

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	
TIGER RESCUE, a California corporation;)	AWA Docket No. 07-0184
JOHN HANS WEINHART, an individual;)	
MARLA SMITH, an individual; and)	
WENDELIN R. RINGEL, an individual,)	Decision and Order as to only
)	JOHN HANS WEINHART
Respondents.)	by Reason of Default

This proceeding was instituted under the Animal Welfare Act (“AWA” or “Act”), as amended (7 U.S.C. § 2131 *et seq.*), by a Complaint filed on August 30, 2007, by the Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (frequently herein “Complainant” or “APHIS”), alleging that the respondents willfully violated the Act and the regulations and standards promulgated thereunder (“Regulations” and “Standards”). 9 C.F.R. § 1.1 *et seq.*

The Complainant, APHIS, is represented by Colleen A. Carroll, Esq., with the Office of the General Counsel (Marketing Division), United States Department of Agriculture, 1400 Independence Avenue, S.W., Washington D.C. 20250-1417.

John Hans Weinhart, respondent, is an individual (frequently herein “Respondent Weinhart” or “Respondent”), whose address was 9478 Bellegrave Avenue, Riverside, California 92509.

Procedural History

On August 31, 2007, the Hearing Clerk sent to Respondent John Hans Weinhart, by certified mail, return receipt requested, a copy of the Complaint and the Rules of Practice governing proceedings under the Act (7 C.F.R. §§ 1.130-1.151), together with the Hearing Clerk's service letter, addressed to "John Hans Weinhart, d/b/a Tiger Rescue, 9478 Bellegrave Avenue, Riverside, CA 92509." The Complaint package was returned by the United States Postal Service to the Office of the Hearing Clerk, marked "RETURNED TO SENDER" "Refused." On September 14, 2007, the Hearing Clerk re-mailed the Complaint package to Respondent Weinhart by ordinary mail at the same address, pursuant to section 1.147(c) of the Rules of Practice. 7 C.F.R. § 1.147(c).

Respondent John Hans Weinhart was informed in the Hearing Clerk's service letter 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.

Respondent Weinhart did not file an answer to the Complaint. His time for filing an answer expired on October 4, 2007.

This case was assigned to me, Jill S. Clifton, on April 9, 2008. APHIS's Motion for Adoption of Proposed Decision and Order as to Respondent John Hans Weinhart, filed October 23, 2007, is before me. The Hearing Clerk, on October 24, 2007, sent to Respondent John Hans Weinhart, by certified mail, return receipt requested, a copy of the Motion (for Decision), together with the Hearing Clerk's letter dated October 24, 2007, addressed to "John Hans Weinhart, d/b/a Tiger Rescue, 9478 Bellegrave Avenue, Riverside, CA 92509." The Motion (for Decision) package was returned by the United States Postal Service to the

Office of the Hearing Clerk, marked “RETURNED TO SENDER” “UNCLAIMED.” On December 20, 2007, the Hearing Clerk re-mailed the Motion package to Respondent Weinhart by ordinary mail at the same address. Respondent Weinhart did not respond. His time for filing a response to the Motion expired on January 9, 2008.

The Rules of Practice provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. §1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139.

Accordingly, the material allegations in the Complaint, which are admitted by Respondent Weinhart’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 John Hans Weinhart is an individual whose address was 9478 Bellegrave Avenue, Riverside, California 92509. Respondent Weinhart was an exhibitor, as that term is defined in the Act and the Regulations, at all times material herein. Between October 6, 2000, and October 17, 2003, Respondent Weinhart held Animal Welfare Act license number 93-C-0825, issued to “JOHN WEINHART DBA: TIGER RESCUE,” and was President of respondent Tiger Rescue. Respondent Weinhart previously held Animal Welfare Act licenses 21-A-005 and 21-C-021, as well as 93-C-0199, which license has been terminated.

2. APHIS conducted inspections of Respondent Weinhart’s facilities, animals and

records on November 20, 2002, November 25, 2002, December 10, 2002, January 28, 2003, April 26, 2003, and April 30, 2003. On April 22 and 23, 2003, the Riverside County Department of Animal Services and the California Department of Fish and Game executed a search warrant at the facilities and home of Respondent Weinhart, at 9474 and 9478 Bellegrave Avenue, Glen Avon, California, and 1350 Agua Mansa Road, Colton, California.

3. Respondent Weinhart operated a large business. On August 29, 2001, Respondent Weinhart represented to APHIS that he and respondent Tiger Rescue had custody and control of 65 wild and exotic felines and 20 farm animals used in exhibition. Respondent Weinhart used these animals for economic gain.

4. The gravity of the violations detailed in this Decision is of the utmost severity. Respondent Weinhart neglected and abused many animals. By April 2003, approximately 90 animals (mostly tigers) died as a direct result of Respondent Weinhart's lack of care and husbandry. Respondent Weinhart also handled animals in a manner that was unsafe for the animals and the public, failed to provide minimally-adequate housing or veterinary care to animals in obvious distress, and failed to provide sufficient food to animals. On April 22, 2005, Respondent Weinhart was convicted by the State of California of 13 counts of felony animal cruelty, and was sentenced to two years in jail and five years probation.

