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UNITED STATES DEPARTMENT OF AGRICULTURE

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BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 11-0073

In re: Lee Marvin Greenly,

Respondent

Decision and Order

Appearances: Colleen A. Carroll, Esquire, Office of General Counsel, United States Department of Agriculture, Washington, DC for the Complainant

Larry D. Perry, Esquire, Knoxville, Tennessee for the Respondents

Preliminary Statement

This Decision and Order involves the second of two actions initiated by Kevin Shea, the Acting Administrator of the Animal and Plant Health Inspection Service (APHIS) against Lee Marvin Greenly (Greenly) seeking termination of his Animal Welfare Act license.¹

This action, also filed on November 29, 2010, was initiated by the filing of an Order to Show Cause Why Animal Welfare Act License 41-C-0122 Should Not Be Terminated and named Greenly as the Respondent. The Order to Show Cause alleges that Respondent is no longer fit for licensure under the Animal Welfare Act, 7 U.S.C. §2131, *et seq.* (the Act or AWA) as a result of a conviction under the Lacey Act (16 U.S.C. §§3371-3378) and other specified grounds and seeks termination of Respondent's license and disqualification of the Respondent, any agent, assigns, or business entity in which the

¹ The other action is *In re Lee Marvin Greenly and Minnesota Wildlife Connection, Inc.*, Docket No. 11-0072

Respondent might hold a position as an officer, agent or representative, or otherwise holds a significant business interest from obtaining an AWA license for a period of two years.

After requesting and being granted an extension of time in which to respond, Respondent filed his Answer on January 14, 2011. The Answer was accompanied by a Motion to Consolidate the two proceedings brought against him and during a teleconference held on January 19, 2011, the Motion was granted with a written Order entered into the record of the same date.²

On February 8, 2011, Complainant filed a Motion for Summary Judgment and on March 1, 2011 sought and was granted an Extension of Time in which to comply with the Order of January 19, 2011 concerning the exchange deadlines established for the consolidated hearing. By Order entered on March 8, 2011, the ruling on the Motion for Summary Judgment was deferred pending the hearing of the consolidated actions. On April 14, 2011, the Complainant amended its Complaint in Docket No. 11-0072 and on May 5, 2011, moved to continue the oral hearing of the consolidated cases. By Notice of Hearing entered on April 25, 2012, the actions were rescheduled to be heard on May 1, 2012 in Minneapolis, Minnesota.³

At the hearing conducted May 1 and 2, 2012, eleven witnesses testified for the Complainant, seven witnesses testified for the Respondents, fifty-one exhibits were admitted for the Complainant and forty-eight exhibits admitted for the Respondents.⁴

² From the onset, Counsel for Mr. Greenly placed both docket numbers on his pleadings.

³ The actions had previously been set for hearing on May 1, 2012 in Duluth, Minnesota; however, court space was not available and the location of the hearing was moved to Minneapolis.

⁴ Includes sub exhibits introduced by Complainant (2-2c less 2a, 16-16a, and 24-24a).

Discussion

In addition to setting forth allegations concerning the Lacy Act plea and conviction, the Show Cause Order indicates that the Respondent is unfit for licensure and that maintenance of a license by him would be contrary to the purposes of the Act. The Show Cause Order also mirrors certain of the allegations contained in Docket No. 11-0072, containing the handling violations alleged on February 12, 2009, August 14, 2010, and October 19, 2010 and inspection access violations alleged to have occurred on December 19, 2006, June 12, 2007, February 13, 2008, February 23, 2009, and May 13, 2009.

In responding to the Show Cause Order, Respondent suggests: (a) that the plea agreement “that does not bind any federal or state agency;” (b) that there was a genuine dispute related to the land boundaries where the offense was alleged to have occurred; (c) that Minnesota allows baiting of bears in bear season and no laws were broken in that regard; (d) that the Respondent was licensed as a hunting guide; and (e) that the State of Minnesota requires all land where hunting is prohibited to be posted and that the land in question was not posted.

In Respondent’s post hearing brief, Respondent argues that the Lacey Act is not part of the AWA and that USDA has no oversight over wildlife “unless exhibited to the public or used in research or teaching” and raises the defenses of Double Jeopardy and a bar to the action by reason of the Statute of Limitations.

The Animal Welfare Act (the Act) 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).⁵ 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: 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).

The primary basis of the Administrator's determination that the Respondent is no longer fit to be licensed as an exhibitor under the Animal Welfare Act is based upon evidence that the Respondent was convicted of conspiracy to violate the Lacey Act. In his Answer, the Respondent admits entering into the plea agreement and acknowledges that the plea agreement is a matter of record.

The Lacey Act, introduced by Iowa Congressman John Lacey, was signed into law by President William McKinley on May 25, 1900, and was the first federal law protecting wildlife. The original Act was directed primarily at the preservation of game and wild birds by making it a crime to poach game in one state with the purpose of selling the bounty in another. Following a number of amendments, the Act now protects both plants and wildlife by providing both civil and criminal penalties for a wide array of violations prohibiting trade in wildlife, fish and plants that have been illegally taken, possessed, transported or sold.⁶

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:

(4) Has pled *nolo contendere* (no contest) or has been found to have violated any Federal, State, or local laws or regulations pertaining to animal cruelty, within one

⁵ "... Provided that no license shall be issued until the dealer or exhibitor shall have demonstrated that his facility complies . . ."

⁶ Significant amendments were added in 1969, 1981 and 1988. The 1988 amendment was added to cover threats to big game species under the ambit of a "sale."

year of application, or after one year if the Administrator determines that the circumstances render the applicant unfit to be licensed.

....

