UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

REC'D - USDA/OALJ/OHC
2019 APR 12 PM2:20

In re:	)	
	)	
SPLISH SPLASH II, LLC, an Oklahoma limited liability company,	)	AWA Docket No. 19-J-0050
	)	
Petitioner.	)	

DECISION AND ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Appearances:

Pro se Petitioner Splish Splash II, LLC, represented by Joseph M. Estes, also known as Joe Estes; and

Colleen A. Carroll, Esq., with the Office of the General Counsel, United States Department of Agriculture, Washington D.C., for Respondent, Animal and Plant Health Inspection Service.

Before Chief Administrative Law Judge, Channing D. Strother.

INTRODUCTION AND BACKGROUND

This case was initiated by *pro se* Petitioner, Splish Splash II, LLC, represented by Mr. Joseph M. Estes, also known as Joe Estes, via a Petition to "appeal revoke Licenseing [*sic*] due to payment was made" and requesting "a hearing in accordance with section 2.11b" filed on February 21, 2019. Petition at 1. Attached to the Petition was a letter ("APHIS Denial Letter") to Mr. Estes from the Assistant Deputy Administrator for the Animal and Plant Health Inspection Service ("APHIS"), United States Department of Agriculture ("USDA"), dated February 5, 2019, denying Mr. Estes's application for a Class C exhibitor's license under the Animal Welfare Act ("AWA"), sections 2133 and 2151 (7 U.S.C. §§ 2133, 2151), and sections 2.11(a)(3) and 2.10(b) of the AWA regulations (9 C.F.R. §§ 2.11(a)(3), 2.10(b)) due to revocation of Mr. Estes's previous AWA exhibitor's license number 73-C-0133. APHIS Denial Letter at 1.

Respondent, the Administrator of the APHIS, filed Respondent's Motion for Summary Judgment ("Motion"), including a Memorandum of Points and Authorities that included several exhibits, on February 26, 2019, based on section 1.143(d) of the Rules of Practice (7 C.F.R. § 1.143(d)) and all pleadings, documents, and points and authorities filed as a part of the Motion. The Hearing Clerk's records to date reflect that Petitioner has not filed a response to Respondent's Motion. All filed documents are hereby admitted to the record.

Based on careful review of the pleadings and evidence before me, I find that there are no material issues of fact requiring resolution before issuing a decision. As outlined further below, I find that 1) Mr. Joseph M. Estes's, also known as Joe Estes, previous AWA exhibitor's license number 73-C-0133 was revoked; 2) Mr. Joseph M. Estes, also known as Joe Estes, has a substantial interest, financial or otherwise, in Petitioner Splish Splash II, LLC; and 3) that APHIS properly found Splish Splash II, LLC unfit to be licensed under the AWA and Regulations due to Mr. Estes's previous license revocation. Therefore, Respondent's Motion for Summary Judgment is hereby GRANTED and Respondent APHIS's denial of Applicant Splish Splash II, LLC's Class C exhibitors license application is AFFIRMED.

JURISDICTION

The AWA was promulgated to insure the humane care and treatment of animals intended for use in research facilities, exhibition, or as pets. 7 U.S.C. § 2131. Congress provided for enforcement of the AWA by the Secretary of Agriculture, USDA. 7 U.S.C. §§ 2131-59.

Regulations promulgated under the AWA are in the Code of Federal Regulations, part 9, sections 1.1 through 3.142.

APPLICABLE STATUTORY PROVISIONS

Congress enacted the AWA, in relevant part, because it is necessary

> to insure that animals intended for intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment; . . .
>
> 7 U.S.C. § 2131.

To achieve this purpose, Congress provided (emphasis added):

> The Secretary shall issue licenses to dealers and exhibitors upon application therefor **in such form and manner as he may prescribe** and upon payment of such fee established pursuant to 2153 of this title . . .
>
> 7 U.S.C. § 2133.

Further, the corresponding regulations mandate, in pertinent part:

> **§ 2.10 Licensees whose licenses have been suspended or revoked.**
>
> . . . .
>
> (b) Any person whose license has been revoked shall not be licensed in his 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. . . . .

