

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	Docket No. 09-0069
	)	
Lion's Gate Center, LLC,	)	
	)	
Petitioner	)	<b>Decision and Order</b>

**PROCEDURAL HISTORY**

Lion's Gate Center, LLC [hereinafter Lion's Gate], instituted the instant proceeding seeking review of the determination by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], that Lion's Gate was unfit to be licensed under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act], and the regulations issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-2.133) [hereinafter the Regulations].<sup>1</sup> Chief Administrative Law Judge Peter M. Davenport [hereinafter the Chief ALJ] set the matter for oral hearing to commence in Denver, Colorado, on January 26, 2010; however, prior to that date, the Administrator filed a Motion for

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<sup>1</sup>Lion's Gate is represented by Jay Wayne Swearingen and Jennifer Reba Edwards, The Animal Law Center, LLC, Wheat Ridge, Colorado. The Administrator is represented by Colleen A. Carroll, Office of the General Counsel, United States Department of Agriculture, Washington, DC.

Summary Judgment which the Chief ALJ granted in a Decision and Order entered on January 5, 2010.

Lion's Gate appealed the Chief ALJ's Decision and Order, and on August 30, 2010, I remanded the case to the Chief ALJ for further proceedings in accordance with the rules of practice applicable to this proceeding<sup>2</sup> to determine the identity of the person or persons whose Animal Welfare Act license was revoked, effective August 27, 2003, pursuant to *In re Michael Jurich* (Consent Decision), 60 Agric. Dec. 722 (2001). *In re Lion's Gate Center, LLC* (Remand Order), \_\_\_ Agric. Dec. \_\_\_ (Aug. 30, 2010).

Following a conference conducted by the Chief ALJ on February 9, 2011, Lion's Gate and the Administrator agreed that the issues in the proceeding were of law rather than of fact and that disposition could be effected by briefs and affidavits rather than by holding an evidentiary hearing. On May 9, 2011, after Lion's Gate and the Administrator filed briefs, the Chief ALJ issued a Decision and Order on Remand in which the Chief ALJ: (1) affirmed the Administrator's determination that Lion's Gate is unfit to be licensed under the Animal Welfare Act; (2) affirmed the Administrator's denial of Lion's Gate's Animal Welfare Act license application; and (3) disqualified Lion's Gate from obtaining, holding, or using an Animal Welfare Act license for 1 year.

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<sup>2</sup>The rules of practice applicable to the instant proceeding are the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151).

On June 13, 2011, Lion's Gate filed "Petitioner's Appeal Petition to Judicial Officer of May 9, 2011 Order on Remand" [hereinafter Appeal Petition], and on July 5, 2011, the Administrator filed a response to Lion's Gate's Appeal Petition. On August 18, 2011, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision. Based upon a careful consideration of the record, I adopt, with minor changes, the Chief ALJ's May 9, 2011, Decision and Order on Remand as the final agency decision.

## **DECISION**

### **Discussion**

At issue in this proceeding is whether the Administrator, acting through Dr. Robert M. Gibbens, the Western Regional Director, Animal Care, Animal and Plant Health Inspection Service, United States Department of Agriculture, was justified in denying Lion's Gate's Animal Welfare Act license application. The Administrator based the denial of Lion's Gate's application on Lion's Gate's agreement with Prairie Wind Animal Refuge, an entity whose Animal Welfare Act license had been revoked. The Administrator found that issuance of an Animal Welfare Act license to Lion's Gate would circumvent the Secretary of Agriculture's revocation of Prairie Wind Animal Refuge's Animal Welfare Act license.

