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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:	)	
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Linda L. Hager, an individual; and	)	AWA Docket No. 17-0226
Edward E. Ruyle, an individual,	)	AWA Docket No. 17-0227
	)	
Respondents.	)	

DECISION AND ORDER GRANTING COMPLAINANT'S MOTION FOR SUMMARY DISPOSITION, DENYING RESPONDENTS' MOTION TO DISMISS ALL CHARGES, AND COMPELLING RESPONDENTS TO CEASE AND DESIST

Appearances:

Charles L. Kendall, Esq., Office of the General Counsel, United States Department of Agriculture, Washington D.C., for Complainant, Animal and Plant Health Inspection Service; and

Pro se Respondents: Linda L. Hager and Edward E. Ruyle.

Before Acting Chief Administrative Law Judge, Channing D. Strother.

INTRODUCTION AND SUMMARY OF DECISION

The Administrator, Animal and Plant Health Inspection Service ("APHIS"), United States Department of Agriculture ("USDA"), Complainant, instituted this administrative enforcement proceeding under the Animal Welfare Act, as amended ("AWA"), [1] by filing a Complaint alleging that Respondents, Linda L. Hager and Edward E. Ruyle, violated section 2134 of the AWA[2] by conducting a "dealer operation" between the dates of July 13, 2015, and January 18, 2017, [3] without a required license.

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[1] 7 U.S.C. §§ 2131-59.

[2] 7 U.S.C. § 2134.

[3] Respondents opined that the parties agreed, and I ordered, that the alleged violations of Docket Nos. 16-0049 and 16-0050 should be taken up separately from the alleged violations in Docket Nos. 17-0226 and 17-0227, and Complainant thus improperly referenced certain allegedly unlicensed sales in both sets of complaints. *See* Answer to Complainant's Motion for Summary Disposition, and Motion to Dismiss all Charges at ¶3.4. Complainant's May 22, 2018 Motion

The above captioned cases (17-0226 and 17-0227) are a second, later set of cases in which a Complaint was filed alleging violation of the AWA against both Respondents. Among other things, these cases involve Respondents' alleged unlawful operations only during a period after Respondent Hager gave up her AWA license, whereas the 16-0049 and 16-0050 dockets involve both a period during which Respondent Hager had an AWA license, and a period when she did not. Respondent Ruyle has at no time been issued an AWA license.

These two sets of cases have not been consolidated. This Decision and Order grants summary disposition only in the captioned cases for violations where no dispute regarding material allegations of fact remains. This Decision and Order does not address violations of the AWA alleged in dockets 16-0049 and 16-0050, including alleged violations between February 3, 2015 through June 27, 2015 referenced in the 2017 Complaints, which were previously alleged in Docket Numbers 16-0049 and 16-0050.[4]

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for Summary Disposition in Response to Order Setting Procedures, p. 2, footnote 1, states that "the allegations of unlicensed sales on the remaining 13 dates of the 16-0049 and 16-0050 Complaint are listed again in the 17-0226 and 17-0227 Complaint (the overlap is of the violations occurring in the period from February 3, 2015 through June 27, 2015), has no bearing on the disposition of the 17-0226 and 17-0227." I take this statement by Complainant to mean the overlapping alleged violations should only be considered in the prior 16-0049 and 16-0050 dockets and not in the 17-0226 and 17-0227 dockets. Thus, I will consider the overlapping violations listed in the original Complaint from February 3, 2015 through June 27, 2015, to be borne within the violations alleged in Docket Nos. 16-0049 and 16-0050, and not considered in the disposition here of Docket Nos.17-0226 and 17-0227.

[4] *See supra* note 3. Complainant notes that its motion for summary disposition is pending in Docket Nos. 16-0049 and 16-0050 and has not been acted upon. *See* Complainant Motion for Summary Disposition, 2-3. Complainant does not note that any action by the undersigned in those dockets was postponed pending resolution of summary disposition in the 17-0226 and 17-0227 dockets. *Id.* After the parties have had the opportunity to review the herein Decision and Order, they, or either party, can propose procedures for Docket Nos. 16-0049 and 16-0050.

Complainant filed its[5] Motion for Summary Disposition in Response to Order Setting Procedures on May 22, 2018. Respondents filed their "Answer to complainants [sic] motion for summary Disposition, and motion to Dismiss all charges" ("Response to Motion for Summary Disposition") on June 22, 2018. Although my March 23, 2018 Summary of Telephone Conference with Parties and Order Setting Procedures, as modified by subsequent orders, provided expressly that Complainant would have the opportunity to file a reply to Respondents' response to Complainant's Motion for Summary Disposition within fifteen days of service of that response, Complainant submitted no reply. Nor did Complainant answer Respondents' Motion to Dismiss All Charges.

Complainant contends that Respondents willfully violated the AWA by repeatedly conducting dealer operations without a license. Complainant also contends that Respondents operate a large business, the gravity of these repeated violations is great, Respondents were fully aware of the requirements of the AWA, and their unlicensed sales were not made in good faith.

Respondents have not denied that they engaged in commercial sales of puppies and kittens during a period where neither Respondent held a license as required by the AWA. However, Respondents contend that they continued to make sales based on 1) the advice of a state official that they could continue to sell animals to the pet store and 2) the belief that they could sell puppies and kittens to a pet store that maintained a "rescue permit" issued by the state without need for a USDA license.[6] Respondents also contend that Complainant obtained the

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[5] The March 2, 2017 Complaint in these dockets, p. 1, recites that Administrator of APHIS—the current APHIS Administrator is Kevin Shea—issued it, and the Complaint is signed by then APHIS Acting Administrator, now Associate Administrator, Michael C. Gregoire. Nevertheless, while I expressly recognize that the APHIS Administrator is a human being not an inanimate object, I will respectfully refer to the "Complainant" herein with the pronoun "it."

[6] Answer at 5 (¶VIII). *See also* March 6, 2017 Correspondence Letter from Respondents filed in Docket Nos. 16-0049 and 16-0050 at ¶2.3, and *supra* note 9.

records of sale in violation of the Fourth Amendment of the Constitution and, thus, should not be used as evidence against them.[7] Respondents also include many other contentions in their Answer to the Complaint regarding inspection of their dog kennels[8] that are irrelevant to the alleged violations in the instant case and were included as defense to alleged violations in Docket Numbers 16-0049 and 16-0050.[9]

Based on careful review of the pleadings before me, I find that there are no material issues of fact requiring resolution before issuing a decision. As it bears on the appropriateness of the penalty, in consideration of the Respondents' moderately sized business, gravity of the repeated violations, varying lack of good faith, and history of previous violations, I find it necessary to institute a civil penalty and a cease and desist order. Further, it is time sensitive to issue this Decision and Order, particularly a cease and desist provision, due to Respondents' ongoing AWA violations.

