

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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| In re: |) | AWA Docket No. 07-0077 |
| |) | |
| |) | |
| Amarillo Wildlife Refuge, |) | |
| Inc., a Texas non-profit corporation, |) | |
| |) | |
| Respondent |) | DECISION AND ORDER |

Procedural History

On March 6, 2007, Complainant, the Animal and Plant Health Inspection Service (APHIS), filed an “Order to Show Cause as to Why Animal Welfare License 74-C-0486 Should Not Be Terminated”. On April 2, 2007, Charles Azzopardi filed a letter as Respondent’s Answer in which he requested a hearing. Mr. Azzopardi contended that there are mitigating circumstances why the license should not be terminated even though he admits, as the Order to Show Cause alleges, that he was the Respondent’s president, director and agent, and managed and controlled its business when, on July 21, 2006, he pled guilty to and was convicted by a U.S. Magistrate Judge of the misdemeanor of Selling and Transporting in Interstate Commerce an Endangered Species of Wildlife.

APHIS, by its attorney, responded that Mr. Azzopardi’s request for a hearing should be denied since the license termination sought by APHIS is based on a criminal conviction. Attached to the APHIS response were: (1) a copy of the plea agreement, (2) a factual resume signed by Mr. Azzopardi and his attorney, and (3) the Judgment by the United States Magistrate’s Judge; each of which was certified to be a “true copy of an

instrument on file” by the Deputy Clerk of the U.S. District Court, Northern Texas. In sum, counsel for APHIS contended that a hearing is unnecessary and would serve no useful purpose where the agency’s action is predicated upon a criminal conviction and the material facts are not in dispute.

In response to rulings that a more dispositive motion was needed, APHIS filed, on January 15, 2008, a motion for summary judgment with a Declaration by Robert M. Gibbens, DVM, APHIS, Animal Care, Regional Director – Western Region explaining why Mr. Azzopardi’s criminal conviction for violating the Endangered Species Act constitutes an appropriate cause for terminating the license held by Amarillo Wildlife Refuge, Inc. under the Animal Welfare Act (AWA), and for a two-year disqualification of both Respondent and Carmel Azzopardi from obtaining a new AWA license. Thereupon, Respondent requested and was granted an extension of time until March 18, 2008 to respond to the motion. No response was filed.

Decision

I agree with Complainant that under section 1.132 of the rules of practice (7 C.F.R. § 1.132), an “order to show cause” constitutes a valid form of a complaint, and that inasmuch as Mr. Azzopardi admitted in the Court certified true copy of his signed and witnessed “Factual Resume” that he “knowingly and willfully offered for sale, or sold in interstate commerce in the course of commercial activity an endangered species of wildlife”, his conduct comes within the “willfulness” exception to the requirement of 5 U.S.C. § 558 that an agency must give a licensee notice and opportunity to achieve compliance before taking action to terminate a license.

As explained by Complainant's Memorandum in support of the Motion for Summary Judgment, and the Declaration of Dr. Gibbens, the activities governed by the Animal Welfare Act and the Endangered Species Act overlap. Persons who meet the AWA's definition of a dealer or exhibitor must be licensed or registered with the Secretary of Agriculture to help assure that, among other goals of the AWA, animals receive humane treatment when transported in commerce (7 U.S.C. §§ 2131, 2132, 2133, 2134). Holding such a license is also a prerequisite for obtaining a permit from the United States Department of the Interior to sell, deliver, carry, transport or ship "endangered species"(16 U.S.C. §§ 1538, 1539, 1540; 50 C.F.R. §§ 17.3, 17.21(g)(2)(iv)).

The regulations issued under the Animal Welfare Act authorize the termination of an AWA license at any time for any reason that an initial license application may be denied (9 C.F.R. § 2.12), and an initial license application may be denied 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.

The certified court documents that have been filed, and Mr. Azzopardi's admissions, establish that Mr. Azzopardi was the Respondent's president, director and agent, and managed and controlled its business when he pled guilty to and was convicted, on July 21, 2006, by a U.S. Magistrate Judge of the misdemeanor of Selling and Transporting in Interstate Commerce an Endangered Species of Wildlife.

In his Declaration, Dr. Gibbens states that this conviction of the Endangered Species Act, a statute aimed at protecting animals, makes both Mr. Azzopardi and his company, Amarillo Wildlife, Inc. unfit to hold an AWA license. Mr. Azzopardi was convicted of illegally transporting and selling endangered animals, thereby commercializing endangered species and promoting both the black market for the animals and incentives to illegally take endangered species from their habitat. In doing so, Mr. Azzopardi operated as a “dealer” as defined in the AWA and used the AWA license issued to Amarillo Wildlife Refuge, Inc., to transport them to a site where he illegally sold them to a person he knew did not have a permit to own them. Dr. Gibbens has determined that, in light of these facts, the issuance of a license to either Mr. Azzopardi or Amarillo Wildlife Refuge, Inc. would be contrary to the AWA’s stated purposes of ensuring humane treatment of animals in that Mr. Azzopardi used the existing AWA license for unlawful purposes that exposed animals in his care to harm. Based on his experience in enforcing the AWA and given the seriousness of Mr. Azzopardi’s violations of the Endangered Species Act and their impact under the AWA, Dr. Gibbens advises that a two-year period of license disqualification of the Respondent corporation and its directors, officers and agents, is the minimal time needed to ensure that they will abide by federal statutes enacted to protect animals and understand that there are consequences for violating those laws.

In keeping with the policy often expressed by the Judicial Officer that when adjudicating sanction cases, we should ascertain policies relevant to their disposition from the Department’s administrative officials and defer to them when appropriate, the following order is being entered in accordance with Dr. Gibbens’ declaration.

ORDER

It is hereby ORDERED that Animal Welfare license number 74-C-0486 issued to Amarillo Wildlife Refuge, Inc. is terminated, and that Amarillo Wildlife Refuge, Inc., its directors, officers and agents, and any legal entity in which they may have a substantial interest, are disqualified from obtaining an AWA license for a two-year period.

This decision and order shall become effective and final 35 days from its service upon the parties who have the right to file an appeal with the Judicial Officer within 30 days after receiving service of this decision and order by the Hearing Clerk as provided in the Rules of Practice (7 C.F.R. § 1.145).

Dated: March 24, 2008

Victor W. Palmer
Administrative Law Judge