

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 04-0006
)
Patricia Morris d.b.a. Pats Pets Kennel,)
)
Respondent)

**DECISION AND ORDER UPON
ADMISSION OF FACTS BY REASON OF DEFAULT**

PRELIMINARY STATEMENT

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 et seq.), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent willfully violated the Act.

A copy of the complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, was served on the respondent by certified mail sent on February 12, 2004. Respondent signed for the certified letter on February 17, 2004. The letter informed respondent that she must file an answer pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

Respondent Patricia Morris has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted as set forth herein by respondent's failure to file an answer, are adopted and set forth herein as Findings of Fact and Conclusions of Law.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I

A. Patricia Morris, hereinafter referred to as respondent, is an individual doing business as Pats Pets Kennel, whose address is Rt. 33, Box 36, Woodward, Oklahoma 73801.

B. The respondent, at all times material herein, was licensed and operating as a dealer as defined in the Act and the regulations.

C. When the respondent became licensed and annually thereafter, she received a copy of the Act and the regulations and standards issued thereunder and agreed in writing to comply with them.

II

A. On March 24, 1998, APHIS inspected respondent's premises and found that respondents had failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and failed to provide veterinary care to animals in need of care, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).

B. On March 24, 1998, APHIS inspected the respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

1. Housing facilities for dogs were not structurally sound and maintained in good repair so as to protect the animals from injury, contain the animals securely, and restrict other animals from entering (9 C.F.R. § 3.1(a));

2. The surfaces of housing facilities were not constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled (9 C.F.R. § 3.1(c)(1)); and

3. Provisions were not made for the regular and frequent collection, removal, and disposal of animal and food wastes, bedding, debris, garbage, water, and other fluids and wastes, in a manner that minimizes contamination and disease risks (9 C.F.R. § 3.1(f)).

III

A. On October 7, 1998, APHIS inspected respondent's premises and found that respondents had failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and failed to provide veterinary care to animals in need of care, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).

B. On October 7, 1998, APHIS inspected the respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

1. The surfaces of housing facilities were not constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled (9 C.F.R. § 3.1(c)(1));

2. Interior surfaces of housing facilities and surfaces that come in contact with dogs were not free of jagged edges and sharp points that might injure the animals (9 C.F.R. § 3.1(c)(1)(ii)); and

3. Interior height of primary enclosures were not the required 6 inches higher than the head of the tallest dog, when standing in a normal standing position (9 C.F.R. § 3.6(c)(1)(I)).

IV

On January 13, 1999, APHIS inspected the respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

1. Primary enclosures for dogs were not constructed and maintained so that they enable all surfaces in contact with the animals to be readily cleaned and sanitized, or be replaceable when worn or soiled (9 C.F.R. § 3.6(a)(2)(ix)); and

2. The surfaces of housing facilities were not constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled (9 C.F.R. § 3.1(c)(1)).

V

On May 12, 1999, APHIS inspected the respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

1. Housing facilities for dogs were not structurally sound and maintained in good repair so as to protect the animals from injury, contain the animals securely, and restrict other animals from entering (9 C.F.R. § 3.1(a)); and

2. Primary enclosures for dogs were not structurally sound and maintained in good repair so that they contain the animals securely and keep other animals from entering the enclosure (9 C.F.R. § 3.6(a)(2)(iii)).

VI

On November 18, 1999, APHIS inspected the respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

1. Interior surfaces of housing facilities and surfaces that come in contact with dogs were not free of jagged edges and sharp points that might injure the animals (9 C.F.R. § 3.1(c)(1)(ii));

2. Primary enclosures for dogs were not structurally sound and maintained in good repair (9 C.F.R. § 3.6(a)(1)); and

3. Interior height of primary enclosures were not the required 6 inches higher than the head of the tallest dog, when standing in a normal standing position (9 C.F.R. § 3.6(c)(1)(I)).

VII

- A. On June 15, 2000, APHIS inspected respondent's premises and found that respondents had failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and

failed to provide veterinary care to animals in need of care, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).

