

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 09-0069

In re: Lion's Gate Center, LLC,
Petitioner

Decision and Order on Remand

Appearances: Jay Wayne Swearingen, Esquire and Jennifer Reba Edwards, Esquire, The Animal Law Center, LLC, Wheat Ridge, Colorado for the Petitioner
Colleen A. Carroll, Esquire, Office of General Counsel, United States Department of Agriculture, Washington, DC for the Respondent

Preliminary Statement

This action was originally 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 matter was set for oral hearing to commence in Denver, Colorado on January 26, 2010; however, prior to that date the Respondent filed a Motion for Summary Judgment which I granted in a Decision and Order entered on January 5, 2010.

The Petitioner appealed my Decision, and on August 30, 2010, the Departmental Judicial Officer remanded the case to me for further proceedings in accordance with the rules of practice applicable to this proceeding to determine the identity of the person or persons whose Animal Welfare Act license was revoked effective August 27, 2003

pursuant to *In re Michael Jurich* (Consent Decision), 60 Agric. Dec. 722 (2001),¹ as implemented by the settlement agreement in *Jurich v. U.S. Dep't of Agric.*, No. 1:03-cv-00793-EWN-OES (D. Colo. Sept. 10, 2003) and for any other purpose that I as the Chief Administrative Law Judge might determine necessary for the proper disposition of the proceeding.

Following a telephonic conference in the case on February 9, 2011, the parties agreed that the issues in the case were of law rather than of fact and that disposition could be effected by briefs and affidavits rather than by holding an evidentiary hearing. The briefs have since been received and the matter is now ready for disposition.

Discussion

At issue in this action is whether the Administrator, acting through the Western Regional Director, Animal Care, Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA) was justified in denying Petitioner's application for an Animal Welfare Act license on the basis that the applicant had entered into a License Agreement with an entity whose license had been revoked and as a result, issuance of a license to the Petitioner would circumvent an order of revocation issued by the Secretary of Agriculture.

The Petitioner takes the position that the license issued to Michael Jurich and Laurie E. Jurich, d/b/a Prairie Wind Animal Refuge² (AWA License 84-C-0052³) was voluntarily terminated by Jurich as of January 31, 2000 and accordingly was not in effect

¹ See also: www.dm.usda.gov/oaljdecisions

² The Colorado Secretary of State Business Center website lists Prairie Wind Animal Refuge as being incorporated on September 13, 1993.

³ The number sometimes also appears in the record as 84-C-052. The parties are in agreement that 84-C-052 and 84-C-0052 are one and the same. *See*: ¶ 3, Declaration of Robert M. Gibbens, DVM and Petitioner's Brief, ¶ 3.

and thus could not have been revoked in 2003 by violation of the terms of probation of the earlier Consent Decision entered in *In re Michael Jurich, an individual and Prairie Wind Animal Refuge, a Colorado corporation*, AWA Docket No. 01-0029.⁴ Reliance on such a position is misplaced. In the Consent Decision, Jurich agreed that he as an individual and the corporate entity Prairie Wind Animal Refuge would neither apply for a license nor engage in any activities for which a license would be required. They also agreed that if there was a failure to comply with §2.1 of the Regulations, (9 C.F.R. §2.1), such failure would trigger both a revocation of the license and the civil penalty of \$15,000.00.⁵ As the Consent Decision was executed by both Jurich, individually and in his corporate capacity as “President,” and his counsel, awareness of the full consequences will be presumed.

Petitioner argues that issuance of AWA License 84-C-0052 to Michael R. Jurich and Laurie E. Jurich, d/b/a Prairie Wind Animal Refuge did not constitute an issuance of the license to Prairie Wind Animal Refuge, a Colorado non-profit corporation. That argument is also without merit. Jurich’s initial application identified him as “owner” of an unspecified form of entity⁶ and the renewal applications clearly identify the licensed entity as a corporation in the type of organization block of the renewal form. RX-16, p. 3, 4, 6, and 11 of 15. Similarly, the Declaration of Robert M. Gibbens, DVM indicates that the license issued on February 7, 1994 was identified on agency records as a corporation. Declaration of Robert M. Gibbens, DVM, ¶ 3.

⁴ The Consent Decision refers to AWA License No. 94-C-0052. This is a typographical error as no such license exists.

⁵ Revocation is attended by permanent ineligibility to be issued a license. 9 C.F.R. §2.11.

⁶ The type of organization block does not appear on the form; however, is present on subsequent forms used for renewal of the license.

