

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWA Docket No. 08-0073

In re: AMELIA RASMUSSEN,
(also known as Amy Rasmussen),
An individual,

Respondent

MEMORANDUM OPINION AND ORDER

This proceeding was brought under the Animal Welfare Act (the “Act”), 7 U.S.C. § 2131, *et seq.* by Kevin Shea, the Acting Administrator of the Animal and Plant Health Inspection Service (“APHIS”) and seeks to terminate the Respondent’s Animal Welfare License. It was initiated on March 10, 2008 with the filing of an Order to Show Cause Why Animal Welfare License Number 74-C-0537 Should Not Be Terminated. The Respondent’s Answer was filed on May 9, 2008.¹ On July 1, 2008, the Acting Administrator filed a Motion for Summary Judgment. The motion was served by certified mail on the Respondent by the Hearing Clerk’s Office together with a letter advising that any response to the motion should be filed within 20 days. On July 7, 2008, the Administrator filed a Supplement to Complainant’s Motion for Summary Judgment. No response to either pleading has been received and the matter is now before the

¹ The Respondent’s Answer was filed by facsimile on May 2, 2008 and the original was filed May 9, 2008.

Administrative Law Judge for disposition. As there are no genuine issues of any material fact, the Motion will be granted and an Order will be issued terminating the license.

Discussion

7 U.S.C. § 2133 provides that “The Secretary shall issue licenses to dealers and exhibitors upon application therefor in such form and manner as he may prescribe....” Express authority for the suspension or revocation of licenses for violations of the Act or regulations is found in 7 U.S.C. § 2149. The implementing regulations make it clear that a license may be terminated at any time for any reason that an initial license application would be denied. 9 C.F.R. § 2.12 Included in the list of specified reasons for denial of the issuance of a license is:

(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 governmental agencies, or has plead *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws 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 record amply supports the existence of such a conviction² by the Respondent. Initially, it will be noted that as the Respondent’s Answer failed to directly address the factual allegation of the conviction as set forth in the Order to Show Cause with a denial or other response, she will be is deemed to have admitted the allegation. 7 C.F.R. § 1.136(c).

² See Plea Agreement dated March 20, 2007 and the Judgment in a Criminal Case dated March 20, 2007 in *United States v. Amelia Rasmussen*, Case No. SA-07-CR-80-JWP, United States District Court for the Western District of Texas, attached as exhibits to Petitioner’s Motion for Summary Judgment.

The defenses invoked by the Respondent have little merit. Even assuming *pro arguendo* that a statute of limitations governs this action, it was brought within the five year period set forth in 28 U.S.C. § 2462 for bringing enforcement action involving any civil fine, penalty, or forfeiture, pecuniary or otherwise. It is also well established that *laches*, a defense based upon undue delay in asserting a legal right or privilege, is inapplicable to actions of the government. *United States v. Kirkpatrick*, 22 U.S. (9 Wheat) 720 (1824); *See also, Gaussen v. United States*, 97 U.S. 584, 590 (1878); *German Bank v. United States*, 148 U.S. 573, 579 (1893); *United States v. Verdier*, 164 U.S. 213, 219 and *United States v. Mack*, 295 U.S. 480, 489 (1935).

The defense raised concerning retrospective application of the regulation also lacks merit as it was the conviction of the Respondent in 2007, well after the effective date of the regulation that provides the legal basis for the termination of the Respondent's Animal Welfare Act license. *See, Khan v. Ashcroft*, 352 F.3d 521 (2nd Cir. 2003).

Given the nature of the Respondent's violations of the Endangered Species Act by illegally purchasing and transporting endangered animals, thereby commercializing endangered species, and promoting both the black market for the animals and the incentives to illegally take endangered species from their habitat while acting as a "dealer" as defined by the Act and using her AWA license and USDA records to illegally purchase and transport endangered animals, as set forth in the Declaration of Robert M. Gibbens, D.V.M., a two year period of disqualification is both appropriate and warranted.

Accordingly, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. The Secretary has jurisdiction under the Animal Welfare Act over the Respondent who has acted as a “dealer” within the meaning of the Act.
2. At all relevant times, the Respondent held Animal Welfare Act License 74-C-0537 as an exhibitor and dealer which was issued in the name of “AMY RASMUSSEN.”
3. On or about August 1, 2006, the United States Attorney filed a Misdemeanor Information in the United States District Court for the District of Oregon alleging that the Respondent knowingly, intentionally and unlawfully received, transported and shipped in interstate commerce an endangered species, namely two ocelots she purchased from the “Temple of Isis,” in the course of commercial activity, in violation of the Endangered Species Act, 16 U.S.C. § 1538(1)(E) and 1540(b)(1). It was further alleged that in furtherance of the crime, an APHIS Form 7020 was falsified to conceal the illegal nature of the transaction.
4. On or about August 2, 2006, the United States Attorney for the District of Oregon and the Respondent jointly filed a Plea Agreement containing admissions to the offenses contained in the Misdemeanor Information and which stipulated facts as to the specifics of the unlawful transactions concerning the sales of ocelots in interstate commerce.
5. On or about March 20, 2007, before the United States District Court, the Respondent entered a plea of guilty to the violations of the Endangered Species Act, as charged. The guilty plea was found to be provident based upon the admission of sufficient facts establishing the elements of the crimes, to have been made voluntarily, and was accepted by United States Magistrate Judge John W. Primomo. Consistent with

the Plea Agreement, the Respondent was sentenced to serve a term of probation of twelve months and to pay \$15,000 as a “Community Service Payment” to the Oregon Zoo.

Conclusions of Law

1. The Respondent engaged in the transactions found to violate the Endangered Species Act.
2. The violation of the Endangered Species Act by the Respondent is a violation of a Federal law pertaining to the transportation, ownership, neglect or welfare of animals within the meaning of 9 C.F.R. § 2.11(a)(6) and constitutes sufficient basis to terminate the license of the Respondent.

Order

1. Animal Welfare Act License 74-C-0537 issued in the name of “AMY RASMUSSEN” is **TERMINATED**.
2. The Respondent, any agent, assign or successor of the Respondent or any related business entity or in which she is an officer, agent or representative are **DISQUALIFIED** from obtaining an Animal Welfare Act License for a period of two (2) years.
3. This Order shall become effective and final 35 days from its service upon the parties who have a right to file an appeal with the Judicial Officer within 30 days after receiving service of this Memorandum Opinion and Order by the Hearing Clerk as provided in the Rules of Practice. 7 C.F.R. § 1.145.

Copies of this Order will be served upon the parties by the Hearing Clerk.

Done at Washington, D.C.
September 25, 2008

PETER M. DAVENPORT
Administrative Law Judge

Copies to: Bernadette Juarez, Esquire
Tylden Shaeffer, Esquire

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