

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. D-08-0149
Wayne Edwards, d/b/a)
Oklahoma Wildlife Preserve, Inc.,)
)
Petitioner) **Order Denying Appeal Petition**

DISCUSSION

Wayne Edwards requested that the Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter APHIS], provide him the information necessary to obtain a license under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]. On September 5, 2007, APHIS responded to Mr. Edwards' request by providing him the information and forms necessary to obtain an Animal Welfare Act license.¹ On September 19, 2007, Oklahoma Wildlife Preserve, Inc., was incorporated in the State of Oklahoma.² Mr. Edwards signed

¹“License Denial” filed June 24, 2008 [hereinafter Request for Hearing], at Exhibit 8.

²Request for Hearing at Exhibit 12.

the articles of incorporation as one of the incorporators and was identified as one of three persons who would serve as trustee or director of Oklahoma Wildlife Preserve, Inc.³

On January 8, 2008, Oklahoma Wildlife Preserve, Inc., applied for an Animal Welfare Act license.⁴ On June 6, 2008, pursuant to the regulations issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations], APHIS denied Oklahoma Wildlife Preserve, Inc.'s Animal Welfare Act license application on the grounds that the application was not complete and Oklahoma Wildlife Preserve, Inc., made false statements to APHIS employees during the application process.⁵

On June 24, 2008, pursuant to section 2.11(b) of the Regulations (9 C.F.R. § 2.11(b)), Mr. Edwards, d/b/a Oklahoma Wildlife Preserve, Inc., filed a Request for Hearing to show why Oklahoma Wildlife Preserve, Inc.'s application for an Animal Welfare Act license should not be denied. On July 15, 2008, APHIS filed "Respondent's Response to Petitioner's Request for Hearing and Respondent's Motion for Summary Judgment or to Amend Case Caption" seeking summary judgment against Mr. Edwards on the ground that Oklahoma Wildlife Preserve, Inc., applied for, and was denied, an Animal Welfare Act license; thus, only Oklahoma Wildlife Preserve, Inc., is entitled to a hearing pursuant to section 2.11(b) of the Regulations (9 C.F.R. § 2.11(b)). On July 21,

³*Id.*

⁴Request for Hearing at Exhibit 11.

⁵Request for Hearing at Exhibit 14.

2008, Mr. Edwards replied to APHIS' motion for summary judgment stating he is the president of Oklahoma Wildlife Preserve, Inc., and authorized to conduct all business on behalf of Oklahoma Wildlife Preserve, Inc., including filing a response to APHIS' denial of Oklahoma Wildlife Preserve, Inc.'s application for an Animal Welfare Act license.

On February 19, 2009, Administrative Law Judge Peter M. Davenport [hereinafter the ALJ] issued an Order scheduling a hearing to commence March 11, 2009,⁶ and the Hearing Clerk served Mr. Edwards and APHIS with the ALJ's February 19, 2009, Order.⁷ On March 11, 2009, the ALJ conducted a hearing in Washington, DC. Colleen Carroll, Office of the General Counsel, United States Department of Agriculture, represented APHIS. Mr. Edwards did not appear at the hearing and APHIS moved to dismiss the proceeding based on Mr. Edwards' failure to prosecute his Request for Hearing.⁸ During the hearing, the ALJ stated APHIS' motion to dismiss would be granted,⁹ and, on March 11, 2009, after the close of the hearing, the ALJ issued a written Order dismissing the proceeding with prejudice on the ground that Mr. Edwards failed to appear at the hearing and prosecute his Request for Hearing.

⁶Order of Hearing Location.

⁷Office of Administrative Law Judges, Hearing Clerk's Office, Document Distribution Form regarding the ALJ's February 19, 2009, Order of Hearing Location.

⁸Transcript of the March 11, 2009, hearing at 3-4.

