

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE DEPARTMENT OF AGRICULTURE

In re:) AWA Docket No. 04-0024
)
Jewel Bond)
d/b/a Bonds Kennel,)
)
Respondent)

DECISION AND ORDER

Jewel Bond, the respondent in this proceeding, breeds dogs and sells them in interstate commerce under the trade name of Bonds Kennel. She is licensed as a Class B Dealer and is subject to regulation under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159; “the AWA”). Jewel Bond is charged in a complaint filed on August 19, 2004, by the Administrator of the Animal and Health Inspection Service (“APHIS”) with violating the AWA and the regulations and standards issued under it (9 C.F.R. §§ 1.1-3.142), by failing to provide adequate veterinary care to dogs she has owned; failing to adequately construct, maintain, clean and sanitize the facilities where she houses dogs so as to protect their health and well-being; failing to provide her dogs with safe and adequate shelter; and failing to protect them from other animals, pests, contaminants, injury and disease.

Jewel Bond has elected to represent herself, *pro se*, and has denied the allegations. An oral hearing was held in Springfield, Missouri, on May 24-25, 2005. At the hearing, APHIS was represented by Brian T. Hill, Esq., Office of the General Counsel,

Washington, D.C. Jewel Bond represented herself with the assistance of her former husband and present business helper, Larry Bond, who was allowed to interrogate and cross-examine witnesses, voice objections to evidence and present arguments. The testimony was transcribed (TR___), and exhibits were received from both APHIS, the complainant (CX___), and from Jewel Bond, the respondent (RX___). Subsequent to the hearing, both APHIS and Jewel Bond filed briefs in support of their positions. APHIS seeks a cease and desist order, a one year suspension of Jewel Bond's dealer's license and a civil penalty of \$10,000.00.

For the reasons that follow, I have found and concluded that Jewel Bond committed willful violations of the AWA and applicable regulations and standards, and that a cease and desist order, the suspension of her dealer's license for one year and the imposition of a \$10,000.00 civil penalty are appropriate sanctions that are needed to deter future violations.

Pertinent Statutory Provisions, Regulations and Standards

The Animal Welfare Act (7 U.S.C. §§ 2131-2159)

§ 2131 states the purposes of The Animal Welfare Act:

(1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment....

§ 2132 defines the term "dealer":

(f) The term "dealer" means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes, except that this term does not include---

(i) a retail pet store except such store which sells any animals to a research facility, an exhibitor, or a dealer; or

(ii) any person who does not sell, or negotiate the purchase or sale of any wild animal, dog, or cat, and who derives no more than \$500 gross income from the sale of other animals during any calendar year.

§ 2143 (a) authorizes the promulgation of standards for humane care and treatment:

(1) The Secretary shall promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities and exhibitors.

(2) The standards described in paragraph (1) shall include minimum requirements---

(A) for handling, housing, feeding, watering, sanitation, ventilation, shelter from extremes of weather and temperatures, adequate veterinary care, and separation by species where the Secretary finds necessary for humane handling, care, or treatment of animals; and

(B) for exercise of dogs, as determined by an attending veterinarian in accordance with general standards promulgated by the Secretary....

§ 2146 (a) places administration and enforcement with the Secretary of Agriculture:

The Secretary shall make such investigations or inspections as he deems necessary to determine whether any dealer...has violated or is violating any provision of this chapter or any regulation or standard issued thereunder, and for such purposes, the Secretary shall, at all reasonable times, have access to the places of business and the facilities, animals, and those records required to be kept...of any such dealer....

§ 2149 provides for license suspension or revocation, civil penalties and cease and desist orders:

(a)...If the Secretary has reason to believe that any person licensed as a dealer...has violated or is violating any provision of this chapter, or any of the rules or regulations or standards promulgated by the Secretary hereunder, he may suspend such person's license temporarily, but not to exceed 21 days, and after notice and opportunity for hearing, may suspend for such additional period as he may specify, or revoke such license, if such violation is determined to have occurred.