§ 2.11 Denial of initial license application.

(a) A license will not be issued to any applicant who:

. . . .

(3) Has had a license revoked or whose license is suspended, as set forth in § 2.10; . . . .

9 C.F.R. §§ 2.10(b), 2.11(a)(3).

SUMMARY OF THE EVIDENCE

Documentary Evidence:

CX 1 August 14, 2006 Consent Decision and Orders in *Estes and Safari Joe's Wildlife Ranch, Inc.*, AWA Docket No. 04-B032; and in *Estes and Safari Joe's Wildlife Ranch, Inc.*, AWA Docket No. 05-0027 (where Mr. Estes admitted to violating the AWA and was subjected to a probation period during which he would "not engage in any activity for which such a license under the Act is required" (at 8) and which states, at 3, that Mr. Estes's AWA license (No. 73-C-0133) was revoked on December 1, 2003).

CX 2 March 20, 2014 initial Decision and Order in *Estes*, AWA Docket No. 11-0027 (which references, at 1, that Mr. Estes's license was revoked in 2003, orders that "Respondent Joseph M. Estes, an individual and agent for Safari Joe's Wildlife Ranch, Inc., his agents and employees, successors and assigns, directly or indirectly, or through any corporate or other device or person, shall cease and desist from violating 9 C.F.R. § 2.10(c), including but not limited to delivering for transportation any animal (as defined in 9 C.F.R. § 2.1), even an animal to be used as a pet, even when there is no sale or trade," and assesses a civil penalty of $2,650.00 (at 7-8)).

CX 3 The June 12, 2014 Order Dismissing Purported Appeal Petition and Cross-Appeal in *Estes*, USDA Docket No. 11-0027 (which adopts and makes final the administrative law judge's March 20, 2014 Decision and Order in that case).

CX 4 The March 15, 2018 AWA exhibitors license application from applicant "Splish Splash II, LLC".

CX 5 Filings submitted by Mr. Estes to the Oklahoma Secretary of State pertaining to Splish Splash II, LLC, and its parent, Safari Joes H20 (electronically signed by Mr. Estes (as "Joe M Estes"), titled Limited Liability Company, at 1; signed by

Mr. Estes (in print as "Joe M Estes, President"), at 3; and signed electronically by Mr. Estes (as "Joe Estes"), titled "Managing Member," at 4).

CX 6 APHIS's February 5, 2019 Denial Letter.

On or about February 21, 2019, Petitioner Splish Splash II LLC, submitted an application for an AWA Class C exhibitor's license. CX 4. The application names Mr. Estes (as "Joe Estes"), titled as "President" in Box 3[1] and is signed by Mr. Estes, titled "President" and dated March 15, 2018 in Boxes 10, 11, and 12. The application also includes "Safari Joes H20" in Box 2,[2] including two separate addresses in Tulsa, Oklahoma, and the same phone number provided for Splish Splash II LLC; has "N/A" written in answer to both questions in Box 4 which are: "(A) Previous USDA License Number: (if any)" and "(B) Active USDA License Number in which you have an interest"; and in Box 9 lists 2 nonhuman primates as the "largest number of animals that you have held, owned, leased, or exhibited at any one time during the previous business year."

By letter dated February 5, 2019 and addressed to Mr. Estes, APHIS denied Petitioner's AWA application for a Class C exhibitor's license on the grounds that Petitioner is "an 'applicant who. . . [h]as had a license revoked. . . as set forth in § 2.10'" (citing 9 C.F.R. § 2.10(b)) and stating that Petitioner "previously held AWA exhibitor's license number 73-C-0133. That license was revoked by order of the Secretary of Agriculture. *In re Joe Estes, et al., Consent Decision and Order, AWA Docket No. 02-0026*, June 11, 2003." CX 6 at 1. The APHIS letter further stated that "the application materials indicate [Mr. Estes is] the president of Splish

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[1] *See* CX-4 at 1. Box 3 directs "IF THE APPLICANT IS A CORPORATION, PARTNERSHIP OR OTHER BUSINESS ENTITY, LIST THE ENTITY'S PARTNERS OR OFFICERS AND AGENT FOR SERVICE OF PROCESS."

