

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWA Docket No. 04-0035

In re:

LARRY DARRELL WINSLOW, an individual
doing business as Bear Breeders, Inc., and; BETH
THOMPSON-WINSLOW, an individual doing
business as Bear Breeders, Inc.

Respondents.

**DECISION AND ORDER AS TO BETH THOMPSON-WINSLOW
BY REASON OF ADMISSION OF FACTS**

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 respondents willfully violated the Act and the regulations and standards (“Regulations” and “Standards”) issued thereunder (9 C.F.R. § 1.1 et seq.).

On October 29, 2004, the Hearing Clerk sent to respondents Larry Darrell Winslow and Beth Thompson-Winslow (“respondents”), by regular mail, copies of the complaint and the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary (7

C.F.R. _ 1.130 et seq.).¹ Respondents were informed in the accompanying letter of service that an answer to the complaint should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

Neither respondent filed an answer within the time prescribed in the Rules of Practice; however, the Respondent Larry Darrell Winslow telephonically requested leave to file his answer out of time, advising that he was without knowledge of the proceedings against him and that he is a blind, disabled and indigent veteran now separated and estranged from his wife. By Order dated March 23, 2005, he was given leave to file his answer out of time. He has since filed an answer. No response has been received from the Respondent Beth Thompson-Winslow.

Thus, the material facts alleged in the complaint are admitted by the said respondent Beth Thompson-Winslow's default, are adopted and set forth herein as Findings of Fact. 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

1. Respondent Beth Thompson-Winslow is an individual, doing business as Bear Breeders, Inc., a partnership or unincorporated association, and whose mailing address 24 Lawrence 236, Black Rock, Arkansas 72415. At all times herein said respondent was operating as a dealer as that term is defined in the Act and the Regulations and held Animal Welfare Act license number 71-A-0778, issued to "Larry Winslow & Beth Thomspson-Winslow DBA: Bear Breeders Inc." On October 3, 2004, Animal Welfare Act license number 71-A-0778 expired because it was not

¹On September 29, 2004, the Hearing Clerk sent respondents, by certified mail, return receipt requested, copies of the complaint and the Rules of Practice. The United States Postal Service marked each mailing "refused" and returned the mailings to the Hearing Clerk on October 12, 2004. See Domestic Return Receipt for Article Number 7003 2260 0005 5721 3212 (respondent Larry Darrell Winslow); Domestic Return Receipt for Article Number 7003 2260 0005 5721 3205 (respondent Beth Thompson-Winslow).

renewed.

2. APHIS personnel conducted inspections of respondents' facilities, records and animals for the purpose of determining respondents' compliance with the Act and the Regulations and Standards on January 24, 2003, July 25, 2003 (attempted inspection), and January 26, 2004 (attempted inspection).

3. On November 20, 2002, respondent Beth Thompson Winslow ("respondent") received an official warning notice from complainant for alleged violations of the Regulations, documented in Animal Welfare investigation No. AR03002-AC.

4. On January 24, 2003, respondent failed to identify all live dogs and cats on the premises, and specifically, failed to identify, by any means, at least six cats. (9 C.F.R. § 2.50(a)).

5. On January 24, 2003, respondent failed to maintain records that fully and accurately disclose information concerning cats and dogs, and specifically, failed to maintain, and make available for inspection, records concerning respondents' nine adult dogs and nine adult cats. (9 C.F.R. § 2.75(a)(1)).

6. On January 24, 2003, respondent failed to maintain records that fully and accurately disclose information concerning the disposition of cats and dogs, and specifically, the disposition records for seven puppies and five kittens were incomplete; all of the records lacked the animals' official USDA number and five records lacked the buyers' or receivers' complete address or USDA Animal Welfare Act license or registration number. (9 C.F.R. § 2.75(a)(1)(iv)).

7. On July 25, 2003, respondent failed to have a responsible party available during business hours to permit APHIS officials to conduct an inspection of respondents' animal facilities. (9 C.F.R. § 2.126(a)).

8. On January 26, 2004, respondent failed to have a responsible party available during business hours to permit APHIS officials to conduct an inspection of respondents' animal facilities. (9 C.F.R. § 2.126(a)).

9. On January 24, 2003, respondent failed to meet the minimum facilities and operating standards for dogs and cats (9 C.F.R. §§ 3.1-3.19), as follows:

a. Respondent failed to store food supplies in a manner that protects the food from spoilage, contamination, and vermin infestation by failing to keep food supplies in containers with tightly fitting lids, and specifically, the plastic food container used to store food for the animals lacked a lid. (9 C.F.R. §§ 2.100(a), 3.1(d)).

b. Respondent failed to maintain indoor housing facilities and any other surfaces in contact with the animals that are impervious to moisture, and specifically, housed an adult Miniature Pinscher in two rooms of respondents' home that had floors, walls and furniture that were not impervious to moisture. (9 C.F.R. §§ 2.100(a), 3.2(d)).

