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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

ELENA ZAKHAROVA for herself and as representative of her dog, Umka

Plaintiff(s),

-against-

DARREL J. AUBERTINE, as Commissioner of the and New York State Department of Agriculture and Markets and THE NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS,

Defendant(s).

Index No. [type in Index No] 2549-13

Summons

Date Index No. Purchased: May 7, 2013

To the above named Defendant(s)

DARREL J. AUBERTINE, as Commissioner of the and New York State Department of Agriculture and Markets and THE NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is Defendants' principle place of business per statute which is IOB Airline Drive, Albany, New York.

Dated: New York, NY

May 7, 2013

LAW OFFICES OF SUSAN CHANA LASK

by Susan Chana Lask

SUSAN CHANA LASK, ESQ.

Attorneys for Plaintiff

LAW OFFICES OF SUSAN CHANA LASK
Attorney for Plaintiffs
244 Fifth Avenue, Suite 2369
New York, New York 10001
(917) 300-1958

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ALBANY

INDEX NO. 2549/13

ELENA ZAKHAROVA for herself and as representative of her dog, Umka,

Plaintiffs,

-against-

VERIFIED COMPLAINT

For a Declaratory Judgment
Pursuant to CPLR §3001

DARREL J. AUBERTINE, as Commissioner of the and New York State Department of Agriculture and Markets and THE NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS,

Defendants.

Plaintiffs Elena Zakharova for herself and as the representative and voice of her dog, Umka, ("Plaintiffs") by and through their attorney Susan Chana Lask, Esq., demand a declaratory judgment pursuant to CPLR §3001with respect to Commissioner Darrel Aubertine and the New York State Department of Agriculture and Markets (the "State Defendants") based upon the following facts and allegations:

I. PRELIMINARY STATEMENT

1. This proceeding involves the failure of the State Defendants to perform the clear duty enjoined upon them by law to investigate, enforce and penalize pet stores licensed under their jurisdiction that violate laws designed to protect animals as sentient beings and their human counterparts as consumers and companions who suffer emotionally and financially when the animal suffers. In this case, a New York City pet store named Raising Rover was licensed by the State Defendants and mandated to operate pursuant to Department of Agriculture and Markets laws and other State laws with respect to the care and sale of puppies. In 2011, Raising Rover sold a congenitally defective female puppy named Umka to Plaintiff Elena Zakharova for a phenomenal price of thousands of dollars. They used a contract that unlawfully had Plaintiff Elena Zakharova waive her legal rights protected by the State Defendants and they ignored a series of laws that protect consumers and puppies, including providing papers proving the source of Umka.

2. By letter dated June 27, 2012 to Raising Rover, the State Defendants admit that they regulate

pet stores, that Raising Rover violated the laws and that Raising Rover was directed to comply with the laws by providing Elena Zakharova paperwork for Umka she was legally entitled to (**Exhibit "A"**). Thereafter, the State Defendant abandoned a number of its statutory duties, including failng to investigate, file charges, hold a hearing or revoke Raising Rover's present license obtained by the same owner now operating under the name of Barking Babies.

3. The fact that Raising Rover used contracts to make consumers waive their legal rights to paperwork regarding the source of the puppies sold and that Raising Rover's blatant disregard for the laws protecting Plaintiffs Zakharova and Umka makes it more probable that they sold defective and abused puppies from Puppy Mills. Were State Respondents to enforce the laws as is their statutory duty then Plaintiff Zakharova and all New York State consumers similarly situated would be protected from unscrupulous pet stores selling puppies or dogs from unsafe and unreliable breeders that should be free from the diseases and defects found in puppies and dogs from the deplorable conditions of Puppy Mills.

4. The Department of Agriculture and Markets has known about the diseased and debilitated nature of puppies and dogs bred at Puppy Mills for years as the Puppy mill epidemic is widespread news and as evidenced by the many laws aimed at prohibiting and regulating retail sales, but has nonetheless failed to comply with the legislative intent and mandate of General Business Law §§751, 753, and 755, as well as the mandates set forth in the Agriculture and Markets Law, §§403 et. seq. to ensure such puppies will not enter the retail animal sales market. By failing to enforce the law the State Defendants encourage violations of its own laws by sending the message to its licensees that they can engage in unlawful conduct and avoid complaints by simply re-applying for a new license under a different name, resulting in pain and suffering and a huge financial expense to untold numbers of human and non-human animals.

