

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket Nos. 09-0155 and 10-0418

In re: Terranova Enterprises, Inc., a Texas corporation
d/b/a Animal Encounters, Inc.;
Douglas Keith Terranova, an individual;
Will Ann Terranova, an individual;
Farin Fleming, an individual;
Craig Perry, an individual d/b/a
Perry's Exotic Petting Zoo;
Eugene ("Trey") Key, III, an individual;
and Key Equipment Company, Inc.,
an Oklahoma Corporation d/b/a
Culpepper & Merriweather Circus,

Respondents.

DECISION AND ORDER (RESPONDENT FARIN FLEMING)

I. Introduction

The above captioned matters involve administrative disciplinary proceedings initiated by the Administrator of the Animal and Plant Health Inspection Service ("APHIS"), an agency of the United States Department of Agriculture ("USDA"; "Complainant"), against Terranova Enterprises Inc., Douglas Terranova, Will Ann Terranova, Farin Fleming ("Terranova Respondents")¹; Craig Perry ("Perry Respondent"); and Eugene "Trey" Key, III, and Key Equipment Company, Inc. ("Key Respondents"). Complainant alleges that Respondents violated the Animal Welfare Act, as amended (7 U.S.C. §§ 2131- 2159; "the Act"), and the Regulations and Standards issued under the Act (9 C.F.R. §§ 1.1-3.142; "Regulations and Standards").

¹ I have issued separate Decisions and Orders addressing the charges against Will Ann Terranova, Doug Terranova and the Terranova business entities, as well as all other named Respondents.

A. Procedural History

In a Complaint filed on July 23, 2009, amended on June 8, 2010, Complainant alleged that the Terranova, Key and Perry Respondents² willfully violated the Act and the Regulations on multiple occasions between 2005 and 2008. Complainant filed another Complaint on September 7, 2010, charging the Terranova Respondents with additional violations of the Act. Generally, the Complaints allege that Respondents failed to properly handle and care for a variety of animals; failed to maintain proper records and facilities; failed to allow access to inspectors; and exhibited animals without proper licenses.

The two Complaints were consolidated, but in deference to the joint request of the Key and Perry Respondents, I found it appropriate to partition the hearing between the allegations raised in the 2009 Complaint and those raised in the 2010 Complaint. The events allegedly underlying the 2009 Complaint were addressed in a hearing that commenced on February 17, 2011 and continued through February 25, 2011, held in person in Washington, D.C., and through audio-visual equipment located in Texas, Iowa and Missouri. Events involving the Terranova Respondents alone were addressed at a hearing that was held on June 1 and 2, 2011 in Dallas, Texas.

Complainant is represented by Colleen A. Carroll, Esq., Office of the General Counsel, Washington D.C. The Terranova Respondents are represented by Bruce Monning, Esq.; the Perry Respondents are represented by Larry Thorson, Esq.; and the

² The complaint also named an individual Sloan Damon as a Respondent, but Complainant and Respondent Damon entered into a Consent Decision dismissing Mr. Damon from the cause of action, which was filed with the Hearing Clerk for OALJ on January 31, 2011. Accordingly, I shall not address charges against Mr. Damon in this Decision and Order.

Key Respondents are represented by Derek Shaffer, Esq. and Michael Weitzner, Esq. At the hearings, the testimony of witnesses was transcribed, and I received into evidence³ the parties' exhibits. At the hearing that commenced on February 17, 2011, I admitted to the record Complainant's exhibits identified as CX-1 through CX-67; Terranova Respondents' exhibits TX-1 through TX-41; Key Respondent exhibits KX-1 through KX-30; and Perry Respondents' exhibits PX-1 through PX-8. In addition, the parties entered into stipulations, regarding the admissibility and authenticity of the documentary evidence with the exception of certain photographic and holographic evidence. Tr. at 90-140.

