

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	AWA Docket No. 04-0018
LINDA L. COMBS, an individual doing business	)	
as JLC Kennels; JAMES A. SMITH, an individual	)	
doing business as JLC Kennels, BARBARA J.	)	
THOMSEN, an individual doing business as JLC	)	
Kennels; ARNOLD G. SMITH, an individual doing	)	CONSENT DECISION
business as JLC Kennels, BETTY J. SMITH, an	)	AND ORDER AS TO
individual doing business as JLC Kennels; and,	)	LINDA L. COMBS, JAMES
JLC KENNELS, LLC, a Nebraska domestic limited	)	A. SMITH, BARBARA J.
liability corporation,	)	THOMSEN, ARNOLD G.
	)	SMITH, BETTY J. SMITH,
Respondents.	)	AND JLC KENNELS, LLC

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 *et seq.*), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging, *inter alia*, that 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 respondents admit the allegations in the complaint, as set forth below as findings of fact and conclusions of law, specifically admit that the Secretary has jurisdiction in this matter, waive oral hearing and further procedure, and consent and agree to the entry of this decision for the purpose of settling this proceeding.

The complainant agrees to the entry of this decision.

**FINDINGS OF FACT**

1. Respondent Linda L. Combs is an individual, doing business as JLC Kennels, a partnership or unincorporated association, and whose mailing address is RR#2 Box 108 Superior,

Nebraska 68978. At all times herein said respondent was operating as a dealer as that term is defined in the Act and the Regulations. Beginning on or before May 18, 2000, and until October 2, 2002, said respondent held Animal Welfare Act license number 47-A-0167, issued to “John & Linda Combs DBA: JLC Kennels.”

Beginning January 6, 2003, respondent Combs was also a principal, manager, officer and agent of respondent JLC Kennels, LLC, and the acts, omissions, and failures to act by respondent Combs alleged herein were within the scope of said respondent’s office, and are deemed to be the acts, omissions and failures of respondent JLC Kennels, LLC, as well as of respondent Combs, for the purpose of construing or enforcing the provisions of the Act.

2. Respondent Arnold G. Smith is an individual doing business as JLC Kennels, a partnership or unincorporated association, and whose address is RR#1 Box 4, Superior, Nebraska 68978. Between October 16, 2002, and April 1, 2003, said respondent was operating as a dealer as that term is defined in the Act and the Regulations and held Animal Welfare Act License number 47-A-0451 issued to “Betty & Arnold Smith DBA: JLC Kennels.”

3. Respondent Betty J. Smith is an individual doing business as JLC Kennels, a partnership or unincorporated association, and whose address is RR#1 Box 4, Superior, Nebraska 68978. Between October 16, 2002, and April 1, 2003, said respondent was operating as a dealer as that term is defined in the Act and the Regulations and held Animal Welfare Act License number 47-A-0451 issued to “Betty & Arnold Smith DBA: JLC Kennels.”

4. Respondent JLC Kennels, LLC, is a Nebraska domestic limited liability company whose agent for service of process is James A. Smith, Rt. 2, Box 108, Superior, Nebraska 68978. At all times material herein said respondent was operating as a dealer as that term is defined in

the Act and the Regulations. Beginning April 11, 2003, said respondent has held Animal Welfare Act license number 47-A-0470, issued to "JLC Kennels, L.L.C."

5. Respondent James A. Smith is individual doing business as JLC Kennels, a partnership or unincorporated association, and whose mailing address is 603 West 4th, Superior, Nebraska 68978. At all times material herein said respondent was operating as a dealer as that term is defined in the Act and the Regulations.

Beginning January 6, 2003, respondent James A. Smith was also a principal, manager, officer and agent of respondent JLC Kennels, LLC, and the acts, omissions, and failures to act by respondent James A. Smith alleged herein were within the scope of said respondent's office, and are deemed to be the acts, omissions and failures of respondent JLC Kennels, LLC, as well as of respondent James A. Smith, for the purpose of construing or enforcing the provisions of the Act.