(b)...Any dealer...that violates any provision of this chapter, or any rule, regulation, or standard promulgated by the Secretary thereunder, may be assessed a civil penalty by the Secretary of not more than \$2,500¹ for each such violation, and the Secretary may also make an order that such person shall cease and desist from continuing

¹ In accordance with the Federal Civil Penalties Act of 1990 (28 U.S.C. § 2461), and the applicable implementing regulation (7 C.F.R. § 3.91(a), (b)(2)(v)), the civil penalty for a violation of the Animal Welfare Act was increased to a maximum of \$2,750; and a knowing failure to obey a cease and desist order now has a civil penalty of \$1,650.

such violation. Each violation and each day during which a violation continues shall be a separate offense. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing with respect to the alleged violation, and the order of the Secretary assessing a penalty and making a cease and desist order shall be final and conclusive unless the person files an appeal from the Secretary's order with the appropriate United States Court of Appeals. The Secretary shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person involved, the gravity of the violation, the person's good faith, and the history of previous violations....

§ 2151 authorizes the issuance of miscellaneous rules and regulations:

The Secretary is authorized to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this chapter.

**The regulations and standards
(9 C.F.R. §§ 1.1 – 3.142)**

§ 1.1 reiterates the Animal Welfare Act's "dealer" definition:

...Dealer means any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of: Any dog ...for use as a pet.

§ 2.40 requires each dealer to provide its animals adequate veterinary care:

(a) Each dealer...shall have an attending veterinarian who shall provide adequate veterinary care to its animals in compliance with this section....

(b) Each dealer...shall establish and maintain programs of veterinary care that include:

* * * * *

(2) The use of appropriate methods to prevent, control, diagnose and treat diseases and injuries, and the availability of emergency, weekend, and holiday care....

§ 2.100 requires each dealer to comply with the regulations and standards:

(a) Each dealer...shall comply in all respects with the regulations set forth in part 2 and the standards set forth in part 3 of this subchapter for the humane handling, care, treatment, housing, and transportation of animals.

(b)

§ 3.1 specifies standards for housing facilities for dogs and cats:

(a) *Structure; construction.* Housing facilities for dogs and cats must be designed and constructed so that they are structurally sound. They must be kept in good repair, and they must protect the animals from injury, contain the animals securely, and restrict other animals from entering.

* * * * *

(c) *Surfaces—(1) General requirements.* The surfaces of housing facilities—including houses, dens, and other furniture-type fixtures and objects within the facility—must be 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. Interior surfaces and any surfaces that come in contact with dogs or cats must:

(i) Be free of excessive rust that prevents the required cleaning and sanitization, or that affects the structural strength of the surface; and

(ii) Be free of jagged edges or sharp points that might injure the animals.

(2) *Maintenance and replacement of surfaces.* All surfaces must be maintained on a regular basis. Surfaces of housing facilities—including houses, dens, and other furniture-type fixtures and objects within the facility—that cannot be readily cleaned and sanitized, must be replaced when worn or soiled.

(3) *Cleaning.* Hard surfaces with which dogs or cats come in contact must be spot-cleaned daily and sanitized in accordance with § 3.11 (b) of this subpart to prevent accumulation of excreta and reduce disease hazards. Floors made of dirt, absorbent bedding, sand, gravel, grass, or other similar material must be raked or spot-cleaned with sufficient frequency to ensure all animals the freedom to avoid contact with excreta. Contaminated material must be replaced whenever this raking and spot-cleaning is not sufficient to prevent or eliminate odors, insects, pests, or vermin infestation. All other surfaces of housing facilities must be cleaned and sanitized when necessary to satisfy generally accepted husbandry standards and practices. Sanitization may be done using any of the methods provided in §3.11(b) (3) for primary enclosures.

