UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

USDA
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OALJ / HCO
WASH, DC

Docket No. 14-0132

In re: CASEY LUDWIG,

an individual,

Respondent.

DECISION AND ORDER BY ENTRY OF DEFAULT AGAINST RESPONDENT

Preliminary Statement

The instant matter involves a disciplinary proceeding under the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*) ("Act" or "AWA"), and the regulations and standards issued thereunder (9 C.F.R. § *et seq.*) ("Regulations and Standards"). The proceeding initiated with a Complaint filed by the Administrator, Animal and Plant Health Inspection Service ("APHIS"), of the United States Department of Agriculture ("USDA"; "Complainant"), alleging that Casey Ludwig, an individual ("Respondent"), had committed multiple violations of the Act.

Issues

1. Whether default should be entered in this matter;
2. Whether a hearing is necessary in this matter;
3. Whether Respondent willfully violated the Act; and
4. Whether the sanctions recommended by Complainant should be imposed.

Statement of the Case

I. Procedural History

On June 17, 2014, Complainant filed with the Hearing Clerk, Office of Administrative Law Judges ("OALJ"; "Hearing Clerk"), a Complaint alleging willful violations of the Act,

Standards, and Regulations. On June 24, 2014, the Hearing Clerk served Respondent, via certified mail, with the Complaint and a copy of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary (7 C.F.R. § 1.130 *et seq.*) ("Rules of Practice" or "Rules"). When no Answer was received, the Hearing Clerk sent Respondent a letter via regular mail on July 15, 2014 apprising that Respondent had failed to timely answer the Complaint.[1] On July 21, 2014, Respondent filed with the Hearing Clerk an Answer "deny[ing] all allegations within [the] complaint" and "requesting a hearing regarding [the] allegations" (Answer).

By Order issued October 30, 2014, I directed the parties to show cause as to why a Decision and Order on the Record should not be entered. In that Order I stated that good cause existed to decide this case on the record and noted that OALJ staff had been unable to arrange a telephone conference between the parties (Order at 1). On November 19, 2014, Complainant filed a "Response to Order to Show Cause Why Decision and Order Should Not Be Entered" and proposed "Decision and Order on the Record by Reason of Default." Respondent failed to respond to my Order.

II. Statutory and Regulatory Authority

"It is well established that the Rules of Practice, 7 C.F.R. § 1.130 *et seq.*, rather than the Federal Rules of Civil Procedure apply to adjudicatory proceedings under the regulations promulgated under the Animal Welfare Act."[2] Pursuant to the Rules of Practice, a respondent is required to file an Answer within twenty (20) days after service of a Complaint. 7 C.F.R. §

[1] The Hearing Clerk's letter of July 15, 2014 states: "As of this date, an Answer has not been filed within the allotted time as noted in Section 1.126 of the Rules of Practice." It appears that the Hearing Clerk's reference to "Section 1.126" is a clerical error, as the applicable Rule of Practice is set forth at 7 C.F.R. § 1.136.

[2] *In re* Hamilton, 64 Agric. Dec. 1659, 1662 (U.S.D.A. 2005) (internal citations omitted); *see In re* Noell, 58 Agric. Dec. 130, No. 98-0033, 1999 WL 11230, at *9 (U.S.D.A. 1999) ("The Federal Rules of Civil Procedure are not applicable to administrative proceedings which are conducted before the Secretary of Agriculture under the Animal Welfare Act, in accordance with the Rules of Practice.").

1.136(a). The Rules also provide that an Answer "shall . . . [c]learly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent." 7 C.F.R. § 1.136(b)(1). The failure to timely file an Answer or failure to deny or otherwise respond to an allegation proffered in the Complaint shall be deemed admission of all the material allegations in the Complaint; in such situation, default shall be appropriate.[3] 7 C.F.R. § 1.136(c).

Additionally, the Rules of Practice prescribe that, when computing the time permitted for a party to file a document or other paper, Saturdays, Sundays, and Federal holidays are to be included except when the time expires on one of those days; should such situation occur, the time period shall be extended to include the next business day. 7 C.F.R. § 1.147(h). The Rules also state that a document sent by the Hearing Clerk "shall be deemed to be received by any party to a proceeding . . . on the date of delivery by certified or registered mail. . ." 7 C.F.R. § 1.147(c)(1).