6. Respondent Barbara J. Thomsen is an individual doing business as JLC Kennels, a partnership or unincorporated association, and whose mailing address is RR #2 Box 84, Superior, Nebraska 68978. At all times material herein said respondent was operating as a dealer as that term is defined in the Act and the Regulations.

Beginning January 6, 2003, respondent Thomsen was also a principal, manager, officer and agent of respondent JLC Kennels, LLC, and the acts, omissions, and failures to act by respondent Thomsen alleged herein were within the scope of said respondent's office, and are deemed to be the acts, omissions and failures of respondent JLC Kennels, LLC, as well as of respondent Thomsen, for the purpose of construing or enforcing the provisions of the Act.

NONCOMPLIANCE WITH THE REGULATIONS  
GOVERNING LICENSING

7. Respondents failed to comply with the licensing regulations by selling, in commerce, for resale use as a pets, animals without having obtained a license from the Secretary of Agriculture (the sale of each dog constitutes a separate violation), as follows:

- a. October 30, 2002. Respondents Combs, James A. Smith, and Thomsen sold 1 Shiba Inu and 3 Poodles to The Pet Pantry of Orange, California.
- b. November 11, 2002. Respondents Combs, James A. Smith, and Thomsen sold 4 Shiba Inu and 2 Pekingese to American Kennels of New York, New York.
- c. November 19, 2002. Respondents Combs, James A. Smith, and Thomsen sold 1 Chihuahua, 1 Miniature Pinscher, and 2 Boston Terriers to Pets-On-Lex of New York, New York.
- d. November 26, 2002. Respondents Combs, James A. Smith, and Thomsen sold 2 Chihuahua and 4 Cocker Spaniels to American Kennels of New York, New York.
- e. November 26, 2002. Respondents Combs, James A. Smith, and Thomsen sold 1 Boston Terrier, 2 Shih Tzu and 2 Cocker Spaniels to The Pet Pantry of Orange, California.
- f. December 3, 2002. Respondents Combs, James A. Smith, and Thomsen sold 1 Poodle and 1 Miniature Pinscher to Pet Doctor of Lincoln, Nebraska.
- g. December 29, 2002. Respondents Combs, James A. Smith, and Thomsen sold 3 Papillons to Pet Doctor of Lincoln, Nebraska.
- h. January 30, 2003. Respondents Combs, James A. Smith, Thomsen and JLC

Kennels, LLC, sold 3 Poodles and 1 Brindle to Pet Doctor of Lincoln, Nebraska.

i. January 30, 2003. Respondents Combs, James A. Smith, Thomsen and JLC

Kennels, LLC, sold 2 Poodles to Pets-On-Lex of New York, New York.

j. February 12, 2003. Respondents Combs, James A. Smith, Thomsen and JLC

Kennels, LLC, sold 3 Miniature Pinscher to Pet Doctor of Lincoln, Nebraska.

k. March 19, 2003. Respondents Combs, James A. Smith, Thomsen and JLC

Kennels, LLC, sold 3 Maltese and 1 Shih Tzu to American Kennels of New York, New York.

8. On January 10, 2002, respondent Combs failed to notify APHIS officials, within ten days, of any change in the name, address, management, or ownership of her business or of any additional sites, and failed to notify APHIS officials regarding the change in management and ownership of JLC Kennels.

NONCOMPLIANCE WITH REGULATIONS GOVERNING  
MISCELLANEOUS LICENSEE REQUIREMENTS

9. On July 31, 2002, respondent Combs failed to have a responsible party available during business hours to permit APHIS officials to conduct an inspection of respondent's animal facilities.

NONCOMPLIANCE WITH REGULATIONS GOVERNING  
ATTENDING VETERINARIAN AND ADEQUATE VETERINARY CARE

10. On January 10, 2002, respondent Combs failed to employ a full-time attending veterinarian, or to employ a part-time attending veterinarian under formal arrangements that included a written program of veterinary care, and specifically, the written program of veterinary care was incomplete.

11. On June 18, 2002 and June 19, 2002, respondent Combs 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, fecal matter and hair matts gathered around the ears and mouths of 2 Poodles housed in the middle building.