(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 evidence establishes that on November 27, 2006, the United States and Respondent entered into a Plea Agreement and Sentencing Stipulations whereby Respondent pleaded guilty to the Information charging him with a misdemeanor conspiracy violation of the Lacey Act, by making or submitting a false record or account for wildlife under 16 U.S.C. §3372(d), 3372(d)(3)(B)(ii), all in violation of 18 U.S.C. §371. *United States v. Lee Marvin Greenly*, Crim. No. 060235 (PAM) (D. Minn); CX-120. In the Plea Agreement, Respondent admitted committing the offenses and agreed to and did plead guilty to conspiring to violate the Lacey Act. *Id at* 2-3. In addition to the admissions contained in the Plea Agreement, the record contains supporting evidence reflecting that Respondent had given statements and submitted records to the Minnesota Department of Natural Resources (DNR) concerning the incident, falsely representing that he had guided a country singer named Troy Gentry on a commercial hunt “in a no-quota zone” where Gentry had killed the bear. CX-32, 33, and 35.

At the hearing, Respondent testified that on Dr. Cathy Hovancsak's last inspection of his facility, she informed him that under a new policy a bear named "Cubbie" that he was keeping in a seven acre "hot wire" enclosure would need a second barrier installed. Tr. 501-502. At the time, "Cubbie" was experiencing serious dental problems which would require expensive dental work if the bear were to be kept.⁷ As the cost of either the fence or dental care would be an expense Respondent was reluctant to "bear," after unsuccessful efforts to find the animal another home and discussing the matter with Dr. Hovancsak, Greenly agreed to euthanize the bear. Tr. 503-504. Rather than complying with the facility's Program of Veterinary Care which required euthanization by injection; however, Respondent searched for an individual who would purchase the animal for slaughter. Tr. 505, CX-75. After receiving one offer for \$1,500 which never reached fruition, he was contacted by a hunting client, Troy Gentry, who expressed interest in purchasing the animal and being filmed killing the bear with a bow and arrow. Tr. 505-507. After the bear was killed on Greenly's property, it was tagged with a Minnesota Department of Natural Resources hunting license tag and submitted as a lawfully taken bear from the wild population. CX-121. Cubbie's hide and teeth were then transported to Kentucky to a taxidermist for mounting and tanning. Tr. 506-507.

As the handling and inspection access violations were addressed in the companion case, Docket No. 11-0072, no need exists to discuss them further in this action.

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

⁷ The causation of the dental problems was not established; however, Respondent frequently feeds his bears a sweet called "Gummi Worms." Tr.

Findings of Fact

1. Respondent Lee Marvin Greenly is an individual residing in the State of Minnesota who holds Animal Welfare Act license number 41-C-0122 as an exhibitor in his own name. CX-2. Greenly exhibits wild and exotic animals to the public both at traveling locations and operates what he refers to as a photographic educational game farm on property that he owns on the Kettle River near Sandstone, Minnesota. Tr. 382-383. On various occasions, he also provides animals for photographic opportunities at other locations on nearby private or public land that he does not own. Tr. 439-440.
2. On November 27, 2006, the United States and Respondent entered into a Plea Agreement and Sentencing Stipulations whereby Respondent agreed to plead guilty to the Information charging him with a misdemeanor conspiracy violation of the Lacey Act, by making or submitting a false record or account for wildlife under 16 U.S.C. §3372(d), 3372(d)(3)(B)(ii), all in violation of 18 U.S.C. §371. *United States v. Lee Marvin Greenly*, Crim. No. 060235 (PAM) (D. Minn); CX-120, 121.
3. Pursuant to the Plea Agreement, Respondent admitted the offense, agreed to and did plead guilty in the United States District Court to conspiring to violate the Lacey Act and to violating the Lacey Act. *Id at* 2-3.
4. On February 26, 2007, Respondent was sentenced by Senior United States District Judge Paul A. Magnuson in the United States District Court for the District of Minnesota to probation for three months, a fine of \$15,000.00, a special assessment of \$25.00 and other terms and conditions contained in the sentencing documents. CX-120-121.

5. Respondent submitted false statements and records to the Minnesota Department of Natural Resources (DNR) concerning the incident, falsely representing that he had guided a country singer named Troy Gentry on a commercial hunt "in a no-quota zone" where Gentry had killed the bear when in fact the bear was killed on Greenly's property in a fenced enclosure. CX-32, 33, 35, 120 and 121.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. The Respondent, having been found guilty on February 26, 2007 of a criminal misdemeanor conspiracy violation of the Lacey Act, by making or submitting a false record or account for wildlife under 16 U.S.C. §3372(d), 3372(d)(3)(B)(ii), in violation of 18 U.S.C. §371 by the United States District Court for the District of Minnesota, is found to be unfit to hold an Animal Welfare Act license. 9 C.F.R. §2.11(a)(4) and (6); and §2.12.
3. License revocation proceedings do not constitute Double Jeopardy.
4. As Respondent's conviction and sentence were not entered until February 26, 2007, the termination proceedings are not barred by the Statute of Limitations.

Order

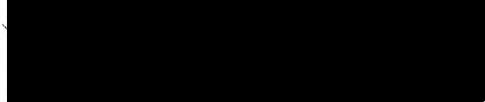
1. Should the revocation of Respondent's Animal Welfare Act License No. 41-C-0122 in Docket No. 11-0072 be vacated for any reason, said license is terminated by this action.
2. The Respondent is disqualified for a period of 2 years from becoming licensed under the Animal Welfare Act or otherwise obtaining, 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 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.

August 22, 2012



Peter M. Davenport /
Chief Administrative Law Judge

Copies to: Colleen Carroll, Esquire
Larry Perry, Esquire

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