III. Discussion

1. *Whether a Default Without Hearing Is Appropriate*

The record here reflects that Respondent received certified mailing of the Complaint on June 24, 2014. Accordingly, Respondent had until July 14, 2014—twenty (20) days after service of the Complaint—to file an Answer. *See* 7 C.F.R. § 1.136(a). Respondent filed his Answer on July 21, 2014, which was seven (7) days past the filing deadline per the Rules of Practice. *Id.* Therefore, pursuant to 7 C.F.R. § 1.136(c), Respondent is deemed to have admitted the allegations set forth in the Complaint, and entry of default is appropriate. *See* 7 C.F.R. §§

[3] *See* Morrow v. Dep't of Agric., 65 F.3d (West) 168 (6th Cir. 1995) (per curiam) (unpublished disposition) ("7 C.F.R. Secs. 1.136(c) and 1.139 clearly describe the consequences of failing to answer a complaint in a timely fashion. These sections provide for default judgments to be entered [and] for admissions absent an answer . . . . Furthermore, the failure to answer constitutes the waiver of the right to a hearing.") (internal citations omitted).

1.136(c), 1.139. This is true notwithstanding the fact that Respondent requested an oral hearing in his Answer, as Respondent waived his opportunity for hearing by filing the Answer late. *See* 7 C.F.R. § 1.141(a) ("Failure to request a hearing within the time allowed for the filing of the answer shall constitute a waiver of such hearing.").

Further, even if Respondent had filed his Answer within twenty (20) days of service as required by the Rules, entry of default would still be proper as the Answer does not "[c]learly admit, deny, or explain each of the allegations of the Complaint" or "set forth any defense."[4] 7 C.F.R. § 1.136(b)(1). Respondent's Answer, excluding its heading and salutations, merely reads:

> I Casey Ludwig deny all allegations within this complaint. I am requesting a hearing regarding these allegations. I no longer operate a zoo; there are no longer any animals, nor any enclosures for animals on my property. I have no intention to over get back into the zoo business. Previously I complied with all requests from the USDA regarding this matter.

(Answer). Plainly, the Answer fails to respond to Complainant's allegations with any degree of specificity and does not raise any legitimate legal defenses. It constitutes a general denial and, consequently, does not satisfy the requirements of Rule 1.136.[5] Respondent's Answer will

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[4] *See* 7 C.F.R. § 1.136(c) (". . . failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for the purposes of the proceeding, an admission of said allegation, unless the parties have agreed to a consent decision pursuant to § 1.138."); *In re* Daul, 45 Agric. Dec. 556, 562 (U.S.D.A. 1986) (". . . even if Respondent's answer had been timely filed, the answer did not deny or otherwise respond to the allegations of the complaint and, therefore, the answer, even if timely filed, would have warranted the issuance of a default decision, under the [Rules of Practice].").

[5] *See Morrow*, 65 F.3d at 168 (stating that respondent "made it impossible to conclude that the [Judicial Officer] abused his discretion in affirming the [Administrative Law Judge's] default" where respondent's Answer was "a single page of about 100 words" that made "conclusory statements of denial"); United States v. Hulings, 484 F. Supp. 562, 567-68 (D. Kan. 1980) (holding that a hearing is not required by Fifth Amendment where respondent is notified that failure to deny allegations of Complaint will constitute admission of the allegations and respondent fails to specifically deny allegations); *In re:* Kaplinsky, 47 Agric. Dec. 613, 617 (U.S.D.A. 1998) (finding that, where an Answer is filed late and also fails to deny material allegations of the Complaint, either reason warrants default judgment).

therefore be treated as an admission of the material allegations to this proceeding; thus, there is no need to hold an oral hearing on the matter.[6]

Accordingly, I find that Respondent has admitted the gravamen of Complainant's allegations, thereby obviating the need for a hearing in this matter. The material allegations of the Complaint are thus adopted as findings of fact. I further find it appropriate to enter a decision on the record by reason of default. This Decision and Order is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

2. *Violations of the Act*

It is evident that Respondent violated the Regulations and Standards issued under the Animal Welfare Act. As discussed in the foregoing paragraphs, Respondent failed to timely file an Answer to the Complaint and is hence deemed, for purposes of the present proceeding, to have admitted at least nineteen (19) violations of the Act.[7] Many of these were "egregious, obvious violations" that "endangered the health and well-being of [Respondent's] animals." *In re: Pearson*, 2007 WL 3170312, at *22-*23 (U.S.D.A. 2007), *aff'd*, 411 Fed. App'x 866 (6th Cir. 2011). Some of Respondent's serious violations include "repeated failures to handle animals and to provide them with minimally-adequate veterinary care in accordance with the applicable Regulations;" failure to make records available for APHIS inspection and to permit inspectors to

