UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0552

In re: Hope Knaust,

Stan Knaust, and

The Lucky Money, a partnership

Respondents

Decision and Order

Preliminary Statement

This matter is before the Administrative Law Judge upon the Motion of the Complainant for Summary Judgment.

This disciplinary action was commenced on July 26, 2012 by Kevin Shea, the Acting Administrator of the Animal and Plant Health Inspection Service by filing a Complaint alleging that Respondents had violated the Animal Welfare Act, as amended (AWA or Act), 7 U.S.C. §2131 *et seq.* and the regulations and standards issued thereunder, 9 C.F.R. §1.1 *et seq.* Copies of the Complaint were served upon each of the Respondents by certified mail on August 3, 2012.

An Answer was filed on behalf of all Respondents on August 22, 2012, fully admitting only the allegations identifying the Respondents, (but correcting the mailing address of Stan Knaust), and generally (except as discussed herein) denying the other allegations. On August 27, 2012, an Order was entered requiring the parties to file and exchange exhibit and witness lists and provide to the opposing side copies of any exhibits

intended to be introduced at trial. The matter was set for hearing to commence June 4, 2013; however, subsequent to the date being set, the Complainant filed a Motion for Summary Judgment, suggesting that its motion might obviate the need for a hearing and moved to continue the hearing which had been set. On May 30, 2013, with the Motion pending before me, I ordered the hearing cancelled. After being given a brief extension of time, Respondents responded and the matter is now ripe for ruling on the Motion.

The Summary Judgment Standard

The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (the Rules or the Rules of Practice) set forth at 7 C.F.R., Subpart H, apply to the adjudication of this matter. While the Rules do not specifically provide for the use or exclusion of summary judgment, the Department's Judicial Officer has consistently ruled that hearings are futile and summary judgment is appropriate where there is no factual dispute of substance. *In re Animals of Montana, Inc.*, 68 Agric. Dec. 92, 104 (2009); *In re Kathy Jo Bauck d/b/a Puppy's on Wheels a/k/a Puppies on Wheels and Pick of the Litter*[1], 68 Agric. Dec. 853, 858-9 (2009); *Veg-Mix, Inc. v. U.S. Dep't of Agric*., 832 F.2d 601, 607 (DC Cir. 1987).

While not an exact match, "no factual dispute of substance" may be equated with the "no genuine issue as to any material fact" language found in the Supreme Court's decision construing Fed. R. Civ. P. 56 in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986); *See also, In re Thomas Massey*, 56 Agric. Dec. 1640 (1997). An issue is "genuine" if sufficient evidence exists on each side so that a rational trier of fact could resolve the issue either way, and an issue of fact is "material" if under the substantive law it is essential to the proper disposition of the claim. *Alder v. Wal-Mart Stores, Inc.*, 144

[1] *See*, n. 6 and 7 at 858-9 where the use of summary judgment is discussed in a variety of cases.

F.3d 664, 670 (10th Cir. 1998). The mere existence of some factual dispute will not defeat an otherwise properly supported motion for summary judgment because the factual dispute must be material. *Schwartz v. Brotherhood of Maintenance Way Employees*, 264 F.3d 1181, 1183 (10th Cir. 2001). The usual and primary purpose of summary judgment is to isolate and dispose of factually unsupported claims or defenses. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-4 (1986).

If a moving party supports its motion,[2] the burden shifts to the non-moving party, who may not rest on mere allegation or denial in pleadings, but must set forth specific facts showing there is a genuine issue for trial. *T. W. Elec. Serv., Inc v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987), *Muck v. United States*, 3 F.3d 1378, 1380 (10th Cir. 1993). In setting forth such facts, the non-moving party must identify the facts by reference to depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials. Fed. R. Civ. P. 56(c)(1); *Anderson, supra* at 247, *See also, Adler, supra,* at 671. A non-moving party cannot rely upon ignorance of facts, on speculation or suspicions, and may not avoid summary judgment on a hope that something may show up at trial. *Conaway v. Smith*, 853 F2d. 789, 793 (10th Cir. 1988). In ruling on a motion for summary judgment all evidence must be considered in the light most favorable to the non-moving party with all justifiable inferences to be drawn in the non-movant's favor. *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 158-9 (1970); *Anderson, supra* at 254. Although the Respondents filed a Response to Complainant's Motion for Summary Judgment, the Response is abysmally devoid of the type of supporting documentation discussed above, except for references to the