5. The laws of the State of New York protect companion animals sold in Pet Stores by mandating that puppies and dogs sold in Pet Stores receive specific humane care. Similarly, those laws are meant to protect consumers purchasing those puppies and dogs by mandating consumers receive certain paperwork regarding the companion animals they purchase. The paperwork will prove the source of the animal. The source is important because consumers do not want to purchase a puppy from a Puppy Mill. Puppy Mills breed them in inhumane and tortuous conditions. Puppies and dogs form Puppy Mills are sick, have social conditioning issues and genetic disorders from inbreeding and overbreeding their mothers. Sick puppies cost consumers thousands to tens of thousands of dollars in medical and

veterinarian bills, and cost emotional and physical distress to the consumer and puppy.

6. The right to be free from pain and suffering is no different between human and non-human animals' as they both have the ability to communicate, learn, think and feel. However, the Puppy suffers an indescribable pain simply because he or she cannot speak our language, and often masks the pain until death. However, black, white, Asian or companion animal, the fact is pain is pain and suffering is suffering and the laws of our State do not condone the abuse of sentient beings.

7. The Courts in this State and nationwide hold that companion animal puppies and dogs are "sentient beings" . *Brousseau v. Rosenthal*, 110 Misc2d 1054, 1055-1056, 443 NYS2d 285, 286 [Dist. Ct. Nassau Co. 2003]; *Corso v. Crawford Dog and Cat Hospital, Inc. New York*, 415 N.Y.S.2d (182 N.Y. City Civ. Ct., 1979); *Zager v. Dimilia*, 138 Misc2d 448 at 450, 524 NYS2d 968 at 969 [Jus.Ct. Vill. Pleasantville 1988]; *California Veterinary Medical Association v. City of West Hollywood*, Cal. App. Lexis 1029 (2007), *Medlen v. Strickland*, 353 S.W.3d 576 (Tex.App.–Fort Worth, 2011). Sentient means "the ability to feel, perceive or be conscience, or to experience subjectivity (Wikipedia.com). Because they are alive or sentient, civil and criminal laws with stiff penalties including jail time exist in this State to protect puppies from harm (**Exhibit "B"**). In fact, their value to humans is much more than that of a product like a chair or a computer as the law permits Trusts to be established for the benefit of a puppy or dog (NY Est Pow & Trst § 7-8.1). Yet there is a huge disconnect and a perversion of our States' intent to protect puppies as living beings as its many laws prove they are and deserve protection (see Exh. B) when State Defendants choose to ignore their obligations to enforce the laws, which essentially nullifies the laws and encourages their licensees to engage in unlawful conduct to harm puppies and consumers.

8. It is of the utmost importance that Plaintiffs receive judicial intervention in this case not only for the benefit of citizen consumers, but also to ensure the Department of Agriculture enforces laws that the New York State Legislature intended to protect and have an impact on sentient beings who cannot speak for themselves. By failing to enforce the laws, thereby allowing sick puppies and dogs into the marketplace, State Defendants allow their licensees to directly harm consumers such as Plaintiff Zakharova who purchase diseased and genetically defective puppies from State licensees. Furthermore, Umka the puppy, and all those puppies similarly situated, would not endure the physical and emotional pain and suffering puppies and dogs from Puppy Mills endure all their lives if State Defendants would do their job and enforce the laws that protect them.

9. Plaintiff Umka the puppy is not requesting human rights such as the right to vote, but she

demands species appropriate rights to protect her as a sentient being to be free from pain and suffering and not to be exploited for the financial gain of others who know they can abuse the laws because State Defendants fail to enforce them.

II. PARTIES

10. Plaintiff ELENA ZAKHAROVA was at all relevant times and is now a resident of the State of New York who purchased a companion animal puppy she named Umka from a New York State pet store named Raising Rover.

11. Plaintiff Zakharova has an interest and standing in this matter as at all relevant times herein she was a New York State taxpayer, which a portion of her taxes funds the State Defendants' operations to protect her as a consumer of a companion animal in the State of New York by virtue of the Department of Agriculture and Markets Laws and GBL Article 35-D §752; of which the State Defendants are legally bound to protect her as a consumer.

12. Plaintiff Zakharova's taxes are also used to fund protection for Plaintiff Umka the puppy. Plaintiff Umka is a female Brussels Griffon and was at all relevant times herein subject to the protection of the State Defendants who are legally bound to protect her as an animal and sentient being by virtue of GBL Article 35-D §752 that "Animal" means a dog or a cat and Agriculture and Markets Article 26 §350 that ""Animal," as used in this article, includes every living creature except a human being", as well as Agriculture and Markets Law, §§403, 404 and GBL §751 and other laws cited herein below.

13. Plaintiff Umka as a puppy does not have the voice to protect herself so she is being heard in this matter by Plaintiff Zakharova as her representative to enforce the laws that exist to protect her.

