

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

RE: RAMBONE, DENNIS & BRENDA
DEER PROPAGATION PERMIT

AAD NO. 07-093/F&WA

AMENDED DECISION AND ORDER

This matter came before Chief Hearing Officer David Kerins on DEM's Motion for Summary Judgment and Applicants' Objection thereto: (the record does not contain a written objection but the applications have expressed their objection orally and in contents of their Prehearing Conference submissions). DEM was represented by Attorney Susan Forcier Esq., Applicants represented themselves and were advised of their right to representation by an attorney. The Applicants filed an appeal on December 12, 2007 to challenge the denial of the renewal of propagation license issued by DEM dated November 19, 2007.

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R.I. GEN. LAWS S 42-17.7-1 et seq.); the Administrative Procedures Act (R.I. GEN. LAWS S 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"); the Rules and Regulations Governing the Importation Feeding and Baiting of Cervids in Rhode Island and the Rules and Regulations Governing Importation and Possession of Native Wildlife.

The reason given by DEM in denial of Applicants' application is that a propagation license can only be issued for "bona fide scientific purposes" as requested by Part 3.1.1 of the Rules and Regulations Governing Importation, Feeding and Baiting of Cervids in Rhode Island ("Cervid Regs").

STANDARD OF REVIEW

The standard of review for an AAD Hearing Officer reviewing a Motion for Summary Judgment is the same standard that is applied in Superior Court for the State of Rhode Island. Administrative Rules of Practice and Procedure for the Administrative Adjudication Division for Environmental Matters (AAD Rules of Procedure) Rule 8.00(a)(1). That standard is found in Rule 56 of the Rhode Island Rules of Civil Procedure, and states that "(t)he judgment sought shall be rendered forthwith if the pleadings...show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law" R.I.R.C.P. Rule 56 (c).

A litigant opposing a Motion for Summary Judgment, in meeting the burden of proving the existence of a disputed issue of material fact, cannot rest upon mere allegations or denials in the pleadings, mere conclusions, or mere legal opinions. Senn v MacDougall 683 A2d. 1337 (R.I. 1996).

REVIEW OF FACTS

The following facts were stipulated to by the parties:

1. AAD has subject matter jurisdiction over this action by virtue of R.I. Gen. Laws S 42 17.7-2.
2. AAD has personal jurisdiction over the Applicants by virtue of Applicants' presence in the state of Rhode Island.
3. The Applicants submitted to the Department an application for Renewal of a propagating

license on or about July 18, 2007. (DEM Exhibit A.)

4. The Applicants' Application for Renewal of a propagating license sought permission to commercially propagate one species of native cervid i.e., white tail deer.
5. The Division of Fish and Wildlife denied the Applicants' Application for Renewal of a Propagating License on November 19, 2007. (DEM Exhibit B.)
6. Applicants requested an appeal with AAD, by letter dated December 10, 2007. (DEM Exhibit C.)

Neither party supported their allegations by sworn affidavit but relied on the statements made in the pleading, including representations made in their Prehearing Conference materials. The primary issues to be determined are:

1. Do the Cervid Regulations prohibit the issuance of a Cervid License for all persons except those who maintain cervids for "bona fide scientific research"?
2. Have the Applicants shown that they are engaged in "bona fide scientific research" of cervids so as to entitle them to a cervid License?

Applicants have alleged that they have kept cervids (white tailed deer) for many years and have had a "Commercial Wild Animal Permit" from 1977-2006. They represent in their proposed Applicants' Exhibit B that they have brought their deer to a school for educational purposes. They also allege in proposed Applicants' Exhibit H at page 4: "also our deer have been used for scientific purpose. Scientist (sp) from URI have been out to the farm to collect deer tick off our deer they could pick them off because the deer are friendly apposed (sp) to wild deer" (emphasis not added).

ANALYSIS

DEM has presented as an issue of facts that the Applicants are not proposing to maintain or propagate cervids (white tailed deer) for a "bona fide scientific purposes". Under the Rules of Civil Procedure it becomes the burden of the Applicants to contest or refute this fact. The Applicants in their various submissions allege that they maintain and propagate the white tailed deer for educational purposes and in the end consume the meat from the deer personally. The closest assertion made by the Applicants that they are maintaining or propagating the deer for "bona fide scientific purposes" is that they make the deer available to scientist's from URI for the collection of deer ticks.

The Applicants have not met their burden of proof to refute DEM's allegation that they are not engaged in "bona fide scientific purposes". The Cervid Regulations clearly provide that the only qualifying activity for the maintenance and propagation of white tailed deer is for "bona fide scientific purposes". I find that there is no issue of material fact in this matter and that DEM is entitled to the entry of judgment as a matter law.

Finding and Fact

After consideration of the documentary and testimonial evidence presented I make the following findings of facts:

1. The AAD has jurisdiction of the subject matter and personal jurisdiction in this matter;
2. The Applicants submitted to the Department an application for Renewal of a propagating license on or about July 18, 2007;
3. The Applicant's Application for Renewal of a propagation license sought permission to commercially propagate one species of native cervid i.e., white tail deer;

4. The Division of Fish and Wildlife denied Applicants' Application for Renewal of Propagation License on November 19, 2007;
5. Applicants requested an appeal with AAD by letter dated December 10, 2007.
6. The Cervid Regulations prohibit the issuance of Cervid Propagation Licenses except to those persons who are engaged in "bona fide scientific research".
7. The Applicants have not shown that they are propagating or intend to propagate cervid for "bona fide scientific research".
8. There is no material issue of fact in dispute and DEM is entitled to a Judgment as a matter of law.

CONCLUSIONS OF LAW

After due consideration of the documentary and testimonial evidence of record and based upon the above finding of facts, I conclude the following as a matter of law:

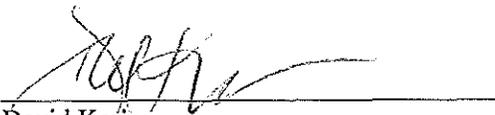
1. The Administrative Adjudication Division has subject matter jurisdiction over this action and personal jurisdiction over the Applicants.
2. Applicants have failed to prove by a preponderance of the evidence that their application for renewal of Propagating License as proposed, complies with the requirements of the Rules and Regulations Governing Importation and Possession Of Native Wildlife.
3. Applicants have failed to prove by a preponderance of the evidence that their application for renewal of the Propagating License as proposed, complies with the requirements of the Rules and Regulations Governing Importation Feeding, and Baiting of Cervids in Rhode Island.
4. DEM is entitled to entry of Summary Judgment as a matter of Law.

Based on the foregoing, it is hereby:

ORDERED

1. DEM's Motion for Summary Judgment is **GRANTED**.
2. Applicants' appeal of the Division's denial of the Applicant to Renew Propagating License is **DENIED** and **DISMISSED**.

Entered as an Administrative Order this 26th day of September, 2011.



David Kerins
Chief Hearing Officer
Department of Environmental Management
Administrative Adjudication Division
One Capitol Hill, 2nd Floor
Providence, RI 02906
(401) 574-8600

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded, via regular mail, postage prepaid to: Dennis and Brenda Rambone, 36 Howard Hill Road, Foster, RI 02825; via interoffice mail to Susan Forcier, Esquire, DEM Office of Legal Services, One Capitol Hill 2nd FL, Providence, RI 02908 on this 26th day of September, 2011.