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UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

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In re: ) AWA Docket No. 07-0004  
)  
DONALD B. ARTHUR, an individual doing )  
business as KENNEL KARE; and, PATRICIA )  
Y. ARTHUR, an individual doing business as )  
KENNEL KARE, )  
)  
Respondents. ) CONSENT DECISION AND  
) ORDER

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 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.). 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 of the complaint, and consent and agree, for the purpose of settling this proceeding, to the entry of this decision.

The complainant agrees to the entry of this decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent Donald B. Arthur is an individual, doing business as Kennel Kare, a partnership or unincorporated association, and whose mailing address is 15241 Young School Road, Lexington, Missouri 64067. At all times herein, 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 43-B-3509, issued to "DONALD B & PATRICIA Y ARTHUR." On June 14, 2005, said

respondent's Animal Welfare Act license automatically terminated because respondent did not file his annual license renewal application.

2. Respondent Patricia Y. Arthur is an individual, doing business as Kennel Kare, a partnership or unincorporated association, and whose mailing address is 15241 Young School Road, Lexington, Missouri 64067. At all times herein, 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 43-B-3509, issued to "DONALD B & PATRICIA Y ARTHUR." On June 14, 2005, said respondent's Animal Welfare Act license automatically terminated because respondent did not file her annual license renewal application.

3. APHIS personnel conducted inspections of respondents Donald B. Arthur and Patricia Y. Arthur's (collectively, "respondents") facilities, records and animals for the purpose of determining respondents' compliance with the Act and the Regulations and Standards on or about: September 29, 2004 (approximately 148 animals inspected), January 11, 2005 (approximately 170 animals inspected), January 18, 2005 (approximately 173 animals inspected), February 22, 2005 (approximately 132 animals inspected), and May 9, 2005 (approximately 146 animals inspected). During each of these compliance inspections, APHIS officials provided respondents both with written notice of their noncompliance with the Regulations and Standards and the opportunity to demonstrate or achieve compliance with such provisions.

4. Respondents have a large business. At all material times herein respondents held between 124-173 animals for breeding purposes and resale use as pets.

5. The gravity of the violations alleged in this complaint is great. They include

repeated instances in which respondents failed to provide minimally-adequate veterinary care, housing and husbandry to their animals. Respondents have continually failed to comply with the Regulations and Standards, after having been repeatedly provided with written notice that described deficiencies.

6. Respondents do not have a previous history of violations. However, respondents' conduct over the eight-month period described herein reveals a consistent disregard for, and unwillingness or inability to abide by, the requirements of the Animal Welfare Act and the Regulations and Standards. An ongoing pattern of violations establishes a "history of previous violations" for the purposes of section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) and lack of good faith.

7. Respondents willfully violated the veterinary care regulations (9 C.F.R. § 2.40), as follows:

8. January 11, 2005. Respondents failed to establish and maintain a program of veterinary care that included methods to prevent, control, diagnose, and treat diseases and injuries, and specifically, failed to remove dried, caked feces beneath the tail of a male shih tzu and failed to obtain veterinary treatment for no fewer than 5 dogs suffering from alopecia and crusty, dry skin over significant portion of their bodies. 9 C.F.R. § 2.40(b)(2). Complainant previously notified respondents, in writing, that their program of veterinary care failed to include minimally-adequate methods to prevent, control, diagnose and treat diseases and injuries on September 29, 2004.

9. January 18, 2005. Respondents failed to establish and maintain a program of

veterinary care that included methods to prevent, control, diagnose, and treat diseases and injuries, and specifically, respondents failed to obtain treatment for a female schnauzer that exhibited symptoms (large red mass in the rectal area) consistent with a rectal prolapse; a geriatric Pekingese (Gusty) that had a 2-inch, moist, red, swollen circular spot cranial to the left flank, hair missing around his eyes and top of his head, and severely matted hair entangled in his teeth that compromised his ability to eat; a female geriatric pekingese (Peaches) that appeared lethargic, thin and matted, with prominent ribs, hip bones, and vertebra, had a left eye that was completely clouded with yellowish-green exudation, and a 2-inch, moist, red, swollen circular spot between the shoulder blades and on her right side just past the last rib; a male shih tzu that continued to exhibit caked, dried feces beneath his tail and around the rectal area; and, failed to separate no fewer than 4 dogs exhibiting excessive hair loss (over 30% to 90% of their body area) and crusty, white skin scale from dogs in apparent good health despite their attending veterinarian's advice to do so. 9 C.F.R. § 2.40(b)(2). Complainant previously notified respondents, in writing, regarding their failure to provide minimally-adequate veterinary care to their animals on September 29, 2004, and January 11, 2005.

