

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0296

In re: Jeffery¹ W. Ash, an individual
doing business as Ashville Game Farm; and
Ashville Game Farm, Inc., a New York Corporation

Respondents

Decision and Order

Preliminary Statement

On March 16, 2012, Kevin Shea, the Acting Administrator of the Animal and Plant Health Inspection Service filed a Complaint alleging that Respondents had violated the Animal Welfare Act, as amended (AWA or Act), 7 U.S.C. §2131 *et seq.* and the regulations and standards issued thereunder, 9 C.F.R. §1.1 *et seq.* A copy of the Complaint and the Rules of Practice were served by certified mail upon Respondent Jeffery W. Ash on March 22, 2012. The attempt to serve Ashville Game Farm, Inc. was unsuccessful and was returned by the U.S. Postal Service.

The Complaint filed by the Acting Administrator alleged several violations of the Act and its regulations occurring between July 3, 2007² and January 10, 2011 and sought a cease and desist order, a civil penalty, and either suspension or revocation of Ash's AWA license.

¹ Although the Complaint names Jeffrey W. Ash as the Respondent, his Answer identifies him as Jeffery W. Ash.

² Paragraph 4 of the Complaint however alleges that from June of 2007 to January of 2012 operated a zoo without a valid license. Paragraph 1 of the Complaint however alleges that Ash's AWA License No. 21-C-0256 expired on February 18, 2010 when he failed to renew it, a fact disputed by Ash in his Answer.

On April 9, 2012, Respondent Ash's Answer was received and filed in the Hearing Clerk's Office. In his Answer, Ash denied generally the allegations contained in the Complaint and acknowledged that a New York Corporation was formed and registered in the name of an attorney by the name of Amy W. Cohen at the request of his ex-wife, but indicated that all business activities at the Greenwich, New York address were conducted by Respondent Ash doing business as Ashville Game Farm.

On August 31 of the previous year Complainant had initiated action against Respondent Jeffrey W. Ash, doing business as Ashville Game Farm by the filing of an Order to show cause why his exhibitor's license should not be revoked, the same being *In re Jeffrey W. Ash, an individual doing business as Ashville Game Farm*, Docket No. 11-0380. In that action, the Administrator contended that Ash was no longer fit for licensure under the AWA due to his conviction for the misdemeanor of reckless endangerment, second degree in relation to his exhibition of wild and exotic animals.³

On April 2, 2012, only days shortly before Ash's Answer was due to be filed in Docket No. 12-0296, Judge Janice K. Bullard entered a Decision and Order in Docket No. 11-0380 granting summary judgment in favor of the Complainant and revoking AWA License No. 21-C-0359. In her decision, Judge Bullard noted that the State of New York had revoked his State license.

Following the filing of an Answer by Ash, I entered an Order directing the exchange of witness and exhibit lists with the Hearing Clerk's Office and further directed the parties to exchange exhibits. The parties were also directed to confer with each other and to report the expected duration of any hearing of the issues in the action, the

³ No attempt was made by Complainant to request consolidation of the two actions against Ash although obviously, the violations alleged in the second action predated the filing of the first action.

preferred location for the hearing, and a list of mutually agreeable dates. Counsel for the Complainant filed that report on June 15, 2013. As the dates agreed upon by the parties were not available, a teleconference was scheduled for February 20, 2013 to set a hearing date. Counsel for Respondent Ash was available; however, Complainant's Counsel was not. Efforts to schedule this matter for hearing being unsuccessful and mindful of current budgetary constraints all but precluding travel, review of the file was undertaken to determine whether the matter could be resolved without the need for a hearing.

Review of the prior action reflecting that AWA License No. 21-C-0359 has been terminated,⁴ so much of the relief sought as asks for suspension or revocation of the license has been mooted by action taken in *In re Jeffrey W. Ash, an individual doing business as Ashville Game Farm*, Docket No. 11-0380, 71 Agric. Dec. _____ (April 2, 2012); modified by the Judicial Officer, 71 Agric. Dec. _____ (September 14, 2012)(ALJ's decision to revoke not adopted, but rather license terminated).

Official notice being taken that Respondent can no longer legally operate and is no longer in business as both his New York license and AWA licenses have been revoked, entry of a cease and desist order would currently appear to be of limited utility.

Given the remedial nature of the AWA and the fact that Respondent Ash has been precluded from exhibiting animals and effectively put out of business, I further find that imposition of a civil penalty in this case is not necessary to advance the purposes of the Act.

Service never having been made on Ashville Game Farm, Inc. and no further action having been taken to do so, the allegations against it are **DISMISSED**.

⁴ Although the license was revoked in Docket No. 11-0380, it had apparently previously expired for failure to renew it.

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

March 22, 2013

Peter M. Davenport
Chief Administrative Law Judge

Copies to: Colleen A. Carroll, Esquire
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