14. Defendant New York State Department of Agriculture and Markets is a State agency that, among its many duties, executes the laws of the state and the rules of the Department, "relative to agriculture…and expends funds doing so" pursuant to Agriculture and Markets Law§16(1).

15. Defendant Darrell J. Aubertine is the current Commissioner of Defendant New York State Department of Agriculture and Markets, and he is responsible for the determinations described herein.

16. Puppies are defined as agriculture that the State Defendants are obligated to protect.

17. The State Defendants principal office is located at lOB Airline Drive, Albany, New York.

III. VENUE AND JURISDICTION

18. This Court has jurisdiction to hear and decide this action pursuant to CPLR §3001 which provides that "[t]he supreme court may render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed."

19. Pursuant to CPLR §502(b), the proper venue for this Action is the County of Albany.

IV. FACTS

20. On or about February 4, 2011, Plaintiff Zakharova purchased a female puppy Brussels Griffon, born on December 5, 2010, from a New York State pet store named Raising Rover, located at 1428 Lexington Avenue, New York, New York 10128. Plaintiff named the puppy Umka.

21. Raising Rover was owned by a Jeffrey Silverstein and Frankie Foronjy who advertised Umka as a purebred Brussels Griffon that can be registered as a pedigreed animal and they operated as licensee's under Defendant State's licensing laws.

22. Plaintiff purchased Umka because she understood from Defendant State's licensee Raising Rover that she was purchasing a pedigree dog free from defects with papers to prove her source.

23. On February 4, 2011 Plaintiff signed a contract of sale with Raising Rover for Umka and paid a price of $1,650.00 (the "Contract")

CONTRACT TERMS INCORPORATE DEFENDANT STATE'S DEPARTMENT OF AGRICULTURE LAWS

24. The Contract states in part (numbers below follow the contract paragraphs):

> 1- "Article 35-D of the General Business Law" applies;
> 2- Defendant "guarantees your pet for 1 year from the date of whelping for congenital defects (which would adversely affect the life or health of the pet) diagnosed by a licensed veterinarian…with x-rays";
> 8- "I understand that in NO circumstances will the purchaser ever receive a refund";
> 11- "Adoption Dogs are sold as is AND ARE NOT COVERED under any warranty and/or NYS General Business Law, Article 35-D"; and
> page 2 of the Contract confirms Article 35-D of the General Business Law applies.

UMKA'S MEDICAL CONDITION AND PAIN AND SUFFERING

25. Soon after the sale, Plaintiff Umka started limping and crying in pain. A veterinarian put Umka to sleep the entire day to take x-rays.

26. Umka was only about 10 months old when she suffered a painful operation of her right rear

knee bone shaved and her knee inserted back into the socket. She suffers pain and has limited walking ability. Umka's medical bills directly related to her congenital defect cost Plaintiff Zakharova $2,079.50.

27. Umka was diagnosed with a medial patella subluxation disorder of both rear knees and her hip sockets as a congenital problem.

28. Upon information and belief, Umka's disorder is a genetic defect passed from her parents that had genetic defects, which she should not have been sired by dogs with genetic disorders.

RAISING ROVER DISREGARDS THE LAW THEN OPERATES UNDER A NEW LICENSE AND NAME

29. Upon purchasing Umka, and for months thereafter, Plaintiff Zakharova notified Raising Rover of Umka's genetic disorder and requested Umka's breeder information pursuant to the contract terms and Article 35-D of the General Business Law.

30. To date, Raising Rover ignored Elena Zakharova's requests for Umka's documents despite Article 35-D of the General Business Law mandating Raising Rover to provide said documents.

31. Upon information and belief, Umka did not come from a licensed breeder and was not a pedigree dog as Raising Rover advertised and took a hefty fee for her sale.

32. Instead of responding to Plaintiff Zakharova, upon information and belief, on October 17, 2011, the owner of Raising Rover, Jeffrey Silverstein, applied for a new license from the State Defendants to open a pet store named Barking Babies, LLC at 830 West Jericho Turnpike, Huntingdon, NY 11743.

