

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

AWA DOCKET NO. 04-0033

In re:

FOR THE BIRDS, INC., AN IDAHO CORPORATION;
JERRY L. KORN AND SUSAN F. KORN, INDIVIDUALLY
AND D/B/A FOR THE BIRDS; AND BEN KORN

Respondents

DECISION AND ORDER

This proceeding was commenced by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture on September 8, 2004 by the filing of a Complaint alleging violations of the Animal Welfare Act, as amended (7 U.S.C. § 2131, et seq.) (the "Act").

On September 9, 2004, the Hearing Clerk sent copies of the Complaint and the Rules of Practice governing the proceedings under the Act (7 C.F.R. § 1.130 et seq.) to the addresses contained in the Complaint via certified mail. The record contains the postal Domestic Service Receipts (PS Forms 3811) reflecting delivery of the mailings to the Respondents For the Birds, Inc. and Jerry L. Korn, d/b/a For the Birds on September 14, 2004 at 1506 Happy Valley Road, Nampa,

Idaho 83687.¹ Delivery of the certified mail was made to the Respondent Susan F. Korn on September 29, 2004. Delivery of the certified mail to the Respondent Ben Korn was never made and it is unclear whether actual notice of the proceedings has ever been given to him.²

Each of the Respondents were informed in the accompanying letter of service that an answer should be filed pursuant to the Rules of Practice and that a timely failure to answer any allegation of the Complaint would constitute an admission of that allegation. An untimely Answer generally denying the allegations of the Complaint was filed on behalf of the Respondents Jerry L. Korn, Ben Korn and For the Birds on October 12, 2004.³ No Answer has been filed on behalf of the corporate Respondents, For the Birds, Inc.⁴ or Susan F. Korn. On January 29, 2005, the Complainant filed separate Motions seeking adoption of three separate tendered Decisions and Orders against the Respondents For the Birds, Inc., Jerry L. Korn and Susan F. Korn.

An Objection to the Motion for Adoption of Decision and Order and Request for Telephonic Hearing was filed by counsel for Jerry L. Korn, For the Birds, Inc. and Ben Korn on February 22, 2005 which incorrectly asserts that a timely answer was filed. Although the Answer is in fact dated October 1, 2004, the file contains the envelope in which it was mailed bearing a post mark of October 7, 2004 which was received by the Hearing Clerk's Office on October 12, 2004.

¹ Attached to the Decision and Order is a copy of the registered address for the corporation at 1506 Happy Valley Rd, Nampa, ID 83687 as reflected by the Idaho Secretary of State's Office. The PS Forms 8311 reflect that the certified mail was delivered as addressed.

² The Answer filed by Jerry L. Korn indicates that the Answer included Jerry L. Korn individually and d/b/a For the Birds as well as Ben Korn.

³ The Answer alleges that Ben Korn is a dependent child and appears to suggest that some unspecified mail was misdelivered or accepted by unauthorized individuals; however, the PS 3811s reflect delivery of the Complaint and a copy of the Rules of Practice as indicated. The Answer was received thirteen days late.

⁴ The Objection to the Motion for Adoption of Decision and Order purports to respond for the corporate respondent however the Answer as originally filed failed to include it.

As the Respondents have failed to file an Answer within the time prescribed by the Rules of Practice, the material facts alleged in the Complaint are deemed admitted and are adopted and set forth herein in the Findings of Fact and this Decision and Order are issued pursuant to Section 1.139 of the Rule of Practice.

FINDINGS OF FACT

1. The Respondent, For the Birds, Inc. is an Idaho corporation with a registered address of 1506 Happy Valley Road, Nampa, Idaho 83687. At all times material to the allegations contained in the Complaint, the corporate Respondent was an “exhibitor” as that term is defined in the Act and the implementing Regulations.

2. The Respondent Jerry L. Korn is an individual doing business as For the Birds and whose address is 1506 Happy Valley Road, Nampa, Idaho 83687. At all times material to the allegations contained in the Complaint, the said Respondent was an “exhibitor” as that term is defined in the Act and the implementing Regulations. Between 2001 and May 23, 2003, the said Respondent jointly held Animal Welfare Act License Number 82-C-0035 issued to “JERRY L. AND SUSAN F. KORN DBA FOR THE BIRDS,” which license was cancelled on May 23, 2003 and has not been reinstated.