[6] Case law affirms that an oral hearing is necessary only in cases that present an issue of material fact. *See, e.g.*, Carpenito Bros. v. U.S. Dep't of Agric., 851 F.2d 1500, 1500 (D.C. Cir. 1988) ("As we only recently stated, a hearing is not necessary in the absence of any genuine dispute of material fact.") (citations omitted); Veg-Mix, Inc. v. U.S. Dep't of Agric., 832 F.2d 601, 607-08 (D.C. Cir. 1987) ("[A]n agency may ordinarily dispense with a hearing when no genuine dispute exists."); Cmty. Nutrition Inst. v. Young, 773 F.2d 1356, 1364 (D.C. Cir. 1985), *cert. denied*, 475 U.S. 1123, 106 S.Ct. 1642, 90 L.Ed.2d 187 (1986) ("A request for hearing must contain evidence that raises a material issue of fact on which a meaningful hearing might be held.") (citation omitted).

[7] *See* Ramos v. U.S. Dep't of Agric., 322 F. App'x 814, 821 (11th Cir. 2009)) (unpublished) (holding that Judicial Officer was correct in finding that respondent had willfully violated the Act on basis that respondent's "failure to answer or otherwise respond to the Complaint" constituted admission of all material allegations); *In re* Drogosch, 63 Agric. Dec. 623, 643 (U.S.D.A. 2004) ("Respondent, by his failure to file a timely answer to the Complaint, is deemed to have admitted the violations of the Regulations and Standards alleged in the Complaint."); *In re* Hardin Cnty. Stockyards, Inc., 53 Agric. Dec. 654, 656 (U.S.D.A. 1994) (". . . as respondent did not deny the allegations in the complaint, that he engaged in the conduct alleged to be prohibited, he is found to have willfully violated the Act.").

conduct inspection of the facilities and animals; failure to handle animals with minimal risk of harm to the animals and the public during exhibition; failure to provide adequate shelter, enclosures, public barriers, and environmental enrichment plans for animals; and failure to provide a tiger with sufficient food, which caused the tiger to have metabolic bone disease (Compl. at 1-7). Violations transpired continually for a period of more than two (2) years (Compl. at 1-7). Indeed, Respondent's recurrent "failure to bring his facilities into compliance after repeated warnings" indicates that these violations were willful. *Pearson v. U.S. Department of Agriculture*, 411 Fed. App'x 866, 872 (11th Cir. 2011). Therefore, I conclude that Respondent committed at least (19) willful violations of the Act and adopt Complainant's account of said violations.

3. *Sanctions*

Complainant maintains that Respondent committed, at minimum, nineteen (19) violations of AWA Regulations and thereby requests that I issue both a cease-and-desist order and an order revoking Respondent's AWA license (Proposed Decision & Order on Rec. at 2). Complainant asserts that "[t]hese sanctions are appropriate in light of the gravity of the violations" (Proposed Decision & Order on Rec. at 2). Upon careful review of the documents and arguments submitted by both parties, I find that Complainant's proposed sanctions in this case are warranted.

The Department's sanction policy is set forth in *In re: S.S. Farms Linn County, Inc.*, (Decision as to James Joseph Hickey & Shannon Hansen), 50 Agric. Dec. 476 (U.S.D.A. 1991), *aff'd*, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3):

> The 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.

S.S. Farms Linn County, Inc., 50 Agric. Dec. at 497. "In assessing penalties, the Secretary is required to give due consideration to the size of the business involved, the gravity of the violation, the person's good faith, and the history of previous violations." *In re Roach*, 51 Agric. Dec. 252, 264 (U.S.D.A. 1992). Among the "many discretionary sanctions" that the Secretary may impose "for remedial purposes in enforcing the Animal Welfare Act" are "temporary license suspensions without a hearing; lengthier suspensions or revocations after notice and hearing; civil penalties; and cease and desist orders" as provided under section 19 of the Act (7 U.S.C. § 2149). *In re Davenport*, 57 Agric. Dec. 189, 1998 WL 300096, at *33-*34, *34 nn.9&10 (U.S.D.A. 1998). The purpose of assessing sanctions is not to punish violators but to deter future similar behavior by the violator and others. *In re: Zimmerman*, 57 Agric. Dec. 1038, 1998 WL 799196, at *16 (U.S.D.A. 1998).

Additionally, "[t]he administrative recommendation as to the appropriate sanction is entitled to great weight, in view of the experience gained by the administrative officials during their day-to-day supervision of the regulated industry." *S.S. Farms Linn County, Inc.*, 50 Agric. Dec. at 497. Nevertheless, an administrative official's recommendation is not controlling; in appropriate cases, the sanction imposed may be considerably less than or different from what is recommended. *In re: Shepherd*, 57 Agric. Dec. 242, 1998 WL 385884, at *29 (U.S.D.A. 1998).