[2] Box 2 directs "ALL BUSINESS NAMES AND LOCATION ADDRESSES HOUSING ANIMALS."

Splash II, LLC. Pursuant to 2.10(b), because you have a revoked AWA exhibitor's license, you shall not be licensed in your own name or in any manner, including but not limited to a corporation in which you have a substantial interest, financial or otherwise." CX 6 at 2.

Mr. Estes filed letter to appeal the AWA license application denial on February 20, 2019. The top of the letter states "Joe Estes AWA 73-c-0133", and the body of the letter reads "This letter is to appeal revoke Licesneing [*sic*] due to payment was made . [*sic*] I request a hearing in accordance with section 2.11b Thank you Joe Estes." Mr. Estes attached a copy of the APHIS denial letter but provided no further argument nor documentation therein.

DISCUSSION

The Secretary of Agriculture is authorized by the AWA to "issue licenses to dealers and exhibitors upon application therefor in such form and manner as he may prescribe." 7 U.S.C. § 2133. Accordingly, the Secretary of Agriculture has promulgated regulations prescribing the form and manner of AWA licensing procedure. *See* 9 C.F.R. §§ 2.1-.12. The present case was initiated by Petitioner who seeks an appeal of an application for a Class C AWA exhibitor's license which was denied due to a revocation of Petitioner's representative's, Joseph M. Estes, also known as Joe Estes (herein referred to as "Mr. Estes") previous AWA exhibitor's license.[3]

Respondent APHIS seeks summary judgment of this matter, contending that there is no factual dispute for which a hearing is needed. Motion at 6. Respondent contends that it has met its burden by showing:

> First, there is no dispute that the license applicant is a legal entity in which a person who has had an AWA license revoked (like Mr. Estes), has a substantial interest, financial or otherwise. There is no dispute that Mr. Estes had an AWA license that was revoked. There is also no dispute that Mr. Estes has a substantial interest in the license applicant. 9 C.F.R. § 2.10(b).

[3] Under AWA Regulations, revocation of a license is permanent, see 9 C.F.R. § 2.10.

> Second, the Administrator has determined, with good cause, that the license applicant, Splish Splash II, LLC, by virtue of that fact that Mr. Estes is its principal, is unfit to be licensed and that the issuance of a license would be contrary to the purposes of the Act. . . .
>
> Third, the issuance of a license to this applicant, Splish Splash II, LLC, would circumvent the Secretary's order revoking the license previously held by Mr. Estes, as it would be tantamount to issuing a license directly to Mr. Estes. 9 C.F.R. § 2.11(d).
>
> Motion at 6-7.

Petitioner has not responded to Respondent's Motion for Summary Judgment.

The legal standard for summary judgment in a proceeding before a USDA Administrative Law Judge, well-articulated by then Chief Administrative Law Judge Davenport, is as follows:[4]

> The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (the Rules or the Rules of Practice) set forth at 7 C.F.R., Subpart H, apply to the adjudication of this matter. While the Rules do not specifically provide for the use or exclusion of summary judgment, the Department's Judicial Officer has consistently ruled that hearings are futile and summary judgment is appropriate where there is no factual dispute of substance. *Animals of Montana, Inc.*, 68 Agric. Dec. 92, 104 (U.S.D.A. 2009); *Bauck*, 868 Agric. Dec. 853, 858-59 (U.S.D.A. 2009); *Veg-Mix, Inc. v. U.S. Dep't of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987).
>
> While not an exact match, "no factual dispute of substance" may be equated with the "no genuine issue as to any material fact" language found in the Supreme Court's decision construing Fed. R. Civ. P. 56 in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). [Citation omitted.] An issue is "genuine" if sufficient evidence exists on each side so that a rational trier of fact could resolve the issue either way, and an issue of fact is "material" if under the substantive law it is essential to the proper disposition of the claim. [Citation omitted.] The mere existence of some factual dispute will not defeat an otherwise properly supported motion for

[4] *Agri-Sales, Inc.*, 73 Agric. Dec. 327, 328-30 (U.S.D.A. 2014), *aff'd* by the Judicial Officer and adopted as the final order in the proceeding, 73 Agric. Dec. 612 (U.S.D.A. 2014).

