

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:

Tri-State Zoological Park of Western
Maryland, Inc., a Maryland
corporation; and

AWA-D Docket No. 22-J-0040

Robert L. Candy, an individual,

AWA-D Docket No. 22-J-0041

Respondents.

**DECISION AND ORDER GRANTING COMPLAINANT’S
MOTION FOR SUMMARY JUDGMENT**

Appearances:

*John V. Rodriguez, Esq., Office of the General Counsel, United States Department of
Agriculture, Washington D.C., for Complainant, Animal and Plant Health Inspection Service;
and*

*John M. Pierce, Esquire, of John Pierce Law, Woodland Hills, CA, for Respondents Tri-State
Zoological Park of Western Maryland, Inc. and Robert L. Candy.*

Before Administrative Law Judge Tierney Carlos.

INTRODUCTION AND SUMMARY OF DECISION

The Administrator, Animal and Plant Health Inspection Service (“APHIS”), United States Department of Agriculture (“USDA”), Complainant, initiated this proceeding under the Animal Welfare Act, as amended (“AWA”),¹ by filing an Order to Show Cause Why Animal Welfare License 51-C-0064 Should Not Be Terminated (“Order to Show Cause”) on March 25, 2022. The Order to Show Cause alleges that Respondents, Tri-State Zoological Park of Western Maryland, Inc. (“Tri-State”) and Robert L. Candy, were found to have violated the Endangered Species Act (“ESA”) and, thus, permitting Respondent Tri-State to continue to hold an AWA license would be contrary to the AWA’s purpose. The Order to Show Cause requests termination

¹ 7 U.S.C. §§ 2131-59.

of Respondents' license.

Respondents timely filed an Answer to Order to Show Cause Why Animal Welfare License 51-C-0064 Should Not Be Terminated ("Answer") on April 22, 2022. In their Answer, Respondents admit to the jurisdictional allegations in the complaint and that they were found to have violated the ESA. *See* Answer, paras. 1, 3. Respondents generally did not respond to or denied, with explanation, all other allegations contained in the Order to Show Cause.

Complainant filed a Motion for Summary Judgment and Memorandum of Points and Authorities (referred to collectively as "Complainants' Motion"), including Exhibits 1-8 ("MSJ Ex. 1" *et seq.*), on May 13, 2022. On June 3, 2022, Respondents filed an Opposition to Complainant's Motion for Summary Judgment ("Respondents' Opposition"). On June 22, 2022, Complainant filed a Response to Respondents' Opposition to Complainant's Motion for Summary Judgment ("Complainant's Response to Opposition"). I then issued a *Sua Sponte* Order Accepting Complainant's Response to Respondents' Opposition and Providing Opportunity for Respondent to Respond, providing Respondents time to respond by July 7, 2022. To date, Respondents have not filed a response to Complainant's Response to Opposition or any other filing. The record is now closed.

Based on careful review of the pleadings before me, I find that there are no material issues of fact that merit a hearing. Further, I find that 1) Respondents violated the Endangered Species Act, a federal law pertaining to the transportation, ownership, neglect, or welfare of animals; and 2) the Administrator of APHIS has not erred in determining the renewal or continuation of Tri-State's license would be contrary to the purposes of the AWA and said license should be terminated. Therefore, a termination of AWA license 51-C-0064 is in order as detailed further below.

JURISDICTION AND BURDEN OF PROOF

The AWA was promulgated to “insure” the humane care and treatment of animals intended for use in research facilities, exhibition, or as pets.² Congress provided for enforcement of the AWA by the Secretary of Agriculture.³ Regulations promulgated under the AWA are in the Code of Federal Regulations, part 9, sections 1.1 through 3.142.

The burden of proof is on Complainant, APHIS.⁴ The standard of proof applicable to adjudicatory proceedings under the Administrative Procedure Act,⁵ such as this one, is the preponderance of the evidence.⁶

APPLICABLE STATUTORY PROVISIONS

Congress enacted the AWA, in relevant part, because it is:

necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order--

(1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;

(2) to assure the humane treatment of animals during transportation in commerce; and

(3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is essential to regulate, as provided in this chapter, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

7 U.S.C. § 2131. The AWA authorizes the Secretary of Agriculture to “issue licenses to dealers and exhibitors upon application therefor in such form and manner as he may prescribe,” 7 U.S.C.

