

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION

RE: WILKINSON, LYNN (SUPER SONIC PETS)
LICENSE DENIAL

AAD NO. 13-001/AGA

Decision and Order

This is an appeal filed by Applicant Lynn Wilkinson (“Wilkinson” or “Applicant”) from a denial by the Department of Environmental Management, Division of Agriculture (“the Division”) of her applications to operate two (2) pet shops. A Pretrial Conference and Administrative Hearing were held on July 9, 2013. The Applicant represented herself pro se and the Division was represented by Marisa A. Desautel, Esquire. Upon the conclusion of the Administrative Hearing the parties were allowed to file a Post Hearing Memoranda within thirty (30) days. The Division filed its Post Hearing Memorandum on August 15, 2013 and the Applicant did not file a Post Hearing Memorandum.

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R.I. General Laws §42-17.7-1 et seq.); the *Administrative Procedures Act* (R.I. General Laws §42-35-1 et seq.); the *Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters* (AAD Rules); and R.I. General Laws §4-19-1 et seq.

Hearing

The Applicant testified as her only witness. She said that she applied for two (2) pet shop licenses in March. The Hearing Officer requested a copy of the applications and the Division provided the first page of the two applications which were marked and entered as AG Exhibits #2

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Full and #3 Full. AG Exhibit #2 Full is an application filed by Lynn Wilkinson on March 20, 2013 to operate a pet shop at 1465 Atwood Avenue, Johnston, Rhode Island under the business name "Super Sonic Pets". AG Exhibit #3 Full is an application filed by Lynn Wilkinson on March 20, 2013 to operate a pet shop at 1435 Victory Highway, North Smithfield, Rhode Island under the same trade name.

The Division submitted a copy of the denial of Wilkinson's applications dated April 3, 2013 which has been marked as AG Exhibit #1 Full ("Denial"). The Denial states that "Your applications are being denied because the Department previously found that the subject pet shops' practices were not consistent with the intent of RI General Laws §4-19-1, et seq."

Mr. Wilkinson testified that she had never operated a pet shop before and wasn't part of any previous problems. She was aware that the previous owner had problems with the operation of pet shops at these locations. She testified that she is not related to, associated with and, in fact, doesn't know the previous owner. She testified that she is the sister-in-law of a past previous owner James Reagan who operated under the business name of Creatures. He had problems in 2010 and lost his license. She said that she was not an employee or co-owner with Reagan and had nothing to do with the operation. She said that she filed her application individually and has never been the subject of sanctions by the Division.

The Division conducted a brief Cross Examination. Upon the completion of Division's Cross Examination the Applicant rested. The Division made an oral Motion to Dismiss pursuant to Rule 52(c) of the Superior Court *Rules of Civil Procedure*. The Hearing Officer reserved ruling on Division's Motion. The Division did not present any witnesses or exhibits other than AG Exhibits #1 Full, #2 Full, and #3 Full.

BURDEN OF PROOF

The burden of proof is on the Applicant to show that the Division committed error in the denial of her application by a preponderance of the evidence, which requires “the Trier to believe that the existence of a fact is more probable than its nonexistence before he may find in favor of the Party who has the burden to persuade the Judge of the fact’s existence” **Metropolitan Stevedore Co. v. Rambo, 521 U.S. 121.**

APPLICABLE LAW

The authority of the Division to regulate or issue Pet Shop licenses is established by R.I. General Laws §4-19-5. R.I. General Laws §4-19-8 provides as follows:

Denial of certificated of registration or licenses

A certificate of registration may be denied to any pound or animal shelter and a license may be denied to any public auction, kennel, pet shop or dealer or, if granted, the certificate or license may be revoked by the director if, after a hearing, it is determined that the housing facilities and/or primary enclosures are inadequate for the purposes of this chapter or if the feeding, watering, sanitizing and housing practices at the pound, animal shelter, public auction, pet shop or kennel are not consistent with the intent of this chapter or with the intent of the rules and regulations which may be promulgated pursuant to the authority of this chapter.

There have been no regulations promulgated for the licensing or oversight of Pet Licenses by the Division.