[2] *See, Celotex Corp. v. Catrett,* 477 U.S. 317, 325 (1986).

Affidavit of Hope Knaust which was prepared not by her attorney, but rather by Morris Smith, an Investigator with USDA's Investigative & Enforcement Service as part of the investigation.

As discussed in *Anderson,* the judge's function is not himself to weigh and determine the truth of the matter but to determine whether there is a genuine issue for trial. *Anderson, supra* at 250. The standard to be used mirrors that for a directed verdict under Fed. R. Civ. P. 50(a), which is that the trial judge must direct a verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict. *Brady v. Southern R. Co.,* 320 U.S. 476, 479-80 (1943), *Sartor v. Arkansas Gas Corp.*, 321 U.S. 620, 624 (1944). If reasonable minds could differ as to the import of the evidence, however, a verdict should not be directed. *Anderson, supra* at 250, *Wilkerson v. McCarthy,* 336 U.S. 53, 62 (1949).

Formerly it was held that if there was what was called a scintilla of evidence, a judge was obligated to leave that determination to a jury, but recent decisions have established a more reasonable rule that in every case the question for the judge is not whether there is literally no evidence, but whether there is any upon which the jury could properly proceed to find a verdict for the party producing it upon whom the onus of proof is imposed. *Improvement Co. v. Munson,* 14 Wall. 442, 448 (1872). While administrative proceedings typically do not have juries, the rule's application remains applicable for a judge sitting as a fact finder performing the same function.

Discussion

Applying the foregoing standard to the evidence before me, it is necessary to determine whether the Respondents have established the existence of genuine issues of

material fact as to each of the allegations addressed in Complainant's Motion. An evaluation of the evidence supporting the allegations contained in the Complaint follows.

The first three paragraphs of the Complaint deal with the identity of the parties and contain no substantive allegations of violations. Aside from correcting the mailing address of Stan Knaust, Respondents admitted the allegations. The fourth paragraph referred to Respondents' option as a zoo which Respondents denied, despite the fact that the term zoo is included in references contained in the record to the "Lucky Monkey Patting Zoo" and the Application for License Renewal signed by Hope Knaust dated June 11, 2009 which has a check for zoo in block 7. CX-1 at 3. Given that the Animal Welfare Act license granted is a Class C license for an exhibitor, the exact characterization of the business itself is not material to the allegations and resolution of any semantic disagreement is not required. CX-1 at 2, 5, 7 and 10.

Paragraph 5 of the Complaint alleged that on or about February 11, 2008 Respondents willfully violated 9 C.F.R. §2.100 of the Regulations by failing to enclose a zebra in an enclosure having a perimeter fence not less than six feet high as required by 9 C.F.R. §3.127(d). In paragraph 3 of the Statement of Undisputed Facts in Support of Complainant's Motion for Summary Judgment (hereafter referred to as Statement),[3] Complainant referred to the Inspection Report prepared by Animal Care Inspector Don Fox (CX-65) as well as the Respondents' Answer which indicated: "When the zebra was a baby, the wall was four feet high. As the animal grew, Respondents built a six-foot [high] enclosure." Answer, ¶ 5, Docket entry 4.

Perimeter fence requirements are set forth in 9 C.F.R. §3.127(d), which provides in pertinent part:

[3] Docket Entry No. 16.