At the hearing that commenced on June 1, 2011, I admitted to the record exhibits CX-69-93, and TX-42, 42. I granted Respondent's objection to the testimony of Margaret Whittaker. Tr. at 3162 - 3206. The witness was called by Complainant to provide opinions regarding what she believed to be the best training methods for working with elephants, which may have led to her concluding that Respondents did not use the best methods to handle animals. However, Ms. Whittaker had not reviewed the evidence regarding the incidents involved in the instant matter, and could formulate no opinion regarding whether animals had been handled properly. Tr. 3187 -3190. Though I credit Ms. Whittaker's training and expertise, I concluded that the proffered testimony regarding her opinion on the best methods to use to train animals in general is not material to my inquiry, as the Act and controlling regulations do not specify a particular method to train and handle animals. Moreover, Ms. Whittaker was not a fact witness,

³ I excluded from the record CX 23. Tr. at 116.

and was given no evidence relating to the events of this case to allow her to formulate an expert opinion that could be rebutted by Respondent.

Pursuant to my Order of June 28, 2011 the parties submitted corrections to the transcript, which I adopted by Order issued August 8, 2011. The parties submitted written closing argument pursuant to my Order of June 28, 2011. The instant decision⁴ is limited to Respondent Will Ann Terranova, and is based upon consideration of the record evidence; the pleadings, arguments and explanations of the parties; and controlling law.

II. Issue

Is Farin Fleming responsible for any violations of the Act as the result of her association with Terranova Enterprises Inc.?

III. Findings of Fact and Conclusions of Law

A. Admissions

In its Answer to the Amended Complaint filed July 23, 2010, Respondents admitted that Terranova Enterprises, Inc. is a Texas corporation doing business as “Animal Encounters, Inc.”, corporate Number 159995901. The corporation’s registered agent, President, and director is Douglas Keith Terranova, who resides at 6962 S. FM 148, Kaufman, Texas 75142, which is also the corporation’s registered address. The corporate charter was forfeited during the period from February 11, 2005 until on or about November 30, 2005, for failure to file or pay state franchise taxes. The charter was again forfeited for noncompliance with state tax law for the period July 25, 2008 through March 11, 2009. Terranova Enterprises, Inc. and Mr. Terranova continued to

⁴ In this decision, exhibits shall be denoted as follows: Complainant’s shall be “CX-#”; Terranova Respondents’ shall be “TX-#”; Perry Respondent shall be “PX-#”; Key Respondents shall be “KX-#”. References to the transcript of the hearing shall be denoted as “Tr. at [page] #”.

operate as an exhibitor and held Animal Welfare Act license number 74-C-0199 during the periods relevant to this adjudication. Respondent Farin Fleming's mailing address and residence is noted to be 1200 Overlook, Kaufman, Texas 75142. She was a director of Terranova Enterprises.

B. Summary of Factual History

During the period encompassed by the instant causes of action, all of the Respondents were in the business of exhibiting animals. Craig Alan Perry has been involved with exotic animals since he was sixteen years of age. Tr. at 1700. He has exhibited animals as an individual and through the auspices of a corporation, which is licensed by USDA. Tr. at 1700-1701. Mr. Perry has a number of different animals, including bobcats, servals, lynx, leopards, mountain lions, tigers, lions; and animals shown in a "petting zoo", such as zebras, kangaroos, goats, cattle, and water buffalo. Tr. at 1701. The petting zoo has been in operation for many years under the name of "Perry's Exotic Petting Zoo". Tr. at 1702.

From 1987 until sometime in 2010, Douglas Keith Terranova trained animals under contract with their owners, and presented instructional programs at fairs and facilities using animals that he owned. Tr. at 2509; 2511; 2517-18. He also provided animals to circuses and production crews for television shows and films and acted with his animals. Tr. at 2517-2518. Mr. Terranova owns many different animals, including a number of tigers, camels, a cougar, and spider monkeys. Tr. at 2518-2523. He owned two elephants, Kamba and Congo, until he donated them to the Dallas zoo in 2009. Tr. at 2801.

