



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. ENH 00200-16

AGENCY DKT. NO. 2015-0046

**BRENDA OAKES,**

Petitioner,

v.

**NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION-  
DIVISION OF FISH AND WILDLIFE.**

Respondent.

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**Brenda Oakes**, petitioner, pro se

**Yin Zhou, Esquire**, Deputy Attorney General, for respondent, New Jersey  
Department of Environmental Protection-Division of Fish and Wildlife  
(Christopher S. Porrino, Attorney General of New Jersey, attorney)

Record Closed: July 26, 2017

Decided: August 24, 2017

BEFORE **DEAN J. BUONO**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner Brenda Oakes (Oakes or petitioner), appeals from the February 10, 2015, denial by respondent that she be denied a captive game "Animal Exhibitor

Permit". The procedural history and facts of this case represent the facts at issue for this Motion for Summary Decision. Respondent argues that Oakes has not contested the material facts that in 2010, she took possession of three whitetail deer without a permit and the State of New Jersey requires an individual who desires to take possession of a whitetail deer to obtain a permit. Therefore, respondent argues that Summary Decision is appropriate because there are no genuine issues of material fact that Oakes illegally possessed the deer and is not qualified under the regulations to qualify for a permit. On the contrary, Oakes argues that she has more than eighteen years' experience in raising, handling and caring for whitetail deer. Also, she has "shadowed" veterinarians and has a facility that is capable of properly caring for the animals. Therefore, she is qualified to obtain a permit and should be given one so that she may continue to raise the three-whitetail deer.

In the February 10, 2015, denial, Fish and Wildlife failed to contain information regarding her right to request an administrative hearing. As a result, Fish and Wildlife sent a March 13, 2015, correspondence to Oakes informing her of the right to an administrative hearing under N.J.A.C. 7:25-10.12 and N.J.S.A. 52:14B-1 et seq. (Predl Cert. ¶ 22, Ex. C). On April 1, 2015, petitioner filed a timely Notice of Appeal.

The Department of Environmental Protection, Division of Fish and Wildlife transmitted the case to the Office of Administrative Law, where it was filed on December 29, 2015. A hearing was scheduled for July 27, 2017. Respondent filed a Motion for Summary Decision on June 27, 2017. On July 7, 2017, a telephone conference was held with the parties for the undersigned to inform the pro se petitioner of her right to reply to the Motion. Oakes filed a Reply Brief on July 12, 2017. On July 26, 2017, the JJDEP filed a response to the Oakes Reply and the record closed on that date.

### **FACTUAL DISCUSSION**

Many facts in this matter are not in dispute. Having reviewed the brief in support of its motion for summary disposition and in petitioner's opposition brief, I **FIND as FACT:**

In approximately 2009 or 2010, Oakes took possession of three wild whitetail deer, and kept them at her residence in Kingwood Township. (Certification of Susan Predl, Ex. A at 3, 6). She did not have a permit that allowed her to possess whitetail deer. (Predl Cert. ¶ 8).

On November 25, 2014, Fish and Wildlife personnel tranquilized and removed the three-whitetail deer, relocating them to Johnson Park in Middlesex County. (Predl Cert. ¶ 9). On February 5, 2015 Oakes submitted a captive game permit application to Fish and Wildlife, specifically an Animal Exhibitor permit, along with a potentially dangerous species application ("Permit Application"), pursuant to the Captive Game Animal and Game Bird Regulations, N.J.A.C. 7:25-10 ("Captive Game Regulations"). (Predl Cert. Ex. A). In the Permit Application, Oakes listed one female five-year old whitetail deer and two female four-year old whitetail deer as the game species that had been orphaned and were given to her by local law enforcement. (Predl Cert. Ex. A at 3, 6). Oakes has not provided any receipts or documentation of legal origin for any of the three-whitetail deer, as requested pursuant to the permit application. (Predl Cert. ¶ 14, Ex. A at 6, 7). The animals listed were the three-whitetail deer that had been removed from her residence on November 25, 2014. (Predl Cert. ¶11, Ex. A at 1, 3, 7). Oakes further indicated that she was applying for a captive game permit to return the three-whitetail deer to her residence. (Predl Cert. Ex. A at 1).

In the Permit Application, Oakes explained in detail her experience with raising, handling and caring for whitetail deer. Some of which consists of rehabilitating and releasing fawns to the wild for approximately eighteen years. (Predl Cert. Ex. A at 1, 3). She indicated that her experience with raising, handling and caring for whitetail deer also included working with veterinarians like Jonathan Bergmann, DVM, a zoo veterinarian who specializes in whitetail deer. (Predl Cert. Ex. A at 1, 3).

Dr. Bergmann indicated that Oakes had been "shadowing" him at various zoos and farms in his care of "farm animals and farmed whitetail deer." (Predl Cert. Ex. A. at 11).