> (d) *Perimeter fence.* On or after May 17, 2000, all outdoor housing facilities (*i.e.* facilities not entirely indoors) must be enclosed by a perimeter fence that is of sufficient height to keep animals and unauthorized persons out. Fences less than 8 feet high for potentially dangerous animals…., or **less than 6 feet high for other animals** must be approved by the Administrator. (Emphasis added)

The Answer admits that the fence was only four feet high and there is no assertion or indication that the Administrator's approval was obtained for a fence less than 6 feet high. Accordingly, a violation is established as to this allegation. CX-4, 7, and 65.

Paragraph 6 of the Complaint alleges that on or about February 10, 2010, Respondents failed to employ an attending veterinarian under formal arrangements, as required, in willful violation of 9 C.F.R. §2.40(a)(1), and specifically Respondent's arrangements did not include a current written program of veterinary care with regularly scheduled visits to the facility, none having been made to the facility since sometime in 2008,[4] a period well in excess of a year. Respondents denied the allegation in their Answer, claiming that David Snyder, DVM was the attending veterinarian and believed that he had come to the facility in 2008 for an on-site visit. Answer, ¶ 6; Docket entry 4. While Respondents may have considered Dr. Snyder to have been their attending veterinarian, merely entertaining such a belief is not sufficient. *See, Conaway, supra.* 9 C.F.R §2.40(a)(1) requires that in the case of a part-time attending veterinarian or consultant, formal arrangements "shall include a written program of veterinary care and regularly scheduled visits to the premises…." The affidavit of Hope Knaust (CX-7) indicates that Don Fox cited her for not having a written program of veterinary care (PVC) and she was given a week to get a veterinarian and to have the PVC signed.[5] It is thus abundantly clear that at the time of the inspection, a current written program of

[4] Knaust "thought" that Dr. Snyder had been to the facility in 2009. CX-7 at page 2. Dr. Snyder did confirm that he had sold the facility some hay in 2009 and presumably had been there to deliver the hay. CX-6.
[5] CX-7 at page 2.

veterinary care did not exist and formal arrangements had not been reduced to writing. CX-4, 5. The interview of Dr. Snyder confirmed that he last signed a PVC for the facility in 2008 and had not visited the facility, except possibly to sell it some hay in 2009.[6] The protracted hiatus between his professional visits cannot be considered sufficiently regular to comply with the intent of the Regulation to insure adequate veterinary care. Accordingly, the violation has been established.

The Complaint also alleges recurring violations of the same regulation on or about February 17, 2010 (Paragraph 10), February 23, 2010 (Paragraph 12), March 4, 2010 (Paragraph 15), and May 3, 2010 (Paragraph 18). Even without considering the observations recorded in the Inspection Reports,[7] Hope Knaust's affidavit admits the violations on February 10, 2013 and February 17, 2013, by indicating that they were waiting for Dr. Snyder to make a visit to the facility.[8]

> "Regarding the PVC, I told Don [Fox] we were still waiting for Dr. Snyder to come out and inspect the property. Dr. Snyder told Stanley he was coming on 02/17/10. Apparently Don went and talked to Dr. Snyder and he told Don he was not going to be our vet. Dr. Snyder called Stanley the next day, on 2/18/10 and said he could not pass or sign our vet plan…." CX-7 at page 5.

The violation on February 23, 2010 is also admitted:

> "Again, I was first again cited for not having a written program of veterinary care. It is true that Don Fox cited this on his inspection reports dated, 02/10/10 and 02/17/10. I did not know until 03/19/10 that Dr. Snyder was refusing to come back out…."[9] CX-7 at page 8.

[6] CX-5 and 6.
[7] CX-2, 9, 13, 25 and 61.
[8] Dr. Snyder did go to the facility at some point before February 19, 2010 but did not go to the residence as he could see from the driveway that the animals were in deplorable shape. CX-6.
[9] Dr. Snyder had communicated his intention not to continue as the facility's veterinarian to Stanley Knaust; however, if Hope Knaust's affidavit is to be given credence, Stanley Knaust apparently failed to share that critical information with her. CX-6.