RAISING ROVER IS LICENSED BY THE DEPARTMENT OF AGRICULTURE AND IS SUBJECT TO PENALTIES

33. At all times relevant hereto, Raising Rover was licensed and regulated by the State Defendants.

34. On January 10, 2012, the Department of Agriculture provided Plaintiff Zakharova a history of Raising Rover pursuant to her FOIA request, which showed the following:

> -Department of Agriculture Pet Dealer License for a fee of $100, expires 01/01/2011, for "Raising Rover, Ltd Jeffrey Silverstein 1428 Lexington Avenue, New York, NY 10021"
>
> -Department of Agriculture Pet Dealer License No. 874 for a fee of $100, expires 11/22/2012, for "House of Paws Inc, Raising Rover, 1428 Lexington Avenue, New York, NY 10128 (sic)"

- Department of Agriculture Pet Dealer License No. 583 for a fee of $100, expires 01/01/2012, for "Raising Rover Ltd., 1428 Lexington Avenue, New York, NY 10021"

-Department of Agriculture Pet Dealer License Application, dated October 17, 2011, for a fee of $100 for "Barking Babies by Jeffrey Silverstein, 830 West Jericho Turnpike, Huntingdon, NY 11743", incorporated "8/10/11", confirming they sell "250 dogs".

-Various "deficiencies" and "critical deficiencies" by Raising Rover from 2007 through 2011 regarding the care of animals and unlawful advertising for the sale of animals on websites, including K9Stud.com wherein in each instance the Department of Agriculture informed Raising Rover that the State Respondents were responsible for enforcing the Department of Agriculture and other laws related to pet dealers licensed by the State Respondents.

-A November 3, 2011 letter from Jeffrey Silverstein to the State Respondents stating as of July, 2011 he was not the proprietor of Raising Rover.

STATE DEFENDANTS ADMIT THEIR LICENSEE VIOLATED THEIR LAWS BUT ABANDONED THEIR DUTY TO PLAINTIFF AS A CITIZEN TAXPAYER PAYING THEIR FEES TO INVESTIGATE AND PENALIZE THEIR LICENSEE AND ABANDONED THEIR DUTY TO PROTECT CONSUMERS AND COMPANION ANIMALS

35. By letter dated June 27, 2012 to Raising Rover, the State Defendant admits that they regulate "pet dealers pursuant to Article 26-A of the Agriculture and Markets Law" and that Raising Rover violated "Article 35-D of the General Business Law" by having contracts waive consumers' legal rights under statute to receive paper work regarding their puppies and failing to provide Plaintiff Zakharova with paperwork regarding Umka (**Exhibit "A"**).

36. After State Defendants sent that letter, they claimed that because Raising Rover operates under a different license then they have no authority to investigate and penalize them for their violations of the law related to Plaintiffs herein.

37. State Defendants claim is untrue as the law permits an expired license to be revoked; *Matter of Mendel & Sons v. Dept. of Agriculture, 455 N.Y.S.2d 867 (3rd Dept., 1982); Matter of Maine Sugar of Montezuma v Wickham, 37 AD2d 381* (*3rd Dept.,* 1971), which revoking the license of the same licensee operating under a different name to escape violations of the laws and attendant penalties is also available so the State Defendants can enforce the laws.

38. Upon information and belief, in the last year Defendant State was funded by $471 Million Dollars of which $345 Million Dollars of that comes from the General Fund covering State

Defendants' salaries and travel expenses and is considered "taxpayer dollars".[1]

39. Upon information and belief, in the past four years, the Defendant New York State Department of Agriculture uses taxpayer funds as follows to enforce pet store licensing and investigations:

2009-10 - $115,000
2010-11 – $117,000
2011-12 - $117,000
2012-13 - $117,000

40. Plaintiff Zakharova paid a portion of the aforesaid funds as a citizen taxpayer to which State Defendants are mandated to use to protect her and Umka.

41. Upon information and belief, there is only one full time inspector working for the State Defendants to investigate some 257 licensed pet stores statewide and what could be hundreds or thousands more unlicensed operating illegally that contribute to breeding and promoting sick puppies sold at pet stores and elsewhere that State Defendants are is mandated to investigate.

42. Because State Defendants are underfunded and do not employ the proper manpower to enforce the laws designed to protect consumers and puppies alike, they actually defeat the purpose of the laws and harm Plaintiff Zakahrova and other citizens who pay taxes to protect their rights and the rights of animals sold in pet stores by causing the very animals citizens pay their taxes to protect to be killed at alarming rates in New York State animal shelters at the further expense of citizens' local tax dollars at horrible pain and suffering by euthanasia, gas chambers, shootings and mass burials that Plaintiffs object to spending their tax money towards.

43. For example, upon information and belief, the Town of Huntington spent over $850,000 in 2011 of tax dollars to take in over 1000 dogs & cats then killed 900 of those animals, or a 90% kill rate using tax payer dollars and more deaths reported at Erie County killing 2,740 dogs and New York City euthanized 3,661 dogs in 2011.[2]

44. Defendant State abandoned their duties to protect Plaintiffs Zakharova and Umka the puppy as mandated under the law and for which Plaintiff Zakharova pays for their protection by her taxes and instead contributes to the deaths of millions of dogs and puppies over the years of which many are not documented by State Defendants.