⁹*Id.*

On April 15, 2009, Richard Fischer, representing himself to be president of Oklahoma Wildlife Preserve, Inc., appealed the ALJ's March 11, 2009, Order issued against Mr. Edwards. On April 27, 2009, APHIS filed "Respondent's Response to Petition for Appeal" in which it argued that Mr. Fischer's appeal of the ALJ's March 11, 2009, Order must be denied because Mr. Fischer is not a party in the instant proceeding. On April 30, 2009, the Hearing Clerk transmitted the record to me for consideration and decision. Based upon a careful consideration of the record, I agree with APHIS that Mr. Fischer is not a party in the instant proceeding and Mr. Fischer's April 15, 2009, appeal petition must be denied.

MR. FISCHER'S APPEAL PETITION

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], provide that only a party in a proceeding may appeal an administrative law judge's decision, as follows:

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the

decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk.

7 C.F.R. § 1.145(a). The parties in the instant proceeding are Mr. Edwards, d/b/a Oklahoma Wildlife Preserve, Inc., and APHIS; therefore, under the Rules of Practice, only Mr. Edwards and APHIS had the opportunity to appeal the ALJ's March 11, 2009, Order. Mr. Fischer's appeal petition, even if filed on behalf of Oklahoma Wildlife Preserve, Inc., is denied on the ground that neither Mr. Fischer nor Oklahoma Wildlife Preserve, Inc., is a party in the instant proceeding.

Even if I were to find Mr. Fischer could substitute himself for Mr. Edwards and is a party in the instant proceeding (which I do not so find), I would deny Mr. Fischer's appeal petition. Mr. Fischer raises only one issue on appeal. Mr. Fischer asserts Oklahoma Wildlife Preserve, Inc., did not receive notice of the time and place of the March 11, 2009, hearing conducted in Washington, DC, and requests a second hearing to be held in Oklahoma City, Oklahoma.

As an initial matter, Oklahoma Wildlife Preserve, Inc., did not request a hearing pursuant to section 2.11(b) of the Regulations (9 C.F.R. § 2.11(b)) and is not a party in the instant proceeding. Instead, Mr. Edwards, d/b/a Oklahoma Wildlife Preserve, Inc., requested a hearing and was entitled to notice of the time and place of hearing. On February 19, 2009, the ALJ issued an Order of Hearing Location scheduling a hearing, as follows:

ORDER OF HEARING LOCATION

Notice is hereby given that the hearing in this case scheduled to commence at 9:00 AM (Eastern Standard Time) on March 11, 2009 will be conducted at the following location:

United States Department of Agriculture
Room 1037, South Building
1400 Independence Ave., S.W.
Washington, DC 20250

Copies of this Order shall be served upon the parties by the Hearing Clerk's Office.

Done at Washington, D.C.
February 19, 2009

PETER M. DAVENPORT
Administrative Law Judge

On February 19, 2009, in accordance with the ALJ's Order of Hearing Location, the Hearing Clerk, by ordinary mail, served Mr. Edwards at his last known principal place of business.¹⁰ The Rules of Practice provide that a notice of hearing is deemed to be received at the time of mailing by ordinary mail to the last known principal place of business of a party (7 C.F.R. § 1.147(c)(2)). Therefore, in accordance with 7 C.F.R.

¹⁰Office of Administrative Law Judges, Hearing Clerk's Office, Document Distribution Form indicating the ALJ's February 19, 2009, Order of Hearing Location was sent by ordinary mail to Mr. Edwards on February 19, 2009, at the following address:

Mr. Wayne Edward [sic], President
Oklahoma Wildlife Preserve, Inc.
690-B South Highway 69/75
Atoka, OK 74525

§ 1.147(c)(2), Mr. Edwards is deemed to have received the notice of the time and place of the hearing on February 19, 2009. Under these circumstances, I agree with the ALJ's dismissal of the case based upon Mr. Edwards' failure to appear and prosecute his Request for Hearing; therefore, even if I were to find Mr. Fischer is a party in the instant proceeding and were to consider the merits of Mr. Fischer's appeal petition, I would deny Mr. Fischer's request to schedule a second hearing to be held in Oklahoma City, Oklahoma.

For the foregoing reasons, the following Order is issued.

ORDER

Richard Fisher's April 15, 2009, appeal petition is denied. This Order shall become effective upon service on Mr. Fischer.

Done at Washington, DC

June 22, 2009

William G. Jenson
Judicial Officer