Lion's Gate takes the position that Animal Welfare Act license number 84-C-0052,<sup>3</sup> issued to Michael Jurich and Laurie E. Jurich, d/b/a Prairie Wind Animal Refuge,<sup>4</sup> was voluntarily terminated by Mr. Jurich on January 31, 2000, and, accordingly, was not in effect and could not have been revoked in 2003 by violation of the terms of probation in *In re Michael Jurich* (Consent Decision), 60 Agric. Dec. 722 (2001).<sup>5</sup> Lion's Gate's reliance on this position is misplaced. In the Consent Decision, Mr. Jurich and Prairie Wind Animal Refuge agreed they neither would apply for an Animal Welfare Act license nor would engage in any activities for which an Animal Welfare Act license would be required. Mr. Jurich and Prairie Wind Animal Refuge also agreed, if there was a failure to comply with 9 C.F.R. § 2.1, such failure would trigger both revocation of the Animal Welfare Act license and a \$15,000 civil penalty.<sup>6</sup>

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<sup>3</sup>Animal Welfare Act license number 84-C-0052 also appears in the record as Animal Welfare Act license number 84-C-052. Lion's Gate and the Administrator are in agreement that Animal Welfare Act license number 84-C-052 and Animal Welfare Act license number 84-C-0052 are one and the same. *See* Respondent's Brief on Remand Decl. of Robert M. Gibbens, D.V.M., at 1 ¶ 3 and Lion's Gate's Brief in Response to February 9, 2011 at 7-8 ¶ 3.

<sup>4</sup>The Colorado Secretary of State Business Center website lists Prairie Wind Animal Refuge as being incorporated on September 13, 1993.

<sup>5</sup>*In re Michael Jurich* (Consent Decision), 60 Agric. Dec. 722 (2001), refers to Animal Welfare Act license number "94-C-052." The references to Animal Welfare Act license number "94-C-052" are typographical errors as no such Animal Welfare Act license number exists.

<sup>6</sup>Revocation is attended by permanent ineligibility to be issued an Animal Welfare Act license (9 C.F.R. §§ 2.10(b), .11(a)(3)).

Lion's Gate argues issuance of Animal Welfare Act license number 84-C-0052 to Michael R. Jurich and Laurie E. Jurich, d/b/a Prairie Wind Animal Refuge, did not constitute issuance of the license to Prairie Wind Animal Refuge, a Colorado nonprofit corporation. That argument is also without merit. Mr. Jurich's initial Animal Welfare Act license application identified Mr. Jurich as "owner" of an unspecified form of an entity<sup>7</sup> and the Animal Welfare Act license renewal applications clearly identify the licensed entity as a corporation in the type of organization block of the renewal forms (Respondent's Brief on Remand Attach. RX 16 at 3-4, 6, 11). Similarly, Dr. Gibbens states Michael R. Jurich and Laurie E. Jurich, d/b/a Prairie Wind Animal Refuge, applied for, and, on February 7, 1994, were issued, an Animal Welfare Act license as a corporation (Respondent's Brief on Remand, Decl. of Robert M. Gibbens, D.V.M., at ¶ 3).

Lion's Gate's letter dated October 31, 2008, accompanying Lion's Gate's Animal Welfare Act license application, explained that Lion's Gate had entered into a License Agreement with Prairie Wind Animal Refuge dated October 27, 2008. That letter acknowledges that Prairie Wind Animal Refuge's Animal Welfare Act license had been revoked. The letter explains that their attorneys had considered dissolving Prairie Wind Animal Refuge, but were concerned that such dissolution might jeopardize Prairie Wind

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<sup>7</sup>The type of organization block does not appear on the form; however, it is present on subsequent forms used for renewal of the Animal Welfare Act license.

Animal Refuge's grandfather status under State of Colorado rules pertaining to wildlife sanctuaries. (Respondent's Motion for Summary Judgment Attach. RX 6 at 1-2.)

In denying Lion's Gate's Animal Welfare Act license application, the Administrator relied upon 9 C.F.R. §§ 2.10(b) and 2.11(a)(3), which provide, as follows:

**§ 2.10 Licensees whose licenses have been suspended or revoked.**

.....

(b) Any person whose license has been revoked shall not be licensed in his or her own name or in any other manner; nor will any partnership, firm, corporation, or other legal entity in which any such person has a substantial interest, financial or otherwise, be licensed.