3. The Respondent Susan F. Korn is an individual doing business as For the Birds and whose address is Post Office Box 72, Nampa, Idaho 83653. At all times material to the allegations contained in the Complaint, the said Respondent was an “exhibitor” as that term is defined in the Act and the implementing Regulations. Between 2001 and May 23, 2003, the said Respondent jointly held Animal Welfare Act License Number 82-C-0035 issued to “JERRY L. AND SUSAN F. KORN DBA FOR THE BIRDS” which license was cancelled on May 23, 2003 and has not been reinstated.

4. The Respondents have a moderate-sized business, with approximately fifty animals, including farm, wild and exotic animals: goats, llamas, giraffe, a camel, a bear, tigers, a mountain lion, lemurs, eland, elk, prairie dogs, rabbits, cats, dogs and a kangaroo. The gravity of the violations alleged in this complaint is great. They include repeated instances in which Respondents knowingly exhibited animals without having a valid license, and continuing instances of a failure by the Respondents to provide minimally-adequate veterinary care, food, water or housing to animals and to handle animals carefully and in compliance with the Regulations (which failures have resulted in serious injuries and death to animals in Respondents' custody). The Respondents have continually failed to comply with the Regulations, after having been repeatedly advised of deficiencies.

5. The Respondents do not have a history of previous violations.

6. Between March 15, 2001 until May 23, 2003, the Respondents Jerry L. Korn and Susan F. Korn d/b/a For the Birds were licensed under the Animal Welfare Act, having been issued License Number 82-C-0035 until the license was cancelled. From and after May 23, 2003 until at least August 24, 2003, the Respondents continued to exhibit animals without having been licensed by the Secretary to do so, and specifically, said Respondents continuously kept the animals kept at 1506 Happy Valley Road, Nampa, Idaho 83687, on display to the public.

7. Between May 23, 2003 and at least August 16, 2003, the Respondent Jerry L. Korn operated as a "dealer" as that term is defined in the Act and the Regulations without being licensed by the Secretary to do so, specifically delivering for transportation or transported, sold or negotiated the sale of a zebra, multiple elk and llamas.

8. On or about the following dates, the Respondents violated the Act and Regulations by

failing to have an attending veterinarian provide adequate veterinary care to its animals:

- a. October 2002 through August 12, 2003. Respondents failed to obtain any veterinary care for a giraffe whose hooves were overgrown.
- b. Approximately May 2003 through August 2003. Respondents failed to obtain any veterinary care for a white Bengal tiger that was experiencing a rapid and extreme weight loss.
- c. Approximately August 1, 2003 through August 16, 2003. Respondents failed to employ an attending veterinarian to provide adequate veterinary care to its animals, and specifically, Respondents failed to obtain any veterinary care for a tiger that was limping and whose left front paw was severely swollen.
- d. Approximately May 2003 through August 2003. Respondents failed to employ an attending veterinarian to provide adequate veterinary care to its animals, and specifically, Respondents failed to obtain any veterinary care for a camel having a golf-ball sized abscess on its lower left jaw. The Respondent Jerry F. Korn lanced the abscess, causing it to become a seeping, open wound that attracted a large number of flies.
- e. On or about July 7, 2003 through July 9, 2003. Respondents failed to employ an attending veterinarian to provide adequate veterinary care to its animals, and specifically, on July 7, 2003, Respondents failed to obtain any veterinary care for a female snow leopard in obvious severe distress and bleeding from her vaginal and rectal area and whose condition was reported directly to Respondent Jerry F. Korn, who took no action, which inaction resulted in or contributed to the animal's death on or about July 9, 2003.
- f. Spring 2002. Respondents failed to employ an attending veterinarian to

provide adequate veterinary care to its animals, and specifically, Respondents failed to obtain any veterinary care for a pregnant llama, resulting in or contributing to the death of the animal and her baby.

g. On or about August 12, 2003. Respondents failed to employ an attending veterinarian to provide adequate veterinary care to its animals, and specifically, Respondents failed to obtain any veterinary care for an eland whose hooves were overgrown.

9. On or about the following dates, Respondents 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):

- a. March 7, 2001
- b. April 3, 2002
- c. May 22, 2002
- d. July 2, 2002
- e. August 27, 2002
- f. February 12, 2003

10. Between March 7, 2001, and August 24, 2003, Respondents failed to ensure that their attending veterinarian or attending veterinarians had appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use.