5. Respondent Weinhart has not shown good faith. Respondent Weinhart provided false information to APHIS in his 2000 application for an exhibitor's license, namely, a representation that "direct public contact is not allowed," falsely portrayed his facility, located at 1350 Agua Mansa Road, Colton, California, to the public as a "sanctuary" for abused animals, and maintained a separate, undisclosed, animal facility at his home in

Glen Avon, California. Respondent Weinhart has failed to obey the cease and desist order issued in *In re John Weinhart*, AWA Docket No. 162, 40 Agric. Dec. 1924 (1981).

6. Respondent Weinhart has a history of noncompliance, *In re John Weinhart*, 40 Agric. Dec. 1924 (1981), and received written warnings in April 1998 and January 1990. In 1981, Respondent Weinhart was ordered to cease and desist from violating the Act and the Regulations and Standards, as follows:

“Respondent John Weinhart shall comply with each and every provision of the Animal Welfare Act...and the standards and regulations issued thereunder...and shall cease and desist from any violation thereof.” *In re John Weinhart*, 40 Agric. Dec. 1924 (1981).

7. Between November 16, 2002, and November 28, 2003, Respondent John Weinhart knowingly failed to obey the cease and desist order made by the Secretary in *In re John Weinhart*, AWA Docket No.162, 40 Agric. Dec. 1924 (1981), pursuant to section 2149(b) of the Act. 7 U.S.C. § 2149(b).

8. Between November 16, 2002, and April 23, 2003, Respondent Weinhart operated as an exhibitor at premises for which a valid license had not been issued or made applicable.

9. On or about April 22, 2003, Respondent Weinhart failed to notify APHIS of an additional site that Respondent operated at his home.

10. On or about the following dates, Respondent Weinhart failed to comply with the attending veterinarian and veterinary care regulations:

a. November 20, November 22, and December 10, 2002. Respondent Weinhart failed to employ a full-time veterinarian under formal arrangements, or a

part-time veterinarian under formal arrangements that included a written program of veterinary care and regularly-scheduled visits to the respondents' premises.

b. November 20 and November 22, 2002. Respondent Weinhart failed to provide adequate veterinary care to animals, specifically:

- i. four severely underweight and undernourished black leopards.
- ii. three underweight and undernourished black leopards and numerous underweight and undernourished tigers.
- iii. one black leopard suffering from untreated facial wounds.
- iv. one underweight and undernourished female tiger (Jaya) suffering from untreated diarrhea, and numerous untreated skin lesions on her body and legs.
- v. one female lion and four tigers that were underweight and undernourished with poor coats.
- vi. four female tigers that were severely underweight and undernourished, with protruding hipbones, visible ribs, and poor coats.
- vii. one male white tiger (Centaur) suffering from several untreated skin lesions.

c. November 20, November 22 and December 10, 2002. Respondent Weinhart failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, and the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend and holiday care, and

specifically, failed to maintain minimally-adequate records showing routine care and observations of animals.

d. November 25, 2002. Respondent Weinhart failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, and the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and failed to provide minimally-adequate veterinary care to animals that were suffering, specifically Nemo, an underweight male tiger with untreated bloody paws, whose enclosure had blood on the floor, and Jaya, an emaciated female tiger with untreated skin lesions on her back, along her right flank, and over her face, and, consequently, APHIS inspectors issued to Respondent Weinhart a notice of intent to confiscate these two tigers unless they were treated within 24 hours.

e. November 25, 2002. Respondent Weinhart failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and daily observation of animals, and failed to provide minimally-adequate veterinary care to animals that were suffering, specifically a tiger in the second pen on the west side of the facility, that had an untreated draining abscess on its neck.

f. November 25 and December 10, 2002, and April 22 and April 23, 2003. Respondent Weinhart failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel,

equipment, and services, and the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and specifically, failed to take steps to determine the cause of the high mortality rate in tiger litters born at respondents' facilities, including the felid cubs whose remains were contained in respondents' freezer.

g. December 10, 2002. Respondent Weinhart failed to establish and maintain programs of adequate veterinary care that include the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and specifically, Respondent Weinhart failed to take steps to establish an adequate feeding and separation program for animals, resulting in a large number of underweight, unthrifty animals bearing fight scars.

h. January 28, 2003. Respondent Weinhart failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, the availability of emergency, weekend and holiday care, and adequate guidance to personnel involved in the care and use of animals, and specifically, failed to provide veterinary care to a goat suffering from tetanus.

e. April 22, 2003. Respondent Weinhart failed to obtain adequate veterinary care for animals, specifically:

- i. two black domestic short-hair cats with severe skin problems.
- ii. one small white female goat with overgrown front hooves (four

inches), that had difficulty walking and standing, and had a swollen left knee.

iii. two donkeys with severely (7 inches) overgrown hooves that curled up and away from the feet, and one donkey that could not stand up.

f. April 22, 2003. Respondent Weinhart failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend and holiday care, and adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, analgesia, tranquilization and euthanasia, and specifically failed to provide minimally-adequate veterinary care to animals and to document the condition of animals, including 53 dead felid cubs.

g. April 23, 2003. Respondent Weinhart failed to obtain minimally-adequate veterinary care for animals, specifically, two black domestic short-hair cats suffering from extreme mite infection (*notoedres cati*), that was so advanced as to require their euthanasia.

h. April 26, 2003. Respondent Weinhart failed to have an attending veterinarian who could provide adequate veterinary care to animals, and failed to ensure that he had an attending veterinarian with appropriate authority to ensure the provision of adequate veterinary care, and specifically, Respondent Weinhart failed to allow access to the facility and animals.

i. April 26, 2003. Respondent Weinhart failed to establish and maintain

programs of adequate veterinary care that include daily observation and a mechanism for frequent communication with the attending veterinarian, and specifically, a tiger that had a surgical procedure on April 13, 2003, had not been seen by a veterinarian since, Respondent Weinhart was not following the veterinarian's instructions, and the veterinarian was not aware of the animal's condition and had not documented the animal's progress or lack thereof.

j. April 26, 2003. Respondent Weinhart failed to provide adequate veterinary care to (i) a male tiger with a swollen left forelimb; (ii) a tiger with an open wound on its back; (iii) pot-bellied pigs with reddened skin, lack of hair and itchiness; and (iv) animals with diarrhea.

11. On or about November 20, 2002, Respondent Weinhart failed to identify fourteen leopards.

12. On or about November 20, November 22, November 25, and December 2, 2002, and April 22, 2003, Respondent Weinhart:

- a. failed to make, keep and maintain any records of animals.
- b. failed to make, keep and maintain records of the name of and address of the person from whom Respondent Weinhart acquired animals.
- c. failed to make, keep and maintain records of the USDA license or registration number or vehicle license number and driver's license number of the person from whom Respondent Weinhart acquired animals.
- d. failed to make, keep and maintain records of the date of purchase, acquisition, sale and disposition of animals.

13. On November 25, 2002, Respondent Weinhart refused to provide to the APHIS inspectors, information concerning the person from whom he acquired the female tiger Jaya.

14. On or about the following dates, Respondent Weinhart failed to comply with the handling regulations, as follows:

a. November 16, November 20, and November 22, 2002. Respondent Weinhart, during public exhibition, allowed members of the public to handle animals (including large felines) directly without any distance or any barriers.

15. On or about the following dates, Respondent Weinhart:

a. April 22, 2003. Failed to feed dogs wholesome, uncontaminated food, in sufficient quantities.

b. April 22, 2003. Failed to provide adequate potable water, in clean receptacles, to dogs.

c. April 30, 2003. Housed three 20-pound dogs in a “VariKennel” that was adequate for only one such dog.

d. April 30, 2003. Failed to remove built-up excreta from the “VariKennel” that housed three dogs.

e. April 30, 2003. Failed to establish an effective program of pest control for eight dogs housed at Respondent Weinhart’s facility.

f. April 30, 2003. Failed to have sufficient employees to attain the level of animal care and husbandry required by the Regulations and Standards.

16. On or about the following dates, Respondent Weinhart:

- a. November 16, 2002. Failed to remove excreta from lion and tiger enclosures.
- b. November 20, 2002. Failed to construct his facility of such material and such strength as appropriate for the animals involved, and to maintain his facility in good repair to protect the animals from injury, and specifically:
 - i. the camel enclosures had large 24-inch gaps, the chain link fencing was warped, bent and buckled, and the bottom was turned into the animals' enclosure, exposing the animals to pointed wire ends;
 - ii. the enclosure housing a male leopard, was missing part of the roof, exposing nails;
 - iii. the shift cage for a male lion was broken, exposing nails;
 - iv. the tops of the two enclosures housing a female lion and a male lion (Nemo) were broken, exposing nails;
 - v. the enclosures housing leopards had torn chicken wire, exposing the animals to sharp wire ends;
 - vi. the main enclosures housing felids had boards that had been torn from the rear wall that were lying inside the enclosures;
 - vii. the roof of the east side enclosures housing female tigers was separating from the rest of the structure;
 - viii. the enclosures housing goats had chain link turned up at its base, exposing sharp wire ends;
 - ix. the torn water container in the enclosure housing three tiger

cubs exposed the animals to sharp metal edges;

x. Respondent Weinhart housed camels in enclosures constructed of chain link fencing, which material is not appropriate for such animals; and

xi. Respondent Weinhart housed three pot-bellied pigs in Rubbermaid tool sheds, which trapped the animals inside with inadequate ventilation, and which enclosures were not appropriate for such animals.

