

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
1130 North Westcott Road, Schenectady, NY 12306-2014
P: (518) 357-2048 | F: (518) 357-2087
www.dec.ny.gov

CERTIFIED - RETURN RECEIPT REQUESTED
7013 1090 0002 3365 3748

May 20, 2015

Garry P. Koschitzki
Bailiwick Animal Park Inc.
118 Castle Road
Catskill, NY 12414

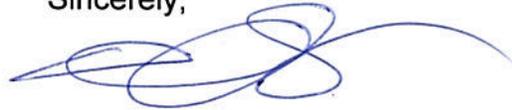
Re: Order of Consent
R4-2014-0127-5

Dear Mr. Koschitzki:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$2,000 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: Captain M. Jacoby
Lt. K. Beiter
ECO M. Arp



Department of
Environmental
Conservation

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations of Article 11 of the Environmental Conservation Law ("ECL") of the State of New York and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR")

ORDER ON CONSENT
R4-2015-0127-5

-by-

Bailiwick Animal Park, Inc.
118 Castle Road
Catskill, NY 12414

Respondent

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is authorized pursuant to Article 11, Title 5, of the Environmental Conservation Law ("ECL") to regulate the possession of wild animals in the State of New York. This Order is issued pursuant to the Department's enforcement authority under Article 71 of the ECL.
2. Pursuant to Article 3, Title 3 of the ECL, the Commissioner of the Department has the power to promote and coordinate management of water, land, fish, wildlife and air resources to assure their protection, enhancement, provisions, allocation and balanced utilization consistent with the environmental policy of the State.
3. Respondent owns/operates Bailiwick Animal Park, Inc., a zoological park located at 118 Castle Road, Catskill, New York ("facility").
4. Respondent possesses, through New York State Department of Environmental Conservation, a permit (Education/Exhibition #297 Effective 8/29/14 through 8/28/15) which authorizes the facility to possess the following endangered/threatened species – Seven (7) Ring-tail Lemur, Four (4) American Alligators, and two tigers, one male and one female.

5. Respondent possesses, through New York State Department of Environmental Conservation, a permit (Education/Exhibition #568 Effective 2/27/15 through 2/26/16 (which was renewed)) which authorizes the facility to purchase, possess, transport and import (1) one male American Black Bear, which was obtained from legal sources, for educational and exhibition purposes.

First and Second Violations

6. Respondent has a Facebook Page which include many pictures depicting the various animals residing at the facility, including some for which Respondent does not possess a license through the Department.

7. As of January 19, 2015, Respondent's Facebook Page depicts that Respondent is in possession of a monkey(s) and an Artic Fox, neither of which is permitted through either of the permits issued by the Department (Attached as Exhibits A and B respectively).

8. ECL 11-0512 provides that *"no person shall knowingly possess, harbor, sell, barter, transfer, exchange or import any wild animals as pets in New York State, except as provided in subdivision three of this section."*

9. ECL 11-0512(3) provides in part that *"any person who possesses or harbors a wild animal for use as a pet at the time that this section takes effect may retain possession of such animal for the remainder of its life, provided that such person . . . applies to the department within six months of the effective date of this section, and obtains from the department, a license. . . ."*

10. ECL 11-0512(8) provides in part that, *"the department . . . is hereby authorized to enforce the provisions of this section and issue notices of violation to persons in violation of this section, and shall have the authority to seize any wild animal held in violation of this section."*

11. Respondent violated ECL 11-1512 by being in possession of a monkey(s) and an Artic Fox which have not been licensed by the Department.