I find that Respondents violated section 2134 of the AWA by selling regulated animals between the dates of July 13, 2015 and January 18, 2017—which they admit to doing—without a license. Complainant requested a penalty of $50,000, revocation of Respondents' license which I

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[7] Answer, 4-5 (¶¶VI-VII).

[8] Answer, 1-4 (¶¶I-V). For instance, Respondents allege that Complainant's inspectors were verbally abusive to Respondents, which, in part, caused Respondent Hager to give up her AWA license. The dockets at issue here involved activities after the license was surrendered. However Respondent Hager came to surrender her license cannot make Respondents' unlicensed activities lawful.

[9] I note at the outset that throughout this decision and order I have taken into account that "[p]ro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." *Boxer X v. Harris*, 437 F.3d 1107 (11th Cir. 2006) (quoting *Hughes v. Lott*, 350 F.3d 1157, 1160 (11th Cir. 2003)). *See also Ramos v. USDA*, 68 Agric. Dec. 60 (U.S.D.A. 2009). Respondents' filing in this docket have not been skillfully prepared. However, among other things, I have attempted to extract and consider Respondents' contentions from their filings taken all together rather than only those from their Response to Motion for Summary Disposition.

understand to be a request for permanent disqualification to obtain a license, and an order to cease and desist all future violations of the AWA. As explained below, I find that the amount of the civil penalty, based on the statutory considerations,[10] should be $25,600, and that license revocation, permanent disqualification from obtaining a license under the AWA, and issuance of a cease and desist order are appropriate.

I also deny Respondents' motion to dismiss because it is unfounded.

JURISDICTION AND BURDEN OF PROOF

The AWA was promulgated to insure the humane care and treatment of animals intended for use in research facilities, exhibition, or as pets.[11] The AWA prohibits the sale of certain animals without a license. Congress provided for enforcement of the AWA by the Secretary of Agriculture, USDA.[12] Regulations promulgated under the AWA are in the Code of Federal Regulations, part 9, sections 1.1 through 3.142.

The burden of proof is on Complainant, APHIS.[13] The standard of proof applicable to adjudicatory proceedings under the Administrative Procedure Act,[14] such as this one, is the preponderance of the evidence.[15] The standard for summary disposition in a proceeding before a

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[10] 7 U.S.C. § 2149(b).

[11] 7 U.S.C. § 2131.

[12] 7 U.S.C. §§ 2131-59.

[13] 5 U.S.C. § 556(d).

[14] 5 U.S.C. §§ 551 *et seq.*

[15] *See Herman & Maclean v. Huddleston,* 459 U.S. 375, 387-91 (1983) (holding the standard of proof in administrative proceedings is preponderance of evidence).

USDA Administrative Law Judge, well-articulated by then Chief Administrative Law Judge Davenport, is as follows:[16]

> The Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes (the Rules or the Rules of Practice) set forth at 7 C.F.R., Subpart H, apply to the adjudication of this matter. While the Rules do not specifically provide for the use or exclusion of summary judgment, the Department's Judicial Officer has consistently ruled that hearings are futile and summary judgment is appropriate where there is no factual dispute of substance. *Animals of Montana, Inc.*, 68 Agric. Dec. 92, 104 (U.S.D.A. 2009); *Bauck*, 868 Agric. Dec. 853, 858-59 (U.S.D.A. 2009); *Veg-Mix, Inc. v. U.S. Dep't of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987).
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> While not an exact match, "no factual dispute of substance" may be equated with the "no genuine issue as to any material fact" language found in the Supreme Court's decision construing Fed. R. Civ. P. 56 in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). [Citation omitted.] An issue is "genuine" if sufficient evidence exists on each side so that a rational trier of fact could resolve the issue either way, and an issue of fact is "material" if under the substantive law it is essential to the proper disposition of the claim. [Citation omitted.] The mere existence of some factual dispute will not defeat an otherwise properly supported motion for summary judgment because the factual dispute must be material. [Citation omitted.] . . . .
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> If a moving party supports its motion, the burden shifts to the non-moving party, who may not rest on mere allegation or denial in pleadings,but must set forth specific facts showing there is a genuine issue for trial. [Citation omitted.] . . . A non-moving party cannot rely upon ignorance of facts, on speculation or suspicions, and may not avoid summary judgment on a hope that something may show up at trial. [Citation omitted.] In ruling on a motion for summary judgment all evidence must be considered in the light most favorable to the non-moving party with all justifiable inferences to be drawn in the non-movant's favor. [Citation omitted.] . . . .
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> As discussed in *Anderson*, the judge's function is not himself to weigh and determine the truth of the matter but to determine whether there is a genuine issue for trial. *Anderson*, *id.* at 250. The standard to be used mirrors that for a directed verdict under Fed. R. Civ. P. 50(a), which is that the trial judge must direct a verdict if,

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[16] *Agri-Sales, Inc.*, 73 Agric. Dec. 327, 328-30 (U.S.D.A. 2014), *aff'd* by the Judicial Officer and adopted as the final order in the proceeding, 73 Agric. Dec. 612 (U.S.D.A. 2014).

> under the governing law, there can be but one reasonable conclusion as to the verdict. [Citation omitted.] If reasonable minds could differ as to the import of the evidence, however, a verdict should not be directed. [Citation omitted.]
>
> Formerly it was held that if there was what was called a scintilla of evidence, a judge was obligated to leave that determination to a jury, but recent decisions have established a more reasonable rule that in every case the question for the judge is not whether there is literally no evidence, but whether there is any upon which the jury could properly proceed to find a verdict for the party producing it upon whom the onus of proof is imposed. [Citation omitted.] While administrative proceedings typically do not have juries, the rule's application remains applicable for a judge sitting as a fact finder performing the same function.