Further, the Secretary is authorized to revoke an exhibitor's AWA license where the licensee has willfully violated any provision of the Act or implementing Regulations. 7 U.S.C. § 2149(a); *In re: Big Bear Farm, Inc.*, 55 Agric. Dec. 107, 139 (U.S.D.A. 1996). The governing statute states in specific and pertinent part:

> If the Secretary has reason to believe that any person licensed as a dealer, exhibitor, or operator of an auction sale . . . has violated or is violating any provision of this chapter, or any of the rules or regulations or standards promulgated by the Secretary hereunder, he . . . after notice and opportunity for hearing, may . . . revoke such license, if such violation is determined to have occurred.

7 U.S.C. § 2149(a).

Permanent license revocation is justified in the present case as Respondent has committed at least nineteen (19) willful violations of the AWA Regulations and Standards, many of which are serious and either affected or could have affected "the health and well-being of Respondent's animals." *In re: Drogosch*, 63 Agric. Dec. 623, 645 (U.S.D.A. 2004). Indeed, "an AWA license may be revoked following a single, willful violation of the Animal Welfare Act . . ." *Pearson*, 411 Fed. App'x at 871 (U.S.D.A. 2011) (internal citation omitted). Considering that Respondent committed not just one (1) but *at minimum* nineteen (19) violations and that Respondent is already unlicensed, prohibiting future licensure by revocation is a fair and fitting sanction. This is especially true in that Respondent committed the violations over a period longer than two (2) years. *See In re: Morgan*, No. 05-0032, 2006 WL 2006165, at *17 (U.S.D.A. 2006) ("[G]enerally, a respondent who violates the Regulations and Standards over a long period of time warrants a more stringent sanction than a respondent who commits the same violations over a short period of time. Violations over a long period of time demonstrate continued disregard of the Animal Welfare Act and the Regulations and Standards."). Also, Respondent's failure to permit APHIS officials to inspect his facility, records, and animals and his failure to provide a responsible individual to accompany APHIS officials on inspection, in willful violation of 9 C.F.R. § 2.126(a), "is extremely serious because it thwarts the Secretary of Agriculture's ability to monitor the exhibitor's compliance with the Animal Welfare Act and the Regulations and severely undermines the Secretary of Agriculture's ability to enforce the Animal Welfare Act."

In re: Terranova Enterprises, Inc. (Decision and Order as to Craig Perry & Perry's Wilderness Ranch & Zoo, Inc.), No. 09-0155, 2012 WL 10767592, at *3 (U.S.D.A. 2012); *see also Pearson*, 411 Fed. App'x at 872 (stating that a party's "failure to bring his facilities into compliance after repeated warnings also makes clear that his violations were willful").

For the above reasons I find it proper to permanently revoke Respondent's AWA license.[8] Respondent's failure to abide by the Standards and Regulations of the Act and blatant noncompliance, to the detriment of animal health and safety to the public, shows that he is unqualified to be licensed; his pattern of willful violations demonstrates that he should not be permitted to possess a license under the Animal Welfare Act.

Similarly, in addition to revoking a violator's AWA license the Secretary may enter an order mandating the violator to cease and desist from continuing a violation. *See* 7 U.S.C. § 2149(b). I find it proper to enter such an order in this case, as Respondent exhibited a clear pattern of willful noncompliance while licensed under the AWA. Now that Respondent no longer has the opportunity to become licensed, he must be deterred from further violating the Act by participating in activities that require a license.

Furthermore, upon considering the circumstances of this case in light of the Department's sanction policy and observing the remedial purposes of the Animal Welfare Act and recommendations of APHIS officials, I find cause to issue a cease-and-desist order and to

[8] I note that license revocation is the most appropriate sanction here despite the fact that Respondent does not presently hold a valid AWA license and will remain unlicensed at the time that this Decision and Order becomes effective. While the Judicial Officer previously held in *In re* Zimmerman, 57 Agric. Dec. 1038, 1067-71 (U.S.D.A. 1998), that "the appropriate sanction to be imposed against a former licensee whose Animal Welfare Act license would be revoked for a violation . . . but for the violator's being unlicensed at the time the sanction is imposed, is disqualification from becoming licensed," that decision was subsequently overruled. *In re:* Drogosch, 63 Agric. Dec. 623, 647-49 (U.S.D.A. 2004) ("Therefore, I conclude, if a person holds a valid Animal Welfare Act license at the time he or she violates the Animal Welfare Act or the Regulations and Standards, the Secretary of Agriculture is authorized by section 19(a) of the Animal Welfare Act (7 U.S.C. § 2149(a)) to revoke that violator's Animal Welfare Act license *even if the violator's Animal Welfare Act license is cancelled prior to revocation.*") (emphasis added). Revocation—rather than disqualification—is especially fitting in the instant case as revocation of Respondent's AWA license will effectively preclude Respondent from obtaining an AWA license in the future. *See In re* Ash, No. 11-0380, 2012 WL 10767598, at *8 (U.S.D.A. 2012).