10. May 9, 2005. Respondents failed to establish and maintain a program of veterinary care that included methods to prevent, control, diagnose, and treat diseases and injuries, and specifically, failed to obtain veterinary treatment for 2 miniature pinschers that exhibited chronic hair loss and crusty, white skin over approximately 70-80% of their bodies. 9 C.F.R. § 2.40(b)(2). Complainant previously notified respondents, in writing, of their failure to provide minimally-adequate veterinary care to their animals on September 29, 2004, and January

11 and 18, 2005.

11. On February 22, 2005, respondents willfully violated the regulations pertaining to the identification of animals (9 C.F.R. § 2.50(a)), by failing to properly identify 25 adult dogs and 5 puppies. 9 C.F.R. § 2.50(a)(1), (a)(2).

12. Respondents willfully violated the record-keeping Regulations, as follows:

13. January 11 and 18, 2005. Respondents failed to make, keep, and maintain records that fully and correctly disclosed information concerning their acquisition of 40 dogs and the official USDA tag numbers assigned to no fewer than 140 dogs. (9 C.F.R. § 2.75(a)(1)(i), (vi)).

14. February 22, 2005. Respondents failed to make, keep, and maintain records that fully and correctly disclosed information concerning their acquisition of 30 dogs and the official USDA tag numbers assigned to no fewer than 30 dogs. (9 C.F.R. § 2.75(a)(1)(i), (vi)).

Complainant previously notified respondents, in writing, of their record-keeping deficiencies pertaining to dogs on January 11 and 18, 2005.

15. January 11 and 18, 2005. Respondents failed to request a variance from APHIS before substituting a computerized record-keeping system for APHIS Forms 7005 and 7006. (9 C.F.R. § 2.75(a)(2)).

16. Respondents willfully violated section 2.100(a) of the Regulations and Standards by failing to meet the minimum facilities and operating standards for dogs (9 C.F.R. §§ 3.1-3.19), as follows:

17. January 11, 2005. Respondents housed 5 dogs in an enclosure directly below an eroded ceiling with falling insulation, thereby risking injury to the animals. (9 C.F.R.

§§ 2.100(a), 3.1(a)). Complainant previously notified respondents, in writing, of their failure to keep animal facilities in good repair to protect the animals from injury on September 29, 2004.

18. January 11, 2005. Respondents housed no fewer than 10 dogs in primary enclosures with more than a day's accumulation of excreta and food waste, thereby risking soiling the dogs and disease hazards. (9 C.F.R. §§ 2.100(a), 3.11(a)).

19. January 11, 2005. Respondents failed to provide dogs housed in outdoor facilities with minimally-adequate shelter from the elements, including no fewer than 4 dogs with shelters that lacked wind and rain breaks at the entrances, and 25 dogs that had no bedding when the ambient temperature was below 35 degrees Fahrenheit (9 C.F.R. §§ 2.100(a), 3.4(b)(3),(4)).

20. January 11, 2005. Respondents housed 2 dogs in an enclosure that allowed feces and urine from the over-head enclosure to fall and seep into their enclosure, thereby depriving the dogs of the ability to remain clean and dry. (9 C.F.R. §§ 2.100(a), 3.6(a)(2)(v)). Complainant previously notified respondents, in writing, that their housing facilities for dogs did not enable the animals to remain clean and dry on September 29, 2004.

21. January 11, 2005. Respondents housed no fewer than 3 puppies in an enclosure that allowed the dogs' feet to pass through the slatted floor, thereby risking injury to the animals. (9 C.F.R. §§ 2.100(a), 3.6(a)(2)(x)). Complainant previously notified respondents, in writing, that the flooring in their dogs' primary enclosures risked injury to the animals on September 29, 2004.