c. November 20, 2002. Failed to provide sufficient shade for white tiger housed outdoors in end cage on north side of facility.

d. November 20, 2002. Failed to provide sufficient shelter from inclement weather for large felids, goats, and a camel.

e. November 20, 2002, January 28 and April 22, April 23, April 26 and April 30, 2003. Failed to remove excreta and food waste from nearly all animal enclosures.

f. November 20, 2002, and January 28, and April 26 and April 30, 2003. Failed to provide a suitable method to rapidly eliminate excess water from animal enclosures.

g. December 10, 2002. Failed to construct his facility of such material and such strength as appropriate for the animals involved, and to maintain the facility in good repair to protect the animals from injury, and specifically the camel enclosures had large 24-inch gaps, the chain link fencing was warped, bent and buckled, and the bottom was turned into the animals' enclosure, exposing the animals to pointed wire ends.

h. January 28, 2003. Failed to provide sufficient shelter from inclement weather for large felids, goats, and pigs.

i. January 28, 2003. Failed to provide sufficient shade for large felids, goats, and pigs.

j. April 22, 2003. Failed to construct his facility of such material and such strength as appropriate for the animals involved, and to maintain the facility in good repair to protect the animals from injury, and specifically, housed ten live lion cubs and two live leopard cubs in an attic area of his home, in filthy conditions.

k. April 26 and April 30, 2003. Failed to store supplies of food and bedding in facilities that adequately protected them from deterioration and contamination, and specifically, there was no adequate means of storing food supplies at Respondent Weinhart's facilities.

l. April 26 and April 30, 2003. Failed to provide sufficient shade for animals, and specifically, most of the shelters have been blown off of the chain link rooftops of animal enclosures.

m. April 30, 2003. Failed to provide sufficient shade for animals, and specifically, housed a tiger (Trevor) in a transport enclosure that offered the animal no shelter from the sun.

n. April 30, 2003. Failed to construct his facility of such material and such strength as appropriate for the animals involved, and to maintain the facility in good repair to protect the animals from injury, and specifically, (i) the camel enclosure had a non-functioning gate; (ii) the old camel enclosure had a 12-inch gap, the chain

link fencing was warped, bent and buckled, and the poles were leaning outward; and

(iii) shelter boxes for large felids were in a state of disrepair.

o. April 30, 2003. Failed to provide sufficient shelter from inclement weather for all animals.

p. April 30, 2003. Failed to provide adequate space to a deer housed in a “VariKennel.”

17. On or about the following dates, Respondent Weinhart:

a. November 16, November 20, 2002, and January 28, April 22, April 23, April 26 and April 30, 2003. Failed to feed large felids wholesome, uncontaminated food in sufficient quantities.

b. November 20, November 22, November 25, and December 10, 2002, and January 28, April 22, April 23, April 26 and April 30, 2003. Failed to provide potable water to animals, in clean receptacles.

c. November 20 and November 22, 2002. Failed to remove excreta from primary enclosures as often as necessary, and in particular, the gap between two adjacent tiger enclosures (housing Jaya and Nemo), and around the den boxes, were filled with feces.

d. November 20 and November 22, 2002, and April 26 and April 30, 2003. Failed to establish and maintain a safe and effective program for the control of insects, and other pests.

e. November 20, November 22, and December 10, 2002, and January 28, April 22 and April 23, 2003. Failed to keep premises clean and good repair in order to

protect animals from injury and to facilitate prescribed husbandry practices, and specifically, inspectors observed accumulations of junk, discarded materials, buildup of filth, food debris, manure, and excreta throughout the facility.

f. November 20, November 22, and December 10, 2002, and April 26 and April 30, 2003. Failed to employ a sufficient number of adequately trained employees to maintain the professionally-acceptable level of husbandry practices.

g. November 16, November 20, November 25 and December 10, 2002. Housed incompatible animals in the same primary enclosures, and housed animals near animals that interfere with their health or well-being, and specifically large felids exhibited scars and open wounds indicative of fighting activity.

h. December 10, 2002, and January 28, April 22, April 23, and April 26, 2003. Failed to remove excreta from primary enclosures as often as necessary.

i. April 30, 2003. Housed seven goats, two pot-bellied pigs, and a llama in the bed of a pick-up truck, with inadequate space, extraneous materials that could harm the animals, and no shade or shelter.

Conclusions

1. Between November 16, 2002, and November 28, 2003, Respondent Weinhart knowingly failed to obey the cease and desist order made by the Secretary in *In re John Weinhart*, AWA Docket No. 162, 40 Agric. Dec. 1924 (1981), 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). 7 C.F.R. § 3.91(b)(2)(v).

2. Between November 16, 2002, and April 23, 2003, Respondent Weinhart operated as an exhibitor at premises for which a valid license had not been issued or made applicable, in willful violation of section 2.1 of the Regulations. 9 C.F.R. § 2.1.