**§ 2.11 Denial of initial license application.**

(a) A license will not be issued to any applicant who:

.....

(3) Has had a license revoked or whose license is suspended, as set forth in § 2.10[.]

In a letter to Lion's Gate dated February 18, 2009, Dr. Gibbens stated the reasons for finding Lion's Gate unfit to be licensed under the Animal Welfare Act. Specifically, because of Lion's Gate's involvement and relationship with Prairie Wind Animal Refuge, issuance of a license to Lion's Gate would be contrary to the purposes of the Animal Welfare Act and would circumvent the order of revocation issued by the Secretary of Agriculture against Prairie Wind Animal Refuge. The stated purpose of the agreement between Lion's Gate and Prairie Wind Animal Refuge was to facilitate the exhibition of the animals owned by Prairie Wind Animal Refuge and Dr. Joan Laub at Prairie Wind Animal Refuge's facility. In turn, Lion's Gate would be allowed to employ the wildlife

sanctuary license issued by the Colorado Division of Wildlife to Prairie Wind Animal Refuge and Lion's Gate would obtain an Animal Welfare Act license in its name.

(Respondent's Motion for Summary Judgment Attachs. RX 6, PX 4.) As Prairie Wind Animal Refuge's Animal Welfare Act license had been revoked, Dr. Gibbens' conclusion that the arrangement between Lion's Gate and Prairie Wind Animal Refuge would circumvent the Secretary of Agriculture's order revoking Prairie Wind Animal Refuge's Animal Welfare Act license, is correct.

### **Findings of Fact**

1. The records of the Colorado Secretary of State indicate Prairie Wind Animal Refuge is a nonprofit corporation that was formed on September 13, 1993. Prairie Wind Animal Refuge's term of duration is perpetual. Michael R. Jurich's name appears on the early corporate filings; the more recent corporate filings contain Dr. Joan Laub's name. (Respondent's Brief on Remand Attach. RX 8.)

2. On July 31, 2001, Administrative Law Judge Jill S. Clifton entered *In re Michael Jurich* (Consent Decision), 60 Agric. Dec. 722 (2001). That Consent Decision resolved the then-pending administrative proceeding and included a civil penalty, a cease and desist order, and liquidated penalties, including Animal Welfare Act license revocation and an additional civil penalty, should there be a violation of 9 C.F.R. § 2.1 during a specified probationary period. (Respondent's Motion for Summary Judgment Attach. RX 1.)

3. References to Animal Welfare Act license number “94-C-052” in *In re Michael Jurich* (Consent Decision), 60 Agric. Dec. 722 (2001), are typographical errors and should properly have been references to Animal Welfare Act license number “84-C-0052.” Animal Welfare Act license number “94-C-052” does not exist. In assigning Animal Welfare Act license numbers, the first two digits refer to the state of issuance. Colorado is coded “84.” The letter refers to the type of Animal Welfare Act license. The letter “C” indicates the license is an exhibitor’s license. The three (and later four) digits following the letter indicate the sequential numbering of the licenses. (Respondent’s Brief on Remand Decl. of Robert M. Gibbens, D.V.M., at 1 ¶ 3.)

4. The Animal Welfare Act license issued originally to Michael R. Jurich and Laurie E. Jurich, d/b/a Prairie Wind Animal Refuge, Animal Welfare Act license number 84-C-052, is one and the same as Animal Welfare Act license number 84-C-0052 and was consistently renewed as a corporate license (Respondent’s Brief on Remand Attach. RX 16 at 3-4, 6, 11).

5. Lion’s Gate was formed by Peter Winney on or about May 31, 2002.

6. By letter dated February 11, 2003, the Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter APHIS], advised Mr. Jurich and Prairie Wind Animal Refuge that APHIS had documented failures to comply with 9 C.F.R. § 2.1 during the probationary period established in *In re Michael Jurich* (Consent Decision), 60 Agric. Dec. 722 (2001), enclosed documentary evidence of



the violations, assessed Mr. Jurich and Prairie Wind Animal Refuge a \$15,000 civil penalty, and revoked Animal Welfare Act license number 84-C-0052, as provided in *In re Michael Jurich* (Consent Decision), 60 Agric. Dec. 722 (2001) (Respondent's Brief on Remand Attach. RX 2).