* * * * *

(f) *Drainage and water disposal.* Housing facility operators must provide for regular and frequent collection, removal, and disposal of animal and food wastes, bedding, debris, garbage, water, other fluids and wastes, and dead animals, in a manner that minimizes contamination and disease risks. Housing facilities must be equipped with disposal facilities and drainage systems that are constructed and operated so that animal waste and water are rapidly eliminated and animals stay dry. Disposal and drainage systems must minimize vermin and pest infestation, insects, odors, and disease hazards. All drains must be properly constructed, installed, and maintained. If closed drainage systems are used, they must be equipped with traps and prevent the backflow of gases and the backup of sewage onto the floor. If the facility uses sump or settlement ponds, or other similar systems for drainage and animal waste disposal, the system must be located far enough away from the animal are of the housing facility to prevent odors, diseases,

pests, and vermin infestation. Standing puddles of water in animal enclosures must be drained or mopped up so that the animals stay dry. Trash containers in housing facilities and in food storage and food preparation areas must be leakproof and must have tightly fitted lids on them at all times. Dead animals, animal parts, and animal waste must not be kept in food storage or food preparation areas, food freezers, food refrigerators, or animal areas.

§ 3.4 specifies standards for the outdoor facilities used to house dogs and cats:

* * * * *

(c) *Construction.* Building surfaces in contact with animals in outdoor housing facilities must be impervious to moisture. Metal barrels, cans, refrigerators or freezers, and the like must not be used as shelter structures. The floors of outdoor housing facilities may be of compacted earth, absorbent bedding, sand, gravel, or grass, and must be replaced if there are any prevalent odors, diseases, insects, pests, or vermin. All surfaces must be maintained on a regular basis. Surfaces of outdoor housing facilities—including houses, dens, etc.—that cannot be readily cleaned and sanitized, must be replaced when worn or soiled.

§ 3.6 specifies standards for primary enclosures used to house dogs and cats:

Primary enclosures for dogs and cats must meet the following minimum requirements:

- (a) *General requirements.* (1) Primary enclosures must be designed and constructed of suitable materials so that they are structurally sound. The primary enclosure must be kept in good repair.
- (2) Primary enclosures must be constructed and maintained so that they:
- (i) Have no sharp points or edges that could injure the dogs and cats;
 - (ii) Protect the dogs and cats from injury;
 - (iii) Contain the dogs and cats securely;
 - (iv) Keep other animals from entering the enclosure;
 - (v) Enable the dogs and cats to remain dry and clean;
 - (vi) Provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to all the dogs and cats;
 - (vii) Provide sufficient shade to shelter all the dogs and cats housed in the primary enclosure at one time;
 - (viii) Provide all the dogs and cats with easy and convenient access to clean food and water;
 - (ix) Enable all surfaces in contact with the dogs and cats to be readily cleaned and sanitized in accordance with §3.11(b) of this subpart, or be replaceable when worn or soiled;
 - (x) Have floors that are constructed in a manner that protects the dogs' and cats' feet and legs from injury, and that, if of mesh or slatted construction, do not allow the dogs' and cats' feet to pass through any openings in the floor;

(xi) Provide sufficient space to allow each dog and cat to turn about freely, to stand, sit, and lie in a comfortable, normal position, and to walk in a normal manner; and

(xii) Primary enclosures constructed on or after February 20, 1998 and floors replaced after that date, must comply with the requirements in this paragraph (a) (2). On or after January 21, 2000, all primary enclosures must be in compliance with the requirements in this paragraph (a) (2). If the suspended floor of a primary enclosure is constructed of metal strands, the metal strands must either be greater than 1/8 of an inch in diameter (9 gauge) or coated with a material such as plastic or fiberglass. The suspended floor of any primary enclosure must be strong enough so that the floor does not sag or bend between the structural supports....