3. On or about April 22, 2003, Respondent Weinhart failed to notify APHIS of an additional site that Respondent Weinhart operated at his home, in willful violation of section 2.8 of the Regulations. 9 C.F.R. § 2.8.

4. On or about the following dates, Respondent Weinhart willfully violated the attending veterinarian and veterinary care regulations (9 C.F.R. § 2.40) as follows:

a. November 20, November 22, and December 10, 2002. Respondent Weinhart failed to employ a full-time veterinarian under formal arrangements, or a part-time veterinarian under formal arrangements that included a written program of veterinary care and regularly-scheduled visits to the respondents' premises. 9 C.F.R. § 2.40(a)(1).

b. November 20 and November 22, 2002. Respondent Weinhart failed to provide adequate veterinary care to animals, in violation of 9 C.F.R. § 2.40(a), specifically:

- i. four severely underweight and undernourished black leopards.
- ii. three underweight and undernourished black leopards and numerous underweight and undernourished tigers.
- iii. one black leopard suffering from untreated facial wounds.
- iv. one underweight and undernourished female tiger (Jaya) suffering from untreated diarrhea, and numerous untreated skin lesions on her

body and legs.

v. one female lion and four tigers that were underweight and undernourished with poor coats.

vi. four female tigers that were severely underweight and undernourished, with protruding hipbones, visible ribs, and poor coats.

vii. one male white tiger (Centaur) suffering from several untreated skin lesions.

c. November 20, November 22 and December 10, 2002. Respondent Weinhart failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, and the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend and holiday care, and specifically, failed to maintain minimally-adequate records showing routine care and observations of animals. 9 C.F.R. §§ 2.40(b)(1), 2.40(b)(2), 2.40(b)(4).

d. November 25, 2002. Respondent Weinhart failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, and the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and failed to provide minimally-adequate veterinary care to animals that were suffering, specifically Nemo, an underweight male tiger with untreated bloody paws, whose enclosure had blood on the floor, and Jaya, an emaciated female tiger with untreated skin lesions on her back, along her right flank, and over her face, and, consequently,

APHIS inspectors issued to Respondent Weinhart a notice of intent to confiscate these two tigers unless they were treated within 24 hours. 9 C.F.R. §§ 2.40(a), 2.40(b)(1), 2.40(b)(2).

e. November 25, 2002. Respondent Weinhart failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and daily observation of animals, and failed to provide minimally-adequate veterinary care to animals that were suffering, specifically a tiger in the second pen on the west side of the facility, that had an untreated draining abscess on its neck. 9 C.F.R. §§ 2.40(a), 2.40(b)(2), 2.40(b)(3).

f. November 25 and December 10, 2002, and April 22 and April 23, 2003. Respondent Weinhart failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, and the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and specifically, failed to take steps to determine the cause of the high mortality rate in tiger litters born at respondents' facilities, including the felid cubs whose remains were contained in respondents' freezer. 9 C.F.R. §§ 2.40(b)(1), 2.40(b)(2).

g. December 10, 2002. Respondent Weinhart failed to establish and maintain programs of adequate veterinary care that include the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and specifically,

Respondent Weinhart failed to take steps to establish an adequate feeding and separation program for animals, resulting in a large number of underweight, unthrifty animals bearing fight scars. 9 C.F.R. § 2.40(b)(2).

h. January 28, 2003. Respondent Weinhart failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend and holiday care, and adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, analgesia, tranquilization and euthanasia, and specifically, failed to provide veterinary care to a goat suffering from tetanus. 9 C.F.R. §§ 2.40(a), 2.40(b)(1), 2.40(b)(2), 2.40(b)(4).

i. April 22, 2003. Respondent Weinhart failed to obtain adequate veterinary care for animals, in violation of 9 C.F.R. § 2.40(a), specifically:

- i. two black domestic short-hair cats with severe skin problems.
- ii. one small white female goat with overgrown front hooves (four inches), that had difficulty walking and standing, and had a swollen left knee.
- iii. two donkeys with severely (7 inches) overgrown hooves that curled up and away from the feet, and one donkey that could not stand up.

j. April 22, 2003. Respondent Weinhart failed to establish and maintain programs of adequate veterinary care that include the availability of appropriate facilities, personnel, equipment, and services, the use of appropriate methods to

prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend and holiday care, and adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, analgesia, tranquilization and euthanasia, and specifically failed to provide minimally-adequate veterinary care to animals and to document the condition of animals, including 53 dead felid cubs. 9 C.F.R. §§ 2.40(b)(1), 2.40(b)(2), 2.40(b)(4).

k. April 23, 2003. Respondent Weinhart failed to obtain minimally-adequate veterinary care for animals, specifically, two black domestic short-hair cats suffering from extreme mite infection (*notoedres cati*), that was so advanced as to require their euthanasia. 9 C.F.R. § 2.40(a).