APPLICABLE STATUTORY PROVISIONS

Congress enacted the AWA, in relevant part, because it is necessary

> to insure that animals intended for . . . use as pets are provided humane care and treatment . . . [and] essential to regulate, as provided in this chapter, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons, or organizations . . . holding them for sale as pets or for any such purpose or use.[17]

To achieve this purpose, Congress provided:

> No dealer or exhibitor shall sell or offer to sell or transport or offer for transportation, in commerce, to any research facility or for exhibition or for use as a pet any animal, or buy, sell, offer to buy or sell, transport or offer for transportation, in commerce, to or from another dealer or exhibitor under this chapter any animals, unless and until such dealer or exhibitor shall have obtained a license from the Secretary and such license shall not have been suspended or revoked.[18]

Further, the corresponding regulations mandate, in pertinent part:

> (a)(1) Any person operating or intending to operate as a dealer, exhibitor, or operator of an auction sale, except persons who are

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[17] 7 U.S.C. § 2131.

[18] 7 U.S.C. § 2134.

exempted from the licensing requirements under paragraph (a)(3) of this section, must have a valid license . . . .

. . . .

(3) The following persons are exempt from the licensing requirements under section 2 or section 3 of the Act:

(i) Retail pet stores as defined in part 1 of this subchapter;

(ii) Any person who sells or negotiates the sale or purchase of any animal except wild or exotic animals, dogs, or cats, and who derives no more than $500 gross income from the sale of such animals during any calendar year and is not otherwise required to obtain a license;

(iii) Any person who maintains a total of four or fewer breeding female pet animals as defined in part 1 of this subchapter, small exotic or wild mammals (such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, jerboas, domesticated ferrets, chinchillas, and gerbils), and/or domesticated farm-type animals (such as cows, goats, pigs, sheep, llamas, and alpacas) and sells only the offspring of these animals, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively maintains a total of more than four of these breeding female animals, regardless of ownership, or to any person maintaining such breeding female animals on premises on which more than four of these breeding female animals are maintained, or to any person acting in concert with others where they collectively maintain a total of more than four of these breeding female animals, regardless of ownership;

(iv) Any person who sells fewer than 25 dogs and/or cats per year, which were born and raised on his or her premises, for research, teaching, or testing purposes or to any research facility and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively sells 25 or more dogs and/or cats, regardless of ownership, nor to any person acting in concert with others where they collectively sell 25 or more dogs and/or cats, regardless of ownership. The sale of any dog or cat not born and raised on the premises for research purposes requires a license;

(v) Any person who arranges for transportation or transports animals solely for the purpose of breeding, exhibiting in purebred shows, boarding (not in association with commercial

> transportation), grooming, or medical treatment, and is not otherwise required to obtain a license;
>
> (vi) Any person who buys, sells, transports, or negotiates the sale, purchase, or transportation of any animals used only for the purposes of food or fiber (including fur); . . . .

Dealers are defined as

> any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes. Such term does not include a retail pet store (other than a retail pet store which sells any animals to a research facility, an exhibitor, or another dealer).[19]

The AWA provides for the following civil penalties if a violation of the statute is found in section 2149(b):

> **(b) Civil penalties for violation of any section, etc.; separate offenses; notice and hearing; appeal; considerations in assessing penalty; compromise of penalty; civil action by Attorney General for failure to pay penalty; district court jurisdiction; failure to obey cease and desist order**
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> **Any dealer**, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale subject to section 2142 of this title, **that violates any provision of this chapter, or any rule, regulation, or standard promulgated by the Secretary thereunder, may be assessed a civil penalty by the Secretary of not more than $10,000 for each such violation, and the Secretary may also make an order that such person shall cease and desist from continuing such violation**. Each violation and each day during which a violation continues shall be a separate offense. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing with respect to the alleged violation, and the order of the Secretary assessing a penalty and making a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary's order with the appropriate United States Court of Appeals. The Secretary shall give due consideration to the appropriateness of the penalty with respect to

[19] 7 U.S.C. § 2132(f).

> the **size of the business of the person involved**, the **gravity of the violation**, the **person's good faith**, and the **history of previous violations**. Any such civil penalty may be compromised by the Secretary. Upon any failure to pay the penalty assessed by a final order under this section, the Secretary shall request the Attorney General to institute a civil action in a district court of the United States or other United States court for any district in which such person is found or resides or transacts business, to collect the penalty, and such court shall have jurisdiction to hear and decide any such action. Any person who knowingly fails to obey a cease and desist order made by the Secretary under this section shall be subject to a civil penalty of $1,500 for each offense, and each day during which such failure continues shall be deemed a separate offense.[20]

PROCEDURAL HISTORY

The Complaint herein was filed on March 2, 2017. Respondents filed a response on April 4, 2017, under a caption containing only the docket numbers 16-0049 and 16-0050 ("2016 dockets"), which was deemed a timely filed "Answer" for the herein dockets ("2017 dockets") by the May 17, 2017 Order on Respondents Answer to Complaint in Dockets 17-0226 and 17-0227. A teleconference was held on September 6, 2017, and a deadline established for Complainant to submit a motion for decision in the 2017 dockets. During this teleconference, it was also agreed by the parties and approved by the undersigned that the 2016 dockets would not be set for hearing or consolidated with the 2017 dockets until a motion for decision was resolved in the 2017 dockets.

On October 3, 2017, Complainant filed a Motion for Decision Without Hearing by Reason of Admissions ("Motion for Decision") relying on Rule of Practice § 1.139, "[t]he failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing."[21] Respondents submitted a "Respondents

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[20] 7 U.S.C. § 2149(b) (emphasis added).

[21] 7 C.F.R. § 1.139.

answer to motion for decision without hearing" on October 31, 2017, requesting that they be allowed to proceed with a hearing and contesting that they had not raised defenses in their Answer to the complaint that would preclude the grant of a Rule 1.139 motion.[22] On November 20, 2017, I issued an Order Denying Complainant's Rule 1.139 Motion ("First Denial Order"). Among other things I noted that "APHIS does not mention that Respondents allege they were told by a Nebraska official that they could sell puppies to Pets R Us without a license, Motion, p. 3, citing Answer VII (p. 5), essentially proffering a legal defense, that has legal and factual components."[23] I also noted that "while [Respondents] admit they sold dogs in that time period, they apparently contend that the dogs were sold under a rescue permit and . . . thus not sold in violation of the AWA."[24]

I found:

> While Respondents may be deemed to have admitted that neither of them had an AWA license during the time frame covered by Docket Nos. 17-0226 and 17-0227, and they appear to admit they sold at least some dogs in that time period, they, consistent with Rule l.136(b)(l), raise various "defenses," which are not, as APHIS apparently contends, simply legal arguments based upon facts not in dispute, but involve disputed issues of fact. They may have admitted certain material facts, but they clearly contested and therefore did not admit "material allegations" of the Complaint, and thus did not waive a hearing. [Footnote omitted.][25]

On December 11, 2017, Complainant filed a Motion for Reconsideration of Decision Without Hearing by Reason of Admission ("Motion for Reconsideration"), which was denied on February 16, 2018 ("Second Denial Order"). There I found "Complainant's Motion for

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[22] "Respondents answer to motion for decision without hearing" at 2. Respondents did not number the pages of this response and all page numbers cited are counted from the first page.

