animals were being kept (RX 20; Tr. 41-51, 72-73, 80-81, 100-11).

8. During the August 24, 2010, inspection, APHIS inspector Megan E. Adams identified six deficiencies that required correction in order for the Loxahatchee, Florida, facility to comply with the Regulations and Standards: (1) adequate veterinary care had to be provided to the animals;<sup>9</sup> (2) documentation that the applicant has adequate experience and knowledge of the species being maintained had to be submitted to APHIS;<sup>10</sup> (3) indoor and outdoor housing facilities had to be improved;<sup>11</sup> (4) the perimeter fence had to be increased in height;<sup>12</sup> (5) the attending veterinarian had to review the

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<sup>9</sup>See 9 C.F.R. § 2.40(b)(2).

<sup>10</sup>See 9 C.F.R. § 2.131(a).

<sup>11</sup>See 9 C.F.R. § 3.125(a).

<sup>12</sup>See 9 C.F.R. § 3.127(d).

animal feeding protocol;<sup>13</sup> and (6) sanitation had to be improved (RX 20).<sup>14</sup> APHIS inspector Megan E. Adams stated on the inspection report: “All items must be in compliance within two more inspections or by 11-24-10 or the applicant will forfeit the application fee and must wait six months to reapply.” (RX 20.)

9. During the course of the August 24, 2010, inspection, questions were raised concerning the appropriateness of Ms. Boynes’ application for an Animal Welfare Act license as an individual as APHIS inspector Megan E. Adams and APHIS supervisor Dr. Gregory Gaj were informed that Mr. Sipek owned both the real property on which the facility was located and the animals (Tr. 47, 73-74).<sup>15</sup> As a result, Ms. Boynes was asked to complete the Animal Welfare Act license application correctly or to update it to indicate who was truly involved in the business (Tr. 51).

10. Dr. Gregory Gaj discussed the subject of the practice of declawing large cats for handling purposes with Mr. Sipek. Mr. Sipek stated that declawing is necessary for his safety and expressed an intention to continue the practice even though Dr. Gaj advised him that declawing large cats for handling purposes is contrary to accepted veterinary care standards (RX 17, RX 20; Tr. 44-48).

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<sup>13</sup>See 9 C.F.R. § 3.129(a).

<sup>14</sup>See 9 C.F.R. § 3.131(c).

<sup>15</sup>Dr. Gregory Gaj testified that, during the August 24, 2010, inspection, Ms. Boynes stated Mr. Sipek owned the property and the animals and she could not conduct “the business without him” (Tr. 47).

11. On August 27, 2010, APHIS received an Animal Welfare Act license application form dated August 24, 2010, and signed by Ms. Boynes, as co-owner.<sup>16</sup> Block 8 of the application form indicates the type of business organization is a partnership. Block 2 of the application form, which requires all business names, contains only the word “same.” Block 7 of the application form, which requires the identification of the nature of the business, has no entry. Block 9 of the application form, which requires a list of all owners, partners, and officers, lists Melanie Boynes and Steve Sipek as co-owners. (RX 19.)

12. On September 16, 2010, without conducting any further pre-license inspection for the August 24, 2010, Animal Welfare Act license application, the Administrator, acting through Dr. Goldentyer, denied the application on the grounds that: (a) the partnership failed to provide all the information requested on the Animal Welfare Act license application form; (b) Mr. Sipek exhibited regulated animals without a valid Animal Welfare Act license; (c) Mr. Sipek had previously declawed large cats and stated he intended to continue to declaw large cats contrary to veterinary care standards; (d) the partnership was unfit to be licensed based upon Mr. Sipek’s history of animal care, Mr. Sipek’s non-compliance with the Regulations and Standards, and Mr. Sipek’s stated intention to continue to declaw large cats; and (e) issuance of an Animal Welfare Act

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<sup>16</sup>Although APHIS considered the August 24, 2010, Animal Welfare Act license application to be a revision of the application that Ms. Boynes had previously submitted as an individual, the August 24, 2010, application might also be considered a new application as it was submitted by the partnership.

license to the partnership would be contrary to the purposes of the Animal Welfare Act (RX 21).

13. At the time of the August 24, 2010, pre-license inspection, Ms. Boynes stated she would try to convince Mr. Sipek to refrain from declawing animals in the future (Tr. 46). At the May 24, 2011, hearing, Mr. Sipek testified he had no intention of acquiring any more animals and he would no longer declaw large cats (Tr. 124, 136).

### **Conclusions of Law**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. The August 24, 2010, Animal Welfare Act license application submitted by the partnership was incomplete; however, the deficiencies could have been easily remedied and are not sufficiently egregious as to warrant any period of disqualification from obtaining, holding, or using an Animal Welfare Act license.
3. The failure of the partnership to correct the deficiencies identified in the August 24, 2010, inspection report (RX 20) warrants denial of the Animal Welfare license application, until such time as the partnership corrects all the deficiencies and thereby complies with all of the Regulations and Standards (9 C.F.R. § 2.11(a)(1)-(2)).
4. Mr. Sipek's continued exhibition of large cats without an Animal Welfare Act license, Mr. Sipek's practice of declawing large cats for handling purposes despite

being warned by both a number of veterinarians<sup>17</sup> and APHIS officials that declawing large cats was not acceptable veterinary care, Mr. Sipek's history of animal care, and Mr. Sipek's non-compliance with the Regulations and Standards, support the Administrator's finding that the partnership is unfit to be licensed under the Animal Welfare Act and the Administrator's determination that issuance of an Animal Welfare Act license to the partnership would be contrary to the purposes of the Animal Welfare Act (9 C.F.R. §§ 2.1(a), .11(a)(1)-(2), (5)-(6)).

