

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWA Docket No. 04-0014
)	
ERIC JOHN DROGOSCH,)	
an individual doing business as)	
ANIMAL ADVENTURES AMERICA,)	DECISION AND ORDER BY
)	REASON OF ADMISSION OF
Respondent.)	FACTS

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*)(the "Act"), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that respondent Eric John Drogosch, an individual doing business as Animal Adventures America, willfully violated the Act and the Regulations and Standards promulgated thereunder (9 C.F.R. § 1.1 *et seq.*)(the "Regulations" and "Standards").

On March 16, 2004, the Hearing Clerk sent to respondent Eric John Drogosch, by certified mail, return receipt requested, copies of the complaint and the Rules of Practice governing proceedings under the Act (7 C.F.R. §§ 1.130-1.151). The package was mailed to the respondent's current mailing address, which respondent had provided to complainant. Respondent Drogosch was informed in the accompanying letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation. Respondent Drogosch actually received the Complaint on March 25, 2004, and failed to file an answer. On April 30, 2004, Complainant filed a Motion for Adoption of Proposed Decision and Order. The Proposed Decision and Order were attached and served on Respondent. By letter dated May 21, 004, that was received by the Hearing Clerk on May 27, 2004, Respondent stated that:

I, Eric John Drogosch d/b/a Animal Adventures America soulfully regret not responding to the Complaint in reference to AWA Docket No. 04-0014 and acknowledge full responsibility for not doing so and all findings.

Respondent went on to state he applied for and was granted a new license under which he now operates. I interpreted this letter as an objection to the entry of a default decision and my secretary has attempted to schedule a teleconference with the parties to discuss the matter. Mr. Drogosch was unavailable for the scheduled conference and has not been able to find time for another to be scheduled. Under these circumstances, I am granting the Motion for a Default Judgment and entering the Decision and Order that was proposed and served on Respondent. Accordingly, Animal Welfare Act license No. 74-C-0536 is being revoked.

Pursuant to sections 1.136 and 1.139 of the Rules of Practice, the material facts alleged in the complaint, are all admitted by said respondent's failure to file an answer or to deny. They are adopted and set forth herein as Findings of Fact and Conclusions of Law, and this decision and order is issued pursuant to section 1.139 of the Rules of Practice.

FINDINGS OF FACT

1. Respondent Eric J. Drogosch is an individual doing business as Animal Adventures America, and whose business mailing address is 8199 CR 310, Terrell, Texas 75160. At all times mentioned herein, said respondent was an exhibitor as that term is defined in the Act and the Regulations, and between November 2001, and November 9, 2003, held AWA license number 74-C-0536, which license was cancelled, and has not been reinstated as of the filing of the complainant's motion for issuance of decision and order.

2. Respondent has a small business, with approximately ten exotic animals, including tigers, leopards, and lions. The gravity of the violations alleged in the complaint is great. They include **repeated instances in which respondent failed to allow inspectors access to his animals, premises and records, failed to provide minimally-adequate housing to animals and failed to handle tigers carefully and in compliance with the Regulations (which failure resulted in injuries to a child). Respondent has continually failed to comply with the Regulations, after having been repeatedly advised of deficiencies.** Respondent was previously cited in June 2001 for exhibiting animals without having a valid license to do so.

3. On September 30, 2003, respondent failed to employ a full-time attending veterinarian or a part-time attending veterinarian under formal arrangements that include a written program of veterinary care.

4. On September 30, 2003, respondent failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate facilities, including adequate enclosures and secure perimeter fences.

5. On September 30, 2003, respondent failed to make, keep, and maintain records that fully and correctly disclose information concerning animals in respondent's possession or under respondent's control, or disposed of by respondent.

6. On February 2, 2002, respondent failed to allow APHIS officials, during business hours, to enter his place of business, to examine records, to make copies, to inspect and photograph animals and to document conditions and areas of noncompliance.

7. On August 15, 2002, respondent failed to allow APHIS officials, during business hours, to enter his place of business, to examine records, to make copies, to inspect and photograph

animals and to document conditions and areas of noncompliance.

8. On August 16, 2002, respondent failed to allow APHIS officials, during business hours, to enter his place of business, to examine records, to make copies, to inspect and photograph animals and to document conditions and areas of noncompliance.

10. On August 28, 2002, respondent failed to allow APHIS officials, during business hours, to enter his place of business, to examine records, to make copies, to inspect and photograph animals and to document conditions and areas of noncompliance.

