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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

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In re:	)	AWA Docket No. 04-0033
	)	
FOR THE BIRDS, INC., an Idaho	)	
corporation; and JERRY L. KORN,	)	
an individual, and SUSAN F. KORN, an	)	
individual, dba FOR THE BIRDS; and	)	
BEN KORN, an individual,	)	
	)	Consent Decision and Order as to
Respondents.	)	Respondent Ben Korn

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 the respondents willfully violated the Act and the regulations and standards issued thereunder (9 C.F.R. § 1.1 et seq.). This decision is entered into pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

Respondent Ben Korn admits the jurisdictional allegations in the complaint, admits the remaining allegations as set forth herein as findings of fact and conclusions of law, waives oral hearing and further procedure, and consents and agrees 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 Ben Korn is an individual whose current mailing address is 1227 Warner Street, Olympia, Washington, 98516. At all times mentioned in the complaint, respondent Ben Korn was acting for respondents Susan Korn, Jerry Korn and For the Birds, Inc. as their agent pursuant to section 2139 of the Act (7 U.S.C. § 2139), and the acts, omissions, and failures to act by respondent Ben Korn alleged herein were within the scope of his office, and are deemed to be his

own acts, omissions and failures, for the purpose of construing or enforcing the provisions of the Act.

2. Between May 23, 2003 and at least August 24, 2003, respondent Ben Korn exhibited animals without having been licensed by the Secretary to do so, at 1506 Happy Valley Road, Nampa, Idaho 83687.

3. On or about the following dates, 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:

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

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

5. On the following dates, 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:

- a. On May 1, 2001, respondent exhibited an adult tiger (Raja) to the public without sufficient any barrier or distance.

- b. On May 10, 2001, respondent exhibited an adult tiger (Raja) to the public without sufficient barrier or distance.
- c. In June 2002, respondent exhibited an adult tiger (Raja) to a child without sufficient barrier or distance.
- d. On June 4, 2002, respondent exhibited adult tigers to children without any barrier or distance.
- e. On February 19, 2003, respondent exhibited adult tigers to the public without any barrier or distance.
- f. On May 13, 2003, respondent exhibited adult tigers to the public without any barrier or distance.
- g. On May 6, 2003, respondent 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)..
- h. On May 6, 2003, respondent 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.
- i. On May 8, 2003, respondent exhibited animals to the public, without sufficient distance and/or barriers to protect the animals and the public.
- j. On July 23, 2003, respondent exhibited adult tigers to approximately 40 children, without any distance or barriers between the animals and the public.
- k. On August 12, 2003, respondent exhibited an adult giraffe and an adult eland to the public, without any distance or barriers between the animals and the public.

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

6. On May 6, 2003, respondent exhibited animals under conditions that were inconsistent with the animals' well-being, and 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.

7. The respondent has admitted the facts set forth above, the parties have agreed to the entry of this decision, and therefore such decision will be entered.

#### Conclusions of Law

1. Between May 23, 2003 and at least August 24, 2003, respondent Ben Korn exhibited animals without having been licensed by the Secretary to do so, at 1506 Happy Valley Road, Nampa, Idaho 83687, in willful violation of sections 2.1(a) and 2.100(a) of the Regulations. 9 C.F.R. §§ 2.1(a), 2.100(a).

2. On or about the following dates, respondent willfully violated 9 C.F.R. § 2.131(b)(1) [formerly section 2.131(a)(1)], as follows:

- 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)

3. On May 6, 2003, respondent willfully violated 9 C.F.R. § 2.131(b)(2)(i) [formerly 9 C.F.R. § 2.131(a)(2)(i)] in connection with an adult tiger.

4. On the following dates, respondent willfully violated 9 C.F.R. § 2.131(c)(1) [formerly 9 C.F.R. § 2.131(b)(1)], as follows:

- a. May 1, 2001 (adult tiger - Raja).
- b. May 10, 2001 (adult tiger - Raja).
- c. June 2002 (adult tiger - Raja).
- d. June 4, 2002 (adult tigers).
- e. February 19, 2003 (adult tigers).
- f. May 13, 2003 (adult tigers).
- g. May 6, 2003 (two adult tigers, adult and juvenile goats, a juvenile kangaroo, an eland, a giraffe, and a camel).
- h. May 8, 2003.
- i. July 23, 2003 (adult tigers).
- j. August 12, 2003 (an adult giraffe and an adult eland).
- k. Between approximately May 2003 and August 16, 2003 (two tigers).

5. On May 6, 2003, respondent willfully violated 9 C.F.R. § 2.131(d)(1) [formerly 9 C.F.R. § 2.131(c)(1)] in connection with an adult goat and her kids, an adult eland, a giraffe and a juvenile kangaroo.

6. The respondent has admitted the facts set forth above, the parties have agreed to the entry of this decision, and therefore such decision will be entered.

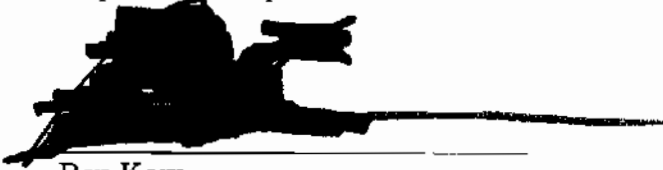
#### Order

1. Respondent Ben Korn, 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. Respondent Ben Korn is disqualified from licensure under the Animal Welfare Act, in his own name, or through any corporate or other device, for a period of ten years commencing

March 15, 2006.

This order shall become effective on the first day after service of this decision on the respondent. Copies of this decision shall be served upon the parties.



Ben Korn  
Respondent



Colleen A. Carroll  
Attorney for Complainant

Done at Washington, D.C.  
this 28<sup>th</sup> day of May, 2006



Peter M. Davenport  
Administrative Law Judge