The same extract implicitly admits the violation on March 4, 2010. The affidavit goes on to relate the inability to secure the services of a veterinarian and that the arrangements for the services of Dr. Tim Holt were not made until March 4 or 5, 2010.[10]

Despite Respondents' professed belief that Dr. Snyder continued to be their veterinarian, the record establishes that Dr. Snyder had advised Stanley Knaust that he could not sign the PVC and was terminating any relationship with the facility prior to February 19, 2010. CX-6. Moreover, a letter dated February 19, 2010 received by APHIS on February 22, 2010 from Dr. Snyder makes it abundantly clear that he had no intention of serving in that capacity for the facility. CX-11. Indeed, his letter expressly indicated that he could not endorse renewal of their license, citing pain, suffering, and lack of feed concerns and indicating that the operation lacked manpower and funding to keep the animals in a satisfactory health status. Given his five year relationship with the facility, his observation concerning the severe deterioration of conditions at the facility which is consistent with that expressed by Inspector Don Fox lends significant credence to the serious allegations concerning the failure of the Respondents to adequately provide for the welfare and care of the animals at their facility. CX-4, 6, 11.

Paragraph 7 of the Complaint alleges that on or about February 10, 2010, Respondents failed to have an attending veterinarian and to provide adequate veterinary care to a camel in willful violation of 9 C.F.R. §2.40(a), (b)(2). Respondents denied the allegation, indicating that the animal had been taken to the veterinarian just prior to the date alleged and treated. Answer ¶ 7. Hope Knaust's account that the animal was treated prior to the February 10 inspection appears to be refuted by Dr. Snyder's statement that

[10] CX-7 at page 13. Hope Knaust contacted Dr. Holt on March 4, 2010, but he did not visit the facility until March 5, 2010. Even after his visit to the facility, no PVC was adopted. CX-61.

the camel was not brought to his clinic until February 11, 2010.[11] Moreover, as his account confirms that the camel required veterinary intervention, the violation is established. Because the camel was taken to the vet on February 11, 2010 and received care, I will decline to find a repeat violation as to the camel on February 23, 2010 as alleged in Paragraph 13. Hope Knaust's affidavit attempts to minimize the need for veterinary intervention as to the other animals; however, the Inspection Report prepared by Don Fox and the affidavit of Dr. Jones support the existence of the other violations alleged on this date.[12] Repeat violations were cited on March 4, 2010 for the capybara, a kangaroo and two fallow deer. Absent any factual evidence that the animals were treated, the violations are established. CX-50, 51, 52, 54 and 55; *Cf. Anderson, supra* at 247, *See also, Adler, supra,* at 671.

Paragraph 8 of the Complaint alleges that on or about February 10, 2010, Respondents failed to maintain accurate records of the acquisition and disposition of animals, as required, in willful violation of 9 C.F.R. §2.75(b). Respondents' Answer denies the allegation, but Hope Knaust's affidavit inconsistently states that the records were "immediately" corrected on the date of the inspection. Answer, ¶ 8, CX-2. Given that the affidavit concedes that corrections were made, Respondents have admitted the existence of deficiencies and the violation. While the curing of a violation may mitigate, or in some circumstances entirely obviate the need for a penalty, it does not alter the fact

[11] CX-6. It should be noted that Respondents failed to provide evidence of any earlier veterinary treatment if in fact such treatment had occurred as would be required under *T. W. Electric, Muck, Anderson* and *Adler, supra*.

[12] Hope Knaust's affidavit references an opinion purportedly given by Dr. Holt (CX-7 at page 9); however, he was not contacted until March 4, 2010 and would not have seen the animals until the following day. CX-7 at page 13, and 17. The lack of adequate veterinary care was confirmed when the animals were subsequently examined and treated following their confiscation by APHIS on March 5, 2010. CX-50, 51, 52, 54 and 55.

that a violation occurred. *See, In re Volpe Vito, Inc., d/b/a Four Bears water Park and Recreation Area,* 56 Agric. Dec. 166 (1997).