Eugene Key, III, familiarly known as “Trey”, manages the Culpepper and Merriweather Circus (“the Circus”). Tr. at 2217. Mr. Key is President of Key Equipment Company, which bought the Circus approximately ten years ago. Tr. at 2217. The Key Respondents hold an exhibitor’s license, and Mr. Key performs in his circus with two tigers, Delia and Solomon, and a lion named Francis, owned by Key Equipment. Tr. at 1222.

In December, 2007, Respondent Perry executed a contract with the Iowa State Fair (“the Fair”) to provide entertainment in the form of a petting zoo and animal rides during the August, 2008 Fair. PX-3; Tr. at 1709. Seeking to enhance the quality of his services, Mr. Perry arranged for horse and camel rides, and engaged the Terranova Respondents to provide elephant rides. Tr. at 1707-1708; 2654-2657; 2660. Mr. Perry provided the equipment for camel rides and the camels, which the Terranova Respondents had purchased⁵. Tr. at 2654-2656; 2657-8. Mr. Terranova also provided two zebu for Mr. Perry’s petting zoo. Tr. at 2666.

It was anticipated that the elephants would be brought to the Fair from the Circus, where they were performing under an agreement between the Terranova and Key Respondents. Tr. at 2553. The Circus travels to different venues from Chicago and the Mississippi to the West Coast, putting on two daily shows under “the Big Top”. Tr. at 2218-19. Mr. Key performs in the Circus with two tigers, Solomon and Delia, and a lion, Francis, which the Circus acquired in 2005. Tr. at 2207. The tigers are of the golden tabby variety and were litter mates. Tr. at 2213-2214.

⁵ The camels belonged to Perry in April, 2008, when arrangements were made with Terranova to provide camel rides at the Fair, but they belonged to Respondents by the time of the Fair. Tr. at 2049.

Before the 2008 circus season began, the Key Respondents' big cats were housed in a compound built on Mr. Terranova's facility. Tr. at 2222; 2551-2. The compound was built to ensure separation of Delia from Solomon when necessary, though they were allowed to socialize; Mr. Terranova agreed with Mr. Key that the tigers should not be allowed to breed. Tr. at 2223. Mr. Key believed it would be irresponsible to intentionally breed litter mates, considering the risk of genetic mutation. Tr. at 2225. Mr. Terranova supervised the care of the cats in Mr. Key's absence, and Mr. Key was not at the Terranova property to confirm that the tigers were kept apart when Delia was "in heat". Tr. at 2224; 2551-2552.

At the start of the 2008 circus season, Terranova's elephant handler delivered the Key cats and Kamba and Congo to the Circus, but he soon returned to the Terranova facility with the elephants and quit his job. Tr. at 2556. Mr. Terranova could not show the elephants himself because of personal circumstances, and he therefore hired Mr. Sloan Damon upon a friend's recommendation. Tr. at 2557-2559. Mr. Damon trained under Mr. Terranova's supervision at his home before taking the elephants back to the Circus with Richard Childs. Tr. at 233; 2561-2562. Mr. Damon hired Mr. Childs to drive the semi-trailer that was used to transport the animals. Tr. at 231; 238. 230; 239. The semi-trailer was partitioned to transport the elephants in the front and the cats in the rear. Tr. at 239. Mr. Damon and Mr. Childs traveled with the animals in the semi until sometime in June or July, when Mr. Key purchased a truck to carry the cats. Tr. at 239. Mr. Damon also looked after Mr. Key's cats because Mr. Damon had large cat experience. Tr. at 2228.

Shortly after he joined the Circus, Mr. Damon noticed that Mr. Key's female tiger was exhibiting behavior associated with pregnancy, although she did not appear to be expecting cubs. Tr. at 241; 2225-7. While the Circus was in Glasgow, Missouri on May 3, 2008, Delia delivered three cubs, which Mr. Damon found outside the mother's cage. Tr. at 2229-2230. Mr. Damon alerted Mr. Key to the births and Mr. Key observed as Mr. Damon replaced the cubs in the cage with Delia, who pushed them away. Tr. at 2232. Mr. Damon was reluctant to expose the cubs to further rejection from their mother, and Mr. Key gave him approval to hand-raise the cubs. Tr. at 2233. Mr. Key was a risk to the newborns' immune systems because he lived with house cats, and he relied upon Mr. Damon's experience with large cats and his reassurance that he had hand-raised tigers in the past. Tr. at 2233; 226-230. A local veterinarian, Dr. Miller, was called to the site to examine the cubs on the night they were born. Tr. at 180-184; 2236. The doctor helped supply kitten milk replacer (KMR) and vitamins for the cubs, and injected Delia with antibiotics. Tr. at 185-188; CX-7.