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[1] http://publications.budget.ny.gov/eBudget1314/agencyPresentations/appropData/AgricultureandMarketsDepartmentof.html

[2] http://www.asilomaraccords.org/participating_organizations.html#NewYork

STATUTES MANDATE STATE DEFENDANTS PROTECT PLAINTIFFS' RIGHTS FROM PAIN AND SUFFERING AND FINANCIAL EXPENSE DUE TO PUPPY MILL DEPLORABLE BREEDING

45. New York State Pet Stores are licensed by the State Defendants pursuant to Article 26-A of the Agriculture and Markets Law §403 et. seq..

46. Agriculture and Markets Law §404 authorizes the State Defendants to enforce their licensing powers by suspending, revoking or refusing licenses to Pet Stores that violate Article 26 or any other article pertaining to animals, harm animals or violate any federal, state or local law regarding the treatment and sale of animals.

47. Agriculture and Markets Law §§401, 402, 403, 404, 405, 406, 407 apply to the regulation and sale of dogs, including, but not limited to, state licensing requirements and retail sales by Pet Stores or dealers.

48. The laws are intended to protect the safety and welfare of the animals as well as the rights of consumers to purchase animals free from congenital and other defects that would cost the consumer unexpected additional expenses to care for sick animals or even discard them which the laws are designed to prevent.

49. General Business Law §753 et seq. is a statute protecting Plaintiffs herein as a consumer and animal. The Legislative Intent of GBL §753 et seq. states it is to regulate the sale of dogs and cats with specific requirements regarding documentation that must be provided to purchasers. GBL §755 mandates the penalties imposed for retailers failing to comply.

50. The intent behind providing documentation for animals sold in licensed pet stores is to prevent the sale of animals from disreputable breeders.

51. General Business Law §751 further protects the rights of consumers and companion animals sold commercially, which states in pertinent part:

> "It is hereby determined and declared that supervision by the state of the sale of dogs and cats by pet dealers is within the *public interest and for the purpose of safeguarding the public and insuring humane treatment of such animals by guaranteeing the good health* of the dogs or cats in the course of such transactions…."

MULTIPLE LAWS VIOLATED BY RAISING ROVER PET STORE ARE IGNORED BY STATE DEFENDANTS

52. GBL §753 addresses the rights of consumers who purchase an animal found later to be diseased or have defects. GBL §753-b states in pertinent part:

> "Every pet dealer *shall* deliver to the purchaser of an animal, at the time of sale, a written statement in a standardized form prescribed by the commissioner of agriculture and markets containing the following information:
> (2)(a) The breeder's name and address, if known, or if not known, the source of the dog. If the person from whom the dog was obtained is a dealer licensed by the United States department of agriculture, the person's name, address, and federal identification number.
> * *
> (c) …If the dog is being sold as being capable of registration, the names and registration numbers of the sire and dam, and the litter number, if known.
> * *
> (4) Every pet dealer *shall* post conspicuously within close proximity to the cages for dogs and cats offered for sale, a notice…{as follows]: "Information on the source of these dogs and cats and the veterinary treatments received by these dogs and cats is available for review by prospective purchasers."

53. GBL §754 states:

> "Every pet dealer who sells an animal to a consumer *shall* post a notice clearly visible to the consumer and provide the consumer at the time of sale with a written notice, printed or types, setting forth the rights provided under this article….

54. GBL §755 states in pertinent part:

> 1-a. Any person who violates any provision of section seven hundred fifty-three-a, seven hundred fifty-three-b, or seven hundred fifty-three-c of this article may also be subject to denial, suspension, revocation of, or refusal to renew a pet dealer license, in accordance with the provisions of sections four hundred three and four hundred four of the agriculture and markets law.

55. Raising Rover violated GBL §§752 and 753 as Umka's source was never posted by his cage nor did they ever provide that paperwork at the time of sale nor to date despite multiple requests the by Elena Zakharova, and State Defendants ignored their duty to enforce those laws and instead in contradiction to GBL §755 provided Raising Rover with a new license under a different name.

56. Agriculture and Markets Law §401 states, "Pet dealers *shall* comply with the following minimum standards of care for every animal in their custody and possession." The statute lists six areas of care including housing, sanitation, feeding/watering, handling, veterinary care, and humane euthanasia.

57. Agriculture and Markets Law §402 states that "Each pet dealer *shall* keep and maintain records for each animal purchased, acquired, held, sold, or otherwise disposed of, including the name and address of the person from whom each animal was acquired" for a period of two years after the sale.