7. Mr. Jurich and Prairie Wind Animal Refuge sought judicial review of the APHIS action in the United States District Court for the District of Colorado, *Jurich v. U.S. Dep't of Agric.*, No. 1:03-CV-00793-OWN-OES (D. Colo. Sept. 10, 2003) (Respondent's Motion for Summary Judgment Attach. RX 3a). On or about August 27, 2003, the case was settled, with Mr. Jurich and Prairie Wind Animal Refuge expressly acknowledging revocation of their Animal Welfare Act license (Respondent's Motion for Summary Judgment Attach. RX 3c).

8. On or about May 11, 2005, Mr. Winney applied for an Animal Welfare Act license, identifying himself as an individual doing business as "Lion's Gate." The Animal Welfare Act license application listed Dr. Joan Laub and Mr. Winney as "owners of the business." (Respondent's Motion for Summary Judgment Attach. RX 4.) Mr. Winney's May 11, 2005, Animal Welfare Act license application was subsequently withdrawn.

9. By deed dated December 21, 2007, Dr. Laub took title to the real estate located at 22111 County Road 150, Agate, Colorado, on which Prairie Wind Animal

Refuge was, and is currently, located (Respondent's Motion for Summary Judgment Attach. RX 6 at 15-16; Respondent's Brief on Remand Attach. RX 8).

10. Prairie Wind Animal Refuge holds Colorado Division of Wildlife License No. 08CP270. Both Dr. Laub and Mr. Winney are officers of Prairie Wind Animal Refuge.

11. On July 7, 2008, Prairie Wind Animal Refuge applied for an Animal Welfare Act license, identifying Dr. Laub as Prairie Wind Animal Refuge's President and Executive Director, and Mr. Winney as Prairie Wind Animal Refuge's Vice President and Director (Respondent's Motion for Summary Judgment Attach. RX 5 at 1).

12. On August 12, 2008, the Administrator denied Prairie Wind Animal Refuge's Animal Welfare Act license application, stating APHIS was unable to issue an Animal Welfare Act license to Prairie Wind Animal Refuge due to the Secretary of Agriculture's previous revocation of Prairie Wind Animal Refuge's Animal Welfare Act license (Respondent's Motion for Summary Judgment Attach. RX 5 at 2-3).

13. On October 31, 2008, Mr. Winney submitted Lion's Gate's application for an Animal Welfare Act license. Included in the attachments to the application was a "License Agreement" between Lion's Gate and Prairie Wind Animal Refuge, stating Prairie Wind Animal Refuge and Dr. Laub own the property, facility, and animals intended to be exhibited by the applicant Lion's Gate. One of the stated purposes of the agreement was to facilitate the exhibition of the animals owned by Prairie Wind Animal

Refuge and Dr. Laub both on and off Prairie Wind Animal Refuge's facility. In turn, Lion's Gate would be allowed to employ the wildlife sanctuary license issued by the Colorado Division of Wildlife to Prairie Wind Animal Refuge and Lion's Gate would obtain an Animal Welfare Act license in its name. (Respondent's Motion for Summary Judgment Attachs. RX 6, PX 4.)

14. In a letter dated October 31, 2008, from Mr. Winney to Dr. Gibbens, Mr. Winney expressly acknowledged that Prairie Wind Animal Refuge's Animal Welfare Act license had been revoked. The letter explained that counsel for Lion's Gate and Mr. Winney had considered dissolving Prairie Wind Animal Refuge, but were concerned that such dissolution might jeopardize Prairie Wind Animal Refuge's grandfather status under State of Colorado rules pertaining to wildlife sanctuaries. (Respondent's Motion for Summary Judgment Attach. RX 6.)

