

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

AWA Docket No. 05-0016

In re: OCTAGON SEQUENCE OF EIGHT,
INC., a Florida corporation d/b/a
OCTAGON WILDLIFE SANCTUARY and
OCTAGON ANIMAL SHOWCASE;
LANCELOT KOLLMAN RAMOS, an individual, a/k/a
LANCELOT RAMOS KOLLMAN; and
MANUEL RAMOS, an individual,

Respondents

DEFAULT DECISION AND ORDER AS TO MANUEL RAMOS

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*)(the "Act"), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that respondents willfully violated the Act and the Regulations and Standards promulgated thereunder (9 C.F.R. § 1.1 *et seq.*)(the "Regulations" and "Standards").

On May 2, 2005, the Hearing Clerk sent to Respondent Manuel Ramos, by certified mail, return receipt requested, copies of the complaint and the Rules of Practice governing proceedings under the Act (7 C.F.R. §§ 1.130-1.151). The address on the package was 12133 Baytree Drive, Riverview, Florida 33569. The package was returned with a notation that there was no such address. The street number contained a typographical error, and should have read "121~~2~~3 Baytree Drive."

On November 8, 2005, the Hearing Clerk resent the package to Respondent Manuel Ramos, by certified mail, return receipt requested, at the 12123 Baytree Drive address. The package was

returned as “unclaimed” by the United States Postal Service, on January 11, 2006. On that same date, the Hearing Clerk remailed the package to respondent Manuel Ramos, by ordinary mail, at the 12123 Baytree Drive address, pursuant to section 1.147(c) of the Rules of Practice.¹ Respondent Manuel Ramos failed to file an answer to the complaint within the time prescribed in section 1.136 of the Rules of Practice.

Respondent Manuel Ramos was informed in the accompanying letter of service that an answer 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. Said Respondent failed to file an answer to the complaint and on April 12, 2007, the Complainant filed a Motion for Adoption of Proposed Decision and Order as to Manual Ramos By Reason of Admission of Facts. Service of the Motion was attempted to be served on the Respondent by certified mail; however, the mailing was again returned “unclaimed” and the Respondent was served by regular mail on May 9, 2007.

On May 11, 2007, the Hearing Clerk’s Office was finally contacted by the Respondent Manuel Ramos in a letter which reads, in pertinent part:

“I Manual Ramos hereby deny all charges and request a hearing on the allegations mentioned in the motion for adoption of proposed decision.
Sincerely,
/s/Manual Ramos
Manual Ramos

While Rule 1.139 (7 C.F.R. § 1.139) permits the judge to deny a motion, such as has been filed by the Complainant for adoption of a proposed decision, where a party against whom a default decision is being sought files “meritorious objections,” the belated letter denying the “charges” fails

¹The January 11, 2006, mailing was not returned to the Hearing Clerk, nor was the February 9, 2006, letter from the Hearing Clerk to Mr. Ramos, informing him that he had failed to file an answer to the complaint.

to satisfy the requirements of the Rule.

Pursuant to sections 1.136 and 1.139 of the Rules of Practice, the material facts alleged in the complaint are admitted by said Respondent's failure to file a timely answer and the following Findings of Fact, Conclusions and Order will be entered.

FINDINGS OF FACT

1. Manuel Ramos is an individual whose address is 12123 Baytree Drive, Riverview, Florida 33569. At all times mentioned herein, said Respondent was operating as a dealer, as that term is defined in the Act and the Regulations.

2. Respondent Manuel Ramos has a small business. The gravity of his violations is great. He knowingly operated as a dealer without having a valid license and caused injuries to two lions that resulted in the death of one of the lions. He has been a respondent in at least three previous AWA enforcement cases, his AWA license was suspended, and was subsequently revoked.²

3. Between June 23, 2000, and the date of the filing of this proceeding, Respondent Manuel Ramos knowingly failed to obey the cease and desist order made by the Secretary pursuant to section 2149(b) of the Act, in *In re Manuel Ramos, dba Oscanian Brothers Circus*, 59 Agric. Dec. 296 (2000), AWA Docket No. 99-0041 (Consent Decision and Order). 7 U.S.C. § 2149(b). Said cease and desist order specifically provided that:

²*In re Arturo Ramos and Manuel Ramos dba Oscanian Bros. Circus*, AWA Docket No. 322; *In re Manuel Ramos, dba Oscanian Brothers Circus*, 51 Agric. Dec. 1225 (1992), AWA Docket No. 91-0042; *In re Manuel Ramos, dba Oscanian Brothers Circus*, AWA Docket No. 00-0025; *In re Manuel Ramos, dba Oscanian Brothers Circus*, 59 Agric. Dec. 296, AWA Docket No. 99-0041 (Consent Decision and Order, June 26, 2000)(revoking respondent Manuel Ramos's license).