58. Agriculture and Markets Law §403(6) states that inspections in accordance with section four hundred five of this article, the results of which establish compliance with the provisions of this article and with the provision of article thirty-five-D of the general business law regarding recordkeeping and consumer disclosure requirements for pet dealers, *shall* precede issuance of a license or renewal thereof under this section.

59. Agriculture and Markets Law §404 states in pertinent part states that "The commissioner may decline to grant or renew or may suspend or revoke a pet dealer license, on any one of the following grounds:… "3. Violation of any provision of this article or…violation of any federal, state, or local law pertaining to the care, treatment, sale, possession, or handling of animals or any regulation or rule promulgated pursuant thereto relating to the endangerment of the life or health of an animal."

60. Agriculture and Markets Law §405 states in pertinent part that" The commissioner or his or her authorized agents *shall, at a minimum*, make *yearly* inspections of pet dealers' facilities to ensure compliance with the provisions of this article *and with the provision of article thirty-five-D of the general business law*….

61. Agriculture and Markets Law §406 states in pertinent part that "In addition to the penalties provided for elsewhere in this section, a pet dealer who violates any provisions of this article may be subject to denial, revocation, suspension, or refusal of renewal of his or her license…."

62. State Defendants failed to enforce Agriculture and Markets Law §§401, 402, 403, 404, 405 and 406 as they refused to properly investigate and commence a hearing against Raising Rover a/k/a Barking Babies, which Raising Rover's admission that they did not maintain paperwork for Umka is apparent by their refusal to provide the documents to Elena Zakharova even after State Defendants directed them to by its June 27, 2012 letter (**see Exh. A**).

63. Moreover, Raising Rover, upon information and belief, admitted in legal documents that they did not maintain Umka's paperwork for two years when in less than a year from her purchase they moved from the premises leaving her paperwork behind which is now lost which is unlawful conduct mandating an investigation and penalties provided by law but the State Defendants instead

continually encourage Raising Rover a/k/a Barking Babies to violate the laws by issuing them licenses under a different name and refusing to enforce the laws listed in this paragraph.

CAUSE OF ACTION: Declaratory Judgment CPLR 3001

64. Plaintiffs allege foregoing paragraphs as if fully set forth herein.

65. The State Defendants' obligations to inspect dealers and review whether they are complying or have complied with the law are not discretionary. Agriculture and Markets Law §405(1).

66. State Defendants have an affirmative duty to inspect, review and regulate pet dealers on at least an annual basis.

67. State Defendants have refused to inspect, investigate and level charges against their licensee Raising Rover a/k/a Barking babies for violating the laws that the State Defendants are obligated to enforce.

68. Plaintiff Elena Zakharova repeatedly complained to State Defendants about Raising Rover's violations, specifically those regarding the failure to disclose Umka's pedigree information and the name of the breeder or source from where Raising Rover obtained Umka, to no avail.

69. The ongoing and consistent failure of the State Defendants to properly construe, interpret, or determine the applicability of express provisions of New York Agriculture and Markets Law and the Rules and Regulations of the New York State Department of Agriculture and Markets as alleged herein above constitutes the effective nullification of those laws and such rules and regulations, which were and are intended to be applied broadly for the exclusive benefit and protection of the consuming public, and constitutes an abdication of the statutory duty entrusted to State Defendants.

70. This failure has directly resulted in damages of thousands of dollars expended by Plaintiff Zakharova to treat Umka's illness, tens of thousands of dollars in legal expenses and costs to protect her rights by filing this complaint to protect the rights of her and Umka as given to the State Defendants and their failures have caused Umka pain and suffering as an animal that civil and criminal laws of this State prohibit, yet State Defendants are condoning by their failures.

71. Because State Defendants fail and continue to refuse to comply with their statutorily mandated obligations, as well as to enforce the law in the spirit of the clear and unequivocal legislative intent that protects Elena Zakharova as a consumer and Umka as a puppy to avoid pain and suffering, Plaintiffs seek judicial intervention as they have no adequate remedy at law.

72. This failure has also injured, and continues to injure, the specific and legally cognizable protected interests of the Plaintiffs as described and set forth herein above.

73. As such, the State Defendants' failures should be declared unlawful and invalid as a matter of law and they should be mandated to act and comport with the alleged original statutory intent.

71. Plaintiffs have no adequate remedy at law and no prior application has been made for the relief requested herein.

IV. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request relief as follows:

(a) That this Court issue an order and judgment determining and declaring that as a matter of law the State Defendants failed their obligations to investigate, conduct a hearing, file charges and/or revoke its licensee's license under the General Business and department of Agriculture and Markets laws cited herein;

(b) That this Court issue an order and judgment awarding Plaintiffs reasonable attorneys' fees, costs, and disbursements pursuant to The Equal Access to Justice Act, CPLR Article 86, along with such other, further and different relief that the Court deems just and proper; and

(c) such other and further relief as the Court may deem just and proper.