Although the cubs appeared to be flourishing with hand feedings, the smallest died on May 6, 2008. Tr. at 246; 2239. It was buried at the Circus site, and the Circus moved to its next engagement in Kansas. Tr. at 2240. When one of the remaining cubs refused to eat on May 12, 2008, Mr. Key authorized Mr. Damon to make an appointment to take the cubs to the Kansas State University Veterinary School for examination. Tr. at 247; 2241. The cub soon showed signs of a seizure and Mr. Damon drove both cubs to the Veterinary School. Tr. at 247-248; 2242. By the time they arrived for examination by Dr. Gary West, the ailing cub had suffered additional seizures and was confirmed dead. Tr. at 248; 2242; 680; CX-9. Dr. West ordered a necropsy, and placed the

surviving cub in intensive care for observation. Tr. at 2243; Tr. at 680-1; CX-9; CX-12. The following day, the doctor discharged the survivor, a male that Mr. Damon named “Tubbs”, with a prescription for dietary changes. Tr. at 692-4; 2244 CX-12. Mr. Damon continued to feed and care for Tubbs, who was kept in a transport carrier in the cab of the truck used to transport the elephants and adult tigers. Tr. at 269-272.

On August 3, 2008, Mr. Damon left the Circus to travel to the Fair under the arrangement between the Perry and Terranova Respondents. Tr. at 2259. Mr. Damon set up the elephant ride arena in an area close to the Petting Zoo and camel rides. Tr. at 259-260; CX-35 at p. 4. He kept the semi, with Tubbs in the cab, parked away from the public. Tr. at 270-273; CX-35 at pp 121, 122, 127. Nearby, Mr. Damon erected a large outdoor pen where Tubbs spent some time together with a dog that Mr. Damon had found in his travels. Tr. at 272; CX-35 at p. 128.

On August 13, 2008, APHIS inspectors Dr. Zeigerer and Dr. Sofranko, together with APHIS investigator Mike Booth, arrived at the fairgrounds to inspect the facilities and animals. Tr. at 1715; 2536; 1919; CX-38, 39. The trailers belonging to Perry and Terranova were parked in close proximity, and were inspected, as were the Petting Zoo, and the elephant and camel ride areas. Tr. at 1721; CX-38, 39. The inspectors continued to visit the Respondents over the course of several days at the Fair, and on the second day of their inspection, they observed Tubbs in the cab of Terranova’s trailer. Tr. at 2602; 2612-13; CX-35 at pp. 121, 122. Mr. Damon did not have a written plan of veterinary care (Tr. at 233-234) and the inspectors instructed Mr. Damon to have Tubbs examined by a qualified veterinarian. Tr. at 288; 2612-4.

Mr. Terranova asked the Fair veterinarians to examine the cub, and Dr. Clothier, Dr. Lucien and two veterinary school students examined Tubbs. Tr. at 2614-5. Dr. Clothier produced a report of examination, and she also consulted with USDA's veterinarian Dr. Gage and drafted recommendations for the cub's diet. Tr. at 2121. Dr. Clothier's examination report was provided to the inspectors on August 15, 2008. Tr. at 2629; Tr. 2119-2121.