22. January 11, 2005. Respondents housed 15 dogs in enclosures with suspended flooring that was neither 1/8 of an inch in diameter (9 gauge) nor coated with a material such as

plastic or fiberglass. (9 C.F.R. §§ 2.100(a), 3.6(a)(2)(xii)).

23. January 11, 2005. Respondents failed to establish and maintain a minimally-adequate program for the control of insects, external parasites affecting dogs, and birds and mammals that are pests to promote the health and well-being of the animals and to reduce contamination by pests in animal areas and, in particular, APHIS officials observed rodent feces in and around animal areas. (9 C.F.R. §§ 2.100(a), 3.11(d)).

24. January 18, 2005. Respondents housed puppies in enclosures that allowed the dogs' feet to pass through the slatted floor, thereby risking injury to the animals. (9 C.F.R. §§ 2.100(a), 3.6(a)(2)(x)). Complainant previously notified respondents, in writing, that the flooring in their dogs' primary enclosures risked injury to the animals on September 29, 2004, and January 11, 2005.

25. January 18, 2005. Respondents housed 15 dogs in enclosures with suspended flooring that was neither 1/8 of an inch in diameter (9 gauge) nor coated with a material such as plastic or fiberglass. (9 C.F.R. §§ 2.100(a), 3.6(a)(2)(xii)). Complainant previously notified respondents, in writing, of their failure to use suitable materials to construct flooring in primary enclosures housing dogs on January 11, 2005.

26. January 18, 2005. Respondents housed dogs in primary enclosures with excessive feces in and/or underneath them, thereby risking soiling the dogs and disease hazards. (9 C.F.R. §§ 2.100(a), 3.11(a)). Complainant previously notified respondents, in writing, of their failure to remove excreta from animal enclosures on January 11, 2005.

27. January 18, 2005. Respondents failed to establish and maintain a minimally-

adequate program for the control of insects, external parasites affecting dogs, and birds and mammals that are pests to promote the health and well-being of the animals and to reduce contamination by pests in animal areas and, in particular, APHIS officials observed rodent feces and rodents in and around animal areas. (9 C.F.R. §§ 2.100(a), 3.11(d)). Complainant previously notified respondents, in writing, regarding deficiencies in their program for pest control on January 11, 2005.

28. May 9, 2005. Respondents housed no fewer than 3 juvenile mastiff dogs in enclosures that lacked minimally-adequate structural integrity to contain the animals securely, thereby risking injury to animals. (9 C.F.R. §§ 2.100(a), 3.1(a)).

29. May 9, 2005. Respondents constructed surfaces of housing facilities for dogs using untreated wood that absorbed feces, urine, and water, and could not be readily cleaned and sanitized or removed or replaced when soiled. (9 C.F.R. §§ 2.100(a), 3.1(c)(1)). Complainant previously notified respondents, in writing, that the materials used to construct animal enclosures prevented them from adequately cleaning and sanitizing such enclosures on September 29, 2004, and January 11 and 18, 2005.

30. May 9, 2005. Respondents housed 4 newly born doberman pinscher puppies in outdoor facilities without having approval from their attending veterinarian to do so. (9 C.F.R. §§ 2.100(a), 3.4(a)(1)(iii)).

31. May 9, 2005. Respondents failed to regularly maintain the surfaces of outdoor facilities and, in particular, failed to fill large holes in an enclosure housing 3 mastiff puppies. (9 C.F.R. §§ 2.100(a), 3.4(a)(1)(iii)).

32. May 9, 2005. Respondents housed 7 dogs in enclosures with suspended flooring that was neither 1/8 of an inch in diameter (9 gauge) nor coated with a material such as plastic or fiberglass. (9 C.F.R. §§ 2.100(a), 3.6(a)(2)(xii)). Complainant previously notified respondents, in writing, of their failure to use suitable materials to construct flooring in primary enclosures housing dogs on January 11 and 18, 2005.