² 7 U.S.C. § 2131.

³ 7 U.S.C. §§ 2131-59.

⁴ 5 U.S.C. § 556(d).

⁵ 5 U.S.C. §§ 551 *et seq.*

⁶ See *Herman & Maclean v. Huddleston*, 459 U.S. 375, 387-91 (1983) (holding the standard of proof in administrative proceedings is preponderance of evidence).

§ 2133, and “to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this chapter,” 7 U.S.C. § 2151.

In accordance with the AWA, the Secretary promulgated the following relevant regulations:

(a) A license will not be issued to any applicant who:

....

(7) Has made any false or fraudulent statements or provided any false or fraudulent records to the Department or other government agencies, or has pled nolo contendere (no contest) or **has been found to have violated any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals, or is otherwise unfit to be licensed and the Administrator determines that the issuance of a license would be contrary to the purposes of the Act.**

7 C.F.R. § 2.11(a)(7) (emphasis added).

A license may be terminated at any time for any reason that a license application may be denied pursuant to § 2.11. . .

7 C.F.R. § 2.12

DISCUSSION

Complainant’s Order to Show Cause alleges: 1) at para. 4, that “Respondents have been found to have violated the Endangered Species Act (ESA), a federal law pertaining to the ownership and welfare of animals. *PETA v. Tri-State Zoological Park of W. Maryland, Inc.*, 424 F. Supp. 3d 404 (D. Md. 2019), *aff’d*, 843 F. App’x 493 (4th Cir. 2021), *cert. denied sub nom, Tri State Zoological Park of W. Maryland, Inc. v. PETA*, 141 S. Ct. 2854 (2021)””; and 2) at para. 5, that “[p]ermitting respondent Tri-State to continue to hold an AWA license would be contrary to the Act’s purpose of ensuring humane treatment of animals because respondents have been found to have harmed the animals in their custody.”

In its Motion, at 6-7, Complainant contends that summary judgment is appropriate because there is “no factual dispute for which a hearing is needed.” Complainants contend that

because Respondents admit they were found to have violated the ESA, which is a “federal, state or local law or regulations pertaining to the transportation, ownership, neglect or welfare of animals,” they have admitted to harming the animals in their custody and no other fact finding is necessary to determine that Respondents are not fit to hold an AWA license.

Respondents admit all jurisdictional allegations and that Respondents have been found by the United States District Court, District of Maryland, to have violated the ESA.⁷ However, in their Opposition, Respondents contend that factual disputes exist because violation of the ESA is not automatically a violation of the AWA,⁸ Respondents have remained in compliance with the AWA,⁹ and Respondents have remedied their ESA violation.¹⁰

I. No dispute of material fact exists for which a hearing is necessary

The Department has long held that motions for summary judgment are appropriate where there is “no genuine issue as to any material fact” to be decided based on evidence beyond the initial pleadings, and the movant is entitled to judgment as a matter of law.¹¹ Complainant brings this action pursuant to 9 C.F.R. § 2.11 and 2.12 which, for termination of the license in this instance, require 1) a violation of “any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect or welfare of animals” and 2) a determination by the Administrator of APHIS that allowing the maintenance of an AWA license “would be contrary

⁷ See Respondents’ Answer at ¶¶ 1, 2.

⁸ Respondents’ Opposition at 2-3.

⁹ *Id.* at 3.

¹⁰ *Id.* at 4.

¹¹ *Agri-Sales, Inc.*, 73 Agric. Dec. 327, 328-30 (U.S.D.A. 2014), *aff’d* by the Judicial Officer and adopted as the final order in the proceeding, 73 Agric. Dec. 612 (U.S.D.A. 2014) (citing *Animals of Montana, Inc.*, 68 Agric. Dec. 92, 104 (U.S.D.A. 2009); *Bauck*, 68 Agric. Dec. 853, 858-59 (U.S.D.A. 2009); *Veg-Mix, Inc. v. U.S. Dep’t of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)).

to the purpose of the Act.”