l. April 26, 2003. Respondent Weinhart failed to have an attending veterinarian who could provide adequate veterinary care to animals, and failed to ensure that he had an attending veterinarian with appropriate authority to ensure the provision of adequate veterinary care, and specifically, Respondent Weinhart failed to allow access to the facility and animals. 9 C.F.R. §§ 2.40(a), 2.40(a)(2).

m. April 26, 2003. Respondent Weinhart failed to establish and maintain programs of adequate veterinary care that include daily observation and a mechanism for frequent communication with the attending veterinarian, and specifically, a tiger that had a surgical procedure on April 13, 2003, had not been seen by a veterinarian since, Respondent Weinhart was not following the veterinarian's instructions, and the veterinarian was not aware of the animal's condition and had not documented the animal's progress or lack thereof. 9 C.F.R. § 2.40(b)(3).

n. April 26, 2003. Respondent Weinhart failed to provide adequate veterinary care to (i) a male tiger with a swollen left forelimb; (ii) a tiger with an open wound on its back; (iii) pot-bellied pigs with reddened skin, lack of hair and itchiness; and (iv) animals with diarrhea. 9 C.F.R. § 2.40(a).

5. On or about November 20, 2002, Respondent Weinhart willfully violated the identification regulations (9 C.F.R. § 2.50), by failing to identify one or more animals other than dogs and cats confined in a primary enclosure, and specifically, failed to identify fourteen leopards. 9 C.F.R. §§ 2.50(e)(2), 2.50(e)(3).

6. On or about November 20, November 22, November 25, and December 2, 2002, and April 22, 2003, Respondent Weinhart willfully violated the record-keeping regulations (9 C.F.R. § 2.75(b)(1)), by failing to make, keep and maintain records or forms that fully and correctly disclose required information concerning animals other than dogs and cats purchased or otherwise acquired, owned, held, leased, or otherwise in respondents' possession or under respondents' control, or transported, sold, euthanized, or otherwise disposed of, and specifically:

- a. failed to make, keep and maintain any records of animals.
- b. failed to make, keep and maintain records of the name of and address of the person from whom Respondent Weinhart acquired animals.
- c. failed to make, keep and maintain records of the USDA license or registration number or vehicle license number and driver's license number of the person from whom Respondent Weinhart acquired animals.
- d. failed to make, keep and maintain records of the date of purchase,

acquisition, sale and disposition of animals.

7. On November 25, 2002, Respondent Weinhart refused to provide to the APHIS inspectors, information concerning the person from whom he acquired the female tiger Jaya, in willful violation of section 2.125 of the Regulations. 9 C.F.R. § 2.125.

8. On or about the following dates, Respondent Weinhart willfully violated the handling regulations (9 C.F.R. § 2.131), as follows:

November 16, November 20, and November 22, 2002. Respondent Weinhart failed to handle animals during public exhibition so that there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the public so as to assure the safety of the animals and the public, and specifically, allowed members of the public to handle animals (including large felines) directly without any distance or any barriers. 9 C.F.R. § 2.131(b)(1).

9. On or about the following dates, Respondent Weinhart willfully violated section 2.100(a) of the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the general facilities and operating standards for dogs, as follows:

a. April 22, 2003. Respondent Weinhart failed to feed dogs wholesome uncontaminated food in sufficient quantities. 9 C.F.R. § 3.9.

b. April 22, 2003. Respondent Weinhart failed to provide dogs with adequate potable water in clean receptacles. 9 C.F.R. § 3.10.

c. April 30, 2003. Respondent Weinhart failed to house dogs in primary enclosures that offered them an adequate amount of space, and specifically, housed three 20-pound dogs in a “VariKennel” that was adequate for only one such dog. 9

C.F.R. § 3.6.

d. April 30, 2003. Respondent Weinhart failed to remove excreta from primary enclosures for dogs as often as necessary, and specifically, there was a buildup of excreta in the “VariKennel” that housed three dogs. 9 C.F.R. § 3.11(a).

e. April 30, 2003. Respondent Weinhart failed to establish an effective program of pest control for eight dogs housed at Respondent Weinhart’s facility. 9 C.F.R. § 3.11(d).

f. April 30, 2003. Respondent Weinhart failed to have sufficient employees to attain the level of animal care and husbandry required by the Regulations and Standards. 9 C.F.R. § 3.12.