11. Between March 7, 2001, and August 24, 2003, Respondents 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.

12. Between March 7, 2001, and August 24, 2003, Respondents failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate personnel, including an adequate number of employees trained in species-specific animal care and husbandry, and specifically, on or about August 2002, failed to have sufficient personnel to remove mud and excreta in the elk enclosure, and allowed an aged elk to become trapped therein for several days, subjecting the elk to injury by a bull elk.

13. Between March 7, 2001, and August 24, 2003, Respondents failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate equipment, in willful violation of section 2.40(b)(1) of the Regulations. 9 C.F.R. § 2.40(b)(1).

14. Between March 7, 2001, and August 24, 2003, Respondents failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate services, including veterinary services, and specifically, failed to have any veterinary services available for, *inter alia*, a snow leopard, a camel, two tigers, an elk, a giraffe, an eland, a pregnant llama and her baby.

15. Between March 7, 2001, and August 24, 2003, Respondents failed to establish and maintain a program of adequate veterinary care that included the use of appropriate methods to prevent, control, diagnose and treat diseases and injuries, and the availability of emergency, weekend, and holiday care, and specifically, failed to use appropriate methods to treat, *inter alia*, a snow leopard, a camel, two tigers, an elk, a giraffe, an eland, a pregnant llama and her baby.

16. Between March 7, 2001, and August 24, 2003, Respondents failed to establish and maintain a program of adequate veterinary care that included a mechanism of direct and frequent communication with the attending veterinarian or attending veterinarians, so that timely and accurate

information on problems of animal health, behavior, and well-being would be conveyed to the attending veterinarian or attending veterinarians, and specifically, failed to communicate to its attending veterinarian animal health information regarding, *inter alia*, a snow leopard, a camel, two tigers, an elk, a giraffe, an eland, a pregnant llama and her baby.

17. Between March 7, 2001, and August 24, 2003, Respondents failed to establish and maintain a program of adequate veterinary care that included daily observation of all animals to assess their health and well-being, and specifically, failed to observe on a daily basis, *inter alia*, a snow leopard, a camel, two tigers, an elk, a giraffe, an eland, a pregnant llama and her baby, to assess their health and well-being.

18. Between March 7, 2001, and August 24, 2003, Respondents failed to establish and maintain a program of adequate veterinary care that included adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, and tranquilization, and specifically, failed to train personnel (including Respondent Jerry F. Korn) in the care and handling of animals.

19. On or about the following dates, Respondents failed to make, keep, and maintain records that fully and correctly disclose information concerning animals in Respondents' possession or under Respondents' control, or disposed of by Respondents.

- a. March 7, 2001
- b. August 27, 2002.
- c. February 11, 2003
- d. February 12, 2003

20. On April 3, 2002, Respondents failed to allow APHIS officials, during business

hours, to examine records required to be kept by the Act and the Regulations.

21. On or about the following dates, Respondents 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.

- a. May 1, 2001 (tigers)
- b. May 10, 2001 (tiger- Raja)
- c. April 3, 2002 (giraffe)
- d. June 4, 2002 (tiger)
- e. June 2002 (tiger - Raja)
- f. June 25, 2002 (bear)
- g. February 19, 2003 (tigers)
- h. May 6, 2003 (tigers, hoofstock, kangaroo)
- i. May 8, 2003 (tigers)
- j. May 13, 2003 (tigers)
- k. July 23, 2003 (tiger)
- l. August 2002 (elk)

22. On May 6, 2003, Respondents used physical abuse to handle a tiger during an exhibition to the public.

23. On several occasions, including May 1, 2001, May 10, 2001, February 19, 2003 and May 13, 2003, Respondents failed to handle animals during public exhibitions 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 adult tigers to the public without sufficient barrier or distance.

24. On June 4, 2002 and July 23, 2003, Respondents 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 adult tigers to children without any barrier or distance.

25. On May 6, 2003, Respondents 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, said Respondents exhibited two adult tigers to the public without any distance or barriers between the animals and the public (resulting in at least one injury to a member of the public).

26. On May 6, 2003, Respondents 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, said Respondents exhibited adult and juvenile goats, a juvenile kangaroo, an eland, a giraffe, and a camel to the public, without sufficient distance or barriers to protect the animals from the public.