In their Answer, at 2-3, para. 4, Respondents offer an “explanation” denying the allegations in para. 5 of the Order to Show Cause.¹² Respondents “explanation,” *id.*, states that “neither USDA nor the Endangered Species Authority has found violations that would be consistent with the district Court judge’s holding.” This is irrelevant. The instant Order to Show Cause is based on Respondents having been found to have violated the ESA, a federal law pertaining to “the transportation, ownership, neglect, or welfare of animals” as referred to in 9 C.F.R. § § 2.11 and 2.12 (discussed further below). Respondents had the opportunity to fully litigate their ESA case and will not be permitted to relitigate the district court’s findings in this forum. Further, as Complainant points out in its Motion at 8, Respondents did not “take[] issue with the factual findings of the district court” but merely disagree with the district court’s findings of fact.¹³

As further laid out below, because Respondents admitted to having been found to have violated the ESA, and because the Administrator has based his determination that, based on those findings of fact contained in the district court finding, allowing Respondents to maintain their AWA license would be contrary to the purpose of the AWA, there are no material facts at issue. Thus, a hearing is not needed.

The two questions of law are at issue here are: 1) whether a violation of the ESA falls under the violations of law or regulations referred to in 9 C.F.R. § § 2.11 and 2.12; and 2)

¹² Order to Show Cause, ¶ 5, states “Permitting respondent Tri-State to continue to hold an AWA license would be contrary to the Act’s purpose of ensuring humane treatment of animals because respondents have been found to have harmed the animals in their custody. Respondents’ actions constitute an abuse of the licensure privileges of the AWA. The Administrator has determined that the renewal or continuation of Tri-State’s license would be contrary to the purposes of the Act, and that said license should be terminated.”

¹³ Citing MSJ Ex. 4 at 6.

whether the issuance of, or maintenance of as in the current situation, a license would be contrary to the purposes of the AWA.

I. The ESA is a federal law “pertaining to the transportation, ownership, neglect, or welfare of animals”

Respondents, in their Opposition at 3 (citing 16 U.S.C. § 1531(b)), contend that

The ESA does not pertain to the transportation, ownership, neglect, or welfare of animals; rather, it was enacted to “provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species.”

Respondents also contend that the finding that Respondents violated the ESA does not and cannot show that “Respondents acted in contravention of the AWA.”

Although Respondents are correct that a “[v]iolation of the ESA is [n]ot an [a]utomatic [v]iolation of the AWA,”¹⁴ Respondents are otherwise incorrect. The ESA has been held on multiple occasions by the USDA Judicial Officer to pertain to “the transportation, ownership, neglect, or welfare of animals” as referred to in 9 C.F.R. § § 2.11 and 2.12. Therefore, as a matter of law, a violation of the ESA, along with a finding of the APHIS Administrator that the maintenance of a license would be contrary to the AWA based on that violation, is sufficient for termination of an AWA license.¹⁵

¹⁴ See *Stark*, 75 Agric. Dec. 419, 430-31 (U.S.D.A. 2016) (where APHIS failed to demonstrate that respondent was found to have harmed the animals in his custody as alleged despite having been convicted of violating the ESA).

¹⁵ See *Amarillo Wildlife Refuge, Inc.*, 68 Agric. Dec. 77 (U.S.D.A. 2009); *Animals of Montana, Inc.*, 68 Agric. Dec. 92 (U.S.D.A. 2009). See also Complainant’s Response to Opposition at 4 (citing *Rasmussen*, 67 Agric. Dec. 1044; *Vigne*, 67 Agric. Dec. 962 (U.S.D.A. 2008) (a violation of the ESA is a violation of a federal law pertaining to the transportation, ownership, neglect or welfare of animals within the meaning of 9 C.F.R. § 2.11(a)(6) and constitutes sufficient basis to terminate an AWA license)).

II. Respondents' violation of the Endangered Species Act, and the facts determined thereunder, demonstrate that Respondents are unfit to hold an AWA license.