> summary judgment because the factual dispute must be material. [Citation omitted.] . . .

The facts in this case are not in dispute and a hearing is not necessary. APHIS has properly denied Petitioner's application for an AWA Class C exhibitor's license based on sections 2133 and 2151 of the AWA (7 U.S.C. §§ 2133, 2151), and section 2.11(a)(3) of the AWA regulations (9 C.F.R. § 2.11(a)(3)). Specifically, APHIS denies Petitioner's AWA license application on the grounds that Mr. Estes is "an 'applicant who . . . [h]as had a license revoked. as set forth in § 2,10,'" and that, because Mr. Estes has had an AWA license previously revoked, Petitioner "shall not be licensed in [Mr. Estes's] own name or in any manner, including but not limited to a corporation in which you have a substantial interest, financial or otherwise" (CX 6 at 1-2) (citing 9 C.F.R. §§ 2.11(a)(3), 2.10(b)).

The record is clear that Mr. Estes is a "person whose license has been revoked" within the meaning of 9 C.F.R. §§ 2.10(b) and 2.11(a)(3). *See* CX 1 at 3 (stating that Mr. Estes's AWA license (No. 73-C-0133) was revoked on December 1, 2003); and CX 2 at 1 (which states that Mr. Estes's license was revoked in 2003 and orders that Mr. Estes "his agents and employees, successors and assigns, directly or indirectly, or through any corporate or other device or person, shall cease and desist from violating 9 C.F.R. § 2.10(c)").

The record is also clear that Mr. Estes, a former AWA license holder whose license was revoked in 2003, has "a substantial interest, financial or otherwise" in the legal entity applying for an AWA exhibitor's license. *See* CX 4 (where Mr. Estes (as "Joe Estes") is titled as "President" in box 3 and the application is signed by Mr. Estes, titled "President"); CX-5 (where the documents filed with Oklahoma Secretary of State is electronically signed by Mr. Estes (as "Joe M Estes"), titled Limited Liability Company (at 1), signed by Mr. Estes (in print as "Joe M

Estes, President") (at 3), and signed electronically by Mr. Estes (as "Joe Estes"), titled "Managing Member" (at 4)).

Further, the record shows that Mr. Estes is the only individual named in the AWA license application and the business documents filed on behalf of Petitioner and associated businesses with the Oklahoma Secretary of State. As Respondent contends, "the issuance of a license to this applicant, Splish Splash II, LLC, would circumvent the Secretary's order revoking the license previously held by Mr. Estes, as it would be tantamount to issuing a license directly to Mr. Estes. 9 C.F.R. § 2.11(d)." (quoting and citing *Lion's Gate Center, LLC,* 70 Agric. Dec. 783, 787-88 (2011)). Petitioner and Mr. Estes have failed to file any pleadings rebutting Respondent's Motion for Summary Judgment. The Administrator of APHIS has properly determined, based on good cause, that Splish Splash II, LLC is unfit to be licensed under the AWA due to the revocation of Mr. Estes' AWA exhibitor's license in 2003.

Because Petitioner did not answer Respondent's motion for summary judgment, it is unknown what "payment" referenced in its Petition Petitioner might contend "was made" or how Petitioner might contend that circumstance would allegedly support the Petition. Perhaps Petitioner is simply stating that it has paid the civil penalties previously imposed on Mr. Estes. Payment of those penalties would not entitle it to a license. I am unaware of any payment that would support or otherwise be relevant to the Petition here, and thus find that there is none. Moreover, as set out herein, at issue is not the revocation of a license. The revocation of Mr. Estes previous exhibitor's license became final and unappealable long ago. No payment at any time could alter that revocation. What is at issue here is the denial of a license to Splish Splash

II, LLC, on the grounds set out herein, which are essentially the previous revocation of Mr. Estes' license. I find no payment could affect that denial or the grounds therefore.

