

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 07-0174
)
Loreon Vigne, an individual,)
d/b/a Isis Society for Inspirational)
Studies, Inc., a California)
domestic non-profit corporation,)
a/k/a Temple of Isis and Isis)
Oasis Sanctuary,)
)
Respondent) **Order Denying Petition To Reconsider**

PROCEDURAL HISTORY

On November 18, 2008, I issued a Decision and Order terminating Loreon Vigne's Animal Welfare Act license and disqualifying Ms. Vigne from obtaining, holding, or using an Animal Welfare Act license for 2 years.¹ On December 31, 2008, Ms. Vigne filed a petition to reconsider the November 18, 2008, Decision and Order. On February 6, 2009, Kevin Shea, the Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Acting Administrator], filed a response to Ms. Vigne's petition to reconsider, and the Hearing Clerk transmitted the record to me for a ruling on Ms. Vigne's petition to reconsider. Based upon a careful

¹*In re Loreon Vigne*, __ Agric. Dec. ____ (Nov. 18, 2008).

review of the record, I deny Ms. Vigne's petition to reconsider and reinstate the Order in *In re Loreon Vigne*, ___ Agric. Dec. ___ (Nov. 18, 2008).

CONCLUSIONS BY THE JUDICIAL OFFICER ON RECONSIDERATION

Ms. Vigne raises five issues in her "Petition for Reconsideration." First, Ms. Vigne contends my finding that she waived her right to an oral hearing violates due process because she was not provided with adequate notice of the procedural requirements applicable to the instant proceeding (Pet. for Recons. at 4-6).

On August 30, 2007, the Hearing Clerk served Ms. Vigne with the Order to Show Cause as to Why Animal Welfare Act License 93-C-0611 Should Not be Terminated [hereinafter Order to Show Cause], 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], and a service letter dated August 22, 2007.² The Rules of Practice contain the procedural requirements applicable to the instant proceeding and the Hearing Clerk's August 22, 2007, service letter specifically instructs Ms. Vigne that the Rules of Practice govern the conduct of the proceeding and that she should become familiar with the Rules of Practice. The Rules of Practice provide that failure to request a hearing within the time allowed for filing the answer constitutes a waiver of hearing (7 C.F.R. § 1.141(a)). Moreover, the Hearing Clerk explicitly states in the August 22, 2007, service letter that Ms. Vigne's answer may include a request for an oral hearing and

²United States Postal Service domestic receipt for article number 7004 2510 0003 7022 9231.

that failure to file an answer or filing an answer which does not deny the material allegations in the Order to Show Cause constitutes an admission of the allegations in the Order to Show Cause and a waiver of the right to an oral hearing.

I conclude the Rules of Practice and the Hearing Clerk's August 22, 2007, service letter provided Ms. Vigne with adequate notice of the procedural requirements applicable to the instant proceeding and specifically notified her that either failure to file a timely request for a hearing or admission of the allegations in the Order to Show Cause would result in the waiver of the right to a hearing. Nonetheless, Ms. Vigne failed to file a timely request for an oral hearing and admitted the material allegations in the Order to Show Cause. Under these circumstances, I find no violation of Ms. Vigne's right to due process.

Second, Ms. Vigne contends my application to her of the waiver of hearing provisions in the Rules of Practice is error because she is an elderly woman and, at the time her request for a hearing was due, she appeared pro se (Pet. for Recons. at 4-6).

The Rules of Practice do not distinguish between persons who appear pro se and persons represented by counsel,³ and Ms. Vigne's status as a pro se litigant is not a basis

³*In re Octagon Sequence of Eight, Inc.* (Order Denying Pet. for Rehearing as to Lancelot Kollman Ramos), __ Agric. Dec. ___, slip op. at 4 (Dec. 13, 2007); *In re Bodie S. Knapp*, 64 Agric. Dec. 253, 299 (2005); *In re Mary Meyers* (Order Denying Pet. for Recons.), 58 Agric. Dec. 861, 865 (1999).

on which to set aside her waiver of the right to an oral hearing.⁴ Moreover, the Rules of Practice do not distinguish between elderly women and other persons, and Ms. Vigne's age and gender are not bases on which to set aside her waiver of the right to an oral hearing.⁵ Therefore, I reject Ms. Vigne's contention that my application to her of the waiver of hearing provisions in the Rules of Practice, is error.