While a violation of the ESA does not automatically mean a violation of the AWA, under the findings of fact determined by the district court, the APHIS Administrator's determination that permitting Respondents to continue to hold an AWA license would be contrary to the purposes of the AWA is appropriate.

Congress created the AWA with the relevant purpose of "insur[ing] that animals intended for . . . exhibition purposes . . . are provided humane care and treatment." 7 U.S.C. § 2131(1). Here, the district court found that Respondents violated the ESA by "harassing and harming" the animals in their custody.¹⁶ The Court did not mince words in finding that the "uncontroverted testimony reflects that every animal at issue suffered under Tri-State's living conditions," that the "animals have been housed in fetid and dystopic conditions," and "[f]ilth and feces dominate Tri-State."¹⁷ Not only did the district court find that the general conditions of protected species were unfit, including living conditions mentioned above, inadequate veterinary care,¹⁸ lack of enrichment,¹⁹ inadequate and unhealthy food;²⁰ but also determined that several animal deaths demonstrate Respondents' violation of the ESA.²¹

In Respondents' Opposition, at 3, Respondents contend that they have remained in

¹⁶ Respondents exhausted all appeal rights, and the finding of the district court was upheld in all instances. See *PETA v. Tri-State Zoological Park of W. Maryland, Inc.*, 424 F. Supp. 3d 404 (D. Md. 2019), *aff'd*, 843 F. App'x 493 (4th Cir. 2021), *cert. denied sub nom, Tri State Zoological Park of W. Maryland, Inc. v. PETA*, 141 S. Ct. 2854 (2021).

¹⁷ See *PETA v. Tri-State Zoological Park of W. Maryland, Inc.*, 424 F. Supp. 3d at 408-11.

¹⁸ *Id.* at 412-13.

¹⁹ *Id.* at 413-18.

²⁰ *Id.* at 418-20.

²¹ *Id.* at 420-26.

compliance with the AWA and reason that “[b]ecause Respondents have not been found in violation of the AWA, they have been permitted to continue to hold their AWA license for the past two-and-a-half years since the district court’s holding.” This is irrelevant. As previously mentioned, Respondents exhausted appeal rights, concluding a denial of petition for writ of certiorari by the Supreme Court entered on June 28, 2021.²² The current action, brought only pursuant to 9 C.F.R. § § 2.11 and 2.12, might have been premature if initiated prior to the finality of the district court’s opinion. However, the current action was brought timely with the finality of the district court’s opinion and Respondents have failed to provide any other relevant evidence, such as evidence to demonstrate whether their current license was renewed since the district court’s findings,²³ and have failed to cite any other controlling authority to support their argument. Respondents’ contention, Opposition at 4, that termination of their “license now, with no evidence of AWA violations and relying solely on the district court’s finding of ESA violations, would be arbitrary and capricious” is unsupported; a violation of a federal law such as the ESA can be, and in this case is, a violation of the AWA. 9 C.F.R. § § 2.11 and 2.12.

In their Opposition, at 4, Respondents also contend that, because they “complied with the district court’s orders, Respondents have remedied the ESA violations.” Respondents’ compliance with the district court’s order is not sufficient to avoid termination of license and does not fully address the remedial purpose of the AWA.²⁴

²² See MSJ Ex. 3; see also <https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/20-1183.html>.

²³ See e.g. *Stark, supra*, 75 Agric. Dec. at 429 (where the ALJ found, and the Judicial Officer upheld, that APHIS’ renewals of respondent’s AWA license demonstrated APHIS’ determinations that respondent was fit to hold an AWA license).

²⁴ See *Animals of Montana, supra*, 68 Agric. Dec. at 107-08 (rejecting Mr. Hyde’s argument that criminal penalty imposed on Mr. Hyde in connection with his violations of the ESA should be considered when determining the remedy in an AWA license termination proceeding) (citing

The AWA, and regulations, particularly 9 C.F.R. § § 2.11 and 2.12, are intended to ensure the humane treatment of animals by identifying license applicants/holders who have violated “any Federal, State, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals” or are otherwise unfit to be licensed. As Complainant states in its Motion, at 10, “[t]he district court’s findings show egregious violations of the ESA and the inability of the Respondents to comply with Federal law. These findings strike at the heart of the foundation of the AWA.”

