

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:

AWA Docket No. 03-0030

RECEIVED

KIRBY VANBURCH, an individual
doing business as Illusion Management,
Inc.; TERRELL J. DIAMOND, an
individual; ILLUSION MANAGEMENT,
INC., an inactive Texas domestic
business corporation doing
business as KIRBY VANBURCH
THEATER,

Respondents.

CONSENT DECISION AND
ORDER AS TO KIRBY
VANBURCH

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.), by an amended complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondents willfully violated the Act and the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 et seq.) (the "Regulations" and "Standards"). This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

The respondent admits certain allegations in the amended complaint, as set forth below as findings of fact and conclusions of law, and admits that the Secretary has jurisdiction in this matter, waives oral hearing and further procedure, and consents and agrees to the entry of this decision for the purpose of settling this proceeding.

FINDINGS OF FACT

1. Respondent Kirby VanBurch, also know as "The Prince of Magic," is an individual whose mailing address is 208 East College, Branson, Missouri 65616, and at all times mentioned

herein was operating as an exhibitor, as that term is defined in the Act and the Regulations.

Between April 4, 2003, and April 4, 2004, said respondent was licensed and operating under Animal Welfare Act license number 43-C-0229, issued to "Kirby Van Burch DBA: Illusion Management, Inc."

2. On or about January 23, 2002, through on or about March 31, 2002, respondent Kirby VanBurch operated as an exhibitor without being licensed.

CONCLUSIONS OF LAW

1. On or about January 23, 2002, through on or about March 31, 2002, respondent Kirby VanBurch, willfully violated the licensing regulations by operating as an exhibitor as defined in the Act (7 U.S.C. § 2132) and the Regulations (9 C.F.R. § 1.1) without being licensed. 9 C.F.R. § 2.1(a)(1).

ORDER

1. Respondent, 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 issued thereunder.

2. Respondent is assessed a civil penalty of \$20,000, of which \$10,000 shall be held in abeyance in accordance with the provisions set forth below. The remaining \$10,000 is to be paid in full no later than February 1, 2005, by certified check(s) or money order(s) made payable to the Treasurer of the United States. Payment shall be sent to:

Bernadette R. Juarez
U.S. Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW
Room 2343-South Building, Mail Stop 1417

Washington, D.C. 20250-1417

Respondent shall indicate on the certified check(s) or money order(s) that payment is in reference to AWA Docket No. 03-0030.

3. If respondent, fails to pay the civil penalty, in full, by certified checks or money orders made payable to the Treasurer of the United States as provided in paragraph 2 of this order, upon respondent's receipt of notice and accompanying supporting documentation from the complainant, Animal Welfare Act license numbers 43-C-0229 shall be revoked immediately and respondent shall be assessed the entire outstanding balance of the civil penalty, without further procedure. Respondent agrees to a prospective waiver of any right to notice and opportunity for a hearing pursuant to section 19 of the Act (7 U.S.C. § 2149) as to any such failure to comply with paragraph 2, and the parties agree that respondent may seek further review or injunctive, declaratory or other appropriate relief pursuant to section 2146(c) of the Act (7 U.S.C. § 2146(c)), in the district court in the district where respondents reside or have their place of business.

4. For the purposes of this consent decision and order, the 12-month period of time between the date in which the order for the consent decision is entered, and 12 months therefrom, shall be referred to as the "probation period." The respondent agrees that during the probation period he will not engage in any activity which is not in compliance with the provisions of the Animal Welfare Act (7 U.S.C. § 2131 et seq.) and regulations issued thereunder (9 C.F.R. § 1.1 et seq.).

5. The respondent further agrees that, if during the probation period, respondent fails to comply with the provisions of the Animal Welfare Act (7 U.S.C. § 2131 et seq.) and regulations issued thereunder (9 C.F.R. § 1.1 et seq.), either on or off of the premises located at 208 East

College, Branson, Missouri 65616, respondent shall be assessed and shall pay the \$10,000 civil penalty held in abeyance. Such penalty shall not be deemed to be an agreement of liquidated damages for such future violation(s), but shall be in addition to any penalty found to be warranted after notice and opportunity for hearing for such future violation.

The provisions of this order shall become effective immediately. Copies of this decision shall be served upon the parties.

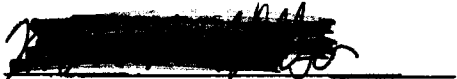


Kirby VanBurch
Respondent



Bernadette R. Juarez
Attorney for Complainant

Done at Washington, D.C.
this 15th day of April, 2004



Marc R. Hillson
Administrative Law Judge