Oakes acknowledges that she violated the Regulations when she acquired and possessed the three-whitetail deer (Predl Cert. Ex. A at 1, 8). She acknowledged that she has never had a captive game permit for whitetail deer, nor has she ever been authorized to possess whitetail deer for rehabilitative, scientific or other purposes. (Predl Cert. ¶ 18).

On February 10, 2015, Fish and Wildlife denied the Permit Application, finding that Oakes's past experience in caring for deer does not qualify her for a captive game permit because such experience was obtained illegally (without a permit). (Predl Cert. Ex. B).

### **FINDINGS OF FACT**

Petitioner does not contest the fact that she took possession of three whitetail deer without a permit and kept them for five years. Instead, she argues that she took care of the animals and should be afforded the opportunity to care for them for the rest of their lives. As such, I **FIND**, by a preponderance of credible evidence, petitioner never possessed a permit allowing her to keep and care for whitetail deer. I **FURTHER FIND** that since 2009 or 2010, petitioner kept and cared for three whitetail deer.

The issue presented by respondent in this Motion is that no genuine material fact is contested and Summary Decision appropriate. Petitioner argues that she should be entitled to obtain a permit raise the three deer. I disagree.

### **LEGAL ARGUMENT AND CONCLUSION**

Pursuant to N.J.A.C. 1:1-12.5(b), a summary decision "may be rendered if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." This rule is substantially similar to the summary judgment rule embodied in the New Jersey Court Rules, R. 4:46-2. See Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 74 (1954). In connection therewith, all inferences of doubt are drawn against the movant and in favor of the party

against whom the motion is directed. Id. at 75. In Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995), the New Jersey Supreme Court addressed the appropriate test to be employed in determining the motion:

[A] determination whether there exists a ‘genuine issue’ of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. The ‘judge’s function is not . . . to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial’.

[Brill, supra, 142 N.J. at 540 (citations omitted).]

Respondent argues that the Captive Game Regulations state that “no person shall have in possession any game animal or game bird unless that person has first received a permit from the division.” N.J.A.C. 7:25-10.5(a). Depending on the applicant’s intended purposes for possession of a game animal or bird, Fish and Wildlife may issue various categories of permits “when it appears to be in the public interest.” See N.J.A.C. 7:25-10.7(a). The categories of permits include Animal Exhibitor permits, which may be issued to exhibitors of game animals or game birds other than zoos, N.J.A.C. 7:25-10.7(a)5, and Cooperator permits, which may be issued to qualified persons for the purpose of rearing orphaned juvenile wildlife or rehabilitating injured wildlife, N.J.A.C. 7:25-10.7(a)8.

In order to receive a permit, applicants must demonstrate to Fish and Wildlife that they have satisfied the six general possession criteria in N.J.A.C. 7:25-10.8(a). The applicant must demonstrate in relevant part that:

1. The origin of the animal is not from the wild stock of this State or any other state except where authorized by the Division for rehabilitative, scientific or other purposes consistent with the purposes of this subchapter as determined by the Division; [and]

....

4. The method of acquisition did not violate the laws and regulations of this State, any other state, or the federal government.

[N.J.A.C. 7:25-10.8(a).]

The species of game animals and birds for which a permit is required are listed in the Captive Game Regulations at N.J.A.C. 7:25-10.6. A permit is required for the possession of whitetail deer. N.J.A.C. 7:25-10.6(a)21. In order to legally possess whitetail deer, an applicant must apply for and meet all the criteria for a captive game permit.

Under the Captive Game Regulations, certain animals are classified as “potentially dangerous species,” which are defined as “any game animal or bird which, in the opinion of the Division, is potentially capable of inflicting serious or fatal injuries, of being an agricultural pest, of being detrimental to existing or future wild populations, or of being a menace to public health.” N.J.A.C. 7:25-10.10(a). All deer species of the Family *Cervidae*, including whitetail deer, are regulated as potentially dangerous species. Ibid.

In addition to the general possession criteria at N.J.A.C. 7:25-10.8, a person seeking to possess a potentially dangerous species must meet the criteria at N.J.A.C. 7:25-10.11(a)1 through 6. Those criteria include having the requisite education and background. Specifically, the applicant must demonstrate that he or she has “extensive experience in maintaining the species desired or related species.” N.J.A.C. 7:25-10.11(a)2. Fish and Wildlife will, in its discretion, issue a captive game permit for a potentially dangerous species “only after a clear showing” that the applicant possesses the requisite experience. N.J.A.C. 7:25-10.10(b).

As discussed, supra, an applicant for a captive game permit must demonstrate that “[t]he origin of the animal is not from the wild stock of this State.” N.J.A.C. 7:25-10.8(a)1. Here, it is undisputed that the subject deer were orphaned wild deer. See (Predl Cert. Ex. A at 1, 3, 6). Oakes acknowledged that she should have “releas[ed] these three deer into the wild” as she had done with fawns in the past. (Predl Cert. Ex. A at 1). Fish and Wildlife also requires receipts or other documentation noting the origin

of the animal(s). See (Predl Cert. Ex. A at 6, 7). Oakes failed to show any documentation. Also, Oakes could not have provided any receipt of legal origin because the deer were from wild stock. See Predl Cert. ¶ 14.