The letter dated October 31, 2008 accompanying Petitioner's license application explained that the Petitioner had entered into a License Agreement with Prairie Wind Animal Refuge dated October 27, 2008. More tellingly, that letter acknowledges that Prairie Wind Animal Refuge's license had been revoked. Attachment 6, Respondent's Motion for Summary Judgment. The letter goes on to explain that their counsel had considered dissolving Prairie Wind Animal Refuge, but were concerned that such dissolution might jeopardize the corporation's grandfathered status as a wildlife sanctuary. *Id.*

In denying the Petitioner's application for an Animal Welfare Act license, the Respondent relied 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 to the Petitioner dated February 18, 2009, Dr. Gibbens indicated his reasons for finding Lion's Gate Center, LLC. unfit as an applicant. Specifically, because of the Petitioner's involvement and relationship 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. The stated purpose of the agreement between the Petitioner and Prairie Wind Animal Refuge was to facilitate

exhibition of the animals owned by Prairie Wind Animal Refuge and Dr. Joan Laub at Prairie Wind Animal Refuge'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. As Prairie Wind Animal Refuge's license had been revoked, the Director's conclusion that the arrangement would operate so as to circumvent the order of revocation issued by the Secretary of Agriculture against a disqualified entity, the denial was proper.

Accordingly on the basis of the evidence before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. The records of the Colorado Secretary of State indicate that Prairie Wind Animal Refuge is a nonprofit corporation that was formed on September 13, 1993. Its term of duration is perpetual. Michael R. Jurich's name appears on the early filings; the more recent filings contain Joan Laub's name. RX-8.
2. On July 31, 2001, United States 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.
3. The reference to AWA License No. 94-C-0052 in the above Consent Decision was a typographical error and should properly have been 84-C-0052. License 94-C-0052

does not exist. In assigning AWA License numbers, the first two digits refer to the state of issuance (Colorado is coded 84); the letter refers to the type of license (exhibitor); and the three (and later four) digits following the letter indicate the sequential numbering of the issuances. Declaration of Robert M. Gibbens, DVM, ¶ 3.

4. The Animal Welfare Act license issued originally to Michael R. Jurich and Laurie E. Jurich, d/b/a Prairie Wind Animal Refuge (No. 84-C-0052) is one and the same as 84-C-052 and was consistently renewed as a corporate license. RX-16, p. 4, 6, 11 of 15.

5. Lion's Gate Center, LLC. was formed by Peter Winney on or about May 31, 2002.

6. By letter dated February 11, 2003, the Animal and Plant Health Inspection Service (APHIS) advised Jurich and Prairie Wind Animal Refuge 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.

7. Jurich and Prairie Wind Animal Refuge 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 both Jurich and Prairie Wind Animal Refuge expressly acknowledging revocation of the exhibitor's license. RX 3c.

8. 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.

9. 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 Animal Refuge was and is currently located. CMSJ, RX 6, pp. 15-16. Prairie Wind Animal Refuge continues to exist at that location according to filings with the Colorado Secretary of State's Office. RX-8.

10. Prairie Wind Animal Refuge holds Colorado Division of Wildlife License No. 08CP270. Both Dr. Laub and Winney are officers of Prairie Wind Animal Refuge.

11. On July 7, 2008, Prairie Wind Animal Refuge 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.

12. 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 Animal Refuge due to its previous license revocation. CMSJ, RX 5, pp. 2-3.

13. 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 Animal Refuge, stating that Prairie Wind Animal Refuge and Dr. Laub own the property, facility, and animals intended to be exhibited by the applicant Lion's Gate. One of the stated purposes of the agreement was to facilitate exhibition of the animals owned by Prairie Wind Animal Refuge and Laub both on and off Prairie Wind Animal Refuge'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.

14. The above letter expressly acknowledged that Prairie Wind Animal Refuge's license had been revoked, but explained that their counsel had considered dissolving Prairie Wind Animal Refuge, but were concerned that such dissolution might jeopardize the corporation's grandfathered status as a wildlife sanctuary.

15. 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 Settlement Agreement reached in *Jurich v. U.S. Dep't of Agric.*, No. 1:03-cv-00793-EWN-OES (D. Colo. Sept. 10, 2003) acknowledged the revocation of the Animal Welfare Act license previously held by Jurich and Prairie Wind Animal Refuge and the imposition of the accompanying civil penalty.
3. 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(a) 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.
4. 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 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.

May 9, 2011

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Colleen A. Carroll, Esquire
Jay Wayne Swearingen, Esquire
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