#### **Ms. Boynes' Appeal Petition**

Ms. Boynes raises five issues in her Appeal Petition. First, Ms. Boynes contends the partnership's August 24, 2010, application for an Animal Welfare Act license, was complete (Appeal Pet. ¶¶ 1, 3-4, 6).

The Chief ALJ concluded that the partnership's August 24, 2010, Animal Welfare Act license application was incomplete (Chief ALJ's Decision and Order at 7). An examination of that application (RX 19) reveals that the application is incomplete and the Chief ALJ's conclusion is not error. The Chief ALJ further states the deficiencies in the August 24, 2010, Animal Welfare Act license application could be remedied and do not warrant any period of disqualification (Chief ALJ's Decision and Order at 7). Therefore, even if I were to find the Chief ALJ erroneously concluded the August 24, 2010, Animal

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<sup>17</sup>At least two veterinarians were identified as having declined to declaw large cats for Mr. Sipek (Tr. 135).

Welfare Act license application was incomplete (which I do not so find), I would find the error harmless.

Second, Ms. Boynes states she and Mr. Sipek are co-owners of the Loxahatchee, Florida, property identified on the August 24, 2010, Animal Welfare Act license application as the mailing address of the partnership, the location at which the animals are housed, and the address of the partners (Appeal Pet. ¶ 2). In support of this statement, Ms. Boynes attached to the Appeal Petition a copy of a Palm Beach County, Florida, property appraisal of the Loxahatchee property which indicates that both Ms. Boynes and Mr. Sipek are owners of the property.

The Chief ALJ found with respect to the ownership of the Loxahatchee property:

11. Although Ms. Boynes represented that she was a “co-owner” of the business and represented in her post hearing brief that the real estate is owned by both Steve Sipek and Melanie Boynes, the record before me contains no transfer documents of either the real estate upon which the facility is located or of the animals owned by Steve Sipek. Petitioner’s Post Hearing Brief, p. 1, Docket entry 21.

Chief ALJ’s Decision and Order at 6 (footnote omitted). The record before the Chief ALJ contained no document evidencing Mr. Sipek’s transfer of an interest in the Loxahatchee property to Ms. Boynes; therefore, I find no error. Further, even if I were to find that Mr. Sipek transferred an interest in the Loxahatchee property to Ms. Boynes, that finding would not alter the disposition of the instant proceeding; therefore, I decline to remand the proceeding to the Chief ALJ to reopen the hearing to provide Ms. Boynes an

additional opportunity to establish her co-ownership of the Loxahatchee property with Mr. Sipek.

Third, Ms. Boynes states the partnership took action to correct the deficiencies in indoor and outdoor housing facilities and sanitation in accordance with the August 24, 2010, inspection report (RX 20) (Appeal Pet. ¶¶ 5, 7).

The Chief ALJ concluded that the partnership's failure to comply with the Regulations and Standards constitutes grounds warranting denial of an Animal Welfare Act license until corrective action has been accomplished (Chief ALJ's Decision and Order at 7). The Chief ALJ's conclusion is correct as a matter of law.<sup>18</sup> Moreover, in addition to the correction of the deficiencies in indoor and outdoor housing facilities and sanitation, which Ms. Boynes now asserts the partnership has taken action to correct, the Chief ALJ found the August 24, 2010, inspection report revealed four other deficiencies that must be corrected before an Animal Welfare Act license could be issued to the partnership. Therefore, the partnership's purported correction of two of the six deficiencies forms no basis for disturbing the Chief ALJ's conclusion that the partnership must demonstrate that it complies with all of the Regulations and Standards prior to the issuance of an Animal Welfare Act license to the partnership.

Fourth, Ms. Boynes asserts Mr. Sipek has stated that he would no longer declaw large cats for handling purposes (Appeal Pet. ¶ 8).

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<sup>18</sup>See 9 C.F.R. §§ 2.3(a), .11(a)(1)-(2).

The Chief ALJ found that Mr. Sipek testified he would no longer declaw large cats (Chief ALJ's Decision and Order at 7); thus, the Chief ALJ made the very finding that Ms. Boynes now urges. Therefore, I decline to modify the Chief ALJ's well-supported finding, with which Ms. Boynes apparently agrees.

Fifth, Ms. Boynes states she should not be disqualified from obtaining, holding, or using an Animal Welfare Act license based upon Mr. Sipek's history of animal care (Appeal Pet. ¶ 9).

The application for an Animal Welfare Act license, which is the subject of the instant proceeding, was submitted by a partnership consisting of two partners, Ms. Boynes and Mr. Sipek. Ms. Boynes asserts she and Mr. Sipek are co-owners of the property on which the facility is located, she and Mr. Sipek share responsibility for the animals, and she cannot conduct the business without Mr. Sipek (Appeal Pet. ¶ 2; Tr. 47, 106-07). Given Ms. Boynes and Mr. Sipek's joint administration of the partnership which applied for an Animal Welfare Act license, I conclude the Chief ALJ's disqualification of Ms. Boynes from obtaining, holding, or using an Animal Welfare Act license for a period of 1 year, based in part on Mr. Sipek's history of animal care, is not error.

**ORDER**

1. The Administrator's determination that the partnership comprised of Melanie H. Boynes and Steve Sipek is unfit to be licensed under the Animal Welfare Act, is affirmed.
2. The Administrator's denial of the August 24, 2010, Animal Welfare Act license application submitted by the partnership comprised of Melanie H. Boynes and Steve Sipek, is affirmed.
3. Melanie H. Boynes is disqualified for a period of 1 year from obtaining, holding, or using an Animal Welfare Act license directly or indirectly through any corporate or other device or person.
4. This Order shall become effective upon service of this Order on Melanie H. Boynes.

Done at Washington, DC

October 18, 2011

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William G. Jenson  
Judicial Officer