

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**BEFORE THE SECRETARY OF AGRICULTURE**

In re:	)	
	)	<b>AWA Docket No. 08-0122</b>
GRANT WILLIAM OLY, an	)	
individual doing business as	)	
Tiger Zone, a former Minnesota	)	
nonprofit corporation,	)	
	)	<b>Decision and Order</b>
Respondent.	)	<b>by Reason of Default</b>

Procedural History

1. This proceeding was initiated under the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*) (herein frequently the “Act”), by a Complaint filed on May 20, 2008. The Complainant, the Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (herein frequently “APHIS” or “Complainant”), was represented by Bernadette Juarez, Esq., (and is believed now to be represented by Colleen A. Carroll, Esq.), with the Marketing Division, Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue SW, Washington, D.C. 20250-1417.
2. The Complaint alleged that Grant William Oly, an individual, doing business as Tiger Zone, a former Minnesota nonprofit corporation, the respondent (herein frequently “Respondent Oly” or “Respondent”) willfully violated the Act and the regulations and standards issued thereunder (9 C.F.R. § 1.1 *et seq.*) (herein frequently “Regulations” and “Standards”).

3. This Decision and Order is issued pursuant to section 1.139 of the Rules of Practice. 7 C.F.R. § 1.139. The Hearing Clerk sent to Respondent Oly a copy of the Complaint (together with the Hearing Clerk's notice letter dated May 21, 2008, and a copy of the Rules of Practice), by certified mail, return receipt requested. [See Domestic Return Receipt for Article Number 7004 1160 0004 4087 8606.] Although the United States Postal Service attempted to serve Respondent Oly with the Hearing Clerk's mailing, the Postal Service returned the mailing to the Hearing Clerk on June 11, 2008, marked, "MR. OLY LOOKED AT RETURN ADDRESS ON THIS LETTER & REFUSED TO ACCEPT IT." and "RETURNED TO SENDER" "REFUSED BY ADDRESSEE".

4. On June 13, 2008, the Hearing Clerk served Respondent Oly, by regular mail, with a copy of the Complaint, notice letter, and Rules of Practice, in accordance with section 1.147(c)(1) of the Rules of Practice. 7 C.F.R. § 1.147(c)(1). [See Memorandum to File, dated June 13, 2008.] Respondent was informed that an answer should be filed within 20 days and that failure to answer would constitute an admission of the allegations and a waiver of the right to a hearing.

5. Respondent Oly failed to file an answer. The time for filing an answer expired on July 3, 2008.

6. The Complainant's Motion for the issuance of a decision, filed December 8, 2008, is before me. The Hearing Clerk sent to Respondent Oly a copy of the Motion (together with proposed Decision and Order), by certified mail, return receipt requested. [See Domestic Return Receipt for Article Number 7007 0710 0001 3860 2307.] Although the United States Postal Service attempted to serve Respondent Oly with the Hearing Clerk's mailing, it was

marked "RETURNED TO SENDER, UNCLAIMED" and returned to the Hearing Clerk on January 8, 2009. The Motion (together with proposed Decision and Order) was mailed by regular mail on January 8, 2009, but that mailing was marked "RETURN TO SENDER" "REFUSED" "UNABLE TO FORWARD".

7. 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 Oly'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. *See* 7 C.F.R. §1.130 *et seq.*

#### Findings of Fact and Conclusions

8. The Secretary of Agriculture has jurisdiction.

9. Respondent Grant William Oly is an individual doing business as Tiger Zone, a former Minnesota nonprofit corporation, 30840 Ski Road, Red Wing, Minnesota 55066.

10. At all times material herein Respondent Oly was operating as an exhibitor and/or dealer as those terms are defined in the Act and the Regulations, and held Animal Welfare Act license number 41-C-0124.

11. On or about March 3, 2006, Animal Welfare Act license number 41-C-0124 expired because it was not renewed.

12. Respondent Oly has had ongoing and repeated issues with the safe handling of his tigers.

13. On or about March 10, 2002, one of Respondent Oly's tigers bit a young man and, in particular, severed a portion of the left index finger.
14. On or about July 17, 2002, one of Respondent Oly's tigers (T.J.) bit a young woman and, in particular, the left arm.
15. In 2002, one of Respondent Oly's tigers bit Respondent's assistant.
16. On or about March 22, 2003, one of Respondent Oly's tigers (Nakita), during public exhibition, bit a woman who was pregnant.
17. The tiger, described above in paragraph 16, was euthanized for rabies testing.
18. On or about November 11, 2003, Complainant and Respondent entered into a stipulation, described below in paragraph 25, to resolve alleged violations involving Respondent's failure to comply with handling regulations on or about March 22, 2003.
19. On or about April 27, 2005, Respondent Oly's tigers attacked and severely injured Respondent's assistant.
20. On or about May 4, 2005, Judge Thomas W. Bibus, Minnesota District Court, First Judicial District, issued an order in *State of Minnesota v. Grant William Oly*, TA-05-2878 (MN 2005), authorizing the State of Minnesota to seize "all seven (7) tigers located on" respondent's property based, in part, on:

On going and repeated safely [sic] problems with the physical barriers of the enclosures used to house the tigers.