27. On May 8, 2003, Respondents 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.

28. On August 12, 2003, Respondents 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, said Respondents exhibited an adult giraffe and an adult eland to the public, without any distance or barriers between the animals and the public.

29. Between approximately May 2003 and August 16, 2003, Respondents 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, said Respondents regularly allowed customers to enter the primary enclosure containing two tigers, without any distance or barriers between the animals and the public.

30. On May 6, 2003, Respondents exhibited animals under conditions that were inconsistent with the animals' well-being, and specifically, said Respondents exhibited tigers to the public outside of any enclosures, and allowed personnel and the public to touch, tease and harass animals, including adult goat and her kids, an adult eland, a giraffe and a juvenile kangaroo.

31. On or about the following dates, Respondents failed to meet the minimum facilities and operating standards for nonhuman primates, as follows:

a. On August 24, 2003, Respondents failed to provide food or potable water to non-human primates, two lemurs.

b. On August 27, 2002, Respondents failed to keep the premises clean and in good repair, specifically, the building housing two lemurs needed cleaning, and the lemur enclosures had a large accumulation of cobwebs.

c. On February 12, 2003, Respondents failed to keep the premises clean and in good repair, specifically, the building housing two lemurs needed cleaning, and the lemur enclosures had a large accumulation of cobwebs.

d. Between August 27, 2002, and August 24, 2003, Respondents failed to have enough employees to carry out the level of husbandry practices and care for non-human primates required by the Regulations and Standards.

32. On or about the following dates, Respondents failed to meet the minimum general facilities standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals, regarding structural strength, as follows:

a. On April 3, 2002, Respondents 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 torn metal in the eland enclosure.

b. On July 2, 2002, Respondents 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 construct the bear enclosure so that it contained the bear securely.

c. On July 2, 2002, Respondents 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 construct the tiger enclosure so that it contained the tigers securely.

d. On August 12, 2002, Respondents 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 exposed nails in camel enclosure.

e. On August 27, 2002, Respondents failed to maintain their housing facilities structurally sound and in good repair to protect the animals housed therein from injury and to contain them, specifically failing to repair jagged wire mesh or the gap between the frame and the wire in the tiger cub enclosure.

f. On May 6, 2003, Respondents 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 broken wire in the enclosure housing a juvenile kangaroo.

g. On February 11, 2003, Respondents 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 the gate and handling chute in the enclosure housing a bull elk and a cow elk.

h. On February 12, 2003, Respondents 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 the gate and handling chute in the enclosure housing a bull elk and a cow elk.

33. On or about the following dates, Respondents failed to meet the minimum general facilities standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals, regarding storage, as follows:

a. On August 27, 2002, Respondents failed to store supplies of food in facilities that adequately protected them from contamination.

b. In approximately June 2003, Respondents failed to store supplies of food and bedding in facilities that adequately protected them from contamination, and specifically failed to protect food supplies from vermin, including the three to four rats found in the food preparation area.

c. In approximately June 2003, Respondents failed to store supplies of food and bedding in facilities that adequately protected them from contamination, and specifically failed to dispose of rancid food in the food preparation area, leaving it out for days at a time.

e. In approximately June 2003, Respondents failed to store supplies of food and bedding in facilities that adequately protected them from deterioration and contamination, and specifically failed to protect animal bedding supplies, which contained countless live maggots.

34. On or about the following dates, Respondents failed to meet the minimum general facilities standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals, regarding waste disposal, as follows:

a. On April 3, 2002 and August 27, 2002, Respondents failed to provide for the removal and disposal of animal and food wastes, bedding, dead animals, trash and debris, and specifically, failed to remove debris, food waste and old bones from the tiger enclosure.

b. On April 3, 2002, August 27, 2002, February 12, 2003 and in June of 2003, Respondents failed to provide for the removal and disposal of animal and food wastes, bedding, dead animals, trash and debris, and specifically, failed to remove excreta from the giraffe enclosure

c. On July 2, 2002, Respondents failed to provide for the removal and disposal

of animal and food wastes, bedding, dead animals, trash and debris, and specifically, failed to remove debris from the prairie dog enclosure.

d. On August 12, 2002, Respondents failed to provide for the removal and disposal of animal and food wastes, bedding, dead animals, trash and debris, and specifically, failed to remove waste and debris from the moat adjacent to the bear enclosure.