The only exception to the prohibition against possession of game animals from wild stock is where Fish and Wildlife has expressly authorized such possession for rehabilitative or scientific purposes. N.J.A.C. 7:25-10.8(a)1. Here, Fish and Wildlife never authorized Oakes to possess wild whitetail deer for any purpose. (Predl Cert. ¶ 18). Furthermore, Oakes acknowledged in the Permit Application that, in raising the three deer, she had violated the Captive Game Regulations. (Predl Cert. Ex. A at 1, 8). Possession of wild game animals, absent express authorization from Fish and Wildlife is illegal, Oakes's method of acquisition of the three-whitetail deer violated state laws and regulations. N.J.A.C. 7:25-10.8(a)4.

An applicant for a permit to possess a potentially dangerous species such as deer must meet additional criteria, including a clear showing that he or she has "extensive experience in maintaining the species desired or related species." N.J.A.C. 7:25-10.11(a)2. Oakes alleges that her experience consists of rehabilitating and releasing fawns for approximately fifteen to twenty years. See (Predl Cert. Ex. A at 1, 3) and Oakes' Reply Brief. There is no question that she cares for these deer and other animals that she has nurtured over the years. However, Oakes never received a permit or otherwise obtained authorization from Fish and Wildlife to possess whitetail deer during that fifteen to twenty-year period. Respondent argues that based on those uncontested facts, it was wholly within Fish and Wildlife's discretion to find that Oakes illegally-obtained experience and did not qualify her for a captive game permit, particularly where the permit involves a game species that poses a heightened risk to public health and safety. See N.J.A.C. 7:25-10.10(b).

Oakes asserts that she has gained experience from working with Dr. Bergmann, a zoo veterinarian. (Predl Cert. Ex. A at 1, 3) and Oakes' Reply Brief. However, the Permit Application only establishes that Oakes had been "shadowing" Dr. Bergmann at various zoos and farms. (Predl Cert. Ex. A at 11). The Permit Application and hearing request are void of details at those zoos and farms, the frequency and duration of her

work with Dr. Bergmann, the types of responsibilities she had, or any hands-on experience she might have obtained. Ibid. Since the Captive Game Regulations require “a clear showing” that the applicant has “extensive” experience in maintaining the desired species, Fish and Wildlife’s denial of the Permit Application was appropriate based on the record.

### **CONCLUSION**

For the foregoing reasons, the Division requests that an Initial Decision be entered granting the Division’s motion for summary decision, and affirming the denial of Oakes’ application for a captive game permit. It is uncontested that Brenda Oakes spent significant time and effort in raising the deer and her efforts are commendable. However, she did it illegally, without the benefit of a permit. She should not and will not be given the benefit of time spent raising deer without a permit. I will not condone behavior that is contrary to the law. I **CONCLUDE** that Brenda Oakes took possession of three whitetail deer without a permit. I **FURTHER CONCLUDE** that petitioner did not meet the general possession criteria at N.J.A.C. 7:25-10.8(a)(1) and (a)(4). I **FURTHER CONCLUDE** that Brenda Oakes acquired some proficiency with raising white tailed deer and other wild animals illegally. I **FURTHER CONCLUDE** that even when the facts with respect to Oakes’ experience are viewed in the light most favorable to her, Fish and Wildlife’s denial of the Permit Application was correct as a matter of law because the whitetail deer were from the wild stock of the State and acquired in violation of the Captive Game Regulations.

Having reviewed the parties’ submissions in support of, and opposition to, the within motion, I **CONCLUDE** that no issue of material fact exists on the denial of a captive game “Animal Exhibitor Permit”.



It is therefore hereby **ORDERED** that the respondent's motion for summary decision be and hereby is **GRANTED**. It is further **ORDERED** that the petitioner's appeal be **DISMISSED**.

I hereby **FILE** my initial decision with the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Environmental Protection does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, OFFICE OF LEGAL AFFAIRS, DEPARTMENT OF ENVIRONMENTAL PROTECTION, 401 East State Street, 4th Floor, West Wing, PO Box 402, Trenton, New Jersey 08625-0402**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



August 24, 2017

DATE

DEAN J. BUONO, ALJ

Date Received at Agency:

Date Mailed to Parties:

/vj

**BRIEFS RELIED ON**

For petitioner

- Petitioner's opposition to Motion for Summary Decision dated July 12, 2017

For respondent

- Respondent's Motion for Summary Decision, dated June 27, 2017
- Respondent's Reply Summary Decision, dated July 26, 2017