“Respondent, his 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.”

Pursuant to section 2149(b) of the Act, any person who knowingly fails to obey such a cease and desist order shall be subject to a civil penalty of \$1,650 for each offense, and each day during which such failure continues shall be deemed a separate offense. 7 U.S.C. § 2149(b).

4. On or about September 13, 2000, Respondent Manuel Ramos operated as a dealer by delivering for transportation, or transporting, two lions for exhibition, without having a valid license to do so, in violation of §2.1, 2.10(c) and 2.100(a) of the Regulations. 9 C.F.R. §2.1, 2.10(c) and 2.100(a).

5. On or about September 13, 2000, Respondent Manuel Ramos violated the Regulations governing the provision of veterinary care to animals.

a. Respondent failed to have an attending veterinarian provide adequate veterinary care to two juvenile lions in compliance with the Regulations.

b. Respondent failed to establish and maintain adequate programs of veterinary care that include the availability of appropriate facilities, personnel, equipment, and services.

c. Respondent failed to establish and maintain adequate programs of veterinary care that include the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries.

d. Respondent failed to establish and maintain adequate programs of veterinary care that include daily observation of all animals to assess their health and well-being, and a mechanism of direct and frequent communication so that timely and accurate information on problems of animal health and well-being is conveyed to the attending veterinarian.

e. Respondent failed to establish and maintain adequate programs of veterinary care that include adequate guidance to personnel involved in the care and use of animals.

f. The above failures constitute violations of § 2.40(a) and (b)(1-4) of the Regulations. (9 C.F.R. § 2.40(a), (b)(1-4)).

6. On or about December 13, 2000, Respondent Manual Ramos failed to handle two juvenile lions as carefully and expeditiously as possible in a manner that does not cause trauma, in violation of § 2.131(a)(1) of the Regulations. (9 C.F.R. § 2.131(a)(1)).

7. On or about December 13, 2000, Respondent Manual Ramos failed to handle two juvenile lions as carefully and expeditiously as possible in a manner that does not cause behavioral stress, in violation of § 2.131(a)(1) of the Regulations. (9 C.F.R. § 2.131(a)(1)).

8. On or about December 13, 2000, Respondent Manual Ramos failed to handle two juvenile lions as carefully and expeditiously as possible in a manner that does not cause physical harm, in violation of § 2.131(a)(1) of the Regulations. (9 C.F.R. § 2.131(a)(1)).

9. On or about December 13, 2000, Respondent Manual Ramos failed to handle two juvenile lions as carefully and expeditiously as possible in a manner that does not cause unnecessary discomfort, in violation of §2.131(a)(1) of the Regulations. (9 C.F.R. § 2.131(a)(1)).

10. On or about December 13, 2000, Respondent Manual Ramos, and/or his agents, used physical abuse to train, work, or otherwise handle two juvenile lions, in violation of § 2.131(a)(2)(i) of the Regulations. (9 C.F.R. § 2.131(a)(2)(i)).

11. In view of the Respondent's three prior consent decisions involving the Act, the above violations will be found to be willful.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.

2. Between June 23, 2000, and the date of the filing of this proceeding, as set forth in the above Findings of Fact, Respondent Manuel Ramos knowingly failed to obey the cease and desist order made by the Secretary pursuant to section 2149(b) of the Act, in *In re Manuel Ramos, dba Oscanian Brothers Circus*, 59 Agric. Dec. 296 (2000), AWA Docket No. 99-0041 (Consent Decision and Order). 7 U.S.C. § 2149(b).

3. For the reasons set forth in the Findings of Fact, the Respondent Manuel Ramos violated the Act and the Regulations and Standards.

ORDER

1. Respondent Manuel Ramos, his 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 Manuel Ramos is assessed a civil penalty of \$3,300, for his knowing failures to obey the cease and desist order entered by the Secretary pursuant to section 2149(b) of the Act, in *In re Manuel Ramos, dba Oscanian Brothers Circus*, 59 Agric. Dec. 296 (2000).

3. Respondent Manuel Ramos is assessed a civil penalty of \$43,500 for his violations of the Regulations set forth herein. The civil penalty shall be paid by certified check or money order made payable to the Treasurer of the United States and sent to:

Colleen A. Carroll
United States Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW

Room 2343-South Building
Washington, DC 20250-1417

Payment of the civil penalty shall be sent to, and received by, Colleen A. Carroll within 60 days after service of this Order on Respondent Manuel Ramos. Respondent Manuel Ramos shall state on the certified check or money order that payment is in reference to AWA Docket No. 05-0016.

4. 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.
May 15, 2007

PETER M. DAVENPORT
Administrative Law Judge