§ 3.11 (a) and (d) specify standards for the cleaning of primary enclosures and pest control:

(a) Cleaning of primary enclosures. Excreta and food waste must be removed from primary enclosures daily, and from under primary enclosures as often as necessary to prevent an excessive accumulation of feces and food waste, to prevent soiling of the dogs or cats contained in the primary enclosures, and to reduce disease hazards, insects, pests and odors. When steam or water is used to clean the primary enclosure, whether by hosing, flushing, or other methods, dogs and cats must be removed, unless the enclosure is large enough to ensure the animals would not be harmed, wetted, or distressed in the process. Standing water must be removed from the primary enclosure and animals in other primary enclosures must be protected from being contaminated with water and other wastes during the cleaning. The pans under primary enclosures with grill type floors and the ground areas under raised runs with mesh or slatted floors must be cleaned as often as necessary to prevent accumulation of feces and food waste and to reduce disease hazards, pests, insects and odors.

* * * * *

(d) Pest control. A effective program for the control of insects, external parasites affecting dogs and cats, and birds and mammals that are pests, must be established and maintained so as to promote the health and well-being of the animals and reduce contamination by pests in animal areas.

Findings of Fact

1. Jewel Bond, doing business as Bonds Kennel, 12250 Hwy 43, Seneca, Missouri 64865, is a dog breeder and dealer who currently holds and has annually renewed Class B Dealer's License 43-B-170 since its issuance on March 16, 1993. Jewel Bond was previously licensed as an "A" Dealer from January 10, 1983 until January 10,

1993. (RX 1). For the past ten years, she has kept about 200 dogs at a time at her facility which her attending veterinarian who testified to seeing a lot of kennels, has characterized as “a lot of dogs”. (TR 223). During the period September 4, 2002 through July 23, 2003, she sold 222 puppies in interstate commerce to Okie Pets, PO Box 21, Ketchum, Oklahoma 74349, for \$39, 690.00; averaging about \$4,000.00 per month in sales to this one outlet alone.(CX 1; CX 4).

2. Animal dealers are required to comply with the AWA and the implementing regulations and standards for the protection of the health and well-being of the animals in their possession. To assure their compliance, APHIS employs Animal Care Inspectors and Veterinarian Medical Officers who periodically inspect the facilities that dealers operate and prepare written inspection reports of the violations that are found. The dealer is given a copy of each inspection report; an exit interview going over the report is conducted; and the dealer is given the opportunity to correct the deficiencies. (TR 5-6; TR 11-112).

3. On the basis of such periodic inspections of her facilities, Jewel Bond was charged with violating the AWA and the implementing regulations and standards in a disciplinary proceeding that resulted in the entry of a consent decision and order on September 6, 2002. (AWA Docket No. 01-0023; CX 70). In the consent decision, Jewel Bond, the named respondent, admitted that the Secretary had jurisdiction; neither admitted nor denied the remaining allegations of the complaint; agreed to a 30 day suspension of her license; agreed to pay a civil penalty of \$6,000.00 of which \$4,500.00 was to be spent for repairs on her facilities on or before August 1, 2002; and agreed to the entry of the following order:

1. Respondent, her agents and employees, successors and assigns, directly or through any corporate or other device, shall not violate the Act and the regulations and standards issued thereunder, and in particular, shall:

- (a) 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, contain them securely, and restrict other animals from entering;
- (b) Construct and maintain indoor and sheltered housing facilities for animals so that they are adequately ventilated;
- (c) Construct and maintain housing facilities for animals so that surfaces may be readily cleaned and sanitized or be replaced when necessary;
- (d) Provide for the rapid elimination of excess water from housing facilities for animals;
- (e) Provide animals with adequate shelter from the elements;
- (f) Provide a suitable method for the rapid elimination of excess water and wastes from housing facilities for animals;
- (g) Provide sufficient space for animals in primary enclosures;
- (h) Maintain primary enclosures for animals in a clean and sanitary condition;
- (i) Keep the premises clean and in good repair and free of accumulations of trash, junk, waste, and discarded matter, and to control weeds, grasses and bushes;
- (j) Establish and maintain an effective program for the control of pests;
- (k) 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; and
- (l) Maintain records of the acquisition, disposition, description, and identification of animals, as required.

4. Periodic inspections of the facilities where Jewel Bond keeps her dogs were made by APHIS officials on May, 13, 2003, July 16, 2003 and August 25, 2003.

