



FILED
OSAH

NOV 5 2014

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

Kevin Westray, Legal Assistant

FRANK ADAM STRICKLAND, JR.,

Petitioner,

v.

**MARK WILLIAMS, COMMISSIONER,
DEPARTMENT OF NATURAL
RESOURCES, STATE OF GEORGIA,**

Respondent.

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: **Docket No.:**
: **OSAH-BNR-WR-1457706-92-Baxter**
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FINAL DECISION

Respondent Mark Williams, Commissioner of the Department of Natural Resources (the “Commissioner”), seeks to suspend Petitioner Frank Adam Strickland’s Georgia hunting license under the Interstate Wildlife Violator Compact based on Petitioner’s violation of a Florida hunting law. Petitioner appeals the proposed suspension. On June 17, 2014, the Commissioner filed a Motion for Summary Determination. Petitioner responded to the Motion on July 7, 2014, and the Commissioner filed a reply brief on July 8, 2014. Subsequently, the Court granted a stay of proceedings for ninety days to allow Petitioner to recover from an illness. Petitioner filed another response to the Commissioner’s Motion for Summary Determination on October 14, 2014, the day the stay was lifted.

After careful consideration of the evidence and the arguments of the parties, the Court makes the following findings of facts, legal conclusions, and decision.

I. Findings of Undisputed Facts

1.

On or about June 20, 2012, Petitioner, a Georgia resident, pled *nolo contendere* before the County Court of the Third Judicial Circuit in Hamilton County, Florida for taking a turkey

during closed season, prohibited under Fla. Stat. § 379.404(1). As a result of this violation, Petitioner's privilege to hunt, fish, and trap in Florida was suspended for three years, from July 2, 2012 through July 3, 2015. Petitioner appealed the suspension, which was upheld by Florida's Fish and Wildlife Conservation Commission on January 28, 2013. (Exs. R-7, R-8, R-9, R-10, R-11.)

2.

Specifically, Petitioner was cited with taking a turkey during closed season by the Law Enforcement Division of the Florida Fish and Wildlife Conservation Commission on March 10, 2012, after a Florida Game Warden found a turkey carcass on Petitioner's property outside of turkey hunting season.¹ (Exs. R-7, R-8, R-9.)

3.

The Florida judge accepted Petitioner's plea, ordered Petitioner to pay \$500.00 including court costs, and revoked his Florida hunting license from July 2, 2012 through July 3, 2015. (Exs. R-9, R-10, R-11.)

4.

Florida and Georgia are both members of the Interstate Wildlife Violator Compact (the "Compact"). The Compact is designed to streamline the enforcement process as it relates to nonresident violators of wildlife laws among the member states. The Compact provides that it is the policy of the party states to promote compliance with wildlife laws by "recogniz[ing] the suspension of wildlife license privileges or rights of any person whose license privileges or rights

¹ Petitioner purportedly believes that he was only charged with possession of a turkey out of season. This belief, however, is unfounded. The incident summary and citation both explicitly charge Petitioner with taking a turkey out of season and Petitioner pled to taking a turkey out of season. (Affidavit of Frank Strickland ¶¶ 2-4; Exs. R-7, R-8, R-9, R-10.)

have been suspended by a party state and treat this suspension as if it had occurred in their state.” (O.C.G.A. § 27-2-40, art. I (b)(1) & (2); Exs. R-1, R-2, R-4, R-5, R-6, R-15.)

5.

Florida entered the three-year suspension of Petitioner’s hunting privileges into the Wildlife Violator Compact database. Georgia’s Compact Administrator, Captain Mike England of the Georgia Department of Natural Resources, ratifies database entries from other states. On or about November 14, 2013, Captain England issued a notice of suspension of Petitioner’s Georgia hunting license. Petitioner appealed the suspension on December 14, 2013. (Affidavit of Captain England, ¶¶ 2, 18, 19; Exs. R-12, R-13.)

