

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

CHAD REEL,)
)
 Appellant,)
)
 v.)
)
 BIG GAME COMMERCIAL)
 SERVICES BOARD,)
)
 _____ Appellee.)

Appeal No. 3AN-11-10124 CI
OAH No.: 11-0183-GUI

ORDER ON REHEARING

This Court issued its “Order on Administrative Appeal” on January 31, 2013. Appellee (hereafter the “Board”) filed a Petition for Rehearing on February 12, 2013 challenging three specific aspects of the decision: (1) whether the Court misapplied the doctrine of equitable estoppel; (2) whether the Court overlooked evidence supporting the Big Game Board’s finding regarding Piper’s course of employment, and (3) whether the Court misapplied AS 08.54.720(a)(6) with regard to knowingly guiding without a license. The Court denied the petition with respect to the first challenge and took under advisement challenges (2) and (3). On February 26, 2013 Appellant (hereafter “Mr. Reel”) submitted a responsive brief addressing those two areas. Having considered the issues and briefs further, the Court concludes as follows:

(1) Whether the Court Overlooked Evidence Re Piper’s Course of Employment

For the reasons set forth in Mr. Reel’s responsive brief, the Court rejects the Board’s second ground for rehearing, *i.e.*, that the Court overlooked evidence supporting the Board’s finding regarding Piper’s course of employment.

(2) Whether the Court misapplied AS 08.54.720(a)(6) with regard to knowingly guiding without a license.

The Court finds there is merit, however, in the Board's third ground for rehearing, which relates to the Huitt moose hunt. Specifically, the Court agrees that its original ruling misapplied the law in determining whether Pepin acted "knowingly" within the meaning of AS 11.81.900(a)(2). After concluding there was substantial evidence for the Board to find that Pepin guided without a license, the Court's original ruling determined that Pepin did not act "knowingly" because "the evidence indicated Pepin did not know whether or not what he did for Huitt constituted guiding, and the Board did not find that he did know." Order on Administrative Appeal at 25. The relevant questions, however, were whether (a) Pepin knew he was unlicensed, which is not disputed, and (b) whether Pepin knew he was engaged in "stalking," as opposed to simply taking a hike in the woods. Substantial evidence supports a finding that Pepin knew he was stalking. For example, he admitted he was "looking for moose" and "doing a little bit of calling." The fact he may have been unsure whether his stalking activities constituted "guiding" within the meaning of AS 08.54.790(9) is immaterial.

(3) Whether Reel knowingly permitted Pepin to guide without a license

The conclusion that Pepin acted "knowingly" requires the Court to address the question it did not have to reach in its January 31, 2013 decision, which is whether there was substantial evidence for the Board to find that Mr. Reel knowingly permitted Pepin to guide without a license and whether he aided Pepin in committing the violation.

The undisputed evidence before the Board established that after assistant guide Reigle left to assist the injured Magnusson, client Huitt was left without a licensed guide at the spike camp. As a result, Mr. Reel asked Pepin to stay with Huitt and go with him and see if they could get a moose. Mr. Reel knew Pepin was as yet unlicensed as a guide, although he had an application for assistant guide pending.

These facts alone provide substantial support for the Board’s findings that Mr. Reel knowingly permitted Pepin to guide without a license and aided Pepin in committing the violation. The fact that the client could have hunted moose without a guide in that particular area is immaterial, and so is the fact that Pepin’s stalking assistance did not lead to the harvesting of a moose.

In his briefs on appeal Mr. Reel argued that Pepin merely accompanied Huitt and that the guiding services were actually being provided by either himself or assistant guide Riegle. *See e.g.*, App.Br. at 18-20. Although neither Mr. Reel nor Reigle were present with Huitt, Mr. Reel argues that he and Riegle were “in the field,” therefore Pepin cannot be deemed to have been “guiding” the moose hunt.¹ The thrust of this argument is to suggest that the Board erred insofar as it inferred that Pepin was acting as a guide merely because he accompanied Huitt.

The Court observes, however, that Pepin did not merely walk around in the woods with Huitt, but rather he engaged in stalking, which is a guiding service. In addition, the Court is not aware of any authority that allows unlicensed, compensated persons to stalk game so long as they are merely assisting a licensed guide or assistant guide “in the field.” Thus, substantial evidence supported the Board’s finding that Mr. Reel placed Pepin in the position of guiding without a license.

The Court VACATES those portions of its January 31, 2013 Order on Administrative Appeal inconsistent with this order. The January 31, 2013 order, as supplemented by the present order, shall now constitute this Court’s decision on the appeal. In summary, while the Board’s decisions with respect to the sheep hunt violations are and remain REVERSED, the Board’s decisions with respect to the moose hunt violations are now AFFIRMED.

¹ The term “in the field” comes from the language used in defining “guide.” AS 08.54.790(8) provides, in part:

“guide” means to provide, for compensation . . . services, equipment or facilities to a big game hunter in the field by a person who accompanies or is present with the big game hunter *in the field* either personally or through an assistant . . . [Emphasis added.]

ORDERED this 12th day of June, 2013, at Anchorage, Alaska.

Signed

ANDREW GUIDI
Superior Court Judge

[This document has been modified to conform to the technical standards for publication.]