5. The inspection conducted on May 13, 2003, revealed the following:

- (a) A female pug had suffered a prolapsed vagina or prolapsed uterus requiring surgical repair to prevent dryness and necrosis. (TR 7-8; TR 113-114; CX 4, CX 42 and CX 45). Also, a shar-pei exhibited swelling and inflamed areas on its rear extremities and redness, irritation and hair loss on its trunk, face and limbs, and itching skin. (TR 7-8; CX 42). At the conclusion of this inspection, Jewel Bond was charged with violating the standard set forth at 9 C.F.R. § 2.40 (b) (2) that requires the availability of

emergency veterinary care. However, the inspector gave her until May 15, 2003 to have the dogs examined by the attending veterinarian and apparently did not believe earlier attention was required. Inasmuch as Jewel Bond and the attending veterinarian have both testified that the dogs were examined within the prescribed two days time and received appropriate treatment, I conclude that 9 C.F.R. § 2.40 (b) (2) was not violated.

(b) There were violations of 9 C.F.R. § 3.1 (a), the general standard that regulates the construction and maintenance of structures housing dogs or cats. Three of the easternmost structures housing 15 dogs, had nails sticking through roofs; deteriorated plywood decking on the roofs with large portions rotted away; decayed wooden rafters that no longer supported the roof; and a black insulation board under the decking, as well as various wooden supports, had been eaten away by mice. The southwestern structure housing 11 dogs had plywood decking on the roofs that was deteriorated with large portions rotted away; the metal roofing portion was loose in several areas allowing rain to enter. Two other structures housing 49 dogs had rusted and broken hinges that did not securely attach the doors. The ramps on a newer large dog structure housing 8 dogs, were not properly secured to the building and were warped and free moving. (TR 8-11; CX 42).

(c) There were violations of 9 C.F.R. § 3.4 (c), the standard regulating the construction of outdoor facilities. The wooden surfaces of many of the interiors of the easternmost 3 structures and a newer large dog structure had not been regularly maintained as required by the standard and showed evidence of chewing and scratching that prevented proper cleaning and sanitizing. Approximately 50 animals were affected. (TR 10; CX 42).

(d) There was a violation of 9 C.F.R. § 3.6 (a) (2) (x), the standard regulating the design and construction of the floors of primary enclosures. The structure housing puppies had openings in the wire floors of the cages of the puppy building so large that the feet of the puppies were allowed to pass through the holes. One yorkie puppy was observed to have a leg completely through the floor of its cage. Eight puppies were affected by this condition. (TR 11; CX 42).

(e) There were violations of 9 C.F.R. § 3.11 (a) and (d), the standards for the cleaning of primary enclosures and pest control. Various deficiencies in respect to the cleaning, sanitization, housekeeping and pest control at the facilities that Jewel Bond had been previously instructed to correct, were still uncorrected. There was excessive accumulation of fecal waste due to inadequate cleaning. In addition to dog feces, there was rodent waste in boxes where dogs were housed with a buildup of 1 ½ inches in one box; and mice had chewed through the walls, floors and exterior areas of the buildings. The APHIS inspector also found a wasp nest and bird droppings on rafters of the central, metal structure, but inasmuch as it is uncertain how long either condition existed and their minor nature, I do not find these conditions violated the standard. (TR 11-13; CX 42).

6. The inspection conducted on July, 16, 2003, revealed the following:

(a) There were violations of 9 C.F.R. § 3.1(c)(1)(i) in that the northeast kennel, the whelping building, and the puppy building exterior had rusted metal wire that was excessive and prevented required cleaning and sanitization.(TR 14-15; CX 62).

(b) There was a violation of 9 C.F.R. § 3.1(a) in that the floor in one of the boxes housing a dog was not structurally sound. It sagged as the dog walked on it and had gaping wire that could allow a paw to become wedged.(TR 15; CX 62).