[23] First Denial Order at 4.

[24] *Id.* at 9.

[25] *Id.* at 8.

Reconsideration presents no new contentions or information. It does not show, or even purport to show, that I 'missed,' and therefore did not consider, any of Complainant's previously made contentions."[26]

On March 23, 2018, all parties participated in a teleconference.[27] During this teleconference, Complainant was informed that any future motion for summary disposition should address each of Respondents' contentions asserted in defense of the Complaint.[28] My Summary of Telephone Conference set a date for Complainant to file a motion for summary disposition, provided that Respondent may answer within the usual twenty-day deadline provided in the Rules of Practice, and provided that Complainant would have the opportunity to reply within fifteen days of service of Respondents' response. Complainant filed a Stipulated Request for Change of Filing Date, and on April 19, 2018, I issued an Order Revising Due Dates Set in March 23, 2018 Order Setting Procedures. Thereafter I issued an Errata to April 19, 2018 Order Revising Due Dates Set in March 23, 2018 Order Setting Procedures, providing the May 22, 2018 due date for Complainant submissions, and noting the Respondents' due date under the twenty-day deadline in the regulations.

Complainant filed a Motion for Summary Disposition in Response to Order Setting Procedures ("Motion for Summary Disposition") on May 22, 2018. On June 6, 2018, Respondents filed a request for an extension of time to answer Complainant's Motion for Summary Disposition, which was granted on June 8, 2018. On June 22, 2018, Respondents timely filed a response captioned "Answer to complainants [sic] motion for summary

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[26] Second Denial Order at 4.

[27] *See* Summary of the Telephone Conference with Parties and Order Setting Procedures ("March 14, 2018 Summary of Telephone Conference").

[28] *Id.* at 5.

Disposition, and motion to Dismiss all charges" ("Response to Motion for Summary Disposition"). Neither party submitted additional documentation or proposed exhibits and, as previously mentioned, Complainant did not reply to Respondents' Response to Motion for Summary Disposition nor the motion to dismiss all charges therein.

DISCUSSION

The Complaint alleges that Respondents conducted dealer operations, which I understand to indicate within the meaning of the AWA, that they offered for sale, delivered for transportation or transported, and/or sold, into commerce approximately 206 puppies and kittens in thirty-four (34) transactions between July 13, 2015, and January 18, 2017,[29] without a valid license in violation of the AWA. In their timely Answer to the Complaint, and in various other subsequent filings, Respondents did not deny that they sold these puppies and kittens to Pets R Us pet store but proffered certain alleged defenses that potentially presented material disputes of fact.[30]

Respondents do not specifically contend that they did not sell animals without a license, but they contend that those sales do not violate the AWA and that even if the sales violated the AWA, the sales were made in a good faith belief that they did not. Specifically, Respondents contend that they continued to sell regulated animals under an alleged "rescue permit" exception to the AWA license requirement because the retail store to which they sold the animals had such a permit.[31] Respondents also allege their sales were made in a good faith belief because they were allegedly told by a state official that the sales would be legal if conducted in the manner

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[29] *See supra* note 3.

[30] *See* First Denial Order and Second Denial Order.

[31] Answer at 5 (¶VIII); Response to Motion for Summary Disposition at 1-2 (¶3).

they were—that is, direct transportation by Respondents to the pet store.[32] Whether or not a sale was made in good faith that it was legal, does not go to whether the AWA was violated by such a sale. Rather, good faith goes to the level of penalties.

Respondents also contend that the records of sales cannot be relied on in an AWA action against them because Complainant obtained those records by illegal means from the pet store in violation of the Fourth Amendment of the United States Constitution.[33] Complainant's Motion for Decision was earlier denied because it failed to address these potential issues of material fact and sought monetary penalties with little to no factual support or explanation including the analysis of the AWA penalty criteria.[34]

Complainant's Motion for Reconsideration similarly failed to fully address potential issues of material fact presented by Respondents. Specifically, I noted in my Second Denial Order that Complainant 1) did not address the "defenses" raised by Respondents regarding the advice given by a Nebraska official that raise a material issue of fact in consideration of the penalty requested; 2) did not clearly explain the overlap of violations or which violations should be attributed to the 2016 dockets versus the 2017 dockets, and whether the relief requested only applied to certain violations presented in Appendix A of the 2017 Complaint; and 3) did not provide sufficient factual support for the monetary penalties requested.[35]

During the March 14, 2018 teleconference, however, Respondents stated that they are continuing to make sales to a pet shop. I noted in my Summary of the Telephone Conference that

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[32] Answer at 5 (¶VIII). *See also* March 6, 2017 Correspondence Letter from Respondents filed in Docket Nos. 16-0049 and 16-0050 at ¶2.3, and *supra* note 9.

[33] First Denial Order, 8-9.

[34] *Id.*

[35] Second Denial Order, 4-9.

"continuing legal sales by Respondents would indicate that there is in fact an urgent need for a cease and desist order."[36] I ordered Complainant to submit a motion for summary disposition, including a full brief and reference to any materials that should be moved into the evidentiary record. I also asked Complainant to address the illegality of Respondents' sales under the AWA and regulations, any relevance or lack thereof that the pet store purchaser has a "rescue permit," and whether a cease and desist order is possible without rendering a decision on one or both cases.

