

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 07-0154
)
Patti J. Van Meter, an individual, and Green)
Acres Exotics, Inc., an Indiana Non-Profit)
Corporation)
)
Respondents)

Ruling Denying Motion for Decision and Order By Reason of Admission of Facts

I am denying Complainant’s motion to adopt a decision and order by reason of admission of facts because many of the material facts necessary to support a finding that Respondents violated the Animal Welfare Act were either denied outright by Respondents in their answer, or Respondents stated that they had insufficient knowledge to admit or deny the allegations in their answer to the complaint.

The complaint in this matter was filed against Respondents on June 28, 2007, and was served by certified mail on July 2, 2007. After I granted an extension of time to file an answer, Respondents’ answer was filed on August 27, 2007. In the answer, filed by Ms. Van Meter on her own behalf and on behalf of Respondent Green Acres Exotics, Inc., Ms. Van Meter variously admitted, denied or stated Respondents were without sufficient knowledge to admit or deny the allegations presented in the complaint. On November 13, 2007, Counsel for Complainant wrote to Ms. Van Meter seeking confirmation that the paragraphs of the complaint that she admitted, denied or were without sufficient knowledge to admit or deny were “correct.” There is no record that

this letter was received by Ms. Van Meter, and it appears that no response was ever received by counsel for Complainant.

On December 28, 2007, Complainant filed a Motion for Adoption of Proposed Decision and Order which stated, in essence, that Respondents in their answer had admitted the material facts alleged in the complaint. A proposed decision was submitted for the signature of an administrative law judge, which included many, if not all, of the allegations specifically denied by respondents, as well as those where respondents stated they did not have sufficient knowledge to admit or deny. These documents were served on Respondents on January 18, 2008. Ms. Van Meter filed a request for a 30-day extension of time to file her response to the motion via fax on February 7, 2008, which I granted.¹ Respondents Objections to Complainants Motion for Decision and Order was filed with the Hearing Clerk on March 19, 2008. In her response, Ms. Van Meter vehemently denies ever violating the Animal Welfare Act.

While Complainant urges that I issue a decision “by reason of admission of facts” there are few, if any, material facts admitted that would justify the imposition of the highest civil penalty provided by the statute combined with a three year license suspension. Rather, the admission relied on by Complainant is the conclusion of law alleged in the complaint:

ALLEGED VIOLATION OF THE ACT AND REGULATIONS
33. On or about April 2004, Respondents failed to provide veterinary care to one black bear cub, in willful violation of section 2.40(b) of the Regulations.

Respondents admitted paragraph 33, which does not allege any material facts except for a failure to provide veterinary care to one black bear cub. However, Respondents denied

¹ For reasons undetermined, the request for a continuance was not served on Complainant. Since the document did not reach my desk for over a week, I granted the continuance until March 20, 2008.

the allegations in paragraph 11, which stated they had a disregard for the requirements of the Act, they denied the allegations of paragraph 15, which stated they owed a portion of a previously assessed civil penalty, they denied the allegations of paragraph 16 concerning the quality of care they provided for a bear cub, they denied the allegations of paragraph 17, concerning their alleged lack of good faith and history of previous violations, and they denied the allegations of paragraph 18 concerning the gravity of the violation. In spite of these specific denials, Complainant has included each of these allegations as an admitted matter in its proposed decision and order. Likewise, the ten allegations to which Respondents indicated they had insufficient knowledge to admit or deny are essentially treated as admitted by Complainant in its proposed decision and order.

Respondents have not admitted the **facts** that would support the proposed decision. While Respondents did admit, presumably through carelessness or confusion, that they willfully failed to provide veterinary care for a bear cub, they have denied virtually every material fact necessary to support that conclusion. Further, the factors Complainant cites to establish a severe sanction—a maximum civil penalty and a three year license suspension—are not supported by any facts admitted by Respondents in their answer. They denied not paying the previous penalty, their alleged lack of good faith, and the gravity of the violation. At the very least, their answer creates a conflict between all the material facts that were denied or which they had insufficient knowledge to admit or deny, and their apparent admission to a legal conclusion.

The rule under which Complainant is seeking this decision, 7 CFR § 1.139 of the Rules of Practice, seems to provide some guidance. The first sentence of the rule reads:

“The failure to file an answer, or the admission by the answer of **all the material allegations of fact** contained in the complaint, shall constitute a waiver of hearing.”

(Emphasis supplied). Here, where there is a denial or lack of knowledge of 15 different paragraphs of the allegations of the complaint, it would appear that the prerequisites to meeting this rule are not met on their face.

Thus, I deny the Motion for a Decision and Order by Reason of Admission of Facts.

MARC R. HILLSON
Chief Administrative Law Judge

April 16, 2008