ANALYSIS

The authority to deny a pet shop license pursuant to R.I. General Laws §4-19-8 is limited to those cases where the Division determines that the “feeding, watering, sanitizing and housing

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practices at the... pet shop... are not consistent” with the statute’s intent. It is assumed that the Division would make this determination after some sort of inspection process. The letter of denial issued on April 3, 2013 (AG Exhibit #1 Full) advises the Applicant that “Your applications are being denied because the Department previously found that the subject pet shops’ practices were not consistent with the intent of R.I. General Laws §4-19-1 et seq.” The Division states earlier in the letter of denial that “On March 5, 2012 the Department under authority of R.I. General Laws. §4-19-11, revoked pet shop licenses issued to Super Sonic Pets, Inc. at both of the aforementioned establishments”.

It appears, from the language of the letter of denial, that the Division is denying the issuance of a pet shop license to the Applicant due to the fact that Super Sonic Pets, Inc. had its licenses revoked at the same addresses as proposed for use by Applicant. Looking to AG Exhibits #2 Full and #3 Full, which are the applications in question, we find that the Name of the owner/ Applicant is Lynn Wilkinson. The applications are indicated as for “new facility” and the “Name of Facility” is “Super Sonic Pets”. In addition, it appears that the check used by Applicant to pay the filing fee was a personal check drawn on her personal account (see AG Exhibit #1 Full).

Although the Applicant chose to use the trade name of the previous revoked license holder, it is clear on the face of the applications that they are for a “new facility” under the name of Lynn Wilkinson and not Super Sonic Pets, Inc. Based on the evidence taken from AG Exhibits #1 Full, #2 Full and #3 Full, together with the sworn testimony of Lynn Wilkinson it appears that the Applicant has made out a prima facie case that she should not have been denied a license based on the actions or revocation of a previous unrelated owner or license holder.

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The Applicant has established through her testimony that she is not the same party which previously had its pet shop license revoked or does she have any connection with the previous owner. The Division did not present any evidence to rebut the testimony of the Applicant. It argues in its Post Hearing Memorandum that the Applicant chose to use the trade name "Super Sonic Pets" and that it "never submitted any information to RIDEM to show that she was the new owner of Super Sonic Pets or to show a change in ownership".

It is clear on the face of the application that the Applicant is not "Super Sonic Pets, Inc." but was Lynn Wilkinson. The Applicant did not offer any explanation why she would use a trade name previously used by a party, which had its license previously revoked. The Division argues that it is the responsibility of the Applicant to clarify her relationship with "Super Sonic Pets, Inc.", if any. I am not convinced that it is the responsibility of the Applicant to explain her application if it is clear on its face. The evidence shows that the application was received by the Division on March 20, 2013. It appears that it was forwarded "to legal per Dr. Marshall". The letter of denial (AG Exhibit #1 Full) indicates that it was issued to the Applicant on April 3, 2013 eight (8) business days after the filing of the application. I can only speculate if the Applicant would have been dealt with in the same manner if she had chosen to use a different trade name such as "A-1 Pets".

The Applicant provided all the information on the application form that was requested. The Division in its Post Hearing Memorandum suggests that "she never submitted any information to RIDEM to show that she was the new owner of Super Sonic Pets or to show a change in ownership". If we look at AG Exhibits #2 Full and #3 Full we find that she is applying for a "New Facility" and that ownership is to be in her name, Lynn Wilkinson. If there was some

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suggestion by her use of the trade name "Super Sonic Pets" that the previously revoked owner was involved, I believe it was the duty of the Division to inquire further. It is presumed by the language of the statute that prior to issuance of the licenses at the locations listed that the Division would conduct inspections to determine "the housing facilities and/or sanitizing and housing practice at the ... pet shop" are consistent with the intent of the statute. One would think that during the time when such inspections are being conducted the question of ownership could have been clarified by the Division.

CONCLUSION

It appears that the Division assumed that the Applicant was related to the previously revoked license holder because of her intended use of the previous trade name, but there was no proof offered at Hearing. All of the other information contained in the application indicated that it was an application for her individually. Once the suspicion of an association with the previous revoked license holder was detected, the Division should have inquired further as part of its overall review of the application and not deny the application "out of hand". The Division should reconsider the Applicant's applications on their merit and not on the assumption that she is related to the prior revoked license holder. The application should be granted if the Division finds that the Applicant's facility will provide "feeding, watering, sanitizing and housing practices consistent with the intent" of the authorizing statutes R.I. General Laws §4-19-5 and R.I. General Laws. §4-19-8.