15. On February 18, 2009, the Administrator denied Lion's Gate's Animal Welfare Act license application on the grounds that Lion's Gate was unfit to be licensed and "that issuance of a license to Lion's Gate would be contrary to the purposes of the Act, and would operate so as to circumvent an order of revocation issued by the Secretary of Agriculture as to Prairie Wind Animal Refuge. . . ." (Respondent's Motion for Summary Judgment Attach. PX 14 at 1.)

### **Conclusions of Law**

1. The Secretary of Agriculture has jurisdiction in this matter.
2. The settlement agreement reached in *Jurich v. U.S. Dep't of Agric.*, No. 1:03-CV-00793-OWN-OES (D. Colo. Sept. 10, 2003), acknowledged the revocation of the Animal Welfare Act license previously held by Mr. Jurich and Prairie Wind Animal Refuge and the imposition of the accompanying civil penalty.
3. The Administrator's determination that Lion's Gate was unfit for issuance of an Animal Welfare Act license and the denial of Lion's Gate's Animal Welfare Act license application on the basis of 9 C.F.R. §§ 2.10(b) and 2.11(a) was in accordance with the Animal Welfare Act and the Regulations as an approval of Lion's Gate's Animal Welfare Act license application would result in the circumvention of the Secretary of Agriculture's revocation of Prairie Wind Animal Refuge's Animal Welfare Act license.
4. The divestiture of ownership by, and subsequent death of, Mr. Jurich do not act to remove the permanent disqualification of licensure of a corporate entity whose existence is perpetual.

### **Lion's Gate's Appeal Petition**

Lion's Gate raises three issues in its Appeal Petition. First, Lion's Gate contends the Chief ALJ's finding that Prairie Wind Animal Refuge applied for, and was issued, Animal Welfare Act license number 84-C-0052, is error. Lion's Gate asserts Mr. and Mrs. Jurich applied for, and were issued, Animal Welfare Act license number 84-C-0052.

Lion's Gate asserts APHIS cannot issue an Animal Welfare Act license to a legal entity that never applied for a license. (Appeal Pet. at 2-3.)

On October 4, 1993, APHIS received Mr. Jurich's application for an Animal Welfare Act license in which Mr. Jurich identified himself as an owner of an unspecified form of an entity. Mr. Jurich identified Prairie Wind Animal Refuge on the Animal Welfare Act license application as a business name. (Respondent's Brief on Remand Attach. RX 16 at 3.) The October 4, 1993, Animal Welfare Act license application contained no space for identifying the form of the entity applying for the Animal Welfare Act license, whereas each of the Animal Welfare Act license renewal applications has a space for identifying the form of the entity seeking license renewal. Each of the Animal Welfare Act license renewal applications submitted by Mr. Jurich identifies the entity seeking renewal as a corporation and identifies Mr. Jurich as "President" (Respondent's Brief on Remand Attach. RX 16 at 4, 6, 11). The record also contains a letter from Prairie Wind Animal Refuge to APHIS, dated October 25, 1993, requesting a variance while its Animal Welfare Act license application is pending (Respondent's Brief on Remand Attach. RX 16 at 1-2). Based on this evidence, I reject Lion's Gate's contention that the Chief ALJ's finding that Prairie Wind Animal Refuge applied for, and was issued, Animal Welfare Act license number 84-C-0052, is error.

Lion's Gate also asserts Prairie Wind Animal Refuge is merely a trade name and not a legal entity to which an Animal Welfare Act license can be issued. Nothing in the

record identifies Prairie Wind Animal Refuge as merely a trade name. To the contrary, the records of the Colorado Secretary of State indicate Prairie Wind Animal Refuge is a nonprofit corporation that was formed on September 13, 1993. Prairie Wind Animal Refuge's term of duration is perpetual. (Respondent's Brief on Remand Attach. RX 8.)