Dated: May 7, 2013
New York, New York

Yours, etc.,
LAW OFFICES OF SUSAN CHANA LASK

Susan Chana Lask

BY: Susan Chana Lask, Esq.
Attorney for Plaintiffs
244 Fifth Avenue, Suite 2369
New York, NY 10001
(917) 300-1958

STATE OF NEW YORK: COUNTY OF NEW YORK ss:

I, Elena Zakharova, being duly sworn, deposes and says that she is the petitioner in this action and she has read the foregoing Complaint and knows the contents thereof; that the same is true to my own knowledge except as to the matters therein stated to be alleged upon information and belief and as to those matters I believe them to be true.

Sworn to and Subscribed Before
me this 7th day of May, 2013

NOTARY PUBLIC

MARIA GAMBINO
Notary Public, State of New York
No. 6126974
Qualified in Rockland County
Commission Expires May 16, 2013

Elena Zakharova

STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE AND MARKETS
10B Airline Drive, Albany, New York 12235
1-800-554-4501
www.agmkt.state.ny.us

Office of the Counsel
Tel. #(518)457-1059
FAX (518)457-8842
TDD (518)485-7784

June 27, 2012

Via Facsimile Only

TO: Mona Engle, Esq

SUBJECT: Umka / Dog Purchased by Ms. Elena Zakharova

Dear Ms. Engel,

I am an attorney with the New York State Department of Agriculture and Markets (Department), which regulates pet dealers pursuant to Article 26-A of the Agriculture and Markets Law. This is in reference to Ms. Elena Zakharova, who on or about February 4, 2012, purchased a Brussels Griffon (Umka) from your client, Jeffrey Silverstein.

I've been advised by Ms. Zakharova's attorney, Susan Lask, Esq., that at the time of purchase, your client did not provide Ms. Zakharova with requisite papers on the dog, specifically, an information statement on the dog; notice regarding the sale of a dog; and a rabies information sheet. Your client also failed to provide registration documents and disclosure of animal pedigree registration.

Pursuant to Article 35-D of the General Business Law, these documents are to be provided to the purchaser of a dog at the time of purchase. Since Article 35-D affords dog purchasers certain rights regarding the purchase of dogs, the provisions of this law cannot be waived by a purchaser as a condition to receiving the aforementioned papers.

With this letter, I am requesting that your client provide the required documentation to Ms. Zakharova; otherwise, the Department may have no choice but to consider commencement of legal action to compel compliance.

Your anticipated cooperation is greatly appreciated.

Very truly yours,

/s Frederick Brian Arnold
Frederick Brian Arnold, Esq.

Cc: Susan Lask, Esq.

EXHIBIT B

Statute Name	Citation	Summary
NY - Cruelty - Consolidated Cruelty Statutes	NY AGRI & MKTS §§ 331 - 379; NY PENAL LAW § 130.20	These New York statutes comprise the state's anti-cruelty provisions. "Animal" includes every living creature except a human being. A person who overdrives, overloads, tortures or cruelly beats or unjustifiably injures, maims, mutilates or kills any animal, or deprives any animal of necessary sustenance, food or drink, is guilty of a misdemeanor, punishable by imprisonment for not more than one year, or by a fine of not more than one thousand dollars, or by both. Exclusions include properly conducted scientific tests, experiments or investigations, involving the use of living animals approved by the state commissioner of health.
NY - Dangerous Dog - § 123. Dangerous dogs	NY AGRI & MKTS § 123, 123-a	This New York statute provides that statutory penalties for dog bites and the process for declaring a dog "dangerous." Any person who witnesses an attack or threatened attack, or in the case of a minor, an adult acting on behalf of such minor, may make a complaint of an attack or threatened attack upon a person, companion animal, farm animal, or a domestic animal to a dog control officer or police officer of the appropriate municipality. Such officer shall immediately inform the complainant of his or her right to commence a proceeding as provided in subdivision two of this section and, if there is reason to believe the dog is a dangerous dog, the officer shall forthwith commence such proceeding himself or herself. Upon a finding that a dog is dangerous, the judge or justice may order humane euthanasia or permanent confinement of the dog if one listed aggravating circumstances is established at the judicial hearing.
NY - Disaster - § 23. Local comprehensive emergency management plans; § 410. Establishment of animal response teams	NY EXEC § 22, 23; NY AGRI & MKTS § 410	In New York, disaster emergency plans must include utilization and coordination of programs to assist individuals with household pets and service animals. Particular emphasis must be on evacuation, shelter and transportation options following a disaster.
NY - Dog - Assistance Animal/Guide Dog Laws	NY AGRI & MKTS § 108, 110, 118, and 123-b; NY GEN OBLIG § 11-107; NY CIV RTS § 47, 47-a to c	The following statutes comprise the state's relevant assistance animal and guide dog laws.
NY - Dogs -	McKinney's	These New York statutes comprise the state's dog laws. Among