Meanwhile, the inspectors were concerned about the cub's welfare, as they believed the cab of the truck where he was kept during the day was too hot; that he was underweight; and that his living conditions were unsanitary. CX-38, 29, 48, 49. The inspectors conferred with other USDA personnel, in particular Dr. Gage, USDA's large cat expert. It was decided that Tubbs' interests would be best served if he were confiscated by the inspection team and relocated to another facility. CX-50. The confiscation was effected on Saturday, August 16, 2008, after which the cub was transported to a USDA approved facility, where he was examined by Dr. June Olds. CX-52, CX-54, CX-55. Dr. Olds concluded that the cub had worn an ill-fitting harness that caused skin abrasions, that he was underweight, and had suffered a wound near his right eye. CX-54, 55. X-rays needed to be highlighted to see the tiger's bone structure. Tr. at 573; CX-53.

The inspectors cited all the Terranova and Key Respondents with violations of the Act regarding the care of the tiger cubs. CX-48, 49. The inspectors cited the Terranova and Perry Respondents with violations pertaining to the care, feeding and housing of the elephants, which were inspected on Saturday morning at the Fair in August 2008. Tr. at 2630-2631. Terranova and Perry Respondents were also charged with failure to handle

the elephants in a manner sufficient to avoid harm, and with failure to provide sufficient barrier between the public and elephants during elephant rides. Terranova was also charged with failure to provide adequate veterinary care and maintain a program of adequate care for the elephants.

APHIS investigator Rodney Walker traveled to the Fair from Kansas as part of his investigation into reports that Terranova's elephants had gotten loose on June 4, 2008, while traveling with the Circus in WaKeeney, Kansas. Tr. at 427; 439; CX-21. Strong winds were present and although Mr. Key denied awareness of tornado advisories for the area, the weather was uncommonly changeable. Tr. at 252-254; 430; 2347. Mr. Key monitored the weather before determining that the Circus could be set up. Tr. at 252; 2344-2346. Mr. Damon had unloaded the elephants, but they were not prepared to conduct rides or show them because the weather was questionable. Tr. at 253-254. He was concerned about leaving the animals in the truck for too long. Tr. at 253. Although Mr. Damon said the decision to conduct the rides was his, he also testified that he would consult Mr. Key, who could override him. Id.

At some point it was decided that that the worst of the weather would bypass the Circus site, and the Circus began to set up attractions. Tr. at 253; 2279. The wind suddenly picked up, and the elephants spooked when a large inflatable amusement slide was blown toward⁶ them, and they escaped from their handler. Tr. at 254. They wandered onto nearby private property and were reclaimed only after one was shot with tranquilizers. Tr. at 255-256; CX-18, 21, 22, 26. Apparently, the elephants suffered no

⁶ There is conflicting testimony regarding whether one of the elephants was struck by the inflatable device or whether the device was blown near the elephants. I need not determine which version is accurate because the significance of the event is that it precipitated the elephants' escape.

permanent injury as the result of this incident in June, because they continued to work at the Circus with Mr. Damon and travel with him to the Fair in August. Tr. at 234. There is conflicting evidence regarding whether Mr. Damon was injured by an elephant during this incident. CX-26.

After the Iowa Fair, Mr. Damon rejoined the circus with the elephants, but he quit his job in September, 2008. Tr. at 234. Mr. Terranova took over the work of handling the animals and was with them on November 4, 2009, at the Family Fun Circus in Enid, Oklahoma, when Kamba escaped and ran onto a highway where she was struck by a vehicle. Tr. at 3483 -3514; CX-70. She sustained various injuries, including lacerations on her right side, a fractured tarsal bone, a broken tusk, bruised trunk, and numerous abrasions. CX-74-76. When Mr. Terranova and his employee Carlos Quinones gave chase to Kamba, they left the other elephant, Congo, unattended for a period of time. Tr. at 3141. Kamba's injuries were treated at the Oklahoma State University School of Veterinary Medicine on the following day. CX-74-76. Kamba recovered from her injuries, and in February 2010, Terranova sold her and Congo to the Dallas Zoo. Tr. at 3517-3520. Mr. Terranova worked at the Zoo until February, 2011, when he resigned following negative publicity involving this case. Tr. at 3520.