Paragraph 9 of the Complaint alleges that on or about February 10, 2010, Respondents failed to meet the minimum general facility standards of 9 C.F.R. § 3.125, 3.127 and 3.75 in willful violation of 9 C.F.R. §2.100(a). Respondents' Answer contains a denial averring that the facilities had been cleaned consistent with existing seasonal conditions. Answer, ¶ 9. Hope Knaust's affidavit admits the existence of uninstalled cabinets in the primate building, the fencing violation for the camel and Axis deer fences, the failure to have a heat source for the capyberas which was corrected the same day and the lack of shelter for the eight alpacas. CX-7. The affidavit affirms the content of the Answer and will be considered sufficient to reasonably raise a genuine issue of material fact as to the remaining violations, and additional evidence will be required if the other violations are to be established as has been alleged.

Additional standards violations are contained in Paragraphs 11, 14, 17 and 20 for the inspections conducted on February 17, February 23, March 4, and May 3, 2010.[13] Hope Knaust's affidavit admits certain of the violations cited on February 17, 2010, including the existence of tools in the food storage building, and the fact that the facility's only full time employee had departed and not been replaced, leaving the burden for caring for the significant number of animals primarily upon her, with only limited assistance from Stanley Knaust who no longer resided on the premises.[14] CX-7.

The same insufficiency of staff was again cited on February 23, 2010, however, Hope Knaust's affidavit indicates that by that date a number of the animals had been sold

[13] CX-9, 13, 25 and 61

[14] Respondent's Answer at ¶ 2. Dr. Snyder commented on the deterioration at the facility after "Stanley and Hope split up." CX-6.

and a new employee had been hired. While the affidavit admits the existence of the horse carcass, it indicates that the animal had died only the night before and that the inspectors arrived before they had had time to remove it. The February 23, 2010 Inspection Report also cited Respondents with failing to provide sufficient food for the animals. CX-13. Respondents deny the allegation; however, given the malnourished condition of the animals confiscated on March 5, 2010, the only logical conclusion that can be reached is that they were not being fed adequate amounts of feed. CX-50, 51, 52, 54, 55 and 112.

The violations cited on March 4, 2010 include an allegation that the primate structure was not constructed in a manner to provide adequate heat. That allegation appears to be inartfully focused as the evidence indicates that rather than the problem being in the structure's construction, it was the lack of fuel for the heating element which had to be replenished to raise the temperature to an acceptable level. Hope Knaust's affidavit admits that a pig and llama had escaped their enclosures and that the llama shelter violation was corrected that day. CX-7. The other violations are contested and I will decline to find that those have been established. The failure to provide sufficient food was also cited and will again be established by the examination of the animals following their confiscation on March 5, 2010. CX-50, 51, 52, 54, 55 and 112.

The Respondents' failed to submit any factual evidence concerning the violations cited in the May 3, 2010 or September 7, 2010 Inspections, and in their Response to the Motion rely solely upon pleadings. *See, T. W. Electric, supra.* Consistent with the burden shifting requirements set forth in *T. W. Electric, Muck, Anderson* and *Adler, supra*, the violations cited on those dates will be deemed established.

The above discussion and the evidence in the record compel the only possible conclusion as being that the Respondents lacked sufficient resources both in funding and personnel for continued operation or correction of the conditions at the facility. The conditions observed reflect an appalling lack of adequate and necessary veterinary care or husbandry practices despite repeated citations, serious overall deterioration in the standard of care of the animals and the physical facilities themselves and repeated deficiencies at the facility not existing previously during prior observations. The seriousness of the conditions at the facility ultimately resulted in confiscation of certain of the animals at the Respondents' facility on March 5, 2010, including Hobo, a monkey that provided Hope Knaust with her main source of income.[15] The subsequent evaluation of those animals reflects unacceptable neglect in their care, with many observed as being malnourished and requiring immediate veterinary care for anemia, lice, and parasites. CX-50, 51, 52, 54 and 55.