Based upon the foregoing, I find that the record is sufficiently developed to conclude that the entry of summery judgment in Respondent's favor is appropriate. I also find that a hearing is not necessary in this matter. Accordingly, Petitioner's request for a hearing is denied.

FINDINGS OF FACT

1) On December 1, 2003, an AWA exhibitor's license held by Joseph M. Estes (No. 73-C-0133) was revoked pursuant to the terms of the June 11, 2003 Consent Decision and Order issued by the Secretary in *Estes, an individual doing business as Safari Joe's Wildlife Rescue, a/k/a Safari Joe's Exotic Wildlife Rescue, a/k/a Safari Joe's Zoological Park, an unincorporated association or sole proprietor*, AWA Docket No. 02-0026 (issued by Chief Administrative Law Judge James W. Hunt, wherein Mr. Estes admitted multiple violations of the AWA and its regulations).
2) On August 14, 2006, Administrative Law Judge Jill S. Clifton issued a Consent Decision and Order in two administrative enforcement cases: *Estes and Safari Joe's Wildlife Ranch, Inc.*, AWA Docket No. 04-B032; and *Estes and Safari Joe's Wildlife Ranch, Inc.*, AWA Docket No. 05-0027 (in which respondents admitted multiple violations of the AWA and its regulations). *See* CX 1.
3) On March 20, 2014, Judge Clifton filed an initial Decision and Order in *Estes*, AWA Docket No. 11-0027, in which she found that Mr. Estes violated the AWA regulations.

See CX 2. On May 14, 2014, the USDA Judicial Officer issued an Order in that case dismissing a filing by Mr. Estes that purported to be a petition for appeal. *See* CX 3.

4) On or about March 15, 2018, APHIS received an application for an AWA license from an applicant named "Splish Splash H, LLC." CX 4. The application was signed by Mr. Estes, who identified the applicant as a corporation, and himself as its "President." CX 4 at Blocks 3, 7, 11. The application does not mention Mr. Estes's previous AWA license. CX 4 at Block 4.

5) APHIS has determined that according to the Oklahoma Secretary of State, Splish Splash II, LLC, is a limited liability company, and Mr. Estes is its "Managing Member." CX 5.

6) On February 5, 2019, APHIS sent a letter to Mr. Estes and Splish Splash II, LLC, denying the license application and setting forth the reasons therefor, specifically that APHIS regulations prohibit the issuance of a license to a legal entity in which a person

who has had an AWA license revoked (like Mr. Estes), has a substantial interest, financial or otherwise. CX 6.

7) On February 21, 2019, Mr. Estes filed a request for hearing on behalf of Splish Splash II, LLC.

CONCLUSIONS OF LAW

1) The Secretary has jurisdiction over this matter.
2) The material facts involved in this matter are not in dispute, and the entry of summary judgment in favor of Respondent is appropriate.
3) APHIS's denial of a license to Petitioner, pursuant to 9 C.F.R. §§ 2.10(b) and 2.11 (a)(6), promotes the remedial nature of the AWA and is hereby AFFIRMED.

ORDER

1) Respondent's Motion for Summary Judgment is hereby **GRANTED**.
2) APHIS's denial of a license to Petitioner, pursuant to 9 C.F.R. §§ 2.10(b) and 2.11 (a)(6), is hereby **AFFIRMED**.
3) Petitioner's request for a hearing is hereby **DISMISSED**, with prejudice.

This Decision and Order shall be final and effective thirty-five (35) days after service of this Decision and Order upon the Respondents, unless there is an appeal to the Judicial Officer under section 1.145 of the Rules of Practice (7 C.F.R. § 1.145) applicable to this proceeding.

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

Issued this 12th day of April 2019, in Washington, D.C.

Channing D. Strother
Chief Administrative Law Judge

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