Third, Ms. Vigne asserts Complainant's Motion for Summary Judgment did not bear on its face the moving attorney's telephone number, fax number, and bar number or any other information which would assist Ms. Vigne in contacting the moving party (Pet. for Recons. at 5).

⁴*Cf. In re Octagon Sequence of Eight, Inc.* (Order Denying Pet. for Rehearing as to Lancelot Kollman Ramos), ___ Agric. Dec. ___, slip op. at 4 (Dec. 13, 2007) (holding the respondent's status as a pro se litigant is not a basis on which to grant his petition for rehearing or set aside the default decision); *In re Anna Mae Noell*, 58 Agric. Dec. 130, 146 (1999) (stating lack of representation by counsel is not a basis for setting aside the default decision), *appeal dismissed sub nom. The Chimp Farm, Inc. v. U.S. Dep't of Agric.*, No. 00-10608-A (11th Cir. July 20, 2000); *In re Dean Byard* (Decision as to Dean Byard), 56 Agric. Dec. 1543, 1559 (1997) (stating the respondent's decision to proceed pro se does not operate as an excuse for the respondent's failure to file an answer).

⁵*Cf. In re Mary Jean Williams* (Order Denying Pet. to Reconsider as to Deborah Ann Milette), 64 Agric. Dec. 1673, 1678 (2005) (stating, generally, physical and mental incapacity are not bases for setting aside a default decision); *In re Jim Aron*, 58 Agric. Dec. 451, 462 (1999) (stating the respondent's automobile accident, loss of memory, payment of taxes, status as a United States citizen, and status as a veteran of the United States Army are not bases for setting aside the default decision); *In re Anna Mae Noell*, 58 Agric. Dec. 130, 146 (1999) (stating the respondent's age, ill health, and hospitalization are not bases for setting aside the default decision), *appeal dismissed sub nom. The Chimp Farm, Inc. v. U.S. Dep't of Agric.*, No. 00-10608-A (11th Cir. July 20, 2000).

Ms. Vigne is correct that Complainant's Motion for Summary Judgment does not bear on its face the moving attorney's telephone number, fax number, and bar number or any other information which would assist Ms. Vigne in contacting the moving party. However, the Rules of Practice do not require that motions contain such information. Moreover, I note the Order to Show Cause, which had been served on Ms. Vigne 9 months 1 week prior to the Acting Administrator's filing Complainant's Motion for Summary Judgment, contains the name, address, telephone number, and facsimile number of counsel for the Acting Administrator. Thus, I find, while not relevant to the disposition of the instant proceeding, Ms. Vigne had sufficient information to contact counsel for the Acting Administrator.

Fourth, Ms. Vigne asserts termination of her Animal Welfare Act license breaches the terms of the plea agreement Ms. Vigne and the United States entered in *United States v. Isis Society for Inspirational Studies, Inc.*, CR-06-313-01-MO (D. Or. Jan. 5, 2007). Specifically, Ms. Vigne contends the United States agreed that she could continue to possess, breed, and exhibit ocelots and termination of her Animal Welfare Act license violates that agreement. (Pet. for Recons. at 6-9.)

I have reviewed the plea agreement filed in *United States v. Isis Society for Inspirational Studies, Inc.*, and I cannot locate any provision in which the United States agreed that Ms. Vigne could continue to exhibit ocelots. The plea agreement states "[t]he government does not object to defendant, its affiliates, or the defendant's Secretary and

Treasurer, Loreon Vigne continuing to possess and breed endangered animals at its facilities in Geyersville, CA[.]” (Plea Agreement filed in *United States v. Isis Society for Inspirational Studies, Inc.*, at 7.) The termination of Ms. Vigne’s Animal Welfare Act license does not prohibit Ms. Vigne from continuing to possess and breed endangered animals; therefore, I reject Ms. Vigne’s assertion that termination of her Animal Welfare Act license breaches the terms of the plea agreement Ms. Vigne and the United States entered in *United States v. Isis Society for Inspirational Studies, Inc.*

Fifth, Ms. Vigne argues her guilty plea to conspiracy to violate the Endangered Species Act does not support termination of her Animal Welfare Act license under 9 C.F.R. § 2.11(a)(6) (Pet. for Recons. at 9-10).