e. On August 27, 2002 and February 12, 2002, Respondents failed to provide for the removal and disposal of animals and food wastes, bedding, dead animals, trash and debris, and specifically, failed to remove excreta and debris from the eland enclosure.

f. On August 27, 2002, Respondents failed to provide for the removal and disposal of animals and food wastes, bedding, dead animals, trash and debris, and specifically, failed to remove excreta and debris from the elk enclosure.

g. On August 27, 2002 and February 12, 2003, Respondents failed to provide for the removal and disposal of animals and food wastes, bedding, dead animals, trash and debris, and specifically, failed to remove mouse droppings from the food preparation area.

h. On August 27, 2002, February 12, 2003 and August 12, 2003, Respondents failed to provide for the removal and disposal of animals and food wastes, bedding, dead animals, trash and debris, and specifically, failed to remove debris from the camel enclosure.

i. On May 6, 2003, Respondents failed to provide for the removal and disposal of animals and food wastes, bedding, dead animals, trash and debris, and specifically, failed to remove debris from the goat enclosure.

j. On August 12, 2002, Respondents failed to provide for the removal and

disposal of animal and food wastes, bedding, dead animals, trash and debris, and specifically, failed to remove waste and debris from the moat adjacent to the cougar enclosure.

35. On or about the following dates, Respondents failed to meet the minimum facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals, by failing to comply with the general facilities standards, specifically on August 27, 2003, Respondents failed to provide a suitable and sanitary method to eliminate rapidly excess water from indoor housing facilities for tigers.

36. On or about the following dates, Respondents failed to meet the minimum the general facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals, as follows:

a. Between at least August 27, 2002 and August 12, 2003, Respondents failed to provide a bear housed outdoors with appropriate natural or artificial shelter.

b. On February 11, 2003, Respondents failed to provide a suitable method to rapidly eliminate excess water from the elk enclosure.

c. On March 15, 2001, Respondents 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 tiger and bear enclosures.

d. On April 3, 2002, Respondents 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 mountain lion

enclosure.

e. On April 3, 2002, Respondents 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 snow leopard enclosure.

f. That from at least May 22, 2003 through July 2, 2002, Respondents 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 tiger enclosure.

g. That from at least May 22, 2002 through August 27, 2002, Respondents 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 bear enclosure.

37. On or about the following dates, Respondents failed to meet the minimum facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals regarding space requirements, as follows:

a. Between October 2002 and May 30, 2003, Respondents failed to construct and maintain enclosures so as to provide sufficient space to allow each animal contained therein to make normal postural and social adjustments, and specifically, failed to construct the giraffe enclosure so as to provide sufficient space for the animal to make normal postural adjustments.

b. On August 12, 2003, Respondents failed to construct and maintain enclosures

so as to provide sufficient space to allow each animal contained therein to make normal postural and social adjustments, and specifically, failed to construct the giraffe enclosure so as to provide sufficient space for the animal to make normal postural adjustments.

38. On or about the following dates, Respondents failed to meet the minimum animal health and husbandry standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals regarding feeding, as follows:

a. Between March 2002 and February 2003, Respondents repeatedly failed to provide tigers with a sufficient quantity of wholesome, palatable food, and routinely failed to feed tigers any food for four days in a row.

b. On or about April 3, 2002, Respondents failed to minimize contamination of food, and specifically, provided spoiled meat to tigers.

c. On or about August 15, 2003, Respondents failed to minimize contamination of food, and specifically, food for tigers was putrified and contained maggots.

d. On or about August 24, 2003, Respondents failed to provide animals with food that was wholesome, palatable and free from contamination and of sufficient quantity, and specifically, failed to feed sufficient food to a giraffe, an eland, rabbits, a kangaroo, elk, tigers, and domestic cats, which animals were thin and hungry.

39. On or about the following dates, Respondents failed to meet the minimum animal health and husbandry standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals regarding watering, as follows:

a. On at least three occasions, including May 22, 2002, April 3, 2003 and July 2, 2002, Respondents failed to maintain water receptacles for the eland clean and sanitary,

and specifically allowed large clumps of algae to grow in the eland's water trough.⁵

b. On or about July 2, 2002, Respondents failed to minimize maintain water receptacles for the snow leopards clean and sanitary.

c. On or about August 24, 2003, Respondents failed to provide animals with potable water as often as necessary, and specifically failing to provide adequate water to the rabbits.