Inspections of Terranova's exhibitions at other facilities were conducted and resulted in citations of violations of the Act. It is undisputed that spider monkeys on display at the Circus World Museum in Baraboo, Wisconsin in June, 2005 were provided a variety of foodstuffs and entertainment, but there was no formal enrichment program for primates in place. CX-1. Other inspections revealed that on June 15, 2006, a camel became entangled in a loose rope barrier that separated Terranova's camels and elephants

at the Circus World Museum (Tr. at 88; CX-2) and inspections further found that two camels were left unattended on that day (Tr. at 3444; CX-2). In addition, it was determined that there were insufficient distance and insufficient perimeter fencing at the Circus World Museum in July, 2007. Tr. at 3449; CX-4.

The record reflects that on June 5, 2007, an APHIS Veterinary Medical Officer (“VMO”) observed Terranova’s mountain lion being inadvertently sprayed with water and exposed to detergent during the cleaning of his cage at the Universoul Circus in Landover, Maryland. CX-3.

Terranova admittedly failed to provide a written program of veterinary care and other records required by the Act while exhibiting at Turner Field in Atlanta, Georgia in February, 2008. CX-6. Further, on June 9 and 10, 2008 no one was available to allow inspection of the Terranova home facility in Kaufman, Texas. CX-6.

At the hearing that commenced on June 1, 2011, Will Ann Terranova testified that Mr. Terranova’s father gave them the business when they married. Tr. at 3226. She was named a corporate officer, and her daughter, Farin Fleming, was also named a corporate officer and director. Tr. at 3226. Mrs. Terranova testified that her daughter was no longer supposed to be a corporate officer, and further stated that Ms. Fleming was never involved in making business decisions regarding the operation of Terranova Enterprises, Inc. Tr. at 3227. Ms. Fleming may have attended some meetings when the business first started, but Mr. Terranova mainly made the business decisions. Tr. at 3228. Ms. Fleming did not share in any business profits. Id.

C. Prevailing Law and Regulations

The purpose of the Animal Welfare Act, as it relates to exhibited animals, is to insure that they are provided humane care and treatment (7 U.S.C. § 2131). The Secretary of Agriculture is specifically authorized to promulgate regulations to govern the humane handling and transportation of animals by (7 U.S.C. §§ 2143(a), 2151). The Act requires exhibitors to be licensed and requires the maintenance of records regarding the purchase, sale, transfer and transportation of regulated animals. 7 U.S.C. §§2133, 2134, 2140. Exhibitors must also allow inspection by APHIS inspectors to assure that the provisions of the Act and the Regulations and Standards are being followed. 7 U.S.C. §§ 2142, 2143, 2143 (a)(1) and (2), 2146 (a).

Violations of the Act by licensees may result in the assessment of civil penalties, and the suspension or revocation of licensees. 7 U.S.C. § 2149. The maximum civil penalty that may be assessed for each violation was modified under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note) and various implementing regulations issued by the Secretary. Though the Act originally specified a \$2,500 maximum, between April 14, 2004 and June 17, 2008 the maximum for each violation was \$3,750. In addition, 7 U.S.C. § 2149(b), was itself amended and, effective June 18, 2008, the maximum civil penalty for each violation has been increased to \$10,000.

The Act extends liability for violations to agents, pursuant to 7 U.S.C. §2139, which states, in pertinent part: “the act, omission, or failure of any person acting for or employed by . . . an exhibitor or a person licensed as . . . an exhibitor . . . within the scope of his employment or office, shall be deemed the act, omission or failure of such . . . exhibitor as well as of such person.” 7 U.S.C. §2139.

Regulations promulgated to implement the Act provide requirements for licensing, recordkeeping and attending veterinary care, as well as specifications for the humane handling, care, treatment and transportation of covered animals. 9 C.F.R. Chapter 1, Subchapter A, Parts 1 through 4. The regulations set forth specific instructions regarding the size and environmental specifications of facilities where animals are housed or kept; the need for adequate barriers; the feeding and watering of animals; sanitation requirements; and the size of enclosures and manner used to transport animals. 9 C.F.R. Chapter 1, Subchapter A, Part 3, Subpart F. The regulations make it clear that exhibited animals must be handled in a manner that assures not only their safety but also the safety of the public, with sufficient distance or barriers between animals and people. *Id.*

D. Discussion

Complainant argues that because Respondent Farin Fleming was listed as an officer and director of Terranova Enterprises, Inc., she should be held personally responsible for any violations of the Act devolving from acts of other officers. In support of this theory, Complainant cites to the holding in *In re Lion Raisins, Inc.*, 69 Agric. Dec. ___, 2010, whereby the failure of a corporation to observe corporate formalities sufficed to render the individual officers indistinguishable from the corporate entity.

