

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	AWA Docket No. 06-0005
	)	
FOR THE BIRDS, INC., an Idaho	)	
corporation; JERRY LEROY KORN,	)	
an individual; and MICHAEL	)	
SCOTT KORN, an individual,	)	
	)	DECISION AND
Respondent.	)	ORDER

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 the respondents willfully violated the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 et seq.). This initial decision and order is entered pursuant to section 1.142(c) of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.142(c)).

The Administrator of the Animal and Plant Health Inspection Service ("APHIS") initiated this case in furtherance of USDA's statutory mandate under the Act to ensure that animals transported, sold or used for exhibition are treated humanely and carefully.<sup>1</sup> In its complaint, APHIS seeks penalties against respondents for violating the Act and the regulations and standards promulgated thereunder, 9 C.F.R. § 2.1 et seq. (the "Regulations" and "Standards"). The respondents filed answers denying the material allegations of the

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<sup>1</sup>The Animal Welfare Act, 7 U.S.C. § 2131 et seq. (the "Act"), was originally passed by Congress specifically to address the public's interest in preventing the theft of pets and in ensuring that animals used in research were treated humanely. The Act was amended to regulate the transportation, purchase, sale, housing, care, handling and treatment of animals used for exhibition purposes or as pets

complaint.

On April 29, 2008, I presided over an oral hearing in this matter in Boise, Idaho. Complainant was represented by Colleen Carroll, Office of the General Counsel, U.S. Department of Agriculture. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn were *pro se*.

None of the aforementioned respondents appeared at the oral hearing. All of the respondents were duly -notified of the hearing. None of the respondents had good cause not to appear at the hearing. Said respondents are deemed to have waived the right to an oral hearing and to have admitted any facts that may have been presented at the hearing. Such failure by each of the respondents shall also constitute an admission of all of the material allegations of fact contained in the complaint. The complainant orally moved for issuance of a decision pursuant to section 1.141(e) of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.141(e)).

I granted complainant's motion, and issue this initial decision and order on April 29, 2008.

#### Findings of Fact

1. Respondent For the Birds, Inc., is an Idaho corporation whose agent for service of process is Jerry L. Korn, 1506 Happy Valley Road, Nampa, Idaho 83687. At all times mentioned herein, respondent For the Birds, Inc., was an exhibitor as that term is defined in the Act and the Regulations.

2. Respondent Jerry LeRoy Korn is an individual whose mailing address is 1506

Happy Valley Road, Nampa, Idaho 83687. At all times mentioned herein, said respondent was an exhibitor as that term is defined in the Act and the Regulations. Between 2001 and May 23, 2003, said respondent held Animal Welfare Act license number 82-C-0035, issued to “JERRY L. AND SUSAN F. KORN DBA FOR THE BIRDS,” which license was cancelled on May 23, 2003. That license was revoked by an order of the Secretary of Agriculture issued on June 22, 2005.

3. Respondent Michael Scott Korn is an individual whose mailing address is 1506 Happy Valley Road, Nampa, Idaho 83687. At all times mentioned herein, said respondent was an exhibitor as that term is defined in the Act and the Regulations.

4. Respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn have a moderate-sized business exhibiting farm, wild and exotic animals. The gravity of the violations alleged in this complaint is great, and include repeated instances in which these respondents knowingly exhibited animals without having a valid license, and failed to handle animals humanely. Said respondents have continually failed to comply with the Regulations, after having been repeatedly advised of deficiencies. Respondents For the Birds, Inc., and Jerry LeRoy Korn have not shown good faith, having demonstrated an unwillingness to comply with the Act’s and the Regulations’ prohibition against exhibiting animals without having a valid license. Respondents For the Birds, Inc., and Jerry LeRoy Korn have a history of previous violations. *See In re For the Birds, Inc., et al.*, 64 Agric. Dec. 306 (2005), WL 1524662 (Decision and Order as to For the Birds, Inc., and Jerry L. Korn).

#### Conclusions of Law

1. On November 13, 2004, respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn exhibited animals at 2400 Greenhurst Road, Nampa, Idaho 83686, without having been licensed by the Secretary to do so, in willful violation of sections 2.1(a) and 2.100(a) of the Regulations. 9 C.F.R. §§ 2.1(a), 2.100(a).

2. On November 26, December 4, December 11, and December 18, 2004, respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn exhibited animals at Sportsmens' Warehouse in Meridian, Idaho, without having been licensed by the Secretary to do so, in willful violation of sections 2.1(a) and 2.100(a) of the Regulations. 9 C.F.R. §§ 2.1(a), 2.100(a).