11. On June 8, 2002, respondent failed to handle animals as expeditiously and carefully as possible in a manner that would not cause trauma, unnecessary discomfort, behavioral stress, or physical harm.

12. On June 8, 2002, respondent failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, and specifically exhibited a tiger to four children without any barrier or distance.

13. On June 8, 2002, respondent failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, and specifically exhibited a tiger to a child without any barrier or distance.

14. On June 8, 2002, respondent exhibited animals under conditions that were inconsistent with the animals' well-being, and specifically, said respondent exhibited a tiger cub to the public outside of any enclosures, and allowed the public to excessively handle the young animal.

15. Respondent failed to meet the minimum facilities and operating standards for animals

other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals (9 C.F.R. §§ 3.125-3.142), as follows:

a. On August 28, 2002, respondent failed to maintain his housing facilities structurally sound and in good repair to protect the animals housed therein from injury and to contain them, and specifically, failed to repair damaged metal siding in the lion enclosure.

b. On August 30, 2002, respondent failed to maintain his housing facilities structurally sound and in good repair to protect the animals housed therein from injury and to contain them, and specifically, failed to repair damaged metal siding in the lion enclosure.

c. On February 12, 2002, respondent failed to maintain their housing facilities structurally sound and in good repair to protect the animals housed therein from injury and to contain them, and specifically, failed to repair and/or replace the siding and roofs of the tiger enclosure so that it contained the four animals securely and safely.

d. On February 12, 2002, respondent failed to maintain their housing facilities structurally sound and in good repair to protect the animals housed therein from injury and to contain them, and specifically, failed to repair and/or replace the door and bottom of the lion enclosure.

16. Respondent failed to meet the minimum facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals (9 C.F.R. §§ 3.125-3.142), as follows:

a. On August 28 and August 30, 2002, respondent failed to provide four adult tigers housed outdoors with appropriate natural or artificial shelter.

b. On February 12, 2002, respondent failed to provide a suitable method to

rapidly eliminate excess water, and specifically, failed to eliminate standing water in the tiger enclosure.

c. On September 30, 2003, respondent failed to construct a perimeter fence so that it protects the animals in the facility by restricting animals and unauthorized persons from going through it, and specifically, there was no perimeter fence around the respondent's enclosure.

17. Respondent failed to meet the minimum facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals (9 C.F.R. §§ 3.125-3.142), as follows:

a. On August 28 and August 30, 2002, respondent failed to have a sufficient number of adequately-trained employees to carry out the level of husbandry practices and care required by the Regulations and Standards.

CONCLUSIONS OF LAW

1. On September 30, 2003, respondent failed to employ a full-time attending veterinarian or a part-time attending veterinarian under formal arrangements that include a written program of veterinary care, in willful violation of section 2.40(a)(1) of the Regulations. 9 C.F.R. § 2.40(a)(1).

2. On September 30, 2003, respondent failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate facilities, including adequate enclosures and secure perimeter fences, in willful violation of section 2.40(b)(1) of the Regulations. 9 C.F.R. § 2.40(b)(1).

3. On September 30, 2003, respondent failed to make, keep, and maintain records that

fully and correctly disclose information concerning animals in respondent's possession or under respondent's control, or disposed of by respondent, in willful violation of section 2.75(b)(1) of the Regulations. 9 C.F.R. § 2.75(b)(1).

4. On February 2, 2002, respondent failed to allow APHIS officials, during business hours, to enter his place of business, to examine records, to make copies, to inspect and photograph animals and to document conditions and areas of noncompliance, in willful violation of section 2.136(a) of the Regulations. 9 C.F.R. § 2.126(a).

5. On August 15, 2002, respondent failed to allow APHIS officials, during business hours, to enter his place of business, to examine records, to make copies, to inspect and photograph animals and to document conditions and areas of noncompliance, in willful violation of section 2.136(a) of the Regulations. 9 C.F.R. § 2.126(a).

6. On August 16, 2002, respondent failed to allow APHIS officials, during business hours, to enter his place of business, to examine records, to make copies, to inspect and photograph animals and to document conditions and areas of noncompliance, in willful violation of section 2.136(a) of the Regulations. 9 C.F.R. § 2.126(a).

7. On August 28, 2002, respondent failed to allow APHIS officials, during business hours, to enter his place of business, to examine records, to make copies, to inspect and photograph animals and to document conditions and areas of noncompliance, in willful violation of section 2.136(a) of the Regulations. 9 C.F.R. § 2.126(a).