permanently disqualify Respondent from obtaining an AWA license. I regard these sanctions necessary "to ensure Respondent's compliance with the Animal Welfare Act and the Regulations and Standards in the future, to deter others from violating the Animal Welfare Act and the Regulations and Standards, and to fulfill the remedial purposes of the Animal Welfare Act." *In re: Drogosch*, 63 Agric. Dec. 623, 644 (U.S.D.A. 2004). Based on the foregoing, I hereby issue the following Findings of Fact, Conclusions of Law, and Order.

Findings of Fact

1. Respondent Casey Ludwig is an individual whose mailing address is 15811 Highway 32, Mountain, Wisconsin 54149.
2. At all times material herein, Respondent was operating as an exhibitor, as that term is used in the Act and Regulations, and conducted business as "Lakewood Zoo." Respondent held Animal Welfare Act license 35-C-0290 until December 1, 2011, at which time the license expired for failure to renew.
3. At all times material herein, Respondent operated a business exhibiting wild and exotic animals to the public. In December 2011, Respondent reported holding eighty-four (84) animals.
4. The gravity of violations alleged in this proceeding is great and includes repeated failures to handle and provide animals with minimally adequate veterinary care in accordance with the applicable Standards and Regulations.
5. APHIS conducted inspections of Respondent's facilities, records, and animals on the following dates: June 18, 2009; June 25, 2009; July 21, 2009; October 29, 2009; November 19, 2009; February 24, 2010; June 15, 2010; July 27, 2010; August 17, 2010; November 30, 2010; April 13, 2011; May 25, 2011; and November 28, 2011. On each of

these occasions, APHIS documented Respondent's noncompliance with the Regulations and Standards.

6. On July 21, 2009, June 15, 2010, July 27, 2010, and August 17, 2010 Respondent failed to make available for inspection his records to APHIS inspectors.

7. On October 29, 2009, Respondent failed on two occasions to permit APHIS inspectors to conduct an inspection of his facilities, animals, and records and failed to make available a responsible individual to accompany APHIS inspectors on an inspection.

8. On or about the following dates, Respondent failed to provide adequate veterinary care to animals and failed to establish and maintain programs of veterinary care that included daily observation and the use of appropriate methods to prevent and treat disease and injury:

   (a) *June 18, 2009:* Respondent failed to observe and obtain adequate veterinary care for a tiger suffering from metabolic bone disease; a camel; and two silver foxes;

   (b) *June 25, 2009:* Respondent failed to observe and obtain adequate veterinary care for a tiger ("Apollo") suffering from metabolic bone disease;

   (c) *November 19, 2009:* Respondent failed to observe and obtain adequate veterinary care for a ram with overgrown hooves;

   (d) *February 24, 2010:* Respondent failed to obtain veterinary care for a ram with overgrown hooves and a thin tiger ("Angel") who had cloudy eyes, multiple areas of hair loss, blisters on his feet, and difficulty ambulating and reclining;

   (e) *June 15, 2010:* Respondent failed to obtain veterinary care for a ram with overgrown hooves;

(f) *July 27, 2010:* Respondent failed to obtain veterinary care for a ram with overgrown hooves;

(g) *August 17, 2010:* Respondent failed to obtain veterinary care for a tiger with a bleeding wound on his head and face; and

(h) *November 28, 2011:* Respondent failed to obtain veterinary care for a lion with multiple open wounds on his face.

9. On or about June 18, 2009, Respondent failed to make, keep, and maintain records of the acquisition and disposition of animals (hedgehogs, camel, opossum) as required by the Regulations.

10. On or about the following dates, Respondent failed to handle animals during public exhibition with minimal risk of harm to the animals and the public:

(a) *June 18, 2009:* Respondent exhibited a tiger, silver foxes, kinkajous, and wallabies without a public barrier to separate the animals from the public;

(b) *July 21, 2009:* Respondent exhibited kinkajous, wallabies, arctic foxes, African porcupine, skunk, and silver foxes in enclosures without adequate distance and/or barriers between the animals and the public;

(c) *June 15, 2010:* Respondent exhibited kinkajous, wallabies, opossums, raccoons, African porcupine, coatimundi, skunk, fennec foxes, and a silver fox in enclosures without adequate distance and/or barriers between the animals and the public;

(d) *August 17, 2010:* Respondent exhibited kinkajous, wallabies, opossums, coatimundi, skunk, fennec foxes, and a silver fox in enclosures without adequate distance and/or barriers between the animals and the public;

(e) *November 30, 2010:* Respondent exhibited opossums in enclosures without adequate distance and/or barriers between the animals and the public; and

(f) *May 25, 2011:* Respondent exhibited opossums, porcupine, wallabies, raccoons, and silver foxes in enclosures without adequate distance and/or barriers between the animals and the public.