3. On or about January 12, 2005, respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn exhibited animals at Meridian Middle School, Meridian, Idaho, without having been licensed by the Secretary to do so, in willful violation of sections 2.1(a) and 2.100(a) of the Regulations. 9 C.F.R. §§ 2.1(a), 2.100(a).

4. On November 13, 2004, respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to handle infant tigers as expeditiously and carefully as possible in a manner that would not cause them trauma, unnecessary discomfort, behavioral stress, or physical harm, in willful violation of the handling regulations. 9 C.F.R. § 2.131(b)(1).

5. On November 13, 2004, respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the

public, in willful violation of the handling regulations, and specifically allowed the public to handle infant tigers without any barrier or distance. 9 C.F.R. § 2.131(c)(1).

6. On November 13, 2004, respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn exposed young animals (infant tigers approximately five weeks old) to excessive public handling, or exhibited them for periods of time that would be detrimental to their health or well-being, in willful violation of the handling regulations. 9 C.F.R. § 2.131(c)(3).

7. On November 13, 2004, respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn exhibited animals under conditions that were inconsistent with the animals' well-being, and specifically, said respondents exhibited infant (5-week-old) tigers to the public outside of any enclosures, and allowed the public to handle the infant tigers for extended periods of time, for the purpose of selling "photo shoot" opportunities, in willful violation of the handling regulations. 9 C.F.R. § 2.131(d)(1).

8. On December 11 and December 18, 2004, respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to handle young tigers during public exhibition at Sportsman's Warehouse in Meridian, Idaho, as expeditiously and carefully as possible in a manner that would not cause them trauma, unnecessary discomfort, behavioral stress, or physical harm, in willful violation of the handling regulations. 9 C.F.R. § 2.131(b)(1).

9. On December 11 and December 18, 2004, respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to handle animals during public exhibition at Sportsman's Warehouse in Meridian, Idaho, so there was minimal risk of harm to the animals

and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, in willful violation of the handling regulations, and specifically exhibited young tigers to the public without any barrier or distance. 9 C.F.R. § 2.131(c)(1).

10. On December 11 and December 18, 2004, respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn exposed young tigers to excessive public handling, or exhibited them for periods of time that would be detrimental to their health or well-being, at Sportsman's Warehouse in Meridian, Idaho, in willful violation of the handling regulations. 9 C.F.R. § 2.131(c)(3).

11. On December 11 and December 18, 2004, respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn exhibited animals during public exhibition at Sportsman's Warehouse in Meridian, Idaho, under conditions that were inconsistent with the animals' well-being, and specifically, said respondents allowed the public to handle young tigers for extended periods of time, for the purpose of selling "photo shoot" opportunities, in willful violation of the handling regulations. 9 C.F.R. § 2.131(d)(1).

12. On January 12, 2005, respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn failed to handle young tigers during public exhibition at Meridian Middle School, Meridian, Idaho, as expeditiously and carefully as possible in a manner that would not cause them trauma, unnecessary discomfort, behavioral stress, or physical harm, in willful violation of the handling regulations. 9 C.F.R. § 2.131(b)(1).

13. On January 12, 2005, respondents For the Birds, Inc., Jerry LeRoy Korn and

Michael Scott Korn failed to handle animals at Meridian Middle School, Meridian, Idaho, so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, and specifically, said respondents exhibited juvenile tigers to the public, without any distance or barriers between the animals and the public, in willful violation of the handling regulations. 9 C.F.R. § 2.131(c)(1).

14. On January 12, 2005, respondents For the Birds, Inc., Jerry LeRoy Korn and Michael Scott Korn exhibited animals at Meridian Middle School, Meridian, Idaho, under conditions that were inconsistent with the animals' well-being, and specifically, said respondents allowed the public to handle young tigers for extended periods of time, for the purpose of selling "photo shoot" opportunities, in willful violation of the handling regulations. 9 C.F.R. § 2.131(d)(1).

#### Order

1. Respondents, their 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.

2. Respondents are each assessed a civil penalty of \$57,750, for their 21 violations herein, to be paid by certified check or money order made payable to the Treasurer of the United States, within 60 days of the date of this decision and order, and remitted to:

Colleen A. Carroll  
Office of the General Counsel  
U.S. Department of Agriculture

1400 Independence Avenue, S.W.  
Room 2325B, South Building  
Washington, D.C. 20250-1417

The provisions of this order shall become effective immediately. Copies of this decision shall be served upon the parties.

Done at Boise, Idaho  
this 29<sup>th</sup> day of April, 2008

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Jill S. Clifton  
Administrative Law Judge