⁵ On July 2, 2002, in addition to the algae a dead bird was not removed from the water trough.

40. On or about the following dates, Respondents failed to meet the minimum animal health and husbandry standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals, regarding sanitation, and specifically, the cleaning of enclosures, as follows:

a. On numerous occasions, including April 3, 2002, February 12, 2003 and August 24, 2003, Respondents failed to remove excreta from primary enclosures as often as necessary to prevent contamination of the animals contained therein and to minimize disease hazards and reduce odors, and specifically, the giraffe enclosure had contained excessive fecal material.

b. On February 12, 2003, Respondents failed to remove excreta from primary enclosures as often as necessary to prevent contamination of the animals contained therein and to minimize disease hazards and reduce odors, and specifically, the eland enclosure contained excessive fecal material.

c. On February 11 and 12, 2003, Respondents failed to remove excreta from primary enclosures as often as necessary to prevent contamination of the animals contained therein and to minimize disease hazards and reduce odors, specifically, the enclosure housing the cow elk and bull elk contained excessive excreta.

d. On August 12, 2003, Respondents failed to remove excreta from primary enclosures as often as necessary to prevent contamination of the animals contained therein and to minimize disease hazards and reduce odors, and specifically, the enclosure housing the camel contained excessive excreta.

41. On or about the following dates, Respondents failed to meet the minimum animal

health and husbandry standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals, regarding employees during 2002 and 2003, and specifically on July 2, 2002, Respondents 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.

42. On or about the following dates, Respondents failed to meet the minimum animal health and husbandry standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals, regarding the separation of animals, specifically during Spring and Summer 2002, Respondents housed incompatible animals in the same enclosure, and specifically housed a cow elk (which became trapped in mud and excreta) in the same enclosure as a bull elk which harassed and attacked the trapped elk.

CONCLUSIONS OF LAW

1. Between March 15, 2001 and May 23, 2003, the Respondents Jerry L. Korn and Susan F. Korn d/b/a For the Birds were “exhibitors” as that term is defined in the Act and the implementing Regulations and held Animal Welfare Act License Number 82-C-0035. That license was cancelled on May 23, 2003 and has not been reissued or otherwise reinstated. The corporate Respondent, For the Birds, Inc. was not licensed.

2. After May 23, 2003, the Respondents exhibited animals without having been licensed by the Secretary to do so, specifically, said Respondents continuously kept the animals kept at 1506 Happy Valley Road, Nampa, Idaho 83687, on display to the public, in willful violation of sections 2.10(c) and 2.100(a) of the Regulations. 9 C.F.R. §§ 2.1(a), 2.100(a).

3. Between May 23, 2003 and at least August 16, 2003, the Respondent Jerry L. Korn operated as a “dealer” as that term is defined in the Act and the Regulations without having been licensed by the Secretary to do so by delivering for transport or transported, sold or negotiated the sale of a zebra, multiple elk and llamas.

4. That between Spring of 2002 and as late as August 16, 2003, as previously detailed, Respondents failed to have an attending veterinarian provide adequate veterinary care to its animals, in willful violation of section 2.40(a) of the Regulations (9 C.F.R. § 2.40(a)):

5. That between March 7, 2001 and February 12, 2003, Respondents 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).

6. Between March 7, 2001, and August 24, 2003, Respondents failed to ensure that their attending veterinarian or attending veterinarians had appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use, in willful violation of section 2.40(a)(2) of the Regulations. 9 C.F.R. § 2.40(a)(2).

7. Between March 7, 2001, and August 24, 2003, Respondents 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).

8. Between March 7, 2001, and August 24, 2003, Respondents failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate personnel, including an adequate number of employees trained in species-specific animal care and

husbandry, and specifically, on or about August 2002, failed to have sufficient personnel to remove mud and excreta in the elk enclosure, and allowed an aged elk to become trapped therein for several days, subjecting the elk to injury by a bull elk, in willful violation of section 2.40(b)(1) of the Regulations. 9 C.F.R. § 2.40(b)(1).

9. Between March 7, 2001, and August 24, 2003, Respondents failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate equipment, in willful violation of section 2.40(b)(1) of the Regulations. 9 C.F.R. § 2.40(b)(1).