Consolidated Dog Laws	Agriculture and Markets Law § 106 - 127, 331 - 332, 400 - 410; McKinney's ECL §§ 11-0529, 11-0901 - 0931, 11-2117; McKinney's General Business Law §§ 399-aa, 751 - 755; McKinney's General Municipal Law § 88, 209cc; McKinney's General Obligations Law § 11-107; McKinney's Lien Law § 183; McKinney's Public Health Law § 1310, 505-a, 2140 - 2146; McKinney's Town Law § 130; McKinney's Vehicle and Traffic Law § 601	the provisions include state licensing requirements, the sale of dogs by pet dealers, rabies control laws, and provisions related to dogs and hunting.
NY - Domestic Violence - § 842. Order of protection	NY FAM CT § 842	This New York law pertains to the issuance of protection orders. In July of 2006, the amendment that allows companion animals owned by the petitioner of the order or a minor child residing in the household to be included in the order was signed into law. The law specifically allows a court to order the respondent to refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the petitioner or a minor child residing in the household.
NY - Enforcement - Agriculture and Markets Law - Article 3. Investigation; Practice and	McKinney's Agriculture and Markets Law § 32 - 45-a	This article outlines the procedures and penalties for violations of New York's Agriculture and Markets Law.

Procedure; Violations; Penalties.		
NY - Impound - § 88. Disposition of stray or unwanted dogs by municipality	NY GEN MUN § 88	This New York statute provides that a municipality may by local law or ordinance provide that stray or unwanted dogs be given to an agency which trains seeing eye dogs or to a police department which trains dogs as guards. These agencies can requisition dogs that are awaiting destruction so long as five days have elapsed since the dog was impounded. Licensed dogs surrendered to the municipality or an animal shelter shall not be requisitioned without the written consent of the owner obtained at the time of the surrender.
NY - Property - § 366. Dog stealing	NY AGRI & MKTS § 366	This New York statute provides that it is a crime to steal dogs, defined as: removing the collar, identification tag or any other identification by which the owner may be ascertained from any dog, cat or any other domestic animal; seizing or molesting any dog, while it is being held or led by any person or while it is properly muzzled or wearing a collar with an identification tag attached, except where such action is incidental to the enforcement of some law or regulation; or transporting any dog, not lawfully in his possession, for the purpose of killing or selling such dog.
NY - Service Animal - § 11-107. Compensation for harm to a guide, hearing or service dog.	NY GEN OBLIG § 11-107	Under this New York statute, a disabled person whose guide, hearing or service dog is injured due to the negligence of the owner of another dog in handling that other dog may recover damages from the owner or custodian of the non-guide guide dog. These damages include veterinarian fees, replacement or retraining costs for the guide dog, lost wages, or damages for loss of mobility during retraining or replacement of the dog.
NY - Trusts - § 7-8.1 Trusts for pets.	NY EST POW & TRST § 7-8.1	This New York statute provides that a trust for the care of a designated domestic or pet animal is valid. Such trust shall terminate when the living animal beneficiary or beneficiaries of such trust are no longer alive. Upon termination, the trustee shall transfer the unexpended trust property as directed in the trust instrument or, if there are no such directions in the trust instrument, the property shall pass to the estate of the grantor. A court may reduce the amount of the property transferred if it determines that amount substantially exceeds the amount required for the intended use.

Chart assembled from http://www.animallaw.info/statutes/statestatutes/stusnyset.htm

Index No. ____ **Year 2013**

SUPREME COURT: STATE OF NEW YORK
COUNTY OF ALBANY

ELENA ZAKHAROVA for herself and as representative of her dog, Umka,

Plaintiffs,

-against-

DARREL J. AUBERTINE, as Commissioner of the and New York State Department of Agriculture and Markets and THE NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS,

Defendants.

_____

VERIFIED COMPLAINT

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LAW OFFICES OF
SUSAN CHANA LASK
Attorney for Plaintiffs
244 Fifth Avenue, Suite 2369
New York, New York 10001
(917) 300-1958

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Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney duly admitted to practice law in the courts of New York, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Susan Chana Lask

Dated: May 7, 2013 Signature_____
Susan Chana Lask, Esq.