

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) Docket No. 11-0012
)
Melanie H. Boynes,)
)
Petitioner) **Order Denying Petition to Reconsider**

PROCEDURAL HISTORY

On October 27, 2011, Melanie H. Boynes filed a petition for reconsideration of *In re Melanie H. Boynes*, __ Agric. Dec. __ (Oct. 18, 2011) [hereinafter Petition to Reconsider]. On November 7, 2011, the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], filed a response to Ms. Boynes' Petition to Reconsider. On November 8, 2011, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration of, and a ruling on, Ms. Boynes' Petition to Reconsider.

The purpose of a petition to reconsider is to seek correction of manifest errors of law or fact. Petitions to reconsider are not to be used as vehicles merely for registering disagreement with the Judicial Officer's decision. A petition to reconsider is only granted, absent highly unusual circumstances, if the Judicial Officer has committed error

or if there is an intervening change in controlling law.¹ Based upon my review of the record, in light of the issues raised in Ms. Boynes' Petition to Reconsider, I find no error of law or fact necessitating modification of *In re Melanie H. Boynes*, ___ Agric. Dec. ___ (Oct. 18, 2011). Moreover, Ms. Boynes does not assert an intervening change in controlling law, and I find no highly unusual circumstances necessitating modification of *In re Melanie H. Boynes*, ___ Agric. Dec. ___ (Oct. 18, 2011). Therefore, I deny Ms. Boynes' Petition to Reconsider *In re Melanie H. Boynes*, ___ Agric. Dec. ___ (Oct. 18, 2011).

DISCUSSION ON RECONSIDERATION

Ms. Boynes makes six factual assertions in her Petition to Reconsider. I infer Ms. Boynes contends *In re Melanie H. Boynes*, ___ Agric. Dec. ___ (Oct. 18, 2011), must be modified to include the six factual assertions in her Petition to Reconsider.²

First, Ms. Boynes asserts she originally applied for a license under the Animal Welfare Act, as amended (7 U.S.C. § 2131-2159) [hereinafter the Animal Welfare Act], as an individual; however, 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, advised

¹*In re Sam Mazzola* (Order Denying Pet. for Recons. and Ruling Denying Mot. for Oral Argument), ___ Agric. Dec. ___, slip op. at 2 (Mar. 29, 2010).

²Ms. Boynes provides no citations to the record to support her six factual assertions.

that Ms. Boynes include Mr. Sipek on the Animal Welfare Act license application as a partner/co-owner (Pet. to Reconsider at 1).

In *In re Melanie H. Boynes*, ___ Agric. Dec. ____, slip op. at 8-9 (Oct. 18, 2011), I found that Ms. Boynes originally applied for an Animal Welfare Act license as an individual and that Ms. Boynes was asked to correct or update the application to reflect those involved in the business. The record does not support a finding that both Dr. Gaj and Ms. Adams advised that Ms. Boynes modify her Animal Welfare Act license application to include Mr. Sipek as a partner/co-owner. Instead, the record indicates that only Dr. Gaj advised Ms. Boynes regarding modifications to her Animal Welfare Act license application (Tr. 50-51, 80). Moreover, even if I were to find that both Dr. Gaj and Ms. Adams advised Ms. Boynes to include Mr. Sipek as a partner/co-owner, that finding would not change the disposition of the proceeding.

Second, Ms. Boynes asserts Mr. Sipek has never held an Animal Welfare Act license (Pet. to Reconsider at 1).

The record appears to support Ms. Boynes' assertion; however, even if I were to find that Mr. Sipek has never held an Animal Welfare Act license, that finding would not change the disposition of the proceeding.

Third, Ms. Boynes asserts that she and Mr. Sipek hold a Florida Class I Wildlife license and that she and Mr. Sipek are only required to obtain an Animal Welfare Act

license because the State of Florida requires them to exhibit animals in order to retain their Florida Class I Wildlife license (Pet. to Reconsider at 1).

Ms. Boynes and Mr. Sipek are required to obtain an Animal Welfare Act license in order to exhibit regulated animals. The State of Florida requirement that Ms. Boynes and Mr. Sipek exhibit animals in order to retain their Florida Class I Wildlife license does not exempt Ms. Boynes or Mr. Sipek from compliance with the Animal Welfare Act.

Fourth, Ms. Boynes asserts all six deficiencies identified by APHIS inspector Megan E. Adams during her August 24, 2010, inspection of Ms. Boynes and Mr. Sipek's Loxahatchee, Florida, facility have now been corrected (Pet. to Reconsider at 1).

If true, Ms. Boynes and Mr. Sipek's correction of deficiencies is commendable; however, the partnership's failure to comply with all the regulations and standards issued under the Animal Welfare Act is not the sole basis for denial of the partnership's Animal Welfare Act license application. Therefore, even if I were to find that the Loxahatchee, Florida, facility complies with all the regulations and standards issued under the Animal Welfare Act (which I do not so find), I would not set aside *In re Melanie H. Boynes*, ___ Agric. Dec. ___ (Oct, 18, 2011).

Fifth, Ms. Boynes states she believes the APHIS regional office in North Carolina based the decision to deny the partnership's August 24, 2010, application for an Animal Welfare Act license solely on Mr. Sipek's past history with the United States Department of Agriculture (Pet. to Reconsider at 1).

The grounds for denial of the partnership's August 24, 2010, application for an Animal Welfare Act license are set forth in a letter from Dr. Elizabeth Goldentyer, Eastern Regional Director, Animal Care, APHIS, to Ms. Boynes and Mr. Sipek (RX 21). The letter belies Ms. Boynes' belief that the decision to deny the partnership's August 24, 2010, application for an Animal Welfare Act license was based solely on Mr. Sipek's past history with the United States Department of Agriculture. Moreover, Ms. Boynes cites no evidence in support of her belief. Therefore, I decline to find that the denial of the partnership's August 24, 2010, application for an Animal Welfare Act license was based solely on Mr. Sipek's past history with the United States Department of Agriculture.

Sixth, Ms. Boynes asserts, during the May 24, 2011, hearing, APHIS inspector Megan E. Adams testified that Ms. Boynes is "doing everything in order to be in compliance with USDA regulations" (Pet. to Reconsider at 1).

Ms. Adams testified that, during her August 24, 2010, inspection of the Loxahatchee, Florida, facility she "saw a tremendous amount of progress with housekeeping" and noticed that Ms. Boynes was attempting to make the changes that APHIS had requested (Tr. 79-80). However, I cannot locate testimony that supports Ms. Boynes' assertion that Ms. Adams testified that Ms. Boynes is doing everything in order to be in compliance with USDA regulations.

The Rules of Practice provide that the decision of the Judicial Officer shall automatically be stayed pending the determination to grant or deny a timely-filed petition to reconsider (7 C.F.R. § 1.146(b)). Ms. Boynes' Petition to Reconsider was timely-filed and automatically stayed *In re Melanie H. Boynes*, __ Agric. Dec. ____ (Oct. 18, 2011). Therefore, since Ms. Boynes' Petition to Reconsider is denied, I hereby lift the automatic stay, and the Order in *In re Melanie H. Boynes*, __ Agric. Dec. ____ (Oct. 18, 2011), is reinstated.

For the foregoing reasons, the following Order is issued.

ORDER

Ms. Boynes' Petition to Reconsider, filed October 27, 2011, is denied. This Order shall become effective upon service on Ms. Boynes.

Done at Washington, DC

November 9, 2011

William G. Jenson
Judicial Officer