(c) There was a violation of 9 C.F.R. § 3.1(F) in that the drainage system for waste disposal for the northwest large dog building was not working properly. It allowed waste to wash out on the ground and the wall of the building thereby failing to minimize vermin, insects and pest infestation, odors and disease hazards. This was a repeat violation. (TR 15-16; CX 62).

(d) The violations revealed in the prior inspection of May 13, 2003, respecting chewed and scratched wooden surfaces of buildings had been corrected. However, again in violation of 9 C.F.R. § 3.4 (c), wooden surfaces of the interior of boxes of the kennels were chewed and scratched and in need of repair and proper sealing to allow for cleaning and sanitization. (TR 16; CX 62).

(e) The insect control program at the facility was ineffective, in violation of 9 C.F.R. § 3.11 (d). (TR 16; CX 62).

7. The inspection conducted on August 25, 2003 revealed the following:

(a) There was a violation of 9 C.F.R. § 3.4 (c), in that there was raw, unsealed wood on the door frames of the northeast two buildings.(TR 17; CX 67).

(b) There was a violation of 9 C.F.R. § 3.6 (a) (2), in that the edge of metal flooring installed in replacement of earlier defective flooring, had sharp points that could easily damage the dogs in those pens.(TR 17; CX 67).

(c) There was a violation of 9 C.F.R. § 3.11 (c), in that a plastic washdown had large cracks in it that allowed debris and waste to collect that prevented proper cleaning and sanitizing of the facility.(TR 17; CX 67).

Conclusions

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Jewel Bond is a dealer as defined in the Animal Welfare Act and the regulations.
3. As more fully set forth in findings 5, 6 and 7, *supra*, Jewel Bond willfully violated the Animal Welfare Act, the regulations and the standards as revealed by inspections conducted by APHIS on May 13, 2003, July 16, 2003 and August 25, 2003.
4. The appropriate sanctions for deterrence of future violations, is the issuance of a cease and desist order, the imposition of a one year suspension of Jewel Bond's dealer's license, and the assessment of a \$10,000.00 civil penalty. In concluding that this penalty is appropriate, due consideration has been given to the size of Jewel Bond's business, the gravity of the violations, her good faith and the history of previous violations.

Discussion

Jewel Bond has engaged in business as Bonds Kennel for over 20 years selling dogs in interstate commerce as a "dealer" licensed under the Animal Welfare Act. She

keeps some 200 dogs at her facility which is considered to be large, and averages over \$4,000.00 per month in sales of dogs and puppies.

On September 6, 2002, she entered into a consent decision with APHIS in which she agreed to a 30 day suspension of her license, the payment of a \$6,000.00 civil penalty of which \$4,500.00 was to be spent on repairs to her facility, and the entry of a cease and desist order to not violate the Animal Welfare Act and the regulations and standards issued under it. Yet I find that on May 13, 2003, July 16, 2003 and August 25, 2003, Jewel Bond violated regulations and standards that were of the very type with which she agreed to comply under the terms of the consent decision. Testimony establishing these violations was given by an APHIS Animal Care Inspector and a Veterinarian Medical Officer. Both were extremely credible witnesses who produced photographic evidence corroborating their observations. I have, however, dismissed a charge in the complaint alleging an inadequate response to needed emergency veterinary care. I dismissed this charge because the APHIS Animal Care Inspector did not at the time of the inspection treat the matter as an emergency in that he gave Jewel Bond two days to obtain veterinary care and she complied.

Each violation found in the course of the three inspections conducted in 2003 was willful. An act is considered “willful” under the Administrative Procedure Act (5 U. S. C. § 558 (c)) if the violator “(1) intentionally does an act which is prohibited,-irrespective of evil motive or reliance on erroneous advice, or (2) acts with careless disregard of statutory requirements.” *In re Arab Stock Yard, Inc.*, 37 Agric. Dec. 293, 306 (1978), *aff’d mem.*, 582 F. 2d 39 (5th Cir. 1978); and *In re James E. Stephens, et al.*, 58 Agric. Dec. 149, 180 (1999). Jewel Bond’s chronic failure to comply with the Animal Welfare

