



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

Christina L. Waggett
Assistant Commissioner
for Consumer Protection

Michael Martin, DVM
State Veterinarian

September 1, 2022

Kimberly Bailey
Owner
The Grooming Lady, LLC
1573 N Aspen St.,
Lincolnton, NC 28092

NOTICE of CIVIL PENALTY

**Re: CIVIL PENALTY ASSESSMENT for SECOND VIOLATION of N.C. GENERAL STATUTE
§ 19A-28**

AWS-CP-2022-13

**Facility: The Grooming Lady, LLC
Unlicensed**

Dear Ms. Bailey:

Pursuant to NCGS § 19A-40, I am issuing this notice that you, as owner of The Grooming Lady, LLC, are hereby assessed a civil penalty of \$5,000.00 as provided in the enclosed Notice of Violations.

With regard to the civil penalty, within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing with the N.C. Office of Administrative Hearings to appeal the penalty assessment.

Pursuant to NCGS § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may contact me by telephone at (919) 707-3280. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

PAYMENT

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Dr. Patricia Norris
Director, Animal Welfare Section
1030 Mail Service Center
Raleigh, NC 27699-1030

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by NCGS § 150B-23. The petition must be filed with the N.C. Office of Administrative Hearings ("OAH") within 60 days from the date of this document. Additionally, the petition must be accompanied by a filing fee of twenty dollars (\$20.00). 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 at 919-431-3000.

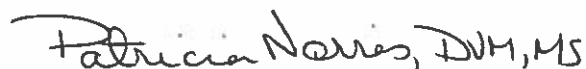
You must serve NCDA&CS by mailing a copy of the petition to:

Mr. Jonathan Lanier
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.

Your attention to this matter is appreciated.

Sincerely,



Patricia Norris, DVM, MS
Director, Animal Welfare Section
North Carolina Department of Agriculture & Consumer Services

Attachment: Notice of Violations, Assessment of Civil Penalty

**cc: Michael Martin, DVM, State Veterinarian;
Jonathan Lanier, General Counsel, NCDA&CS;
Christina L. Waggett, Assistant Commissioner, NCDA&CS;
Christopher R. McLennan, Special Deputy Attorney General**

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

IN THE MATTER OF
KIMBERLY BAILEY
OWNER OF
THE GROOMING LADY, LLC

) NOTICE OF VIOLATION and
) ASSESSMENT of CIVIL PENALTY
) for SECOND VIOLATION of N.C.
) GENERAL STATUTE ("NCGS") § 19A-28
)

Acting pursuant to NCGS § 19A-40, Dr. Patricia Norris, Director, Animal Welfare Section ("AWS"), North Carolina Department of Agriculture and Consumer Services ("NCDA&CS") makes the following:

FINDINGS OF FACT

1. At no time pertinent to this matter was The Grooming Lady, LLC, (the "kennel") located at 1573 N Aspen St., Lincolnton, NC 28092, or the Bailey residence ("the residence kennel") located at 2637 Hull McGinnis Road, Lincolnton, NC 28092, which both offered boarding and dog day care services to the public for a fee, licensed pursuant to NCGS § 19A-28.
2. On July 27, 2022, AWS received a complaint alleging that these facilities were unlicensed boarding kennels and that a Miniature Schnauzer dog, named Rambo, died while boarding at the residence kennel. Based on the information in the complaint, AWS opened an investigation.
3. As part of the investigation, the AWS Inspector conducted an unannounced site visit to the kennel on August 1, 2022. During this site visit the AWS Inspector informed the kennel owner of the state statute requiring a person to have a valid AWS boarding kennel license in order to offer boarding services, including dog daycare services. The AWS Inspector gave the kennel owner written information on how to obtain the boarding kennel license application and how to locate the NC Animal Welfare Act ("AWA") and its associated rules. The AWS Inspector also gave the kennel owner a business card with her contact information and invited her to contact the Inspector should the kennel owner have any questions or difficulties in obtaining this information. The AWS Inspector informed the kennel owner that she needed to stop boarding immediately as she did not have a boarding kennel license.
4. On August 10, 2022, AWS received an email from the kennel owner stating that the AWS Inspector had given her 10 days to submit the boarding kennel license. She also stated that she "did not necessarily consider myself a boarding facility maybe a pet sitter for my clients." Later in the email she stated:
"but I do enjoy being able to connect to my clients in this manner and would like to properly engage in getting in compliance with the rules and requirements needed to pet sit. So I will stop all sitting for now until I can accomplish getting modular kenneling unit and bringing it up to to (sic) the appropriate state standards for pet sitting. I am not looking to becoming a "boarding facility" that houses 100s of dogs and cats. I am goal is to not have anymore (sic) than five pups at any one given time. My goal time would be by Christmas 2022 to complete this project. I will applying (sic) for my application by the end of October 2022.