33. May 9, 2005. Respondents failed to keep the premises where housing facilities are located, including buildings and surrounding grounds, clean and in good repair and, in particular, failed to remove accumulated feces from two vacant enclosures, a trash pile near the barn entrance that contained feces, bedding material, wire paneling and a broken piece of a dog house, and failed to remove or trim tall weeds near animal enclosures. (9 C.F.R. §§ 2.100(a), 3.11(c)). Complainant previously notified respondents, in writing, of housekeeping deficiencies and their failure to remove feces, discarded materials, and trash from in and around animal areas on September 29, 2004, and January 18, 2005.

34. May 9, 2005. Respondents failed to establish and maintain a minimally-adequate program for the control of insects, external parasites affecting dogs, and birds and mammals that are pests to promote the health and well-being of the animals and to reduce contamination by pests in animal areas and, in particular, APHIS officials observed rodent feces and rodents in and around animal areas. (9 C.F.R. §§ 2.100(a), 3.11(d)). Complainant previously notified respondents, in writing, regarding deficiencies in their program for pest control on January 11 and 18, 2005.

35. Each animal affected by respondents' failure to comply with the Regulations and

Standards, as alleged herein, constitutes a separate violation of the Act, Regulations and Standards. 7 U.S.C. § 2149(b); ¶¶ 8-11, 13-14, 17-22, 24-26, 28, 30-32.

36. The respondents having admitted the allegations in the complaint and the parties having agreed to the entry of this decision, such decision will be entered.

#### ORDER

1. 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 issued thereunder.

2. Respondents Donald B. Arthur and Patricia Y. Arthur are assessed a civil penalty in the amount of \$2,750, of which \$2,250, shall be paid in accordance with the provisions set forth in paragraph 3 of this order. Respondents shall pay \$500, by certified check or money order made payable to the Treasurer of United States that includes the notation "AWA Docket No. 07-0004," which shall be mailed to U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Accounts Receivable on or before August 31, 2007, at the address as follows:

USDA, APHIS, Accounts Receivable  
P.O. Box 3334  
Minneapolis, Minnesota 55403

3. Respondents shall pay \$2,250, in twelve monthly installments of \$187.50. Respondents' monthly payments shall be paid by certified check or money order payable to the Treasurer of the United States that include the notation "AWA Docket No. 07-0004, and shall be sent to and received by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Accounts Receivable on or before the first day of each month beginning October 1,

2007, and continuing through September 1, 2008, until the sum is fully paid, at the address as follows:

USDA, APHIS, Accounts Receivable  
P.O. Box 3334  
Minneapolis, Minnesota 55403

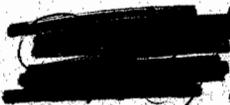
4. If respondents fail to pay the civil penalty in full as provided in paragraphs 2 and 3 of this order, the entire outstanding balance of the civil penalty shall be immediately due and payable, without further procedure. Respondents agree to a prospective waiver of any right to notice and opportunity for a hearing pursuant to section 19 of the Act (7 U.S.C. § 2149) as to any such failure to comply with paragraphs 2 and 3.

5. This Court specifically retains jurisdiction of this matter to enforce the terms of the agreed consent order. If respondents fail to comply with the provisions in paragraphs 2 and 3 of this order, this Court, upon a motion by complainant, shall issue a default order against respondents Donald B. Arthur and Patricia Y. Arthur and grant to complainant the relief specified in paragraph 4 of this order.

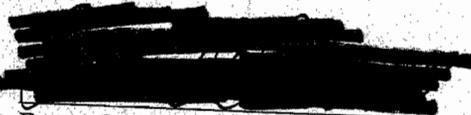
6. Animal Welfare Act license number 43-B-3509 is revoked.

The provisions of this order shall become effective on the first day after service of this decision on the respondents.

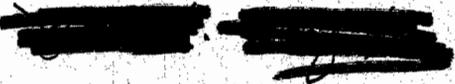
Copies of this decision shall be served upon the parties.

  
Donald B. Arthur  
Respondent

  
Patricia Y. Arthur  
Respondent

  
  
Bernadette Juarez  
Attorney for Complainant

Done at Washington, D.C.  
this 28 day of AUG, 2007

  
Jill S. Clifton  
Administrative Law Judge