NONCOMPLIANCE WITH REGULATIONS GOVERNING RECORDS

12. On October 7, 2003, respondents Combs, JLC Kennels, LLC, James A. Smith, and Thomsen failed to maintain records that fully and accurately disclose information concerning the disposition of dogs.

NONCOMPLIANCE WITH STANDARDS GOVERNING  
HUMANE HANDLING, CARE, AND TREATMENT OF DOGS

13. Respondents failed to meet the minimum facilities and operating standards for dogs, as follows:

a. February 19, 2003. Respondents Combs, Betty J. Smith, Arnold G. Smith, JLC Kennels, LLC, James A. Smith, and Thomsen failed to construct housing facilities so that they are structurally sound and failed to maintain them in good repair to protect the animals from injury, and specifically, housed 3 Shiba Inu in an enclosure with sharp, protruding chainlink fencing.

b. Respondent Combs failed to sufficiently ventilate housing facilities for dogs, at all times when dogs are present to provide for their health and well-being, and to minimize odors, drafts, and ammonia levels, and moisture condensation, and specifically:

(i) January 10, 2002. A strong odor permeated three buildings housing

approximately 120 dogs.

(ii) June 18, 2002 and June 19, 2002. A strong odor permeated three buildings housing approximately 141 dogs.

c. June 18, 2002, and June 19, 2002. Respondent Combs failed to adequately light sheltered housing facilities to permit routine inspection and cleaning of the facility, and observation of the dogs, and specifically, two inadequately lit buildings (the blue and middle buildings) precluded the APHIS official from fully inspecting and photographing respondent's facility.

d. February 19, 2003. Respondents Combs, Betty J. Smith, Arnold G. Smith, JLC Kennels, LLC, James A. Smith, and Thomsen failed to construct primary enclosures with floors that protected the dogs' feet and legs from injury, and that did not allow the dogs' feet to pass through any openings in the floor, and specifically, housed 10 puppies in enclosures with flooring that permitted their feet to pass through.

e. January 10, 2002. Respondent Combs failed to separately house any dog exhibiting vicious or overly aggressive disposition, and specifically, a jointly housed dog was killed in a fight with its cage mate.

f. Respondent Combs failed to remove excreta and food waste from primary enclosures daily, and from under the primary enclosures as often as necessary to prevent excessive accumulation of feces and food waste, and specifically:

(i) January 10, 2002. Housed 35 dogs in enclosures with excessive feces; feces covered 45% of the outside run of western-most building, 30% to 40% of the outside runs for the whelping building, and the enclosures in the whelping

building had accumulated feces approximately an 1½” thick.

- (ii) June 18, 2002. Housed dogs in enclosures with excessive feces; feces covered 45% of three of the blue building’s outside runs (west); 40% of the middle building’s outside runs (west), 25% of four pens in the whelping building.
- (iii) June 19, 2002. Housed 10 dogs in enclosures (eastern-most building) with excessive feces.

g. Respondent Combs failed to keep the premises where the housing facilities are located, including buildings and surrounding grounds, clean and in good repair to protect the animals from injury, to facilitate husbandry practices, and specifically:

- (i) January 10, 2002. Cobwebs covered approximately 30% of the ceiling in the western and middle buildings, and liquid waste covered an area approximately 1' long by 1½” wide on the floor of the western building.
- (ii) June 18, 2002. Failed to clean or remove: overgrown weeds and grass from around the shelter buildings; cobwebs, and rodent and insect feces from the blue building; and, cobwebs and insect feces from the whelping building.
- (iii) June 19, 2002. Failed to clean or remove: overgrown weeds and grass from around the shelter buildings; cobwebs, and rodent and insect feces from the blue building; cobwebs and insect feces from the whelping building; and, cobwebs, insect feces and a trash can covered with brown fecal matter and waste from the middle building.

h. Respondent Combs failed to establish and maintain an adequate program of pest control, and specifically:



(i) January 10, 2002. Respondent failed to take minimally-adequate steps to eradicate a rodent infestation; rodent feces and bits insulation littered the drain gutter in the whelping building.