The United States Department of Agriculture's sanction policy provides that Administrative Law Judges and the Judicial Officer must give appropriate weight to sanction recommendations of administrative officials, as follows:

> [T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

In re S.S. Farms Linn County, Inc. supra.

Like the Judicial Officer, I do not consider such recommendations controlling, and in appropriate circumstances, the sanction imposed may be considerably different,

[15] Confiscation was undertaken under 7 U.S.C. §2146 which permits confiscation of any animal "found to be suffering as a result of a failure to comply with any provision" of the Act "or any regulation or standard issed thereunder."

either less or more than that requested.[16] While the Complainant asked for a civil penalty in addition to revocation of Respondents' license, I will decline to do so, finding that such an imposition is unnecessary under the circumstances, given the confiscation of certain of the animals, and the sanctions imposed herein.

On the basis of the entire record, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. Hope Knaust and Stanley (Stan) Knaust are individuals residing in the State of Texas and are partners operating The Lucky Monkey, a general partnership also sometimes known as The Lucky Monkey Petting Zoo. Hope Knaust lives at the facility in Terrell, Texas. Stanley Knaust lives in Irving, Texas.

2. Hope and Stan Knaust hold a Class C Exhibitor's Animal Welfare Act License No. 74-C-0388. CX-1.

3. On or about February 11, 2008, Respondents failed to enclose facilities for a zebra with a fence not less than six feet high. Answer, ¶5; CX-4, 65.

4. Inspections of the partnership facility conducted on February 10, 2010, February 17, 2010, February 23, 2010, March 4, 2010, and May 3, 2010 established that Respondents failed to employ an attending veterinarian under formal arrangements, that their arrangements with their part-time veterinarian did not include a current written program of veterinary care, that regularly scheduled visits had not been made by the

[16] *In re Amarillo Wildlife Refuge, Inc*., 68 Agric. Dec. 77,89 (2009); *In re Alliance Airlines*, 64 Agric. Dec. 1595, 1608 (2005); *In re Mary Jean Williams*, (Decision as to Deborah Ann Milette), 64 Agric. Dec. 364, 390 (2005); *In re George A. Heimos Produce Co.*, 62 Agric. Dec. 763, 787 (2003), appeal dismissed, No. 03-4008 (8th Cir. Aug 31, 2004); *In re Excel Corp*., 62 Agric. Dec. 196, 234 (2003), enforced as modified, 397 F. 3d 1285 (10th Cir. 2005); *In re Steven Bourk* (Decision as to Steven Bourk and Carmella Bourk), 61 Agric. Dec. 25, 49 (2002).

veterinarian and that the veterinarian had not conducted an on-site visit to the facility since 2008. The violations continued until at least May 5, 2010. CX-2, 4, 5, 6, 7, 9, 13, 25, and 61.

5. On February 10, 2010, Respondents failed to provide adequate veterinary care to a camel with extensive hair loss and visibly red and irritated skin, later diagnosed to have external parasites and a secondary infection. CX-2, 4, and 6.

6. On or about February 10, 2010, Respondents failed to maintain accurate records of the acquisition and disposition of the animals at the facility. Upon being apprised of the deficiency, the records were corrected that same day. CX-2, 4, 7.

7. On or about February 10, 2010, Respondents' nonhuman primate building contained uninstalled cabinets, the enclosure housing the camel and Axis deer were in disrepair, the enclosure for the capyberas lacked a heat source, and the enclosure for eight alpacas lacked adequate shelter. A heat source was provided for the capyberas that same day. CX-2, 7.