In its Motion for Summary Disposition, Complainant contends that there are no material allegations of fact at issue with respect to Respondents' defenses. Complainant contends that Respondents' claim of a sincere belief that their sales were legal could not have been in good faith, especially after service of the first complaint in the 2016 dockets.[37] It contends that "'reliance' upon a third party who provides an incorrect rendering of the AWA is of no merit"[38] because the language of the AWA and regulations is unambiguous as to license requirements. Complainant further contends that there is no "rescue permit" exception within the AWA statute or regulations, and the regulations unambiguously lay out those who are subject to and exempted from the licensing requirements.[39] Complainant specifies that, even if the pet store currently maintains a "rescue permit," such permit is irrelevant; the sales at issue from Respondents to the pet store were for compensation, and thus within the definition of "dealer" under the AWA. Lastly, Complainant contends that a civil penalty in the amount of $50,000 is justified because

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[36] March 14, 2018 Summary of the Telephone Conference at 4.

[37] Motion for Summary Disposition at 4.

[38] *Id.* (citing *McCauley, an Individual d/b/a Dave's Animal Farm*, 67 Agric. Dec. 178, 185, 2008 WL 1822261, at *4-5 (U.S.D.A. 2008)).

[39] *Id* at 5-6 (citing 9 C.F.R. § 2.1).

the AWA provides for a civil penalty of up to $10,000 per violation, which would amount to $2,480,000 if calculated per animal, or $480,000 if calculated per transaction.[40]

In their response, Respondents contend that their business is not large and, as of the last state inspection (no date provided), their kennel had a total of 23 dogs.[41] Respondents do not provide any argument or support regarding any alleged relevance of the pet store's supposed "rescue permit," but mention an unidentified news article they claim refers to the regulation of "rescues that buy and sell dogs."[42] Respondents claim that they have tried to communicate with Complainant to settle this matter, but that the attorney for Complainant, despite an agreement to negotiate, has "deceived the court" by requesting additional filing time to enter settlement negotiations and never actually contacting Respondents to negotiate.[43] Further, Respondents contend that counsel for Complainant has "violated" "court" orders by including the duplicated alleged violations in from the 2016 dockets in the 2017 dockets, and that the case has been unreasonably delayed and, thus, should be dismissed.

I address each party's contentions as follows.

I. AWA Violations

As discussed above, the Rules of Practice do not specifically address summary disposition,[44] but USDA precedents are clear that summary disposition is appropriate where there are no issues of material fact. "On summary judgment the inferences to be drawn from the

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[40] *Id.* at 8.

[41] *Id.* at ¶3.3(A). Respondents reference a "Washington Post expose" but do not cite the article or provide a copy for the record.

[42] *Id.*

[43] *Id.* at 4-5 (¶5).

[44] Note that I will use summary judgement synonymously with summary disposition. *See Black's Law Dictionary*, 1573 (Bryan A. Garner et al. eds., 9th ed. 2009).

underlying facts contained in such materials must be viewed in the light most favorable to the party opposing the motion."[45] While, a hearing is preferred in situations where the parties do not agree to a consent decision and there is a need for the taking of evidence in the form of testimony and exhibits to determine issues of fact, where there is no genuine issue of material fact, the need for a hearing is obviated, and it is proper to rule.[46] Here, Complainant moved for a summary disposition regarding violation of AWA, section 2134,[47] and the corresponding regulation, section 2.1(a).[48] This decision and order disposes of the 2017 dockets in full as there are no other allegations to be considered.

Complainant contends Respondents willfully violated the AWA by repeatedly conducting dealer operations without a license. In their response, Respondents did not deny that any of the sales alleged by Complainant, detailed in Appendix A of the Complaint.[49] However, Respondents contend that the sale records, outlined in Appendix A of the Complaint, were illegally obtained in violation of the Fourth Amendment of the Constitution. This contention has

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[45] *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962). *See also Anderson v. Liberty Lobby*, 477 U. S. 242 (1986) (discussing that while the evidence must be viewed in a light most favorable to the non-moving party, mere existence of a scintilla of evidence in support of the non-moving party's position is not sufficient but must provide enough evidence to show there is a genuine issue of fact).

[46] *See Knaust*, 73 Agric. Dec. 92, 98-9 (U.S.D.A. 2014) (citing *Pine Lake Enters., Inc.*, 69 Agric. Dec. 157, 162-63 (U.S.D.A. 2010); *Bauck*, 68 Agric. Dec. 853, 858-59 (U.S.D.A. 2009), *appeal dismissed*, No. 10-1138 (8th Cir. 2010); *Animals of Mont., Inc.*, 68 Agric. Dec. 92, 104 (U.S.D.A. 2009); *Veg-Mix, Inc. v. U.S. Dep't of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987) (affirming the Secretary of Agriculture's use of summary judgment under the Rules of Practice and rejecting Veg-Mix, Inc.'s claim that a hearing was required because it answered the complaint with a denial of the allegations)).

[47] 7 U.S.C. § 2134.

[48] 9 C.F.R. § 2.1(a).

[49] *See* Answer at 4-5 (¶¶ VI, VII, VIII) (where Respondents argue that the records were obtained illegally but do not deny that the sales evidenced in the records took place).

no merit for current purposes, is beyond the scope of this administrative proceeding, and does not preclude the consideration of these records.

Respondents' argument may be construed to be on behalf of the Pets R Us pet store to whom they sold the puppies and kittens. The pet store is not a party to this proceeding. Respondents contend that a state official requested the sale records from the Pets R Us pet store, which the state regulates, and then submitted the records to the USDA investigator.[50] Respondents thus contend that the USDA investigator "took advantage" of the state official to "commit an illegal search and seizer [sic]."[51] Respondents' contention does not relate to any USDA inspection of Respondents' property or personal records. Although Respondents to not contend that any records were illegally obtained from them, it is worth noting that dealers, within the meaning of the AWA, have an obligation to maintain records regarding the sale and transport of regulated animals, and that APHIS has a right to review those records on a regular basis.[52]

Whether there was any violation of the pet store's or Respondents' Fourth Amendment rights is a matter to be pursued separately, outside of this administrative proceeding, and by an entity with proper standing to do so. If Respondents have any cause of action relating to the

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[50] Answer at 4 (¶VII).

[51] *Id.*

[52] *See* 7 C.F.R. §§ 2.75, 2.126. *See also Lesser*, 53 Agric. Dec. 1063, 1068 (U.S.D.A. 1994) (citing *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 313) (stating that courts have held "that in 'closely regulated' industries--namely, those which have long been subject to close supervision and inspection--the privacy interests of business owners may be so attenuated, and the government's interest in regulating the particular industry so strong, that a warrantless inspection of the commercial premises might be responsible within the meaning of the Fourth Amendment.").

acquisition of these records by the Complainant, under these circumstances, jurisdiction lies elsewhere as before me in this administrative proceeding is only a determination of whether Respondents have violated the AWA.