The regulations and standards issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations and Standards] specify certain bases for denying an initial application for an Animal Welfare Act license (9 C.F.R. § 2.11) and further provide that an Animal Welfare Act license, which has been issued, may be terminated for any reason that an initial license application may be denied (9 C.F.R. § 2.12). Section 2.11(a)(6) of the Regulations and Standards provides that 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 the issuance of the Animal Welfare Act license would be contrary to the purposes of the Animal Welfare Act, as follows:

§ 2.11 Denial of initial license application.

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

....

(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.

9 C.F.R. § 2.11(a)(6).

The purposes of the Animal Welfare Act are set forth in a congressional statement of policy, as follows:

§ 2131. Congressional statement of policy

The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order—

(1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;

(2) to assure the humane treatment of animals during transportation in commerce; and

(3) to protect owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is essential to regulate, as provided in this chapter, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

7 U.S.C. § 2131.

Ms. Vigne was involved with violations of the Endangered Species Act, a federal law pertaining to the ownership of animals, and provided the government with false statements to conceal violations of the Endangered Species Act (Plea Agreement filed in *United States v. Isis Society for Inspirational Studies, Inc.*, at 3-4). These activities are specifically addressed in 9 C.F.R. § 2.11(a)(6) as bases for denying an initial Animal Welfare Act license application and an Animal Welfare Act license, which has been issued, may be terminated for any reason that an initial license application may be denied (9 C.F.R. § 2.12). Therefore, I reject Ms. Vigne's contention that the record does not support termination of her Animal Welfare Act license under 9 C.F.R. § 2.11(a)(6).

In addition to the five issues raised by Ms. Vigne in the Petition for Reconsideration, Ms. Vigne requests permission to withdraw her guilty plea in *United States v. Isis Society for Inspirational Studies, Inc.*, and return of the \$60,000 monetary penalty she paid in connection with *United States v. Isis Society for Inspirational Studies, Inc.*

In January 2007, United States District Court Judge Michael W. Mosman accepted the Isis Society's guilty plea entered in *United States v. Isis Society for Inspirational Studies, Inc.* (Petition to Enter Plea of Guilty, Certificate of Counsel, and Order Entering Plea filed in *United States v. Isis Society for Inspirational Studies, Inc.*); adjudicated the Isis Society guilty of conspiracy to violate the Endangered Species Act (18 U.S.C. § 371) and violating the Endangered Species Act (16 U.S.C. §§ 1538(a)(1)(F), 1540(b)(1)); and

sentenced the Isis Society to pay a \$60,000 fine and to serve a 2-year probationary period. This forum is not the forum in which to lodge a request to withdraw a guilty plea entered in the United States District Court for the District of Oregon. I have no jurisdiction either to entertain Ms. Vigne's request for permission to withdraw the guilty plea entered in the United States District Court for the District of Oregon or to entertain Ms. Vigne's request for return of the \$60,000 fine Ms. Vigne paid in connection with that guilty plea.

Section 1.146(b) of the Rules of Practice (7 C.F.R. § 1.146(b)) provides that the decision of the Judicial Officer shall automatically be stayed pending the determination to grant or deny a timely-filed petition to reconsider. Ms. Vigne's petition to reconsider was timely filed and automatically stayed *In re Loreon Vigne*, ___ Agric. Dec. ___ (Nov. 18, 2008). Therefore, since Ms. Vigne's petition to reconsider is denied, I hereby lift the automatic stay, and the Order in *In re Loreon Vigne*, ___ Agric. Dec. ___ (Nov. 18, 2008), is reinstated; except that, the effective date of the Order is the date indicated in the Order in this Order Denying Petition To Reconsider.

For the foregoing reasons and the reasons in *In re Loreon Vigne*, ___ Agric. Dec. ___ (Nov. 18, 2008), Ms. Vigne's petition to reconsider is denied and the following Order is issued.

ORDER

1. Animal Welfare Act license 93-C-0611 is terminated.
2. Loreon Vigne is disqualified for 2 years from becoming licensed under the Animal Welfare Act or otherwise obtaining, holding, or using an Animal Welfare Act license, directly or indirectly through any corporate or other device or person.

This Order shall become effective on the 60th day after service of this Order on Loreon Vigne.

Done at Washington, DC

February 11, 2009

William G. Jenson
Judicial Officer