8. On or about February 17, 2010, Respondents food storage building contained tools and Respondents failed to employ a sufficient number of trained personnel to care for the nonhuman primates and to provide minimally acceptable husbandry to the other animals. CX-4, 7, 9 and 10.

9. On or about February 23, 2010, Respondents failed to provide adequate veterinary care to a capybara, a kangaroo, two fallow deer, and a sheep. CX-13. The failure to provide adequate veterinary care to the capybara, kangaroo, and the two fallow deer continued at least until March 4, 2010. CX-25, 50, 51, 52, 54 and 55.

10. On or about February 23, 2010, Respondents' food storage building contained clutter, Respondents failed to provide sufficient food for the animals, and failed to remove a bloated equine carcass from the area adjacent to the llama enclosure. CX-7, 13, 14, 50, 51, 52, 54 and 55.

11. On or about March 4, 2010, Respondents failed to adequately maintain fencing in an adequate state of repair, allowing a pig and llama to escape their enclosures, failed to provide sufficient food for the animals, and failed to provide adequate shelter from inclement weather for llamas. CX-7, 25, 50, 51, 52, 54 and 55.

12. Conditions observed on March 4, 2010 resulted in confiscation of certain animals by APHIS on March 5, 2010. Subsequent examination of the animals reflected unacceptable neglect in their care, with many being observed as being malnourished, and requiring immediate veterinary care for anemia, lice and parasites, CX-50, 51, 52, 54 and 55.

13. On or about May 3, 2010, Respondents failed to maintain accurate records of the acquisition and disposition of animals at the facility. CX-61.

14. On or about September 7, 2010, Respondents failed to provide APHIS officials access to the facility. CX-39.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Respondents violated 9 C.F.R. §2.100(a) and 3.127 by failing to enclose a zebra in an enclosure with a fence not less than six feet high.

3. Respondents violated 9 C.F.R. §2.40(a)(1) of the Regulations by failing to employ an attending veterinarian under formal arrangements, their arrangements with their part-

time veterinarian did not include a current written program of veterinary care, and regularly scheduled visits had not been made by the veterinarian.

4. Respondents violated §2.40(b)(2) of the Regulations by failing to provide adequate veterinary care to their animals visibly exhibiting the need for veterinary intervention on February 10, 2010, February 23, 2010 and March 4, 2010.

5. Respondents violated 9 C.F.R §2.75(b) on February 10, 2010.

6. Respondents' facility failed to meet the minimum Standards on February 10, 2010, specifically 9 C.F.R §3.75, 3.125, and 3.127(b).

7. Respondents' facility failed to meet the minimum Standards on February 17, 2010, specifically 9 C.F.R §3.75(b), 3.85, and 3.132.

8. Respondents' facility failed to meet the minimum Standards on February 23, 2010, specifically 9 C.F.R §3.129 and 3.131(c).

9. Respondents' facility failed to meet the minimum Standards on March 4, 2010, specifically 9 C.F.R §3.75(b), 3.75(e), 3.125(a), 3.127(b), and 3.129.

10. Respondents violated 9 C.F.R §2.75(b) on March 4, 2010.

11. Respondents violated 7 U.S.C. §2146(a) and 9 C.F.R §2.126 on September 7, 2010.

12. Except as provided herein, genuine issues of material facts exist as to the other violations alleged in the Complaint.

Order

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

2. AWA License Number 74-C-0388 is revoked. Revocation will be deferred and become effective 90 days after this decision becomes final to allow Respondents to transfer or dispose of any animals they elect not to keep for personal enjoyment.

3. This Decision and Order shall become final and effective without further proceedings thirty-five days after service on the Respondents, unless appealed to the Judicial Officer by a party to the proceeding within thirty (30) days, pursuant to section 1.145 of the Rules of Practice, 7 C.F.R. §1.145.

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

November 15, 2013

Peter M. Davenport

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Peter M. Davenport
Chief Administrative Law Judge

Copies to: Colleen A. Carroll, Esquire
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