Respondents have admitted that they sold animals to the pet store[53] and that Respondent Hager voluntarily surrendered her license prior to the many admitted sales.[54] Respondent Ruyle has never had a license under the AWA. Further, Respondents do not deny that sales took place during the period Respondent Hager was unlicensed, but in fact indicate that she decided to give up her USDA license, at least in part, because Respondents apparently understood that they could continue to sale to the pet store without it.[55] Respondents' admissions and failure to deny the specific allegations, that they sold the puppies and kittens on each of the dates alleged in the Complaint, and that they did so after relinquishing any AWA license to USDA, leaves no material allegation of fact at issue with regard to violation of the AWA. Selling regulated animals without a license is a direct violation of the AWA, section 2134,[56] and the regulation, section 2.1(a).[57]

Respondents asserted that their sales to the pet store were legal because the pet store had a rescue permit. As noted, Respondents in their Response to Motion for Summary Disposition do not provide any statutory or other legal analysis in support of this bare assertion. Respondents do not claim to be a rescue organization. They do not claim themselves to have a "rescue permit" of

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[53] Answer at 5 (¶ VIII) ("Mr. Herchenbach told us (Ms. Hager, Mr. Sipherd and his boss Annette Bredthauer [sic] that we could sell puppies to Pets R Us. We took his advice . . .").

[54] *Id. See also* Response to Motion for Summary Disposition at ¶ 2.2.

[55] *Id.* ("We took [Mr. Herchenbach's] advice, it was a huge factor when Ms. Hager turned in her USDA license.").

[56] 7 U.S.C. § 2134.

[57] 9 C.F.R. § 2.1(a).

any kind. They simply state that the pet store had a "rescue license" of some sort.[58] Complainant's statutory and regulatory analysis[59] is correct. The AWA and the regulations are clear and unambiguous. It is illegal under the AWA to make sales of puppies and kittens in the circumstances Respondents have been making them without an AWA license. There is no exception in the statute or the regulations for sales to an entity that holds a "rescue permit" or "rescue license."

There is, thus, no issue of law or fact that Respondents' sales violated the AWA. The discussion below goes to the amount of penalties to be applied to these AWA violations.

II. Penalties

Under the AWA, the appropriateness of the civil penalty should be determined "with respect to the size of the business of the person involved, the gravity of the violation, the person's good faith, and the history of previous violations."[60] In consideration of each of these factors, I find that the amount of the civil penalty should be $25,600, and that license revocation, permanent disqualification from obtaining a license under the AWA, and issuance of a cease and desist order are proper.

a. Size of the business

Complainant contends, and prior to their Response to Motion for Summary Disposition Respondents did not deny, that Respondents' business is large. I find that the business is moderately sized based on the volume of sales documented (206 over about 18 months). Because

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[58] Answer at 5 (¶VIII).

[59] Complainant's Motion for Summary Disposition, 5-8.

[60] 7 U.S.C. § 2149(b). Although this part of the regulation is entitled "Violations by licenses" and neither Respondent currently holds a license, it has been held that "the title of a statute and the heading of a section cannot limit the plain meaning of the text." *Bhd. of R.R. Trainmen v. Balt. & O.R. Co.,* 331 U.S. 519, 528–29 (1947).

this matter is regarding Respondents' dealer operations, the number of animals held at the kennel facility at any given time is not as significant a factor in this determination as the number of sales.[61] The fact that Respondents may have downsized their operations after the Complaints were brought, does not mean their business was not of significant size when the violations were committed.

b. Gravity of the violation

I find that the gravity of the violations is serious due to Respondents' repeated dealer operations and the number of transactions since Respondent Hager voluntarily relinquished her license. The Secretary has issued a number of decisions stating that "the failure to obtain an AWA license is a grave violation of the statute."[62] The gravity of these violations has been heightened by Respondents' ongoing dealer activities despite receipt of two complaints notifying them of the illegality of such admitted sales amounting to over 200 alleged illegal sales if counted per regulated animal.[63]

c. Good faith

Respondents contend that they had a good faith belief (though they offer little support as to any alleged basis for this belief) that they could continue to sell animals to the pet store because the Pets R Us pet store maintains a "rescue license" or "rescue permit." As discussed

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[61] *See Horton v. U.S. Dep't of Agric.*, 559 Fed. Appx. 527, 73 Agric. Dec. 77, 88 (unpublished in Federal Reporter) (6th Cir.2014) (upholding Judicial Officer's determination that petitioner's business was large due to the large 956 dogs sold in the market in a short amount of time, 19 months).

[62] *Id.* at 84 (citing *Bradshaw*, 50 Agric. Dec. 499, 509 (U.S.D.A. 1991) (stating the "licensing requirements of the Act are at the center of the remedial legislation .... [C]ontinuing to operate without a license [ ] with full knowledge of the licensing requirements [ ] strikes at the heart of the regulatory program.")).

[63] *See* Complaint, Appendix A. *See also* Summary of Telephone Conference at 4.

above, Respondents' contention (by referencing an uncited news article) that USDA was considering whether to regulate "rescues" is irrelevant. At issue here is not the exemption of the pet store, but whether Respondents were exempted from license requirements. As noted, Respondents in their Response to the Motion for Summary Disposition provide no analysis whatsoever that there is some sort of exception for sales to the holder of a rescue permit. The plain language of the statute is unambiguous as to license requirements, as are the statutory exemptions to license requirements. By negotiating the sale of, selling, delivering for transport, and or transporting regulated animals to the pet store, Respondents were "dealers," as that term is defined in the AWA, at the time of the sales and were subject to AWA license requirements.

Respondents also contend that the sales of animals without a license were made in good faith because they were advised by a state agent that they could continue to sale puppies and kittens to a pet store as long as they delivered the animals personally.[64] As Complainant contends, precedent states that the erroneous advice of a federal employee does not negate an individual's duty to comply with the AWA.[65] Further, it is counterintuitive that a dealer who

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[64] Answer at 5 (¶VIII). *See also* March 6, 2017 Correspondence Letter from Respondents filed in Docket Nos. 16-0049 and 16-0050 at ¶2.3, and *supra* note 9.

