

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 05-0021
)
TOM KAELIN, an individual)
doing business as KAELIN'S KENNEL,)
) CONSENT DECISION
Respondent.) AND ORDER

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(the "Act"), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent willfully violated the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 et seq.). This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

Respondent admits the allegations in the complaint, as set forth herein as findings of fact and conclusions of law, waives oral hearing and further procedure, and consents and agrees to the entry of this decision. The complainant agrees to the entry of this decision.

Findings of Fact

1. Respondent Tom Kaelin is an individual whose address is 3401 North Adams, Lexington, Nebraska 68850. Said respondent does business as Kaelin's Kennel, a sole proprietorship. At all times mentioned herein, said respondent was operating as a dealer, as that term is defined in the Regulations. On April 13, 2004, respondent voluntarily terminated his dealer's license (No. 47-B-0092), by written request, pursuant to section 2.5 of the Regulations (9 C.F.R. § 2.5(a)(2)).

2. Respondent maintains a large business as a dog dealer. During the last year for which records are available (2002), respondent represented that he sold 694 dogs, and grossed \$99,410. The gravity of the violations alleged in this complaint is great, and involve willful, deliberate violations of the licensing regulations. The violations themselves demonstrate bad faith on the part of respondent. Respondent has a history of serious violations. *In re Tom Kaelin, dba Kaelin's Kennel; and Pets Direct, Inc.*, 63 Agric. Dec. 889 (2004)(consent decision and order)(where respondents Kaelin and Pets Direct, Inc., were found to have committed numerous violations of the Regulations over a two-year period, respondents were ordered to cease and desist from violating the Act and the Regulations, and respondent Kaelin's dealer's license was revoked, effective June 25, 2004).

3. On or about May 16, 2004, respondent Tom Kaelin operated as a dealer, as that term is defined in the Regulations, without having obtained a license from the Secretary to do so, and specifically, negotiated the sale of fifteen live dogs (American Eskimo dogs, American Eskimo-Shetland Sheepdog mix dogs, and American Eskimo-Australian Shepherd mix dogs), for use as pets, for compensation or profit, and sold said fifteen dogs for use as pets.

4. On or about May 27, 2004, respondent Tom Kaelin operated as a dealer, as that term is defined in the Regulations, without having obtained a license from the Secretary to do so, and specifically, negotiated the sale of eleven live dogs (Rat terriers, Pomeranians, Border Collie-Australian Shepherd mix dogs, and American Eskimo-Australian Shepherd mix dogs) for use as pets, for compensation or profit, and sold said eleven dogs for use as pets.

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Conclusions

1. The respondent having admitted the allegations in the complaint, as set forth herein as findings of fact and conclusions of law, and the parties having agreed to the entry of this decision, such decision will be entered.

2. On or about May 16, 2004, respondent Tom Kaelin operated as a dealer, as that term is defined in the Regulations, without having obtained a license from the Secretary to do so, and specifically, negotiated the sale of fifteen live dogs (American Eskimo dogs, American Eskimo-Shetland Sheepdog mix dogs, and American Eskimo-Australian Shepherd mix dogs), for use as pets, for compensation or profit, and sold said fifteen dogs for use as pets, in willful violation of section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

3. On or about May 27, 2004, respondent Tom Kaelin operated as a dealer, as that term is defined in the Regulations, without having obtained a license from the Secretary to do so, and specifically, negotiated the sale of eleven live dogs (Rat terriers, Pomeranians, Border Collie-Australian Shepherd mix dogs, and American Eskimo-Australian Shepherd mix dogs) for use as pets, for compensation or profit, and sold said eleven dogs for use as pets, in willful violation of section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)(1)).

Order

1. Respondent, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder.

2. Respondent is permanently disqualified from licensure under Animal Welfare Act, in his own name or in any other manner. For the purposes of this consent decision and order, the

five-year period of time between August 1, 2007, and July 31, 2012, shall be referred to as the “probation period.” Respondent agrees that during the probation period, he will not engage in any activity for which such a license under the Act is required, directly or through any agent, employee, or other device. Respondent further agrees that if during the probation period APHIS notifies him that it has documented a failure to comply with section 2.1 of the Regulations (9 C.F.R. § 2.1), upon receipt of such notice and supporting documentation, said respondent shall be jointly and severally assessed a civil penalty of \$35,750 for such failure, without further procedure, and due and payable within 60 days of respondent’s receipt of such notice. Respondent further agrees to a prospective waiver of his right to notice and opportunity for an oral hearing pursuant to section 19 of the Act (7 U.S.C. § 2149) as to any such failure to comply with said Regulation described in this paragraph, and the parties agree that respondent may seek further review or injunctive, declaratory or other appropriate relief in the district court in the district where respondent resides or has his principal place of business, pursuant to section 2146(c) of the Act (7 U.S.C. § 2146(c)), within 60 days of receipt of such notice.

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The provisions of this order shall become effective immediately. Copies of this decision shall be served upon the parties.

[Redacted signature]

Tom Kaelin, doing business as Kaelin's Kennel
Respondent

[Redacted signature]

Colleen A. Carroll
Attorney for Complainant

Done at Washington, D.C. *December*
this 3 day of ~~August~~, 2007 *JSC*

[Redacted signature]

~~Peter M. Davenport~~ *Jill S. Clifton*
Administrative Law Judge