FINDINGS OF FACT

1. Respondent Tri-State Zoological Park of Western Maryland, Inc. (“Tri-State”) is a Maryland corporation whose registered agent for service of process is respondent Robert L. Candy (whose mailing address is in Cumberland, Maryland). At all times mentioned herein, said respondent was operating as an exhibitor, as that term is used in the AWA and the Regulations, and held AWA license 51-C- 0064.
2. Respondent Robert L. Candy is an individual whose mailing address is in Cumberland, Maryland. At all times mentioned herein, said Respondent was the Chief Executive Officer and registered agent of Respondent Tri-State, and operated as an exhibitor, as that term is used in the AWA and the Regulations, or acted for or was employed by an exhibitor (Respondent Tri-State), and his acts, omissions or failures within the scope of his employment or office are, pursuant to section 2139 of the Act (7 U.S.C. § 2139), deemed to

Amarillo Wildlife Refuge, Inc., 68 Agric. Dec. 77 (Jan. 6, 2009) “(rejecting Amarillo Wildlife Refuge, Inc.’s argument that its principal’s 6 months of house arrest, 3 years of probation, and payment of over \$50,000 in fines and attorneys [sic] fees in connection with his violations of the Endangered Species Act should be considered when determining the remedy in an Animal Welfare Act license termination proceeding”).

be his own acts, omissions, or failures, as well as the acts, omissions, or failures of respondent Tri-State.

3. Respondents have been found to have violated the Endangered Species Act (“ESA”), in *PETA v. Tri-State Zoological Park of W. Maryland, Inc.*, 424 F. Supp. 3d 404 (D. Md. 2019), *aff’d*, 843 F. App’x 493 (4th Cir. 2021), *cert. denied sub nom, Tri State Zoological Park of W. Maryland, Inc. v. PETA*, 141 S. Ct. 2854 (2021). In particular, the district court found that Respondents maintained their animals in “fetid and dystopic conditions” where “filth and feces dominate” (*id.* at 408); “never provided adequate veterinary care to its lemurs, tigers, and lions” (*id.* at 412); and “abdicated their responsibility to provide animals preventative or palliative care” (*id.* at 413). The district court further found that Respondents subjected lions to harassment and harm, and thus to a “take” under the ESA; subjected tigers to harassment and harm, and thus to a “take” under the ESA; and subjected lemurs to harassment and harm, and thus to a “take” under the ESA. *Id.* at 430-33.

CONCLUSIONS OF LAW

- 1) The Secretary has jurisdiction over this matter.
- 2) The material facts involved in this matter are not in dispute, and the entry of summary judgment in favor of Complainant is appropriate.
- 3) Based on the Findings of Fact, I conclude Respondents Tri-State and Candy have been found to have violated a federal law, the ESA, which pertains to “transportation, ownership, neglect, or welfare of animals” and are unfit to be licensed under the Animal Welfare Act within the meaning of 9 C.F.R. § § 2.11 and 2.12.
- 4) Based on the Findings of Fact, I conclude the Administrator’s determination that Respondent Tri-State’s retention of an Animal Welfare Act license is contrary to the purposes of the Animal Welfare Act, is reasonable.

ORDER

1. Complainant's Motion for Summary Judgment is **GRANTED**.
2. Animal Welfare Act license 51-C-0064 is terminated.
3. Respondent Tri-State Zoological Park of Western Maryland, Inc. and Respondent Robert L. Candy are disqualified for one (1) year from becoming licensed under the Animal Welfare Act or otherwise obtaining, holding, or using an Animal Welfare Act license, directly or indirectly through any corporate or other device or person.

This Decision and Order shall be final and effective thirty-five (35) days after service of this Decision and Order upon the Respondents, unless there is an appeal to the Judicial Officer under section 1.145 of the Rules of Practice (7 C.F.R. § 1.145) applicable to this proceeding.

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

Issued this 14th day of July 2022, in Washington, D.C.

Tierney Carlos /S/

Tierney Carlos
Administrative Law Judge

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