Improper and inadequate training and protective procedures for those assisting in the care of the tigers, as evidence by several reported incidences of tiger bites occurring on [Respondent's] premises. The latest incident involved life-threatening injuries.

## VIOLATIONS

21. On or about April 27, 2005, Respondent Oly willfully violated the attending veterinarian and veterinary care regulations by failing to establish and maintain programs of adequate veterinary care that included adequate guidance to personnel involved in the care and use of animals regarding handling, and specifically, regarding the handling of tigers and, as a result, Respondent's tigers attacked and seriously injured one of Respondent's assistants. 9 C.F.R. § 2.40(b)(4).

22. On or about April 27, 2005, Respondent Oly willfully violated the handling regulations by failing to handle tigers as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm or unnecessary discomfort, and specifically, Respondent placed his tigers in a position that allowed an inadequately trained assistant to contact the tigers directly and, as a result, the tigers attacked and severely injured the assistant. 9 C.F.R. § 2.131(b)(1).

SIZE OF RESPONDENT'S BUSINESS, GRAVITY OF VIOLATIONS,  
COMPLIANCE HISTORY, LACK OF GOOD FAITH

23. At all times material herein, Respondent Oly operated a small business.

24. The gravity of Respondent Oly's violations is great; Respondent Oly's violations of the veterinary care and handling Regulations on or about April 27, 2005 resulted in Respondent's tigers attacking and severely injuring one of Respondent's assistants. After this attack, Respondent's animals were confiscated by the State of Minnesota.

25. Respondent Oly has a history of violations. On or about November 11, 2003, Complainant and Respondent entered into a stipulation, based on the findings in animal

welfare investigation MN 03-033, and pursuant to 9 C.F.R. § 4.11, in which Respondent paid \$275 to resolve alleged violations involving Respondent's failure to comport with section 2.131(c)(1) of the handling regulations. Moreover, the conduct over the period described herein reveals Respondent's consistent disregard for, and unwillingness or inability to abide by, the requirements of the Animal Welfare Act and the Regulations and Standards. Accordingly, Respondent's ongoing pattern of violations establishes a "history of previous violations" for the purposes of section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) and a lack of good faith.

26. Under these circumstances, the remedies contained in the following Order for Respondent Oly's violations of the Animal Welfare Act on or about April 27, 2005 are reasonable and appropriate, including the \$3,025.00 civil penalty. The remedies are in accordance with the statutory factors to be considered. 7 U.S.C. § 2149.

#### Order

27. Animal Welfare Act license number 41-C-0124 is **revoked**, effective on the day after this Decision becomes final. [See paragraph 32 to determine the day on which this Decision and Order becomes final and effective.] Further, Respondent Oly's privilege to engage in activities that require an Animal Welfare Act license is **revoked**, effective on the day after this Decision becomes final.

28. Respondent Oly is permanently disqualified from becoming licensed under the Animal Welfare Act or from otherwise obtaining, holding, or using an Animal Welfare Act license, directly or indirectly, or through any corporate or other device or person, effective on the day after this Decision becomes final.

29. Under the Animal Welfare Act, revocations and permanent disqualifications are equally permanent.

30. Respondent Oly, 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 issued thereunder, and in particular, shall cease and desist from:

failing to establish and maintain programs of adequate veterinary care that includes adequate guidance to personnel involved in the care and use of animals regarding handling, and;

failing to handle tigers as carefully as possible in a manner that does not cause trauma, behavioral stress, physical harm or unnecessary discomfort.

Respondent Oly, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from engaging in any activity for which a license is required under the Act and Regulations without being licensed as required.

31. Respondent Oly is assessed a civil penalty in the amount of **\$3,025.00**, which he shall pay by certified check(s) or cashier's check(s) or money order(s), made payable to the order of "**Treasurer of the United States**," and forwarded within sixty (60) days from the effective date of this Decision and Order by a commercial delivery service, such as FedEx or UPS, to

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

Respondent Oly shall include **AWA Docket No. 08-0122** on the certified check(s) or cashier's check(s) or money order(s).

Finality

32. This Decision and Order shall have the same force and effect as if entered after a full hearing and shall be final and effective without further proceedings 35 days after service unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 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 6<sup>th</sup> day of April 2009

Jill S. Clifton  
Administrative Law Judge

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



**APPENDIX A**

**7 C.F.R.:**

**TITLE 7—AGRICULTURE**

**SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE**

**PART 1—ADMINISTRATIVE REGULATIONS**

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**SUBPART H—RULES OF PRACTICE GOVERNING FORMAL**

**ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER**

**VARIOUS STATUTES**

...

**§ 1.145 Appeal to Judicial Officer.**

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in

§ 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of

objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145