

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWA Docket No. D-09-0069

In re: LION'S GATE CENTER, LLC.

Petitioner

DECISION AND ORDER

This action was brought by Lion's Gate Center, LLC., a Colorado Limited Liability Company, (Lion's Gate) seeking review of and requesting a hearing concerning the Administrator's determination that the corporation was unfit to be licensed under the Animal Welfare Act. 7 U.S.C. §2131, *et seq.* The Administrator filed a Response to the Request for Hearing, agreeing to have the matter set for hearing. An Order was entered on May 6, 2009 directing the filing of exhibit and witness lists and exchange of the exhibits between the parties on May 6, 2009 and on September 23, 2009, the matter was set for oral hearing to commence in Denver, Colorado on January 26, 2009.

This matter is now before the Administrative Law Judge upon the Motion of the Respondent filed on November 24, 2009 seeking Summary Judgment affirming the denial of an application for an Animal Welfare Act License to the Petitioner corporation. The Petitioner has filed a Response to the Motion and the matter is ready for disposition at this time.

In moving for Summary Judgment, the Respondent relies upon Section 2.10(b) and 2.11 of the Regulations. Section 2.10(b) provides:

Any person whose license has been revoked shall not be licensed in his name or her own name or in any other manner; nor will any partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, be licensed. 9 C.F.R. §2.10(b).

Section 2.11 provides:

A license will not be issued to any applicant...(3) has had a license revoked or whose license is suspended as set forth in §2.10; 9 C.F.R. §2.11.

In the letter dated February 18, 2009, the Administrator indicated his reasons to believe Lion's Gate Center, LLC. unfit as an applicant. Specifically, because of the corporation's involvement with a disqualified entity, issuance of a license to Lion's Gate was considered contrary to the purposes of the Act and would operate so as to circumvent the order of revocation issued by the Secretary of Agriculture against the disqualified entity, Prairie Wind Animal Refuge (Prairie Wind).

Findings of Fact

The following facts do not appear to be in dispute:

1. On July 31, 2001, Administrative Law Judge Jill S. Clifton entered a Consent Decision in *In re Michael Jurich, an individual; and Prairie Wind Animal Refuge, a Colorado corporation*, AWA Docket 01-0029. That decision resolved the pending administrative proceeding and included a civil penalty, a cease and desist order and liquidated penalties including license revocation and an additional civil penalty should there be further violations of the Regulations during a specified probationary period. Complainant's Motion for Summary Judgment (CMSJ) RX 1.

2. Lion's Gate Center, LLC. was formed by Peter Winney on or about May 31, 2002.
3. By letter dated February 11, 2003, the Animal and Plant Health Inspection Service (APHIS) advised Jurich and Prairie Wind that APHIS had documented a failure to comply with the Regulations during the probationary period, enclosed documentary evidence of the violations and assessed the penalty set forth in the Decision and revoked License No 84-C-0052. CMSJ, RX 2.
4. Jurich and Prairie Wind filed suit seeking review of the APHIS action in the United States District Court for the District of Colorado, *Jurich, et al. v. U.S. Dep't of Agriculture*, 1:03-cv-00793-EWN-OES. CMSJ, RX 3a. On or about August 27, 2003, the case was settled, with Jurich and Prairie Wind acknowledging revocation of the exhibitor's license. CMSJ, RX 3c.
5. On or about May 11, 2005, Peter Winney applied for an exhibitor's license, identifying himself as an individual doing business as "Lion's Gate." The application listed Dr. Joan Laub and himself as "owners of the business." The application was subsequently withdrawn. CMSJ, RX 4.
6. By deed dated December 21, 2007, Joan Laub took title to the real estate located at 22111 County Road 150, Agate, Colorado on which Prairie Wind was and is currently located. CMSJ, RX 6, pp. 15-16.
7. Prairie Wind holds Colorado Division of Wildlife License No. 08CP270. Both Dr. Laub and Winney are officers of Prairie Wind.

8. On July 7, 2008, Prairie Wind applied for an Animal Welfare Act license as an exhibitor, identifying Dr. Laub as the corporation's President and Executive Director, and Winney as its Vice President and Director. CMSJ, RX 5, p 1.

9. On August 12, 2008, APHIS denied the application and returned the application fee, stating that APHIS was unable to issue a license to Prairie Wind due to its previous license revocation. CMSJ, RX 5, pp. 2-3.

10. On October 31, 2008, Peter Winney submitted Lion's Gate Center, LLC.'s application for an Animal Welfare Act license as an exhibitor. Included in the attachments to the application was a "License Agreement" between Lion's gate and Prairie Wind, stating that Prairie Wind and Dr. Laub own the property, facility, and animals intended to be exhibited by the applicant Lion's Gate. The stated purpose of the agreement was to facilitate exhibition of the animals owned by Prairie Wind and Laub at Prairie Wind's facility. In turn, Lion's Gate would be allowed to employ the wildlife sanctuary license issued by the Colorado Division of Wildlife and Lion's Gate would obtain an Animal Welfare Act license in its name. CMSJ, RX 6, PX 4.

11. On February 18, 2009, APHIS denied Lion's Gate's application on the grounds that it was unfit to be licensed and "that issuance of a license to Lion's Gate would be contrary to the purposes of the Act, and would operate so as to circumvent an order of revocation issued by the Secretary of Agriculture as to Prairie Wind Animal Refuge." PX 14.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. The Administrator's determination that Lion's Gate was unfit for issuance of a license and the denial of the application on the basis of Sections 2.10(b) and 2.11 of the Regulations (9 C.F.R. §§ 2.10(b) and 2.11) was in accordance with law and the Regulations as the application sought approval of a joint venture with a corporate entity whose license had been revoked by the Secretary.

3. The divestiture of ownership and subsequent death of Michael Jurich do not act to remove the permanent disqualification from licensure of a corporate entity whose existence is perpetual.

Order

1. The Motion of the Administrator for Summary Judgment is **GRANTED** and the determination of unfitness and denial of the license application of Lion's Gate Center, LLC. is **AFFIRMED**.

2. Lion's Gate Center, LLC. is disqualified for a period of one year from obtaining, holding, or using an Animal Welfare Act license directly or indirectly through any corporate or other device or person.

3. This Decision and Order shall become final without further proceedings 35 days from service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to Section 1.145 of the Rules of Practice. 7 C.F.R. §1.145.

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

Done at Washington, D.C.
January 5, 2010

PETER M. DAVENPORT
Acting Chief Administrative Law Judge

Copies to: Colleen A. Carroll, Esquire
Laura J. Reise, Esquire
Jennifer Reba Edwards, Esquire
Jay Wayne Swearingen, Esquire

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue SW
Room 1031, South Building
Washington, D.C. 20250-9203
202-720-4443
Fax: 202-720-9776