11. On June 18, 2009, Respondent failed to meet the minimum Standards as follows:

(a) Respondent failed to enclose the outdoor area of a sheltered housing facility for nonhuman primates by furnishing a fence of sufficient height to keep unwanted species out;

(b) Respondent failed to provide a public barrier to restrict access to three nonhuman primates;

(c) Respondent failed to develop or document a plan for environmental enrichment for three nonhuman primates;

(d) Respondent failed to provide two tigers with adequate shelter from sunlight;

(e) Respondent failed to provide two tigers with adequate shelter from inclement weather;

(f) Respondent housed two tigers in enclosures without an adequate perimeter fence;

(g) Respondent failed to provide a tiger ("Apollo") with sufficient food appropriate to its species, causing the tiger to have metabolic bone disease; and

(h) Respondent housed a female opossum and offspring in an enclosure in the petting-zoo area, where adjacent animals interfered with the opossums' health and caused the opossums discomfort.

12. On June 25, 2009, Respondent failed to meet the minimum Standards for feeding and, specifically, failed to provide a tiger ("Apollo") with sufficient food appropriate to its species, causing the tiger to have metabolic bone disease.

13. On July 21, 2009, Respondent failed to meet the minimum Standards as follows:

    (a) Respondent failed to provide a public barrier to restrict access to three nonhuman primates;

    (b) Respondent failed to develop or document a plan for environmental enrichment for three nonhuman primates;

    (c) Respondent failed to provide two tigers with adequate shelter from inclement weather; and

    (d) Respondent housed tigers in enclosures without an adequate perimeter fence.

14. On November 19, 2009, Respondent failed to meet the minimum Standards by failing to develop or document a plan for environment enhancement for three nonhuman primates and by housing tigers and a lion in enclosures without an adequate perimeter fence.

15. On February 24, 2010, Respondent failed to meet the minimum Standards by failing to enclose facilities for large felids and foxes with an adequate perimeter fence.

16. On June 15, 2010, Respondent failed to meet the minimum Standards by housing animals, including skunks, wallabies, and an opossum, in enclosures without an adequate perimeter fence.

17. On August 17, 2010, Respondent failed to meet the minimum Standards by housing animals, including tigers and silver foxes, in enclosures without an adequate perimeter fence.

18. On or about November 30, 2010, Respondent failed to meet the minimum Standards by:

(a) Failing to ensure that enclosures for rabbits were structurally sound and in good repair to contain the rabbits. Specifically, a Flemish Giant rabbit was able to exit her enclosure a week preceding the inspection and had not been recovered as of November 30, 2010.

(b) Failing to ensure that enclosures for goats were structurally sound and in good repair to contain the goats. On or about November 30, 2010, two goats were able to exit their enclosure, and an APHIS inspector observed the goats grazing near the highway outside Respondent's facility.

(c) Housing silver foxes and tigers in enclosures without an adequate perimeter fence.

19. On April 13, 2011, Respondent failed to meet the minimum Standards by housing tigers in enclosures without an adequate perimeter fence.

20. On May 25, 2011, Respondent failed to meet the minimum Standards by housing tigers in enclosures without an adequate perimeter fence.

21. On November 28, 2011, Respondent failed to meet the minimum Standards by failing to provide a tiger with adequate shelter from inclement weather; housing eight tigers in enclosures without an adequate perimeter fence; failing to remove excreta from tiger and lion enclosures as often as necessary; and housing a male lion with other large felids that were not compatible with the lion, resulting in fights that caused injury to the lion.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.

2. Respondent willfully violated the Act and Regulations (7 U.S.C. § 2146(a); 9 C.F.R. § 2.126)) as follows:

(a) On July 21, 2009, June 15, 2010, July 27, 2010, and August 17, 2010, Respondent failed to make his records available for inspection by APHIS inspectors; and

(b) On October 29, 2009, Respondent failed on two occasions to permit APHIS inspectors to conduct an inspection of his facilities, animals, and records and failed to provide a responsible individual to accompany APHIS inspectors on an inspection.