It is clear from the record that beyond holding a few meetings early after its formation, Terranova Enterprises, Inc. did not engage in formal corporate decision-making processes. I fully credit Will Ann Terranova's testimony that the business decisions were left to her ex-husband, who had the experience and expertise with exhibiting animals. There is no record evidence rebutting her testimony that Ms. Fleming

was not involved in corporate operations or decisions. There is no evidence that Farin Fleming was an employee of the corporation, or anything other than a nominal officer and director. Therefore, factually, the instant matter is distinguishable from the circumstances involved in *In re Lion Raisins, Inc.*, supra., where the individuals were each involved in the operations of the business.

I place further weight upon the fact that Ms. Fleming is the daughter of Mrs. Terranova, and is not related to Mr. Terranova. I find little reason to infer that Ms. Fleming had a relationship with Mr. Terranova after he and her mother separated in 2006. Her address is not the same as the corporate address. The only alleged violation cited before 2006 is the failure to document a plan for environmental enhancement adequate to promote the psychological well-being of spider monkeys on exhibition at the Circus World Museum in Baraboo, Wisconsin in June, 2005. There is no evidence that she was aware of this particular exhibition, or that she was involved in keeping records required under the Act.

Despite the fact that Farin Fleming was named as a director of Terranova Enterprises, Inc., I find that there is insufficient evidence of record to conclude that Ms. Farin Fleming was individually responsible for any of the alleged violations represented by actions taken by Terranova Enterprises, Inc. or Mr. Douglas Terranova at any time relevant to this adjudication. I find that the remedial nature of the Act would not contemplate holding an individual responsible for corporate acts without some evidence of involvement in corporate decisions.

E. Findings of Fact

1. Respondent Farin Fleming is an individual residing in Kaufman, Texas.

2. Respondent Farin Fleming was a director of Respondent Terranova Enterprises, Inc.
3. Terranova Enterprises, Inc., is a moderate sized business that exhibits wild and exotic animals, including tigers, a cougar, and spider monkeys, which operated as an exhibitor under the Act at all times relevant to this adjudication, under AWA license number 74-C-0199.
4. Respondent Farin Fleming was not involved in any manner with the acts of Douglas Keith Terranova or Terranova Enterprises Inc. at any time relevant to this adjudication.

F. Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Although she was named as a director of Terranova Enterprises, Inc., Respondent Farin Fleming was only nominally director, and was not involved in any decisions regarding the operation of the business.
3. Respondent Farin Fleming is not individually responsible for any actions of the other Terranova Respondents.

H. Sanctions

With respect to assessing civil penalties against Respondent for the violation of the Act and the Regulations and Standards, 7 U.S.C. § 2149(b) directs that "...[t]he Secretary shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person involved, the gravity of the violation, the person's good faith, and the history of previous violations". 7 U.S.C. § 2149(b). The purpose of

sanctions is deterrence, and not punishment. In re David M. Zimmerman, 56 Ag. Dec. 433 (1997).

As I have found no evidence to impute individual responsibility to Respondent Farin Fleming for any acts, omissions or failures of the other Terranova Respondents, no sanction of any kind may be taken against her.

ORDER

The allegations brought against Farin Fleming are DISMISSED.

This Decision and Order shall become effective and final 35 days from its service upon t unless an appeal is filed with the Judicial Office pursuant to 7 C.F.R. § 1.145.

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

So Ordered this ____ day of _____, 2011 at Washington, DC.

Janice K. Bullard
Administrative Law Judge