8. On June 8, 2002, respondent failed to handle animals as expeditiously and carefully as possible in a manner that would not cause trauma, unnecessary discomfort, behavioral stress, or physical harm, in willful violation of the handling regulations. 9 C.F.R. § 2.131(a)(1).

9. On June 8, 2002, respondent failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, in willful violation of the handling regulations, and specifically exhibited a tiger to four children without any barrier or distance. 9 C.F.R. § 2.131(b)(1).

10 On June 8, 2002, respondent failed to handle animals during public exhibition so there was minimal risk of harm to the animals and to the public, with sufficient distance and/or barriers between the animals and the general viewing public so as to assure the safety of animals and the public, in willful violation of the handling regulations, and specifically exhibited a tiger to a child without any barrier or distance. 9 C.F.R. § 2.131(b)(1).

11. On June 8, 2002, respondent exhibited animals under conditions that were inconsistent with the animals' well-being, and specifically, said respondent exhibited a tiger cub to the public outside of any enclosures, and allowed the public to excessively handle the young animal, in willful violation of the handling regulations. 9 C.F.R. § 2.131(c)(1).

12. Respondent willfully violated section 2.100(a) of the Regulations by failing to meet the minimum facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals (9 C.F.R. §§ 3.125-3.142), by failing to comply with the general facilities standards (9 C.F.R. § 3.125) as follows:

a. On August 28, 2002, respondent failed to maintain his housing facilities structurally sound and in good repair to protect the animals housed therein from injury and to contain them, and specifically, failed to repair damaged metal siding in the lion enclosure. 9 C.F.R. § 3.125(a).

b. On August 30, 2002, respondent failed to maintain his housing facilities structurally sound and in good repair to protect the animals housed therein from injury and to contain them, and specifically, failed to repair damaged metal siding in the lion enclosure. 9 C.F.R. § 3.125(a).

c. On February 12, 2002, respondent failed to maintain their housing facilities structurally sound and in good repair to protect the animals housed therein from injury and to contain them, and specifically, failed to repair and/or replace the siding and roofs of the tiger enclosure so that it contained the four animals securely and safely. 9 C.F.R. § 3.125(a).

d. On February 12, 2002, respondent failed to maintain their housing facilities structurally sound and in good repair to protect the animals housed therein from injury and to contain them, and specifically, failed to repair and/or replace the door and bottom of the lion enclosure. 9 C.F.R. § 3.125(a).

13. Respondent willfully violated section 2.100(a) of the Regulations by failing to meet the minimum facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals (9 C.F.R. §§ 3.125-3.142), by failing to comply with the general facilities standards (9 C.F.R. § 3.127) as follows:

a. On August 28 and August 30, 2002, respondent failed to provide four adult tigers housed outdoors with appropriate natural or artificial shelter. 9 C.F.R. § 3.127(b).

b. On February 12, 2002, respondent failed to provide a suitable method to rapidly eliminate excess water, and specifically, failed to eliminate standing water in the tiger enclosure. 9 C.F.R. § 3.127(c).

c. On September 30, 2003, respondent failed to construct a perimeter fence so

that it protects the animals in the facility by restricting animals and unauthorized persons from going through it, and specifically, there was no perimeter fence around the respondent's enclosure. 9 C.F.R. § 3.127(d).

14. Respondent willfully violated section 2.100(a) of the Regulations by failing to meet the minimum facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals (9 C.F.R. §§ 3.125-3.142), by failing to comply with the general facilities standards (9 C.F.R. § 3.132) as follows:

a. On August 28 and August 30, 2002, respondent failed to have a sufficient number of adequately-trained employees to carry out the level of husbandry practices and care required by the Regulations and Standards. 9 C.F.R. § 3.132.

ORDER

1. Respondent Eric John Drogosch, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the Regulations and Standards.

2. Animal Welfare Act license No. 74-C-0536 is hereby revoked.

The provisions of this order shall become effective on the first day after this decision becomes final. This decision becomes final without further proceedings 35 days after service as provided in sections 1.142 and 1.145 of the Rules of Practice. Copies of this decision shall be served upon the parties.

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

Date

VICTOR W. PALMER
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
1400 Independence Avenue, SW
Room 1081, South Building
Washington, D.C. 20250-9200
202-720-4443

Fax: 202-720-9776
Fax: 202-720-9776