10. Between March 7, 2001, and August 24, 2003, Respondents failed to establish and maintain a program of adequate veterinary care that included the availability of appropriate services, including veterinary services, and specifically, failed to have any veterinary services available for, *inter alia*, a snow leopard, a camel, two tigers, an elk, a giraffe, an eland, a pregnant llama and her baby, in willful violation of section 2.40(b)(1) of the Regulations. 9 C.F.R. § 2.40(b)(1).

11. Between March 7, 2001, and August 24, 2003, Respondents failed to establish and maintain a program of adequate veterinary care that included the use of appropriate methods to prevent, control, diagnose and treat diseases and injuries, and the availability of emergency, weekend, and holiday care, and specifically, failed to use appropriate methods to treat, *inter alia*, a snow leopard, a camel, two tigers, an elk, a giraffe, an eland, a pregnant llama and her baby, in willful violation of section 2.40(b)(2) of the Regulations. 9 C.F.R. § 2.40(b)(2).

12. Between March 7, 2001, and August 24, 2003, Respondents failed to establish and maintain a program of adequate veterinary care that included a mechanism of direct and frequent communication with the attending veterinarian or attending veterinarians, so that timely and accurate information on problems of animal health, behavior, and well-being is conveyed to the attending

veterinarian or attending veterinarians, and specifically, failed to communicate to their attending veterinarian animal health information regarding, *inter alia*, a snow leopard, a camel, two tigers, an elk, a giraffe, an eland, a pregnant llama and her baby, in willful violation of section 2.40(b)(3) of the Regulations. 9 C.F.R. § 2.40(b)(3).

13. Between March 7, 2001, and August 24, 2003, Respondents failed to establish and maintain a program of adequate veterinary care that included daily observation of all animals to assess their health and well-being, and specifically, failed to observe on a daily basis, *inter alia*, a snow leopard, a camel, two tigers, an elk, a giraffe, an eland, a pregnant llama and her baby, to assess their health and well-being, in willful violation of section 2.40(b)(3) of the Regulations. 9 C.F.R. § 2.40(b)(3).

14. Between March 7, 2001, and August 24, 2003, Respondents failed to establish and maintain a program of adequate veterinary care that included adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, and tranquilization, and specifically, failed to train personnel (including Respondent Jerry F. Korn) in the care and handling of animals, in willful violation of section 2.40(b)(4) of the Regulations. 9 C.F.R. § 2.40(b)(4).

15. Between March 7, 2001 and February 12, 2003, Respondents failed to make, keep, and maintain records that fully and correctly disclose information concerning animals in Respondents' possession or under Respondents' control, or disposed of by Respondents, in willful violation of section 2.75(b)(1) of the Regulations. 9 C.F.R. § 2.75(b)(1).

16. On April 3, 2002, Respondents failed to allow APHIS officials, during business hours, to examine records required to be kept by the Act and the Regulations, in willful violation of

section 2.136(a)(2) of the Regulations. 9 C.F.R. § 2.126(a)(2).

17. Between May 1, 2001 and July 23, 2003 as previously detailed, the Respondents 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).

18. On May 6, 2003, Respondents used physical abuse to handle a tiger during an exhibition to the public, in willful violation of the handling regulations. 9 C.F.R. § 2.131(a)(2)(i).

19. Between May 1, 2001 and July 23, 2003, Respondents failed to handle animals during public exhibitions 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 exhibiting adult tigers to the public, including children, without sufficient barrier or distance. 9 C.F.R. § 2.131(b)(1).

20. On May 6, 2003, Respondents 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, said Respondents exhibited two adult tigers to the public without any distance or barriers between the animals and the public (resulting in at least one injury to a member of the public), in willful violation of the handling regulations. 9 C.F.R. § 2.131(b)(1).

21. On May 6, 2003 and August 12, 2003, Respondents failed to handle animals during public exhibitions 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, specifically, said Respondents exhibited adult and juvenile goats, a juvenile kangaroo, an eland, a giraffe, and a camel to the public, without sufficient distance or barriers to protect the animals from the public, in willful violation of the handling regulations. 9 C.F.R. § 2.131(b)(1).

22. Between approximately May 2003 and August 16, 2003, Respondents 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, said Respondents regularly allowed customers to enter the primary enclosure containing two tigers, without any distance or barriers between the animals and the public, in willful violation of the handling regulations. 9 C.F.R. § 2.131(b)(1).