[65] *See Davenport, d/b/a King Royal Circus.*, 57 Agric. Dec. 189, 209 (U.S.D.A. 1998) (holding that individuals are bound by federal laws and regulations, irrespective of bad advice by federal employees); *Sam Mazzola, an Individual d/b/a World Animal Studios, Inc., A Former Ohio Domestic Corp. & Wildlife Adventures of Ohio, Inc., A Former Fla. Domestic Stock Corp. Currently Licensed As A Foreign Co*, 68 Agric. Dec. 822, 839, 2009 WL 4099115 (U.S.D.A. 2009) (erroneous advise from a federal inspector does not absolve an individual of his violations); *Meyers*, 58 Agric. Dec. 861, 866 (U.S.D.A. 1999) ("It is well settled that individuals are bound by federal statutes and regulations, irrespective of the advice of federal employees.") (citing *FCIC v. Merrill*, 332 U.S. 380, 382-86 (1947)); *Zimmerman*, 57 Agric. Dec. 1038, 1049-50, 1058 (U.S.D.A. 1998); *Davenport*, 57 Agric. Dec. 189, 227 (U.S.D.A. 1998), *appeal dismissed*, No. 98-60463 (5th Cir. 1998); *Andersen Dairy, Inc.*, 49 Agric. Dec. 1, 20 (U.S.D.A. 1990); *Moore Mktg. Int'l, Inc.*, 47 Agric. Dec. 1472, 1477 (U.S.D.A. 1988); *Maquoketa Valley Coop. Creamery*, 27 Agric. Dec. 179, 186 (U.S.D.A. 1968); *Donley*, 22 Agric. Dec. 449, 452 (U.S.D.A. 1963)).

maintained a USDA license would rely on the advice of a state official whose alleged advice is outside the scope of his authority.[66] Yet, proof at a hearing of reliance on erroneous advice could still go to Respondents' good faith under factors to consider when determining penalty.[67] Here, however, a hearing is not necessary to determine whether Respondents could reasonably rely in good faith on any alleged statements by a state official as to the legality of sales after they were served with the 2016 Complaints. Clearly it would be unreasonable to rely on what a state official is alleged to have said, in the face of the agency charged with enforcing the AWA bringing a legal action that the statute has been violated.

Respondents' continued sales after receiving both Complaints and all the other proceedings in this case, would also render dubious the assertions of ever making sales in a good faith belief on the legality of those sales. But since there has been no hearing in this matter, for purpose of summary disposition, I will not here determine that such sales were not made in good faith and will apply a lower penalty to those sales. Whether or not they were made in good faith, they violated the AWA, and a penalty is appropriate.

d. History of previous violations

I find that Respondents have a history of previous violations due to an ongoing pattern of dealer operations that disregard AWA license requirements. Although Respondents have never been subject to a previous adjudication finding that they violated the AWA, "bad faith and a history of previous violations can also be found where a petitioner receives notice of his

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[66] *See FCIC v. Merrill*, 332 U.S. 380, 384 (1947).

[67] *See McCauley*, supra note 38, at 185 (stating "clear proof of bad agency advice might go to the issue of Mr. McCauley's good faith on this issue and have an impact on the sanction" but determining that the respondent could not have produced the name of the person who gave the advice and, thus, the fact could not have been determined).

violations yet continues to operate without a license."[68] Here, Respondents clearly have a history of ongoing illegal sales, admittedly even after Complaints from the Administrator were received.[69] The precedents therefore provide that, in these circumstances, I make a finding of a history of previous violations.

e. Penalty Amount

Complainant's recitation that a civil penalty in the amount of $50,000 is justified because the AWA provides for a civil penalty of up to $10,000 per violation, which would amount to $2,480,000 if calculated per animal, or $480,000 if calculated per transaction, involves no analysis of the factors set out in the statute for determining the amount of penalties, and no reference to, much less application of, precedents. Thus, this recitation is not of great utility in determining what penalties to apply.

The amount of the civil penalty is subject to my discretion within the statutory limit at the time of violation and justified with a purpose of deterring future violations.[70] Considering Respondents' contentions as to good faith sales prior the 2016 complaints in a light most

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[68] *Horton*, *supra* note 61, at 89 (where a history of previous violations was found based on a continuous pattern of conduct and disregard for the AWA license requirement) (citing *Richardson*, 66 Agric. Dec. 69, 88–89 (U.S.D.A. 2007) (stating "I have consistently held under the Animal Welfare Act that an ongoing pattern of violations over a period of time establishes a violator's 'history of previous violations,' even if the violator has not been previously found to have violated the Animal Welfare Act."); *Howser*, 68 Agric. Dec. 1141, 1143 (U.S.D.A. 2009) (where a history of previous violations was found in the absence of formal complaints or penalties, after the petitioner was informed of the AWA's requirements and continued to operate her business without a license); *Mazzola*, 68 Agric. Dec. 822, 827 (U.S.D.A. 2009) (where petitioner's choice to disregard a clear warning, even in the absence of prior formal disciplinary proceedings, was sufficient to establish a history of previous violations and a lack of good faith)).

[69] *See* Summary of Telephone Conference at 4.

[70] *See Horton*, supra note 61, at 533 (finding that the Judicial Officer determination of $200 per dog sale was within his discretion and appropriately applied with the intent to deter future violations).

favorable to Respondents as the non-moving party for summary disposition, I will apply $100 per animal sold in violation of the AWA for all sales that took place on or after July 13, 2015 and prior to Respondents' receipt of the first Complaint in the 2016 dockets in February 2016, totaling 112 sales over 12 transactions. Relying on Judicial Officer precedent, I will apply $200 per animal sold in violation of the AWA[71] for all sales that took place after receipt of the Complaint in the 2016 dockets, totaling 94 sales over 22 transactions, at which time Respondents were on notice of the illegality of these sales and there is no justification for any good faith reliance on erroneous advice that such sales were legal.