Act and the regulations and standards, throughout the year that followed her signing the consent decree, constitutes obvious and careless disregard of the statutory and regulatory requirements, and her violations are clearly willful. *See Stephens, supra*, at 180

Jewel Bond's testimony and actions demonstrate a lack of good faith compliance with the Animal Welfare Act, and the regulations and standards that apply to her as a licensed dog dealer. She has obstinately refused to heed specific APHIS instructions. She became so incensed when told by an APHIS investigator that a building in her facility still did not meet applicable standards, she removed some ten dogs it housed and put them outside on a cold winter night when the temperature was only 20 degrees Fahrenheit. (TR 274-278). Her obstinacy, her fierce temper that can blind her to the needs and welfare of her dogs, her history of previous violations, and the gravity of her present violations which ignored basic needs of the dogs and puppies that she sells in interstate commerce, combine to require the imposition of a substantial sanction to achieve compliance and deter future violations.

I have accepted the recommendations of APHIS officials which I have concluded fully accord with the Animal Welfare Act's sanction and civil penalty provisions. If each standard that was found to have been violated at each of the three inspections is treated as a single violation, Jewel Bond committed 12 violations. Arguably, there were multiple violations of several of the standards. Therefore, the \$10,000.00 civil penalty that is being assessed is far less than may be imposed by applying the \$2,750.00 per violation amount authorized by the AWA against, at a minimum, 12 violations. A one year suspension of Jewel Bond's dealer's license is also presently indicated in that the prior,

lesser thirty day suspension was an ineffective deterrent. The recommended inclusion of cease and desist provisions is also appropriate and needed.

Accordingly, the following Order is being entered.

ORDER

It is hereby ordered:

1. Jewel Bond, her agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Animal Welfare 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, contain them securely, and restrict other animals from entering;

(b) Failing to construct and maintain housing facilities for animals so that surfaces are free of jagged edges or sharp points, and may be readily cleaned and sanitized or be replaced when necessary;

(c) Failing to provide for the rapid elimination of excess water and waste from housing facilities for animals and properly maintaining the drainage systems for waste disposal;

(d) Failing to maintain primary enclosures for animals in a clean and sanitary condition, that have no sharp points or edges that could injure animals, and have

floors that are constructed in a manner that protects the animal's feet from injury and do not allow their feet to pass through any opening in the floor;

(e) Failing to establish and maintain effective programs for the cleaning of primary enclosures and for the control of pests.

2. Jewel Bond is assessed a civil penalty of \$10,000.00. The civil penalty shall be paid by certified check or money order made payable to the Treasurer of the United States and sent by Fed-Ex, UPS, or another overnight delivery service to:

Brian T. Hill
United States Department of Agriculture
Office of the General Counsel
Marketing Division, Room 2325 A, South Building
1400 Independence Avenue, SW
Washington, DC 20250-1417

3. Jewel Bond's dealer's license is suspended for a period of one year and continuing thereafter until she demonstrates to the Animal and Plant Health Inspection Service that she is in full compliance with the Animal Welfare Act, the regulations and standards issued under it, and this order, including payment of the civil penalty imposed herein. When respondent demonstrates to the Animal and Plant Health Inspection Service that she has satisfied this condition, a supplemental order shall be issued in this proceeding upon the motion of the Animal and Plant Inspection Service, terminating the suspension.

This decision and order shall become effective without further proceedings 35 days after the date of service thereof upon Jewel Bond, unless there is an appeal to the Judicial Officer by a party to the proceeding within 30 days after receiving this decision

and order. In the event neither party files an appeal, payment of the civil penalty shall be sent to and received by Brian T. Hill within 60 days after service of this decision and order on Jewel Bond. The certified check or money order shall state upon it that it is in reference to AWA Docket No. 04-0024. Also, in the event neither party files an appeal, the one year suspension shall commence on the 60th day after service of this decision and order on Jewel Bond.

Dated: January 9, 2006

Victor W. Palmer
Victor W. Palmer
Administrative Law Judge