Second, Lion's Gate asserts the Chief ALJ's finding that Animal Welfare Act license number 84-C-0052 was revoked in 2003, is error. Lion's Gate asserts Mr. and Mrs. Jurich voluntarily surrendered Animal Welfare Act license number 84-C-0052 in January 2000 and APHIS accepted the surrender and terminated Animal Welfare Act license number 84-C-0052 as of January 31, 2000; therefore, any subsequent revocation of Animal Welfare Act license number 84-C-0052 is null and void. (Appeal Pet. at 3-4.)

Lion's Gate's argument that the Secretary of Agriculture cannot revoke a previously surrendered and terminated Animal Welfare Act license, is without merit. The Secretary of Agriculture is authorized under 7 U.S.C. § 2149(a) to revoke Animal Welfare Act licenses. The Secretary of Agriculture's authority to revoke Animal Welfare Act licenses includes the authority to revoke Animal Welfare Act licenses that have been voluntarily surrendered and terminated prior to the revocation.<sup>8</sup>

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<sup>8</sup>See *In re Sam Mazzola* (Order Denying Pet. for Recons. and Ruling Denying Mot. for Oral Argument), \_\_\_ Agric. Dec. \_\_\_, slip op. at 7 (Mar. 29, 2010) (rejecting the argument that, in order to revoke an Animal Welfare Act license, a valid license must exist at the time of revocation); *In re Eric John Drogosch*, 63 Agric. Dec. 623, 648-49 (2004) (holding the Secretary of Agriculture is authorized by 7 U.S.C. § 2149(a) to revoke a violator's Animal Welfare Act license even if the violator's Animal Welfare Act license is cancelled prior to revocation).

Third, Lion's Gate contends the Chief ALJ erroneously found the references to Animal Welfare Act license number 94-C-0052 in *In re Michael Jurich* (Consent Decision), 60 Agric. Dec. 722 (2001), are typographical errors. Lion's Gate speculates that Mr. Jurich may have been aware that Animal Welfare Act license number 94-C-0052 did not exist and may have been willing to have an Animal Welfare Act license that never existed revoked. (Appeal Pet. at 4.)

*In re Michael Jurich* (Consent Decision), 60 Agric. Dec. 722 (2001), was instituted against Mr. Jurich and Prairie Wind Animal Refuge, who operated as exhibitors under Animal Welfare Act license number 84-C-052. Mr. Jurich and Prairie Wind Animal Refuge had mailing addresses at the same location in Colorado. The first two digits of an Animal Welfare Act license number identify the state in which a license is issued. The number "84" is used to identify Animal Welfare Act licenses issued in Colorado and the number "94" is used to identify Animal Welfare Act licenses issued in Puerto Rico. Animal Welfare Act license number 94-C-052 does not exist. I find these circumstances support the Chief ALJ's finding that the references to Animal Welfare Act license number "94-C-052" in *In re Michael Jurich* (Consent Decision), 60 Agric. Dec. 722 (2001), are typographical errors and that the parties and Administrative Law Judge Jill S. Clifton intended *In re Michael Jurich* (Consent Decision), 60 Agric. Dec. 722 (2001), to apply to Animal Welfare Act license number 84-C-052.

Lion's Gate's speculation that Mr. Jurich intended *In re Michael Jurich* (Consent Decision), 60 Agric. Dec. 722 (2001), to apply to the nonexistent Animal Welfare Act license number 94-C-052, is not a sufficient basis on which to disturb the Chief ALJ's finding regarding the references to Animal Welfare Act license number 94-C-052 in *In re Michael Jurich* (Consent Decision), 60 Agric. Dec. 722 (2001).

### **ORDER**

1. The Administrator's determination that Lion's Gate is unfit to be licensed under the Animal Welfare Act, is affirmed.
2. The Administrator's denial of Lion's Gate's Animal Welfare Act license application, is affirmed.
3. Lion's Gate is disqualified for a period of 1 year from obtaining, holding, or using an Animal Welfare Act license directly or indirectly through any corporate or other device or person.
4. This Order shall become effective upon service of this Order on Lion's Gate.

Done at Washington, DC

September 8, 2011

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William G. Jenson  
Judicial Officer