B. On June 15, 2000, APHIS inspected the respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

1. Interior surfaces of housing facilities and surfaces that come in contact with dogs were not free of jagged edges and sharp points that might injure the animals (9 C.F.R. § 3.1(c)(1)(ii));

2. Provisions were not made for the regular and frequent collection, removal, and disposal of animal and food wastes, bedding, debris, garbage, water, and other fluids and wastes, in a manner that minimizes contamination and disease risks (9 C.F.R. § 3.1(f));

3. Primary enclosures for dogs were not constructed and maintained so that they enable all surfaces in contact with the animals to be readily cleaned and sanitized, or be replaceable when worn or soiled (9 C.F.R. § 3.6(a)(2)(ix)); and

3. Interior height of primary enclosures were not the required 6 inches higher than the head of the tallest dog, when standing in a normal standing position (9 C.F.R. § 3.6(c)(1)(I)); and

4. The premises including buildings and surrounding grounds, were not kept in good repair, and clean and free of trash, junk, waste, and discarded matter, and weeds, grasses and bushes were not controlled, in order to protect the animals from injury and facilitate the required husbandry practices (9 C.F.R § 3.11(c)).

VIII

A. On March 8, 2001, APHIS inspected respondent's premises and found that respondents had failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and failed to provide veterinary care to animals in need of care, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).

B. On March 8, 2001, APHIS inspected the respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

1. Housing facilities for dogs were not structurally sound and maintained in good repair so as to protect the animals from injury, contain the animals securely, and restrict other animals from entering (9 C.F.R. § 3.1(a));

2. Interior surfaces of housing facilities and surfaces that come in contact with dogs were not free of excessive rust that prevents the required cleaning and sanitization and that affects the structural strength of the surface (9 C.F.R. § 3.1(c)(1)(i));

3. Provisions were not made for the regular and frequent collection, removal, and disposal of animal and food wastes, bedding, debris, garbage, water, and other fluids and wastes, in a manner that minimizes contamination and disease risks (9 C.F.R. § 3.1(f)).

4. The surfaces of indoor floor areas of sheltered housing facilities for dogs that were in contact with the animals were not impervious to moisture (9 C.F.R. § 3.3(e)(1)(I));

5. Dogs in outdoor housing facilities were not provided with adequate protection from the elements and were not provided with clean, dry, bedding material when the ambient temperature was below 50 degrees Fahrenheit (9 C.F.R. § 3.4(b)); and

6. Watering receptacles for dogs were not kept clean and sanitized (9 C.F.R. § 3.10).

IX

On October 4, 2001, APHIS inspected the respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

1. Housing facilities for dogs were not structurally sound and maintained in good repair so as to protect the animals from injury, contain the animals securely, and restrict other animals from entering (9 C.F.R. § 3.1(a));

2. The surfaces of indoor floor areas of sheltered housing facilities for dogs that were in contact with the animals were not impervious to moisture (9 C.F.R. § 3.3(e)(1)(I));

3. Primary enclosures for dogs were not structurally sound and maintained in good repair (9 C.F.R. § 3.6(a)(1)); and

4. Excreta and food waste were not removed from primary enclosures daily, to prevent soiling of the dogs and to reduce disease hazards, insects, pests and odors (9 C.F.R. § 3.11(a)).

CONCLUSIONS

1. The Secretary has jurisdiction in this matter.
2. The following Order is authorized by the Act and warranted under the circumstances.

ORDER

1. Respondent, her agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, shall cease and desist from:

(a) Failing to construct and maintain housing facilities for animals so that they are structurally sound and in good repair in order to protect the animals from injury;

(b) Failing to provide sufficient space for animals in primary enclosures;

(c) Failing to establish and maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine;

(d) Failing to construct and maintain housing facilities for animals so that surfaces may be readily cleaned and sanitized or be replaced when necessary;

(e) Failing to provide a suitable method for the rapid elimination of excess food and animal wastes from housing facilities for animals;

(f) Failing to maintain primary enclosures for animals in a clean and sanitary condition; and

(g) Failing to provide for adequate running potable water for the animals' drinking needs, for cleaning, and for carrying out other husbandry requirements.

2. The determination of the amount of the civil penalty to be assessed is reserved, pending receipt of evidence of reasonableness of the amount requested, considering the size of the business, gravity of the violations, the good faith of the licensee, history of prior violations, if any and any other factors material to the amount which should be imposed.

Copies of this decision shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 26th day of January, 2005

PETER M. DAVENPORT
Administrative Law Judge

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