(ii) June 18, 2002 and June 19, 2002. Respondent failed to take minimally-adequate steps to eradicate a rodent infestation; rodent feces littered the floors in the blue and whelping buildings.

### CONCLUSIONS OF LAW

1. The Secretary has jurisdiction over this matter.

### REGULATIONS GOVERNING LICENSING

2. Respondents willfully violated section 4 of the Act (7 U.S.C. § 2134) and section 2.1(a)(1) of the Regulations (9 C.F.R. § 2.1(a)), on the dates as follows:

- a. October 30, 2002. Respondents Combs, James A. Smith, and Thomsen failed to comply with 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a). The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149(b).

- b. November 11, 2002. Respondents Combs, James A. Smith, and Thomsen failed to comply with 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a). The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149(b).

- c. November 19, 2002. Respondents Combs, James A. Smith, and Thomsen failed to comply with 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a). The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149(b).

- d. November 26, 2002. Respondents Combs, James A. Smith, and Thomsen failed to comply with 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a). The sale of each dog constitutes a

separate violation. 7 U.S.C. § 2149(b).

e. November 26, 2002. Respondents Combs, James A. Smith, and Thomsen failed to comply with 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a). The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149(b).

f. December 3, 2002. Respondents Combs, James A. Smith, and Thomsen failed to comply with 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a). The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149(b).

g. December 29, 2002. Respondents Combs, James A. Smith, and Thomsen failed to comply with 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a). The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149(b).

h. January 30, 2003. Respondents Combs, James A. Smith, Thomsen and JLC Kennels, LLC, failed to comply with 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a). The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149(b).

i. January 30, 2003. Respondents Combs, James A. Smith, Thomsen and JLC Kennels, LLC, failed to comply with 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a). The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149(b).

j. February 12, 2003. Respondents Combs, James A. Smith, Thomsen and JLC Kennels, LLC, failed to comply with 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a). The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149(b).

k. March 19, 2003. Respondents Combs, James A. Smith, Thomsen and JLC Kennels, LLC, failed to comply with 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a). The sale of each dog constitutes a separate violation. 7 U.S.C. § 2149(b).

3. On January 10, 2002, respondent Combs willfully violated section 2.8 of the Regulations. 9 C.F.R. § 2.8.

REGULATIONS GOVERNING  
MISCELLANEOUS LICENSEE REQUIREMENTS

4. On July 31, 2002, respondent Combs willfully violated section 2.126(a) of the Regulations. 9 C.F.R. §§ 2.100(a), 2.126(a).

REGULATIONS GOVERNING ATTENDING VETERINARIAN AND  
ADEQUATE VETERINARY CARE

5. On January 10, 2002, respondent Combs willfully violated the section 2.40(a)(1) of the Regulations. 9 C.F.R. § 2.40(a)(1).

6. On June 18, 2002 and June 19, 2002, respondent Combs willfully violated the section 2.40(b)(2) of the Regulations. 9 C.F.R. § 2.40(b)(2).

REGULATIONS GOVERNING RECORDS

7. On October 7, 2003, respondents Combs, JLC Kennels, LLC, James A. Smith, and Thomsen willfully violated section 2.75(a)(1) of the Regulations. 9 C.F.R. § 2.75(a)(1).

STANDARDS GOVERNING HUMANE HANDLING,  
CARE, AND TREATMENT OF DOGS

8. Respondents willfully violated section 2.100(a) of the Regulations and the Standards, 9 C.F.R. §§ 3.1-3.19, as follows:

- a. February 19, 2003. Respondents Combs, Betty J. Smith, Arnold G. Smith, JLC Kennels, LLC, James A. Smith, and Thomsen failed comply with 9 C.F.R. §§ 2.100(a), 3.1(a).
- b. On the following dates, respondent Combs failed to comply with 9 C.F.R.

§§ 2.100(a), 3.3(b):

(i) January 10, 2002.

