

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWA Docket No. 09-0196
)	
FOR THE BIRDS, INC., an Idaho)	
corporation; JERRY LEROY KORN,)	
an individual; MICHAEL SCOTT KORN,)	
an individual; BEN KORN, an individual;)	
DAWN TALBOTT, an individual;)	
RAYMOND WILLIS, an individual; and)	CONSENT DECISION AND
JOHN BREIDENBACH, an individual,)	ORDER AS TO RESPONDENTS
)	JOHN BREIDENBACH AND
Respondents.)	DAWN TALBOTT

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.)(the "Act"), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondents willfully violated the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 et seq.). This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

Respondents John Breidennbach and Dawn Talbott admit the jurisdictional allegations in the complaint and specifically admit that the Secretary has jurisdiction in this matter, admit the remaining allegations as set forth herein as findings of fact and conclusions of law, waive oral hearing and further procedure, and consent and agree, for the purpose of settling this proceeding, to the entry of this decision. The complainant agrees to the entry of this decision.

Findings of Fact

1. Respondent Dawn Talbott is an individual whose mailing address is 1008 Jonathan Street, Fruitland, Idaho 83619.
2. Respondent John Breidenbach is an individual whose mailing address is 907 S.W.

4th Street, Ontario, Oregon 97914.

3. From January 28, 2006, through approximately January 2008, respondents Breidenbach and Talbott were officers and directors of respondent For the Birds, Inc., and were (1) operating as exhibitors, as that term is defined in the Act and the Regulations, and/or (2) acting for or employed by an exhibitor (respondent For the Birds, Inc.), and their acts, omissions or failures within the scope of their employment or office are, pursuant to section 2139 of the Act (7 U.S.C. § 2139), deemed to be their own acts, omissions, or failures, as well as the acts, omissions, or failures of respondent For the Birds, Inc.

4. Between January 28, 2006, and approximately January 2008, respondents Talbott and Breidenbach failed to have an attending veterinarian provide adequate veterinary care to animals; failed to employ an attending veterinarian under formal arrangements, and with appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use; and failed to establish and maintain programs of adequate veterinary care.

5. Between January 28, 2006, and approximately January 2008, respondents Talbott and Breidenbach failed to handle animals as expeditiously and carefully as possible in a manner that would not cause them trauma, unnecessary discomfort, behavioral stress, or physical harm; and failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, and specifically, allowed the public to handle infant tigers without any barrier or distance.

6. On July 23, 2006, respondents Talbott and Breidenbach failed to meet the minimum facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs,

nonhuman primates and marine mammals (9 C.F.R. §§ 3.125-3.142), and specifically, said respondents failed to:

- a. ensure that housing facilities were structurally sound and maintained in good repair.
- b. maintain a structurally sound perimeter fence, and specifically, there was no perimeter fence around respondents' facility.
- c. provide tigers with adequate shelter from inclement weather.
- d. keep premises clean and in good repair and free from excessive weed growth, trash and accumulated debris.
- e. provide animals (tigers and bears) with clean, potable water as often as necessary for their health and well-being; and.
- f. provide tigers with adequate shelter from sunlight.

Conclusions of Law

1. Between January 28, 2006, and approximately January 2008, respondents Talbott and Breidenbach failed to have an attending veterinarian provide adequate veterinary care to animals, in willful violation of section 2.40(a) of the veterinary care regulations. 9 C.F.R. § 2.40(a).

2. Between January 28, 2006, and approximately January 2008, respondents Talbott and Breidenbach failed to employ an attending veterinarian under formal arrangements, and with appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use, in willful violation of section 2.40(a)(1)-(2) of the veterinary care regulations. 9 C.F.R. § 2.40(a)(1)-(2).

3. Between January 28, 2006, and approximately January 2008, respondents Talbott and Breidenbach failed to establish and maintain programs of adequate veterinary care, in willful violation of section 2.40(b) of the veterinary care regulations. 9 C.F.R. § 2.40(b).

4. Between January 28, 2006, and approximately January 2008, respondents Talbott and Breidenbach failed to handle animals as expeditiously and carefully as possible in a manner that would not cause them trauma, unnecessary discomfort, behavioral stress, or physical harm, in willful violation of the handling regulations. 9 C.F.R. § 2.131(b)(1).

5. Between January 28, 2006, and approximately January 2008, respondents Talbott and Breidenbach failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, in willful violation of the handling regulations. 9 C.F.R. § 2.131(c)(1).

6. On July 23, 2006, respondents Talbott and Breidenbach willfully violated section 2.100(a) of the Regulations by failing to meet the minimum facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals, and specifically, said respondents failed to:

- a. ensure that housing facilities were structurally sound and maintained in good repair. 9 C.F.R. § 3.125(a).
- b. maintain a structurally sound perimeter fence. 9 C.F.R. § 3.127(d).
- c. provide tigers with adequate shelter from inclement weather. 9 C.F.R. § 3.127(b).
- d. keep premises clean and in good repair, and free from excessive weed growth, trash and accumulated debris. 9 C.F.R. § 3.131(c).
- e. provide animals (tigers and bears) with clean, potable water as often as necessary for their health and well-being. 9 C.F.R. § 3.130.
- f. provide tigers with adequate shelter from sunlight. 9 C.F.R. § 3.128.

7. Respondents Breidenbach and Talbott have admitted the above facts and the parties

have agreed to the entry of this decision, therefore such decision will be entered.

Order

1. Respondents Breidenbach and Talbott, their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder.

2. Respondents Breidenbach and Talbott are each disqualified from obtaining an Animal Welfare Act license.

3. If respondent Breidenbach, following service of compulsory process, fails to appear at the oral hearing of this matter (if one is held) and to testify as to the facts that he has admitted herein, this consent decision and order shall automatically be null and void as to him.

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



John Breidenbach
Respondent



Dawn Talbott
Respondent



Colleen A. Carroll
Attorney for Complainant

Done at Washington, D.C.
this 17 day of February 2012



Jill S. Clifton
Administrative Law Judge