FINDINGS OF FACT

Based on the testimony and documentary evidence presented at the Administrative Hearing I make the following Findings of Facts:

1. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
2. On March 20, 2013 Lynn Wilkinson ("Applicant") filed two (2) applications for a Pet Shop License ("License") to operate at two locations: 1465 Atwood Avenue, Johnston, R.I.; and 1435 Victory Highway, North Smithfield, R.I. (AG Exhibits # 2 Full and #3 Full respectfully).
3. On April 3, 2013 the Division of Agriculture of the Rhode Island Department of Environmental Management ("Division") issued a letter of denial (AG Exhibit #1 Full) advising Applicant that her applications had been denied.
4. In the letter of denial the Department advised that "your applications are being denied because the Department previously found that the subject pet shops practices were not consistent with the intent of R.I. General Law §4-19-1 et seq."
5. Within her application Applicant indicated herself, individually, as the owner.
6. Within her application Applicant advised that the license would be for a "New Facility".
7. AG Exhibit #1 Full, the letter of denial, reflects that the original check used by Applicant to pay the application fee was issued as a personal check from an account owned by Lynn Wilkinson and Thomas Wilkinson.
8. Within her applications Applicant indicated that her facilities would operate under the name "Super Sonic Pets".
9. During the Administrative Hearing the Applicant testified, under oath, that she was not associated with or employed by any previous pet shop licensed holder.
10. The Division did not present evidence to establish a connection between Applicant and any previous pet license holder except for the information contained in AG Exhibits #2 Full and #3 Full.

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11. The intended use of the facility name of "Super Sonic Pets" does not establish that the Applicant is associated with the previously revoked license holder.
12. No evidence was presented to show that the Department had inspected the pet shop as proposed by the Applicant.
13. The Division did not deny the Applicant's Applications for Licenses on a finding that the Applicant's proposed "feeding, watering, sanitizing and housing practices at the ... pet shop... are not consistent with the intent" of R.I. General Laws §4-19-8.

CONCLUSIONS OF LAW

Based on the above Findings of Fact I make the following conclusions of Law:

1. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicant.
2. The authority of the Department to issue or revoke "pet shop" licenses is derived from R.I. General Laws §4-19-5.
3. The standard for the Department in granting or denying of a "pet shop" license pursuant to R.I. General Laws §4-19-8 is "if the feeding, watering, sanitizing and housing practices at the ... pet shop ... are consistent with the intent of this chapter".
4. The use of a trade name by an Applicant does not conclusively impute ownership or association of the Applicant with a previously revoked corporate license holder with a similar name.
5. It is the duty of the Department to inquire of an Applicant when it suspects that a relationship exists between the Applicant and a previously revoked corporate license holder.
6. Once it is established that an Applicant is not associated with a previously revoked license holder, the Division should conduct an investigation to determine if the proposed "feeding, watering, sanitizing and housing practices" are consistent with the intent of the authorizing statute.
7. If the Division determines that the Applicant meets the requirements of item 6 hereof, it should grant the pet licenses to the Applicant.

ORDER

Based on the above Findings of Fact and Conclusions of Law it is hereby ORDERED:

1. The Applicant's Appeal is hereby Granted.
2. The Division should reconsider the Applicant's applications on their merit, notwithstanding her intended use of the trade name "Super Sonic Pets".
3. If the Division finds, after review and inspection, that the proposed "feeding, watering, sanitizing and housing practices" at the proposed pet shops are consistent with the intent of R.I. General Laws §4-19-8 it should grant the requested pet shop licenses.

Entered as an Administrative Order this 16th day of October, 2013.



David Kerins
Chief Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, 2nd Floor
Providence, RI 02908
(401) 574-8600

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CERTIFICATION

I certify that I caused a true copy of the enclosed Order to be forwarded by first-class mail, postage paid, to Lynn Wilkinson, 67 Worcester Road, Hubbardston, MA 01452 and via interoffice mail to Marisa Desautel, Esquire, RIDEM Office of Legal Services, 235 Promenade Street, Providence, RI 02908 on this 16th day of October, 2013.



NOTICE OF APPELLATE RIGHTS

This Final Order constitutes a final order of the Department of Environmental Management pursuant to RI General Laws § 42-35-12. Pursuant to R.I. General Laws § 42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.