5. On August 25, 2022, after careful review of the findings of the investigation, AWS assessed a \$2,500.00 Civil Penalty against the kennel owner for violation of NCGS § 19A-28. The Civil Penalty assessment closed that investigation. AWS does note that the time in which the kennel may appeal the August 25, 2022 Civil Penalty has not yet expired as of the date of this Notice of Violation and Assessment of Civil Penalty.
6. On August 25, 2002, AWS received a complaint from an employee of the kennel that she had arrived at the kennel before anyone else and found a boarding cat named Lucky deceased. Lucky and 2 boarding dogs were found to be loose in the facility. Based on the blood on one of the dogs, the conditions noted throughout the grooming area, and the appearance of Lucky's body, it was apparent that Lucky was killed by one of the dogs. Based on the information in the complaint, AWS opened a second investigation.
7. As part of the investigation, the AWS Inspector conducted an unannounced site visit to the kennel on August 25, 2022. This site visit revealed the following:
 - a. initially the kennel owner denied that any animal had died recently at the kennel when asked by the Inspector. When the Inspector asked if the kennel owner wanted to reconsider her answer, the kennel owner admitted to the death of Lucky the cat;
 - b. the kennel owner stated that she had not provided any boarding or dog daycare services since the August 1, 2022 site visit by the AWS Inspector. The kennel owner stated that Lucky had been at the kennel for grooming only;
 - c. the kennel owner, verbally and in her written statement, stated that the 2 dogs had been admitted to the facility on the morning of August 25, 2022 for grooming. She stated that while she was present one of the dogs had gotten out of its kennel and had attacked and killed the cat before she could get the dog off the cat;
 - d. the kennel owner stated that a relative called the dogs' owner and requested that the dogs be taken to another kennel. The relative transported the dogs to a licensed boarding kennel;
 - e. the dogs' owner stated that he had left the 2 dogs at the kennel on August 23, 2022 for boarding as he had done previously. He stated that he was called on August 25, 2022 by a relative of the kennel owner informing him that one of his dogs had killed a cat and that he needed to remove them from the facility. As he was out-of-town, he agreed to have the dogs continue their boarding stay at another boarding kennel;
 - f. Lucky's owner stated that she had boarded Lucky at the kennel periodically over the past 6 years. She stated that she had left Lucky at the kennel on August 24, 2022, as she was leaving for a vacation. She stated that on August 25, 2022, she received a call from the kennel owner's relative saying that Lucky had been killed by a dog at the kennel and that the kennel owner was at the veterinary clinic with another cat that had been severely injured by the same dog in the same incident.
8. A statement from the complainant includes screenshots of texts that she sent upon finding the deceased cat. The timestamps on these texts reveal that they occurred well before the time that the kennel owner stated that the incident occurred and that no one was present when the cat was killed.
9. A review in the "Intro" and "About" sections of the Facebook posts for the kennel shows that the facility is still advertising "Doggie Daycare" and "Boarding" services to the public for a fee as of August 30, 2022.

10. A review of AWS records shows the kennel has never held a boarding kennel license or even submitted an application for a boarding kennel license.

CONCLUSIONS

As a result of this investigation, AWS concludes that the kennel, either by act or omission, willfully violated the following provision:

NCGS §19A-28 for operating a boarding kennel located at 1573 N Aspen St. Lincolnton, NC 28092. without obtaining a license granted by the AWS Director to operate such an establishment.

Furthermore, the kennel was made aware of the AWA and its associated rules on August 1, 2022, yet proceeded to willfully violate 02 NCAC 52J .0209(2) and (4) in failing to obtain written permission from the owners of the animals allowing their animals to have contact with other animals and for dogs and cats to be housed in the same primary enclosure.

In addition, AWS finds that as a result of these violations the cat named Lucky died while in the care and custody of this unlicensed boarding kennel.

CIVIL PENALTY

As required by N.C. General Statute § 19A-40, in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violations listed above.

Accordingly, Kimberly Bailey, as owner of The Grooming Lady, LLC, is hereby assessed a civil penalty for the following violation:

\$5,000.00 for the second violation of NCGS § 19A-28 for operating a boarding kennel without obtaining a license granted by the AWS Director to operate such an establishment. This second violation resulted in the death of another animal that was in the care and custody of this kennel.

\$5,000.00 TOTAL AMOUNT ASSESSED

(See Appendix for text of referenced General Statutes and Administrative Code)

September 1, 2022
Date

Patricia Norris DVM, MS
Patricia Norris, DVM, MS
Director, Animal Welfare Section
North Carolina Department of Agriculture & Consumer Services

Appendix

REFERENCED LAWS AND REGULATIONS

§ 19A-28. License required for public auction or boarding kennel.

No person shall operate a public auction or a boarding kennel unless a license to operate such establishment shall have been granted by the Director. Application for such license shall be made in the manner provided by the Director. The license period shall be the fiscal year and the license fee shall be seventy-five dollars (\$75.00) for each license period or part thereof beginning with the first day of the fiscal year.

§ 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.

§ 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.

02 NCAC 52J .0209 CLASSIFICATION AND SEPARATION

Animals housed in the same primary enclosure shall be maintained in compatible groups, with the following additional restrictions:

- (2) In boarding kennels, animals of different owners shall not have contact with other animals, unless written permission is obtained from the animal's owner. Any dog or cat exhibiting an aggressive disposition shall be housed individually in a primary enclosure.
- (4) Dogs shall not be housed in the same primary enclosure with cats, nor shall dogs or cats be housed in the same primary enclosure with any other species of animals. Exceptions are allowed at boarding kennels, if requested in writing by the animals' owner.

History Note: Authority G.S. 19A-24; Eff. April 1, 1984; Amended Eff. January 1, 2005.