(ii) June 18, 2002 and June 19, 2002.

c. June 18, 2002, and June 19, 2002. Respondent Combs failed to comply with 9 C.F.R. §§ 2.100(a), 3.3(c).

d. February 19, 2003. Respondents Combs, Betty J. Smith, Arnold G. Smith, JLC Kennels, LLC, James A. Smith, and Thomsen failed to comply with 9 C.F.R. §§ 2.100(a), 3.6(a)(x).

e. January 10, 2002. Respondent Combs failed to comply with 9 C.F.R. §§ 2.100(a), 3.7(b).

f. On the following dates, respondent Combs failed to comply with 9 C.F.R.

§§ 2.100(a), 3.11(a):

(i) January 10, 2002.

(ii) June 18, 2002.

(iii) June 19, 2002.

g. On the following dates, respondent Combs failed to comply with 9 C.F.R.

§§ 2.100(a), 3.11(c):

(i) January 10, 2002.

(ii) June 18, 2002.

(iii) June 19, 2002.

h. On the following dates, respondent Combs failed to comply with 9 C.F.R.

§§ 2.100(a), 3.131(d):

- (i) January 10, 2002.
- (ii) June 18, 2002 and June 19, 2002.

**ORDER**

1. Respondents Combs, James A. Smith, Thomsen, Betty J. Smith, Arnold G. Smith and JLC Kennels, LLC, 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. Respondents Combs, James A. Smith, Thomsen, Betty J. Smith, Arnold G. Smith and JLC Kennels, LLC, are jointly and severally assessed a civil penalty of \$ 2,750, which shall be paid by a certified check or money order made payable to the Treasurer of United States and remitted 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


Respondents' payment of the civil penalty shall be forwarded to, and received by, Ms. Juarez on or before July 30, 2004. Respondent shall indicate on the certified check or money order that payment is in reference to AWA Docket No. 04-0018.


3. Respondents', Betty J. Smith, Arnold G. Smith, Animal Welfare Act license (number 47-A-0451) is hereby revoked.


4. Respondent Comb's Animal Welfare Act license (number 47-A-0451) is hereby revoked.


NBW 5. Respondent JLC Kennel, LLC's, Animal Welfare Act license (number 47-A-0470 BBS 0407) is hereby terminated.


The provisions of this order shall become effective on August 6, 2004. Copies of this decision shall be served upon the parties.

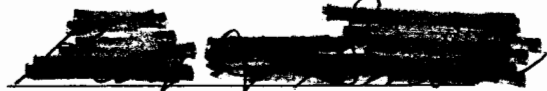
  
Linda L. Combs  
Respondent


JLC KENNELS, LLC  
By   
Its president

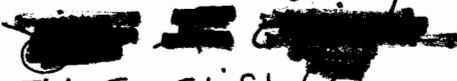
  
James A. Smith  
Respondent

  
Barbara J. Thomsen  
Respondent

  
Arnold G. Smith  
Respondent

  
Betty J. Smith  
Respondent

  
Bernadette R. Juarez  
Attorney for Complainant

Done at Washington, D.C.  
this 2 day of August, 2004  
  
Jill S. Clifton  
Administrative Law Judge

5. Respondent JLC Kennel, LLC's, Animal Welfare Act license (number 47-A-0470) is hereby terminated.

The provisions of this order shall become effective on August 6, 2004. Copies of this decision shall be served upon the parties.

JLC KENNELS, LLC

By \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
Linda L. Combs  
Respondent

\_\_\_\_\_  
James A. Smith  
Respondent

\_\_\_\_\_  
Barbara J. Thomsen  
Respondent

\_\_\_\_\_  
Arnold G. Smith  
Respondent

\_\_\_\_\_  
Betty J. Smith  
Respondent

\_\_\_\_\_  
Bernadette R. Juarez  
Attorney for Complainant

Done at Washington, D.C.  
this \_\_\_\_ day of \_\_\_\_\_, 2004  
*See previous page*  
*JSC*  
\_\_\_\_\_  
Administrative Law Judge

~~\_\_\_\_\_~~  
David B. Downing  
Attorney for Respondents