10. On or about the following dates, Respondent Weinhart willfully violated section 2.100(a) of the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the general facilities and operating standards for warm-blooded animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals (9 C.F.R. §§ 3.125-3.128), as follows:

a. November 16, 2002. Respondent Weinhart failed to provide for the removal of animal waste, and specifically, failed to remove excreta from lion and tiger enclosures. 9 C.F.R. § 3.125(d).

b. November 20, 2002. Respondent Weinhart failed to construct his facility of such material and such strength as appropriate for the animals involved, and to maintain his facility in good repair to protect the animals from injury (9 C.F.R. § 3.125(a)), and specifically:

- i. the camel enclosures had large 24-inch gaps, the chain link fencing was warped, bent and buckled, and the bottom was turned into the animals' enclosure, exposing the animals to pointed wire ends;
- ii. the enclosure housing a male leopard, was missing part of the roof, exposing nails;
- iii. the shift cage for a male lion was broken, exposing nails;
- iv. the tops of the two enclosures housing a female lion and a male lion (Nemo) were broken, exposing nails;
- v. the enclosures housing leopards had torn chicken wire, exposing the animals to sharp wire ends;
- vi. the main enclosures housing felids had boards that had been torn from the rear wall that were lying inside the enclosures;
- vii. the roof of the east side enclosures housing female tigers was separating from the rest of the structure;
- viii. the enclosures housing goats had chain link turned up at its base, exposing sharp wire ends;
- ix. the torn water container in the enclosure housing three tiger cubs exposed the animals to sharp metal edges;
- x. Respondent Weinhart housed camels in enclosures constructed of chain link fencing, which material is not appropriate for such animals; and
- xi. Respondent Weinhart housed three pot-bellied pigs in Rubbermaid tool sheds, which trapped the animals inside with inadequate

ventilation, and which enclosures were not appropriate for such animals.

c. November 20, 2002. Respondent Weinhart failed to provide sufficient shade for white tiger housed outdoors in end cage on north side of facility. 9 C.F.R. § 3.127(a).

d. November 20, 2002. Respondent Weinhart failed to provide sufficient shelter from inclement weather for large felids, goats, and a camel. 9 C.F.R. § 3.127(c).

e. November 20, 2002, January 28 and April 22, April 23, April 26 and April 30, 2003. Respondent Weinhart failed to provide for the removal of animal waste, and specifically failed to remove excreta and food waste from nearly all animal enclosures. 9 C.F.R. § 3.125(d).

f. November 20, 2002, and January 28, and April 26 and April 30, 2003. Respondent Weinhart failed to provide a suitable method to rapidly eliminate excess water from animal enclosures. 9 C.F.R. § 3.127(c).

g. December 10, 2002. Respondent Weinhart failed to construct his facility of such material and such strength as appropriate for the animals involved, and to maintain the facility in good repair to protect the animals from injury, and specifically the camel enclosures had large 24-inch gaps, the chain link fencing was warped, bent and buckled, and the bottom was turned into the animals' enclosure, exposing the animals to pointed wire ends. 9 C.F.R. § 3.125(a).

h. January 28, 2003. Respondent Weinhart failed to provide sufficient shelter from inclement weather for large felids, goats, and pigs. 9 C.F.R. § 3.127(b).

- i. January 28, 2003. Respondent Weinhart failed to provide sufficient shade for large felids, goats, and pigs. 9 C.F.R. § 3.127(a).
- j. April 22, 2003. Respondent Weinhart failed to construct his facility of such material and such strength as appropriate for the animals involved, and to maintain the facility in good repair to protect the animals from injury, and specifically, housed ten live lion cubs and two live leopard cubs in an attic area of his home, in filthy conditions. 9 C.F.R. § 3.125(a).
- k. April 26 and April 30, 2003. Respondent Weinhart failed to store supplies of food and bedding in facilities that adequately protected them from deterioration and contamination, and specifically, there was no adequate means of storing food supplies at Respondent Weinhart's facilities. 9 C.F.R. § 3.125(c).
- l. April 26 and April 30, 2003. Respondent Weinhart failed to provide sufficient shade for animals, and specifically, most of the shelters have been blown off of the chain link rooftops of animal enclosures. 9 C.F.R. § 3.127(a).
- m. April 30, 2003. Respondent Weinhart failed to provide sufficient shade for animals, and specifically, housed a tiger (Trevor) in a transport enclosure that offered the animal no shelter from the sun. 9 C.F.R. § 3.127(a).
- n. April 30, 2003. Respondent Weinhart failed to construct his facility of such material and such strength as appropriate for the animals involved, and to maintain the facility in good repair to protect the animals from injury, and specifically, (i) the camel enclosure had a non-functioning gate; (ii) the old camel enclosure had a 12-inch gap, the chain link fencing was warped, bent and buckled, and the poles were

leaning outward; and (iii) shelter boxes for large felids were in a state of disrepair. 9 C.F.R. § 3.125(a).

o. April 30, 2003. Respondent Weinhart failed to provide sufficient shelter from inclement weather for all animals. 9 C.F.R. § 3.127(b).

p. April 30, 2003. Respondent Weinhart failed to provide adequate space to a deer housed in a “VariKennel.” 9 C.F.R. § 3.128.