23. On May 6, 2003, Respondents exhibited animals under conditions that were inconsistent with the animals' well-being, and specifically, said Respondents exhibited tigers to the public outside of any enclosures, and allowed personnel and the public to touch, tease and harass animals, including adult goat and her kids, an adult eland, a giraffe and a juvenile kangaroo, in willful violation of the handling regulations. 9 C.F.R. § 2.131(c)(1).

24. Between February 12, 2003 and August 27, 2003, as previously detailed, Respondents willfully violated section 2.100(a) of the Regulations by failing to meet the minimum facilities and operating standards for nonhuman primates (9 C.F.R. §§ 3.75-3.92).

25. Between April 3, 2002 and August 27, 2003, as previously detailed, the Respondents willfully violated section 2.100(a) of the Regulations by failing to meet the minimum general facilities standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman

primates and marine mammals, regarding structural strength (9 C.F.R. § 3.125(a)).

26. Between August 27, 2002 and sometime in June of 2003, as previously detailed, the Respondents willfully violated section 2.100(a) of the Regulations by failing to meet the minimum general facilities standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals, regarding storage (9 C.F.R. § 3.125(c)).

27. Between April 3, 2002 and May 6, 2003, as previously detailed, the Respondents willfully violated section 2.100(a) of the Regulations by failing to meet the minimum general facilities standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals, regarding waste disposal (9 C.F.R. § 3.125(d)).

28. On or about the following dates, Respondents 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. § 3.126) on August 27, 2003 by failing to provide a suitable and sanitary method to eliminate rapidly excess water from indoor housing facilities for tigers. 9 C.F.R. § 3.126(d).

29. Between March 15, 2001 and August 12, 2003, as previously detailed, the Respondents willfully violated section 2.100(a) of the Regulations by failing to meet the minimum general facilities standards facilities and operating standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals (9 C.F.R. §§ 3.127).

30. Between October of 2002 and August 12, 2003, the Respondents 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 regarding space requirements (9 C.F.R. § 3.128), by failing to construct and maintain enclosures so as to provide sufficient space to allow each animal contained therein to make normal postural and social adjustments, and specifically, failed to construct the giraffe enclosure so as to provide sufficient space for the animal to make normal postural adjustments.

31. Between March of 2002 and August 24, 2003, as previously detailed, the Respondents willfully violated section 2.100(a) of the Regulations by failing to meet the minimum animal health and husbandry standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals regarding feeding (9 C.F.R. § 3.129).

32. Between May 22, 2002 and August 24, 2003, as previously detailed, the Respondents willfully violated section 2.100(a) of the Regulations by failing to meet the minimum animal health and husbandry standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals regarding watering (9 C.F.R. § 3.130).

33. Between April 3, 2002 and August 24, 2003, as previously detailed, the Respondents willfully violated section 2.100(a) of the Regulations by failing to meet the minimum animal health and husbandry standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals, regarding sanitation, and specifically, the cleaning of enclosures (9 C.F.R. § 3.131(a)).

34. Between 2002 and 2003 and specifically on July 2, 2002, the Respondents willfully violated section 2.100(a) of the Regulations regarding the minimum animal health and husbandry standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals, regarding employees (9 C.F.R. § 3.132), by failing 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.

35. During the Spring and Summer of 2002, the Respondents willfully violated section 2.100(a) of the Regulations regarding the minimum animal health and husbandry standards for animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates and marine mammals, regarding the separation of animals (9 C.F.R. § 3.133), by housing incompatible animals in the same enclosure, and specifically housed a cow elk (which became trapped in mud and excreta) in the same enclosure as a bull elk which harassed and attacked the trapped elk.

ORDER

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

2. The Respondents, For the Birds, Inc., Jerry L. Korn and Susan F. Korn, jointly and severally, are assessed a civil penalty of TWENTY-EIGHT THOUSAND FIFTY DOLLARS (\$28,050.00), to be paid by certified check or money order made payable to the Treasurer of the United States. The said civil penalty shall be delivered to Counsel for the Complainant, Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, D.C. 20250.

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 by the Hearing Clerk's Office.

Done at Washington, D.C.

this 25th day of February, 2005

PETER M. DAVENPORT
Administrative Law Judge

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