3. On or about the following dates, Respondent willfully violated the Regulations governing veterinary care (9 C.F.R. § 2.40) by failing to provide adequate veterinary care to animals and failing to establish and maintain programs of veterinary care that included daily observation and appropriate methods to prevent and treat disease and injury:

(a) *June 18, 2009:* Respondent failed to observe and obtain adequate veterinary care for a tiger suffering from metabolic bone disease; a camel; and two silver foxes;

(b) *June 25, 2009:* Respondent failed to observe and obtain adequate veterinary care for a tiger ("Apollo") suffering from metabolic bone disease;

(c) *November 19, 2009:* Respondent failed to observe and obtain adequate veterinary care for a ram with overgrown hooves;

(d) *February 24, 2010:* Respondent failed to obtain veterinary care for a ram with overgrown hooves and a thin tiger ("Angel") who had cloudy eyes, multiple areas of hair loss, blisters on his feet, and difficulty ambulating and reclining;

(e) *June 15, 2010:* Respondent failed to obtain veterinary care for a ram with overgrown hooves;

(f) *July 27, 2010:* Respondent failed to obtain veterinary care for a ram with overgrown hooves;

(g) *August 17, 2010:* Respondent failed to obtain veterinary care for a tiger with a bleeding wound on his head and face; and

(h) *November 28, 2011:* Respondent failed to obtain veterinary care for a lion with multiple open wounds on his face.

4. On or about June 18, 2009, Respondent willfully violated the Regulations by failing to make, keep, and maintain records of the acquisition and disposition of animals (hedgehogs, camel, opossum), as required by 9 C.F.R § 2.75(b)(1).

5. On or about the following dates, Respondent willfully violated the Regulations governing handling (9 C.F.R. § 2.131(c)(1)) by failing to handle animals during public exhibition with minimal risk of harm to the animals and public:

(a) *June 18, 2009:* Respondent exhibited a tiger, silver foxes, kinkajous, and wallabies without a public barrier to separate the animals from the public;

(b) *July 21, 2009:* Respondent exhibited kinkajous, wallabies, arctic foxes, African porcupine, skunk, and silver foxes in enclosures without adequate distance and/or barriers between the animals and public;

(c) *June 15, 2010:* Respondent exhibited kinkajous, wallabies, opossums, raccoons, African porcupine, coatimundi, skunk, fennec foxes, and silver foxes in enclosures without adequate distance and/or barriers between the animals and public;

(d) *August 17, 2010:* Respondent exhibited kinkajous, wallabies, opossums, coatimundi, skunk, fennec foxes, and silver foxes in enclosures without adequate distance and/or barriers between the animals and public;

(e) *November 30, 2010:* Respondent exhibited opossums in enclosures without adequate distance and/or barriers between the animals and public; and

(f) *May 25, 2011:* Respondent exhibited opossums, porcupine, wallabies, raccoons, and silver foxes in enclosures without adequate distance and/or barriers between the animals and public.

6. On June 18, 2009, Respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)) by failing to comply with the Standards as follows:

(a) Failing to enclose the outdoor area of sheltered housing facility for nonhuman primates by furnishing a fence of sufficient height to keep unwanted species out. 9 C.F.R. § 3.78(d).

(b) Failing to provide a public barrier to restrict access to three nonhuman primates. 9 C.F.R. § 3.78(e).

(c) Failing to develop or document a plan for environment enhancement for three nonhuman primates. 9 C.F.R. § 3.81.

(d) Failing to provide two tigers with adequate shelter from sunlight. 9 C.F.R. § 3.127(a).

(e) Failing to provide two tigers with adequate shelter from inclement weather. 9 C.F.R. § 3.127(b).

(f) Housing two tigers in enclosures without an adequate perimeter fence. 9 C.F.R. § 3.127(d).

(g) Failing to provide a tiger ("Apollo") with sufficient food appropriate to its species, causing the tiger to have metabolic bone disease. 9 C.F.R. § 3.129(a).

(h) Housing a female opossum and offspring in an enclosure in the petting-zoo area where adjacent animals interfered with the opossums' health and caused them discomfort. 9 C.F.R. § 3.133.

7. On June 25, 2009, Respondent willfully violated the Regulations by failing to meet the minimum Standards for feeding (9 C.F.R. § 3.129(a)) and, specifically, failed to provide a tiger ("Apollo") with sufficient food appropriate to its species, causing the tiger to have metabolic bone disease. 9 C.F.R. § 2.100(a).

8. On July 21, 2009, Respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)) by failing to meet the minimum Standards as follows:

(a) Failing to provide a public barrier to restrict access to three nonhuman primates. 9 C.F.R. § 3.78(e).