Third through Eighth Violations

12. Respondent's Education/Exhibition License (#297 Effective 8/29/14 through 8/28/15) Condition #13 and Education/Exhibition License (#568 Effective 2/27/15 through 2/26/16) Condition #14 provide that *"Live Animal-Direct Contact Prohibition – the licensee shall not allow any of the listed animals to have direct contact with the public. Only the licensee and his or her designated agents may have direct contact with the listed animals."*

13. Respondent's Facebook Page includes many pictures depicting the various animals displayed at the facility, several of which include person(s) posing with animals listed on the license, who are NOT designated as agents on the license.
14. Photo No. 538, dated October 25, 2014, depicts an unidentified female subject with two American Alligators in a John Deere Gator UTV (Attached as Exhibit 1).
15. Photo No. 539, dated October 4, 2014, depicts the facility's owner accompanied by an unidentified male subject, riding in a John Deere Gator UTV with a tiger (Attached as Exhibit 2).
16. Photo No. 540, dated September 17, 2014, depicts an unidentified female subject having physical contact with a tiger (Attached as Exhibit 3).
17. Photo No. 545, dated May 10, 2014, depicts an unidentified male subject handling an American Alligator (Attached as Exhibit 4).
18. Photo No. 546, dated April 20, 2014, depicts two unidentified subjects having physical contact with a tiger (Attached as Exhibit 5).
19. Photo No. 611, dated April 20, 2014, depicts an unidentified male child having physical contact with a tiger (Attached as Exhibit 6).
20. Respondent violated the conditions of its license(s) issued by the Department, by permitting contact between animals which Respondent is permitted to own through the license, and people who are not designated as agents on the license.

Civil Penalty

21. ECL §71-0925 provides for a civil penalty of up to \$500 per day and an additional penalty of up to \$500 for each day during which each such violation occurs.
22. Respondent affirmatively waives its right to notice and hearing in the manner provided by law, consents to the issuance of this Order, agrees to be bound by the terms, provisions and conditions contained in this Order, and agrees not to appeal this Order.

NOW, having considered this matter and being duly advised, it is **ORDERED** that:

I. With respect to the aforesaid alleged violations, a civil penalty in the amount of FOUR THOUSAND DOLLARS (\$4,000) of which TWO THOUSAND DOLLARS (\$2,000) shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

The balance TWO THOUSAND DOLLARS (\$2,000) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

III. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IV. Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

V. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

VI. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VII. All communications except where otherwise specifically directed should be sent to:

For Department:
Karen Lavery, Esq.
1130 N. Westcott Road
Schenectady, NY 12306

VIII. This Order is deemed effective on the date signed by the Department.

IX. Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, its agents, its servants, its employees, its successors and its assigns; and;

C. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State, the Department, or any third party, provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that he may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

X. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations cited in this Order.

XI. This Order is made strictly for the purposes of the Department and the State and is not intended for use by any third party.

DATED: *May 20*, 2015
Rotterdam, New York

Joseph J. Martens
Commissioner
New York State Department of
Environmental Conservation

BY:

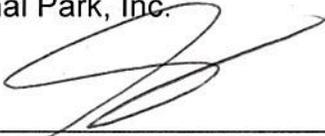


Keith Goertz
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its rights to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Bailiwick Animal Park, Inc.

SIGNED:  _____

TITLE: owner/operator

DATE: 5/18/15

STATE OF New York

COUNTY OF Greene) ss.:

On the 18th day of May in the year 2015 before me, the undersigned, a Notary Public in and for the State, personally appeared Gary Heschitzki personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

 _____

Notary Public
Qualified in the County of: Greene
My Commission Expires:

4/6/2016

ASHLEY LYNN DUNCAN
Notary Public, State of New York
No. 01DU6101273
Qualified in Greene County
Commission Expires ~~Nov. 10, 2011~~
4/6/2016

SCHEDULE OF COMPLIANCE

1. Within 10 days of the effective date of this Order, Respondent shall submit to the Department, a written inventory which list each and every animal including but not limited to all reptiles, mammals, birds, amphibians, etc. ("animals"), which are owned by and/or maintained at the facility. This document must be notarized.
2. As of the effective date of this Order, Respondent shall not possess any further animals which require a NYS license or permit of any kind, which are not accounted for on the inventory list in paragraph #1 above.