

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

AWA Docket No. D-10-0082

In re: SHARON BEATTY
and TOM BEATTY
a/k/a THOMAS BEATTY,

Petitioners

DECISION AND ORDER

This action was initiated on January 29, 2010 by the Petitioner with the filing of an appeal of the January 12, 2010 denial of an Animal Welfare Act license by Robert Gibbens, DVM, Director of the Eastern Region, United States Department of Agriculture (USDA) Animal and Plant Inspection Service (APHIS) Animal Care¹. Through counsel, the Respondent filed a Response to the Request for Hearing indicating that Summary Judgment would be appropriate means of resolving the issues. The Motion for Summary Judgment was filed on March 8, 2010 and a copy of the Motion was served on the Petitioners along with a letter from the Hearing Clerk indicating that they would have twenty days in which to file a Response to the Motion. No response was filed within the allotted time and the motion is before me for disposition.

As I find that there is no issue of material fact in dispute, I grant the Administrator's Motion for Summary Judgment and on the record before me will affirm the denial of the Petitioner's application for an Animal Welfare Act license as set forth in the Order which is a part of this Decision.

¹ Dr. Gibbens signed the January 12, 2010 letter for Ray Flynn, Assistant Regional Director.

Discussion

The Animal Welfare Act (the Act or AWA) provides that the Secretary shall issue licenses to dealers and exhibitors upon application in such form and manner as the Secretary may prescribe (7 U.S.C. §2133).² The power to require and to issue licenses under the Act includes the power to terminate a license and to disqualify a person from being licensed. *In re: Animals of Montana*, 68 Agric. Dec. _____ (2009); *In re: Amarillo Wildlife Refuge, Inc.* 68 Agric. Dec. ____ (2009); *In re: Loreon Vigne*, 67 Agric. Dec. _____ (2008); *In re: Mary Bradshaw*, 50 Agric. Dec. 499, 507 (1991).

In this action, the Administrator of the Animal and Plant Health Inspection Service (APHIS) determined that the Petitioner was unfit to be licensed as a dealer under the Act. In reaching its conclusion, APHIS found that the applicants had engaged in deceptive practices with Yakima County, Washington officials and Investigative and Enforcement Services of USDA and that the applicants were operating a dog kennel operation in violation of local law. The exhibits submitted by the Administrator in support of the Motion for Summary Judgment clearly document the fact that the Petitioners were cited on more than one occasion for violation of the Yakima County Code provisions making it unlawful for any person to operate a kennel without obtaining the applicable license.³ Similarly, the materials attached to the Petitioners' appeal of the denial of an AWA license clearly recount their unsuccessful efforts to obtain the applicable license from Yakima County. The record also amply documents a pattern of false or deceptive statements to the Yakima County Sheriff's Office concerning the

² “. . . Provided that no license shall be issued until the dealer or exhibitor shall have demonstrated that his facility complies . . . “

³ See Infraction Nos. IN-065255-YDP

number of dogs that they were housing at off site locations after being given specific limits on the number of dogs that they could house.

Section 2.11 of the Regulations (9 C.F.R. §2.11) authorizes denial of a license for a variety of reasons, including:

(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 government agencies, or has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that issuance of a license would be contrary to the purposes of the Act.

Section 2.12 (9 C.F.R. §2.12) provides:

A license may be terminated during the license renewal process or at any other time for any reason that an initial license application may be denied pursuant to §2.11 after a hearing in accordance with the applicable rules of practice.

The Judicial Officer, speaking for the Secretary, has repeatedly held motions for summary judgment appropriate in cases involving the termination and denial of Animal Welfare Act licenses. *In re: Amarillo Wildlife Refuge, Inc., supra; In re Loreon Vigne, supra, In re: Mark Levinson*, 65 Agric. Dec. 1026, 1028 (2006). The Judicial Officer has also held that hearings are unnecessary and futile when there is no factual dispute of substance. *In re: Animals of Montana*, 68 Agric. Dec. ____ (2009), 2009 WL 624354 at *7 citing *Veg-Mix, Inc. v. United States Dep't of Agric.*, 832 F. 2d 601, 607 (D.C. Cir. 1987).

Accordingly, based upon the record before me, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. The Petitioners are individuals residing in Selah, Washington.
2. The Petitioners were cited on more than one occasion for violation of the Yakima County Code provisions making it unlawful for any person to operate a kennel without obtaining the applicable license.
3. After being directed to shut down their unlicensed kennel operation (having as many as 130 dogs) in early 2009, the Petitioners failed to comply with the directives requiring them to dispose of the dogs within 30 days, but instead on October 15, 2009 merely moved dogs to other locations which Thomas Beatty indicated that he would not disclose to County Officials.
4. Acting on an anonymous tip that the Petitioners were keeping large numbers of dogs at various locations, including Sharon Beatty's mother's home, on October 16, 2009, Yakima County Sheriff's Office found 49 dogs in a kennel building at the Petitioners' property and an additional three adult nursing females and their litters inside the Petitioners' residence. (Infraction No. IN-065255-YDP).
5. On November 17, 2009, again acting on an anonymous tip, the Sheriff's Office inspected property belonging to Thomas Beatty and found 40 small breed dogs in a trailer located on the property. (Infraction No. IN-065256-YDP).
6. Information received by APHIS indicates that the Petitioners sold dogs to a purchaser in Washington State without having a license to do so and have a past history of previously paying a stipulated penalty for the unlicensed sale of dogs.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Issuance of an AWA license to Sharon Beatty and Tom Beatty, individuals whom have been cited by Yakima County, Washington on two occasions for operating a kennel with obtaining the applicable local license would be contrary to the purposes of the Act. 9 C.F.R. §2.11(a)(6).

3. Denial of the AWA license would be appropriate to anyone who had engaged in the unlicensed sale of dogs for resale as pets or breeding purposes in violation of Federal regulations pertaining to the transportation, ownership, neglect, or welfare of animals. 9 C.F.R. §2.11(a)(6).

Order

1. The denial of the application of Sharon Beatty and Tom Beatty is **AFFIRMED**.

2. Sharon Beatty and Tom Beatty, their agents, and any entities in which either or both of them may hold a substantial interest are **DISQUALIFIED** from being licensed for a period of two (2) years.

3. This Decision and Order shall become final without further proceedings 35 days after 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.
April 9, 2010

PETER M. DAVENPORT
Acting Chief Administrative Law Judge