



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

David T. Marshall, DVM
State Veterinarian

April 11, 2013

Ms. Della May Fitzgerald
For the Love of Dogs, Inc.
5146 Quaker Road
Wilson, NC 27893

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Re: ASSESSMENT OF CIVIL PENALTY
For the Love of Dogs, Inc.

Dear Ms. Fitzgerald:

This letter encloses an Order issued pursuant to N.C. Gen. Stat. §§ 19A-40. Inspections of the conditions and practices prevalent in your animal shelter indicates that grounds exist for imposition of a civil penalty based upon violation(s) of the requirements set forth under the NC Animal Welfare Act and the rules establishing minimum standards in certified animal shelters promulgated under that law.

The attached Civil Penalty Assessment describes in detail the factual basis for this decision. You may contest this decision by filing a petition under the North Carolina Administrative Procedure Act, N.C. Gen. Stat. § 150B-23, within five (5) days of your receipt of this Order. Please find enclosed information on filing said petition.

APPEAL INFORMATION

If you file a contested case petition, it must be in writing and in the form prescribed by N.C. Gen. Stat. § 150B-23. The petition must be accompanied by a filing fee of twenty dollars (\$20.00) payable to the N.C. Office of Administrative Hearings. Should you have any questions about what the fee would be for your case, please contact the OAH Clerk's Office at 919-431-3000. Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings.

File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

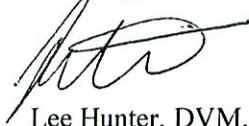
Any questions about filing a petition may be directed to the Clerk of OAH by telephone 919/733-0926. You must serve NCDA&CS by mailing a copy of the petition to:

Mr. David McLeod
North Carolina Department of Agriculture and Consumer Services
Registered Agent and General Counsel
1001 Mail Service Center
Raleigh, NC 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

If you have any questions concerning the basis for this order, you may call me at 919-715-7111.

Sincerely,



Lee Hunter, DVM, MPH
Director, Animal Welfare Section
Veterinary Division, NCDA&CS

Enclosures: 1) Civil Penalty Assessment;

cc: David McLeod, Assistant Commissioner, NCDA&CS
David T. Marshall, DVM, State Veterinarian, NCDA&CS
Barry Bloch, Assistant Attorney General, NCDOJ

STATE OF NORTH CAROLINA

COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT
OF AGRICULTURE AND CONSUMER
SERVICES, VETERINARY DIVISION
ANIMAL WELFARE SECTION

IN THE MATTER OF)

FOR THE LOVE OF DOGS, INC.)

) CIVIL PENALTY ASSESSMENT
)
) PURSUANT TO THE ANIMAL
) WELFARE ACT, N.C. GEN.
) STAT. §§ 19A-30 and -40, AND 02
) N.C.A.C. 52J .0201 & .0207

Acting pursuant to N.C. Gen. Stat. § 19A-40, Dr. Lee Hunter, Director, Animal Welfare Section, NCDA&CS makes the following:

I. FINDINGS OF FACT

1. On February 25, 2013, Ms. Lisa Carlson, Inspector, with the North Carolina Department of Agriculture and Consumer Services, (NCDA&CS) Animal Welfare Section, conducted a follow up inspection of the facility premises of For the Love of Dogs, Inc., located on 5146 Quaker Road, Wilson, NC; the previous inspection took place on September 12, 2012.
2. Inspector Carlson found deficiencies:
 - a) Standing water was present in large holes behind the main kennel building;
 - b) The entire area around the main dog building where dogs play and exercise, remains unchanged from last visit. This area is barren and has several deep holes. Nothing had been done since the previous inspection to remedy this.
3. The facility manager stated that she “had no solution” for the problems described above.
4. Many of the dogs spend most of their time in the barren, hole-pocked areas.

As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, alleges that you either by act or omission, violated the following provision of the North Carolina General Statutes:

§ 19A-30. Refusal, suspension or revocation of certificate or license.