11. On or about the following dates, Respondent Weinhart willfully violated section 2.100(a) of the Regulations (9 C.F.R. § 2.100(a)), by failing to meet the animal health and husbandry and transportation standards for warm-blooded animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals (9 C.F.R. §§ 3.129-3.142), as follows:

a. November 16, November 20, 2002, and January 28, April 22, April 23, April 26 and April 30, 2003. Respondent Weinhart failed to feed large felids wholesome, uncontaminated food in sufficient quantities. 9 C.F.R. § 3.129.

b. November 20, November 22, November 25, and December 10, 2002, and January 28, April 22, April 23, April 26 and April 30, 2003. Respondent Weinhart failed to provide potable water to animals, in clean receptacles. 9 C.F.R. § 3.130.

c. November 20 and November 22, 2002. Respondent Weinhart failed to remove excreta from primary enclosures as often as necessary, and in particular, the gap between two adjacent tiger enclosures (housing Jaya and Nemo), and around the den boxes, were filled with feces. 9 C.F.R. § 3.131(a).

- d. November 20 and November 22, 2002, and April 26 and April 30, 2003. Respondent Weinhart failed to establish and maintain a safe and effective program for the control of insects, and other pests. 9 C.F.R. § 3.131(d).
- e. November 20, November 22, and December 10, 2002, and January 28, April 22 and April 23, 2003. Respondent Weinhart failed to keep premises clean and in good repair in order to protect animals from injury and to facilitate prescribed husbandry practices, and specifically, inspectors observed accumulations of junk, discarded materials, buildup of filth, food debris, manure, and excreta throughout the facility. 9 C.F.R. § 3.131(c).
- f. November 20, November 22, and December 10, 2002, and April 26 and April 30, 2003. Respondent Weinhart failed to employ a sufficient number of adequately trained employees to maintain the professionally-acceptable level of husbandry practices. 9 C.F.R. § 3.132.
- g. November 16, November 20, November 25 and December 10, 2002. Respondent Weinhart housed incompatible animals in the same primary enclosures, and housed animals near animals that interfere with their health or well-being, and specifically large felids exhibited scars and open wounds indicative of fighting activity. 9 C.F.R. § 3.133.
- h. December 10, 2002, and January 28, April 22, April 23, and April 26, 2003. Respondent Weinhart failed to remove excreta from primary enclosures as often as necessary. 9 C.F.R. § 3.131(a).
- i. April 30, 2003. Respondent Weinhart housed seven goats, two pot-

bellied pigs, and a llama in the bed of a pick-up truck, with inadequate space, extraneous materials that could harm the animals, and no shade or shelter. 9 C.F.R. §§ 3.125(a), 3.127(a), 3.127(b), 3.128, 3.138.

Order

1. Respondent John Hans Weinhart, his 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.
2. All Animal Welfare Act licenses held by Respondent John Hans Weinhart (specifically, numbers 93-C-0825, 21-A-005, 21-C-021, and 93-C-0199) are hereby revoked.
3. Respondent John Hans Weinhart is assessed a civil penalty of **\$99,825** for his 363 violations of the Act and the Regulations and Standards.¹ 7 U.S.C. § 2149(b), 7 C.F.R. § 3.91(b)(2)(v) (since renumbered).
4. Respondent John Hans Weinhart is assessed a civil penalty of **\$59,895** for his repeated knowing failure to obey the cease and desist order² issued by the Secretary of Agriculture in *In re John Weinhart*, 40 Agric. Dec. 1924 (1981). 7 U.S.C. § 2149(b), 7 C.F.R. § 3.91(b)(2)(v) (since renumbered).
5. Respondent John Hans Weinhart shall pay the **\$159,720** (\$99,825 plus

¹ The 363 violations comprise 160 violations of the licensing regulations, 67 violations of the veterinary care regulations, 20 violations of the identification regulations, 3 violations of the handling regulations, and 113 instances of noncompliance with the standards. Civil penalties of up to \$2,750 were provided for each violation during the time of these violations. 7 U.S.C. § 2149(b), 7 C.F.R. § 3.91(b)(2)(v). For these 363 violations, the civil penalty amount can be \$998,250.

² Civil penalties of \$1,650 were provided for each knowing failure to obey the Secretary's cease and desist order. 7 U.S.C. § 2149(b), 7 C.F.R. § 3.91(b)(2)(v). For 363 knowing failures to obey the Secretary's cease and desist order, the civil penalty amount can be \$598,950.

\$59,895) by cashier's check(s) or certified check(s) or money order(s), made payable to the order of the **Treasurer of the United States** and delivered within sixty (60) days from the effective date of this Order to:

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

Respondent Weinhart shall include on the cashier's check(s) or certified check(s) or money order(s) the docket number of this proceeding, **AWA Docket No. 07-0184**.

Finality

This Decision and Order shall be final and effective thirty five (35) days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within thirty (30) days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see attached Appendix A).

Copies of this Decision and Order shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 9th day of May 2008

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
South Building Room 1031
1400 Independence Avenue, SW
Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776