II. Standard of Review

On a motion for summary determination, the moving party must demonstrate that there is no genuine issue of material fact for determination. Ga. Comp. R. & Regs. 616-1-2-.15(1). When a motion for summary determination is made and supported, a party opposing the motion may not rest upon mere allegations or denials, but must show by supporting affidavit or other probative evidence that there is, truly, a genuine issue of material fact that requires a trial. Ga. Comp. R. & Regs. 616-1-2-.15(3); *Matsushita Elec. Indus. Col. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). Thus, where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no “genuine issue for trial.” *First Nat. Bank of Arizona v. Cities Serv. Co.*, 391 U.S. 253, 270 (1968).

III. Conclusions of Law

1.

The Commissioner bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

The Board of Natural Resources (the “Board”) is empowered to promulgate rules and regulations necessary to regulate the time, manner, and method of killing, taking, or capturing wildlife. O.C.G.A. § 27-1-4. Pursuant to that power, the Board promulgated a regulation stating that turkeys may only be taken during turkey season, March 19 through May 15. Ga. Comp. R. & Regs. 391-4-2-32. If an individual violates Georgia’s rules and regulations, the Commissioner may revoke or suspend the person’s license up to two years. O.C.G.A. § 27-2-25(a).

3.

Under Georgia’s version of the Compact, Georgia “shall recognize the suspension of license privileges or rights of any person by any state as if the violation on which the suspension is based had in fact occurred in their state and would have been the basis for suspension of license privileges or rights in their state.” O.C.G.A. § 27-2-40, art. V; *see also* Ga. Comp. R. & Regs. 391-4-15-.03, § III. This article of the Compact is entitled the “Reciprocal Recognition of Suspension” and Georgia officials have no discretion under the Compact’s plain language to examine or evaluate the underlying out-of-state suspension. *See generally Stapley v. State*, 966 P.2d 1031 (Ariz. Ct. App. 1998) (Arizona’s Wildlife Violator Compact uses term “shall” in reciprocal recognition of suspension section and Arizona Court of Appeals held that requirement

was mandatory).² Cf. *Gray v. North Dakota Game and Fish Dept.*, 706 N.W.2d 614, 624 (N.D. 2005), citing N.D.C.C. 20.1-16-01, art. 5, § 1.³

4.

Accordingly, despite Petitioner's purported misunderstanding of the underlying violation and plea, the Court concludes that Georgia is required to recognize Florida's suspension of Petitioner's license privileges to hunt, fish, and trap under the Compact.

5.

Petitioner argues that the Commissioner must send notice of suspension within six months of the member state's suspension. Although Petitioner fails to cite any law in support of his contention, it appears that Petitioner relied on an inapplicable regulation that applies to suspensions levied for failure to comply with the terms of the citation. See Ga. Comp R. & Regs. 391-4-15-.03, § II. Thus, the Commissioner was not required to notice the suspension within six months of the underlying violation.

6.

Petitioner contends that the suspension is invalid because Georgia law only allows a two-year suspension. O.C.G.A. § 27-2-25(a). However, because the suspension in Georgia is not retroactive from the notice of suspension date, the suspension is effectively limited to twenty months.


² This Court is persuaded by the reasoning of the Arizona court in *Stapley*, which held that "the word 'recognize' evinces the mandatory nature of a participating state's suspension. Article V requires the reciprocal recognition of suspensions by other participating states. Were such reciprocal action discretionary, it would render Article V meaningless surplusage, adding nothing to the balance of the Compact." *Stapley*, 966 P.2d at 1033.

³ Unlike Georgia, North Dakota adopted a different version of the Interstate Wildlife Violators Compact, changing the term "shall" to "may" in various parts of the Compact, including the reciprocal recognition of suspensions section. *Id.* The North Dakota Supreme Court noted that the legislature had intended the change to allow North Dakota officials "some discretion 'to look at [a violation] more closely.'" *Id.*

IV. Decision

The suspension of Petitioner Frank Adam Strickland, Jr.'s privileges to hunt, trap, or fish in Georgia through July 3, 2015 is **AFFIRMED**.

SO ORDERED, this 4th day of November, 2014.

A handwritten signature in cursive script, appearing to read "Amanda Baxter", written over a horizontal line.

AMANDA BAXTER
Administrative Law Judge