The Director may refuse to issue or renew or may suspend or revoke a certificate of registration for any animal shelter or a license for any public auction, kennel, pet shop, or dealer, if after an impartial investigation as provided in this Article he determines that any one or more of the following grounds apply:

- (1) Material misstatement in the application for the original certificate of registration or license or in the application for any renewal under this Article;
- (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
- (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;
- (4) Allowing one's license under this Article to be used by an unlicensed person;
- (5) Conviction of any crime an essential element of which is misstatement, fraud, or dishonesty, or conviction of any felony;
- (6) Making substantial misrepresentations or false promises of a character likely to influence, persuade, or induce in connection with the business of a public auction, commercial kennel, pet shop, or dealer;

- (7) Pursuing a continued course of misrepresentation of or making false promises through advertising, salesmen, agents, or otherwise in connection with the business to be licensed;
- (8) Failure to possess the necessary qualifications or to meet the requirements of this Article for the issuance or holding of a certificate of registration or license.

The Director shall, before refusing to issue or renew and before suspension or revocation of a certificate of registration or a license, give to the applicant or holder thereof a written notice containing a statement indicating in what respects the applicant or holder has failed to satisfy the requirements for the holding of a certificate of registration or a license. If a certificate of registration or a license is suspended or revoked under the provisions hereof, the holder shall have five days from such suspension or revocation to surrender all certificates of registration or licenses issued thereunder to the Director or his authorized representative.

A person to whom a certificate of registration or a license is denied, suspended, or revoked by the Director may contest the action by filing a petition under G.S. 150B-23 within five days after the denial, suspension, or revocation.

Any licensee whose license is revoked under the provisions of this Article shall not be eligible to apply for a new license hereunder until one year has elapsed from the date of the order revoking said license or if an appeal is taken from said order of revocation, one year from the date of the order or final judgment sustaining said revocation. Any person who has been an officer, agent, or employee of a licensee whose license has been revoked or suspended and who is responsible for or participated in the violation upon which the order of suspension or revocation was based, shall not be licensed within the period during which the order of suspension or revocation is in effect. (1977, 2nd Sess., c. 1217, s. 11; 1987, c. 827, s. 67.)

§ 19A-40. Civil Penalties

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 6; 1998-215, s. 3.)

02 NCAC 52J .0201 GENERAL

(e) Provisions shall be made for the daily removal and disposal of animal and food waste, bedding and debris from the housing facility in accordance with local ordinances, to assure facility will be maintained in a clean and sanitary manner.

02 NCAC 52J .0207 SANITATION

(c) Premises (buildings and grounds) shall be kept clean and in good repair in order to protect the animals from injury and to facilitate the prescribed husbandry practices set forth in this Rule. Premises shall remain free of accumulations of trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled so as to facilitate cleaning of the premises and to improve pest control, and to protect the health and well-being of the animals.

II. CONCLUSIONS OF LAW

- A. For the Love of Dogs, Inc., violated N.C. General Statute § 19A-30 and 2 N.C. Administrative Code 52J .0201 and .0207 and may be assessed a civil penalty of up to \$5,000.00 per violation pursuant to N.C. Gen. Stat. § 19A-40.
- B. The Director of the Animal Welfare Section, Veterinary Division, North Carolina Department of Agriculture and Consumer Services, pursuant to N.C. Gen.Stat. § 19A-30 has the authority to suspend or revoke a certificate of registration for any animal shelter found to have engaged in:
 - (2) Willful disregard or violation of this Article or any rules issued pursuant thereto;
 - (3) Failure to provide adequate housing facilities and/or primary enclosures for the purposes of this Article, or if the feeding, watering, sanitizing and housing practices at

the animal shelter, public auction, pet shop, or kennel are not consistent with the intent of this Article or the rules adopted under this Article;

- C. The Director of the Animal Welfare Section, Veterinary Division, North Carolina Department of Agriculture and Consumer Services, pursuant to N.C. Gen.Stat. § 19A-40 has the authority to assess civil penalties in this matter.

III. DECISION

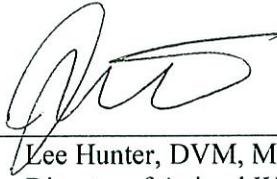
As required by N.C. Gen. Stat. § 19A-40 in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violation of N.C. Gen. Stat. § 19A-30 and 2 N.C. Administrative Code 52J .0201 and .0207.

Accordingly, For The Love of Dogs, Inc. is assessed a civil penalty of: \$1000.00 for violating N.C. Gen. Stat. § 19A-30 and 2 N.C. Administrative Code 52J .0201 and .0207.

\$1,000.00 TOTAL AMOUNT ASSESSED

4/11/13

Date



Lee Hunter, DVM, MPH
Director of Animal Welfare