c. Respondent failed to house breeds of dogs that are not acclimated to the temperatures prevalent in the area or that cannot tolerate the prevalent temperature without stress or discomfort (such as short-haired breeds in cold climates) in outdoor facilities as specifically approved by the attending veterinarian, and specifically, housed seven adult, short-haired Miniature Pinschers in outdoor facilities without an auxiliary heat source when the ambient temperature was approximately 15 degrees Fahrenheit, contrary to respondents' attending veterinarian's approved outdoor housing for these animals. (9 C.F.R. §§ 2.100(a), 3.4(a)).

d. Respondent failed to provide dogs and cats housed outdoors with adequate shelter from the elements, and specifically, housed nine adult dogs and nine adult cats in outdoor

enclosures that contained shelters with little or no bedding when the ambient temperature was approximately 15 degrees Fahrenheit; the shelters provided to nine adult dogs also lacked wind and rain breaks. (9 C.F.R. §§ 2.100(a), 3.4(b)(1), (3), (4)).

e. Respondent failed to construct surfaces in contact with animals housed outdoors that are impervious to moisture, and specifically, housed nine adult cats in an outdoor enclosure that allowed access to respondents' home, thereby placing the animals in contact with surfaces, such as a floor, walls, and other items, that were not impervious to moisture. (9 C.F.R. §§ 2.100(a), 3.4(c)).

f. Respondent failed to construct and maintain primary enclosures that protect dogs and cats from injury, and specifically, housed nine adult dogs and nine adult cats in primary enclosures that contained, at least one of the following: unprotected electrical cords, light receptacles, and/or an extraneous glass light bulb. (9 C.F.R. §§ 2.100(a), 3.1(a), 3.6(a)(2)(ii)).

g. Respondent failed to use food receptacles for dogs and cats, and specifically, fed adult Miniature Pinschers by scattering dog food on the concrete in front of the shelters. (9 C.F.R. §§ 2.100(a), 3.9(b)).

h. Respondent failed to remove excreta and food waste from primary enclosures daily to prevent an excessive accumulation of feces and food waste, to prevent soiling of the dogs or cats contained in the primary enclosure and to reduce disease hazards, insects, pests, and odors, and specifically, the litter pans used by nine adult cats had excessive excreta that had accumulated over, at least, two days and the exercise pen used by nine adult Miniature Pinschers had several months worth of accumulated excreta. (9 C.F.R. §§ 2.100(a), 3.11(a)).

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction over this matter.
2. On January 24, 2003, respondent willfully violated section 2.50(a) of the Regulations. (9 C.F.R. § 2.50(a)).
3. On January 24, 2003, respondent willfully violated section 2.75(a)(1) of the Regulations. (9 C.F.R. § 2.75(a)(1)).
4. On January 24, 2003, respondent willfully violated section 2.75(a)(1) of the Regulations. (9 C.F.R. § 2.75(a)(1)(iv)).
5. On July 25, 2003, respondent willfully violated section 2.126(a) of the Regulations. (9 C.F.R. § 2.126(a)).
6. On January 26, 2004, respondent willfully violated section 2.126(a) of the Regulations. (9 C.F.R. § 2.126(a)).
7. On January 24, 2003, respondent willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. §§ 3.1-3.19), as follows:
 - a. Respondent failed to comply with section 3.1(d) of the Standards. (9 C.F.R. §§ 2.100(a), 3.1(d)).
 - b. Respondent failed to comply with section 3.2(d) of the Standards. (9 C.F.R. §§ 2.100(a), 3.2(d)).
 - c. Respondent failed to comply with section 3.4(a) of the Standards. (9 C.F.R. §§ 2.100(a), 3.4(a)).
 - d. Respondent failed to comply with sections 3.4(b)(1), (3), and (4) of the Standards. (9 C.F.R. §§ 2.100(a), 3.4(b)(1), (3), (4)).

- e. Respondent failed to comply with section 3.4(c) of the Standards. (9 C.F.R. §§ 2.100(a), 3.4(c)).
- f. Respondent failed to comply with sections 3.1(a), 3.6(a)(2)(ii) of the Standards. 0 C.F.R. §§ 2.100(a), 3.1(a), 3.6(a)(2)(ii)).
- g. Respondent failed to comply with section 3.9(b) of the Standards. (9 C.F.R. §§ 2.100(a), 3.9(b)).
- h. Respondent failed to comply with section 3.11(a) of the Standards. (9 C.F.R. §§ 2.100(a), 3.11(a)).

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.

2. Respondent Beth Thompson-Winslow is assessed a civil penalty of \$3,052. The civil penalty shall be paid by certified check or money order made payable to the Treasurer of the United States and sent to:

Bernadette R. Juarez
United States Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW
Room 2343-South Building
Washington, DC 20250-1417

Respondents shall state on the certified check or money order that the payment is in reference to AWA Docket No. 04-0035.

3. Respondent's Animal Welfare Act license (Animal Welfare Act license number 71-

A-0778) is revoked.

The provisions of this order shall become effective on the first day after this decision becomes final. This decision becomes final without further proceedings 35 days after service as provided in sections 1.142 and 1.145 of the Rules of Practice. Copies of this decision shall be served upon the parties.

Done at Washington, D.C.
April 26, 2005

Peter M. Davenport
PETER M. DAVENPORT
Administrative Law Judge

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