(b) Failing to develop or document a plan for environment enhancement for three nonhuman primates. 9 C.F.R. § 3.81.

(c) Failing to provide two tigers with adequate shelter from inclement weather. 9 C.F.R. § 3.127(b).

(d) Housing tigers in enclosures without an adequate perimeter fence. 9 C.F.R. § 3.127(d).

9. On November 19, 2009, Respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)) by failing to meet the minimum Standards as follows:

(a) Failing to develop or document a plan for environment enhancement for three nonhuman primates. 9 C.F.R. § 3.81.

(b) Housing tigers and a lion in enclosures without an adequate perimeter fence. 9 C.F.R. § 3.127(d).

10. On February 24, 2010, Respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)) by failing to meet the minimum Standards in failing to enclosure facilities for large felids and foxes with an adequate perimeter fence. 9 C.F.R. § 3.127(d).

11. On June 15, 2010, Respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)) by failing to meet the minimum Standards in housing animals, including skunks, wallabies, and opossum, in enclosures without an adequate perimeter fence. 9 C.F.R. § 3.127(d).

12. On August 17, 2010, Respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)) by failing to meet the minimum Standards in housing animals, including tigers and silver foxes, in enclosures without an adequate perimeter fence. 9 C.F.R. § 3.127(d).

13. On or about November 30, 2010, Respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)) by failing to meet the minimum Standards as follows:

    (a) Failing to ensure that enclosures for rabbits were structurally sound and in good repair to contain the rabbits. Specifically, a Flemish Giant rabbit was able to exit her enclosure a week preceding inspection and, as of November 30, 2010, had not been recovered. 9 C.F.R. § 3.53(a)(1).

    (b) Failing to ensure that enclosures for goats were structurally sound and in good repair to contain the goats. On or about November 30, 2010 two goats were able to exit their enclosure, and an APHIS inspector observed the goats grazing near the highway outside Respondent's facility. 9 C.F.R. § 3.125(a).

    (c) Housing silver foxes and tigers in enclosures without an adequate perimeter fence. 9 C.F.R. § 3.127(d).

14. On April 13, 2011, Respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)) by failing to meet the minimum Standards in housing tigers in enclosures without an adequate perimeter fence. 9 C.F.R. § 3.127(d).

15. On May 25, 2011, Respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)) by failing to meet the minimum Standards in housing tigers in enclosures without an adequate perimeter fence. 9 C.F.R. § 3.127(d).

16. On November 28, 2011, Respondent willfully violated the Regulations (9 C.F.R. § 2.100(a)) by failing to meet the minimum Standards as follows:

    (a) Failing to provide a tiger with adequate shelter from inclement weather. 9 C.F.R. § 3.127(b).

    (b) Housing eight tigers without an adequate perimeter fence. 9 C.F.R. § 3.127(d).

    (c) Failing to remove excreta from tiger and lion enclosures as often as necessary. 9 C.F.R. § 3.131(a).

    (d) Housing a male lion with other large felids that were not compatible with the lion, resulting in fights that caused injury to the lion. 9 C.F.R. § 3.133.

17. Respondent's conduct has impeded Complainant from implementing its mandate to enforce the Act, in defiance of the Act, Regulations, and Standards.

18. Respondent's conduct warrants a finding that he is no longer fit to be a licensee and that continuance or reinstatement of his licensure would contravene the purposes of the Act.

19. Sanctions are appropriate to deter Respondent and others willfully violating the Animal Welfare Act and the Regulations and Standards issued thereunder.

ORDER

1. Respondent Casey Ludwig, his agents and employees, successors and assigns, directly or indirectly through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations issued thereunder. Specifically, Respondent shall cease and desist from engaging in any activity for which a license is required under the Animal Welfare Act and the Regulation issued thereunder, without being licensed, as required. The cease- and-desist provisions of this Order shall become effective on the day after service of this Order upon Respondent.

2. Animal Welfare Act license 35-C-0290 is hereby revoked. The revocation provisions of this Order shall become effective upon service of this Order on Respondent.

3. This Decision and Order shall have the same effect as if entered after a full hearing.

4. Pursuant to the Rules of Practice, this Decision and Order shall become final without further proceedings thirty-five (35) days after the date of service upon Respondent, unless it is appealed to the Judicial Officer by a party to the proceeding within thirty (30) days after service pursuant to the Rules. 7 C.F.R. §§ 1.139, 1.145(a).

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

So ORDERED this 27th day of January, 2015 at Washington, D.C.

Janice K. Bullard
Acting Chief Administrative Law Judge