III. Other Contentions

In their Response to the Motion for Summary Disposition, Respondents contend that Complainant failed to discuss settlement with them after Complainant indicated that it would do so.[72] As noted, Complainant did not avail itself of the opportunity to reply to Respondents' response, even though the procedural schedule specifically allowed for such a reply. Complainant has not otherwise responded to Respondents' contentions to the effect that Complainant did not participate in good faith discussions. I am troubled by these unanswered allegations, particularly given that Complainant was granted an extension of time to file its motion for summary disposition in part on its representations to me that additional time was

[71] *See Knapp v. U.S. Dep't of Agric.*, 796 F.3d 445, 464 (5th Cir. 2015) (finding that $200 per violation at the Judicial Officer's discretion was not in error where some violations were committed prior to June 18, 2018, when regulations had a lower maximum penalty, and some violations were committed after the raise in maximum penalty).

[72] Response to Motion for Summary Disposition, 4-5 (¶5).

needed to discuss settlement.[73] Nevertheless, I have no authority to require parties to discuss settlement.

Respondents contend that counsel for Complainant "violated court order[s]" by overlapping violations in the 2016 and 2017 dockets.[74] The Complaint with overlapping violations was filed on March 2, 2017 and predated the Summary of September 6, 2017 Telephone Conference and Order, which directed that the dockets not be consolidated until resolution of pre-hearing motions and responses. Although Complainant did not address the issue of overlapping violations despite multiple opportunities to do so prior to this most recent Motion for Summary Disposition, the erroneous inclusion of the overlapping violations does not rise to a "violation of a court order." I consider this issue to be resolved per *supra* pages 1-2, particularly footnote 3, and find that it is not cause for dismissal of this matter.

Lastly, Respondents contend that they have a "right to a speedy trial" and that the length of litigation has unjustly affected them, thus meriting dismissal of this case. Respondents' contention is a misunderstanding of the law. This is an administrative proceeding subject to the USDA Rules of Practice.[75] Any undue delay in these proceedings (both the 2016 and 2017 dockets) has been contributed to by Respondents' non-responsiveness,[76] while all other required time limits provided in the Rules of Practice have been adhered to. As previously mentioned, this

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[73] *See* April 18, 2018 Stipulated Request for Change of Filing Date, filed by attorney for Complainant.

[74] Response to Motion for Summary Disposition, 3-4 (¶4).

[75] 7 C.F.R. §§ 1.130-1.151.

[76] *See* Order That Parties Submit Their Availability for Teleconference, 2 (stating "I am troubled to learn that Ms. Kennedy has been unable to schedule a telephone conference because of an inability to reach the Respondents, despite numerous efforts since my May 17, 2017 order.").

Decision and Order will dispose of the 2017 dockets, but the 2016 dockets will proceed unless otherwise resolved.

IV. Motion to Dismiss

Respondents move to dismiss "all charges." Respondents motion is in effect a motion to dismiss on the pleadings, which is prohibited by Rule 1.143(b)(1).[77] Even if such a motion were not prohibited, Respondents have not supported it. As discussed above, none of the contentions raised by Respondents could possibly eliminate the allegations of the Complaint entirely. As shown, Respondents admit to violations of the AWA. As a matter of law, as shown above, any of Respondents' defenses could at most only reduce the penalties for those violations. In these circumstances Respondents' Motion to Dismiss is without support and is denied.

FINDINGS OF FACT

1. Respondent Linda L. Hager is an individual whose mailing address is (b) (6) (b) (6) Respondent Hager was a dealer as that term is defined in the AWA (7 U.S.C. § 2132(f)) and the regulations (9 C.F.R. § 1.1). Respondent Hager voluntarily terminated her AWA license (number 47-A-0410) in writing and surrendered the license to the AC Regional Director on May 7, 2014, pursuant to Code of Federal

[77] 7 C.F.R. § 1.143(b)(1).

Regulations, Part 9, section 2.5(a)(2), thereby terminating the validity of license number 47-A-0410.

2. Respondent Edward E. Ruyle is an individual whose mailing address is (b) (6) (b) (6).

3. Respondents Linda L. Hager and Edward E. Ruyle operate a medium sized commercial dog breeding facility and dealer operation at 375 Howard Street, Crab Orchard, Nebraska 68332.

4. From on or about July 13, 2015 through on or about January 18, 2017, Respondents Linda L. Hager and Edward E. Ruyle were active dealers, as that term is defined under the AWA (7 U.S.C. § 2132(f)) and the regulations (9 C.F.R. § 1.1), offering for sale, delivering for transportation or transporting, and selling, in commerce, approximately 206 puppies and kittens, on 34 separate dates, in violation of the AWA (7 U.S.C. § 2134) and regulations (9 C.F.R. § 2.l(a)).

CONCLUSIONS OF LAW

1) The Secretary has jurisdiction over this matter.

2) From on or about July 13, 2015 through on or about January 18, 2017, Respondents Linda L. Hager and Edward E. Ruyle were active dealers, as that term is defined under the AWA (7 U.S.C. § 2132(f)) and the regulations (9 C.F.R. § 1.1), offering for sale, delivering for transportation or transporting, and selling, in commerce, approximately 206 puppies and kittens, on 34 separate dates, in violation of the AWA (7 U.S.C. § 2134) and regulations (9 C.F.R. § 2.l (a)).

3) A dealer, as that term is defined under the AWA (7 U.S.C. § 2132(f)) and the regulations (9 C.F.R. § 1.1), is not exempt under AWA regulations (9 C.F.R. § 2.1) from licensing

requirements when offering for sale, delivering for transportation or transporting, and selling, in commerce and for profit, to any entity or individual holding a "rescue permit."

ORDER

By reasons of the findings of fact above, the Respondents have violated the AWA and, therefore, the following Order is issued:

1. Respondents Linda L. Hager and Edward E. Ruyle, their agents and employees, successors and assigns, directly or indirectly, or through any corporate or other devise or person, shall **CEASE AND DESIST** from operating as a dealer, as that term is defined under the AWA (7 U.S.C. § 2132(f)) and the regulations (9 C.F.R. § 1.1), without having obtained a dealer's license under the Animal Welfare Act from the Secretary of Agriculture, in violation of section 2134 of the AWA (7 U.S.C. § 2134). This of provision of the Order shall be effective on the day after this decision becomes final.
2. Respondents Linda L. Hager and Edward E. Ruyle are assessed a joint civil penalty totaling $25,600. Respondents shall send a certified check or money order in the amount of twenty-five thousand, six hundred dollars ($25,600.00), payable to the Treasurer of the United States, to:

   United States Department of Agriculture
   APHIS, Miscellaneous
   P.O. Box 979043
   St. Louis, MO 63197-9000

   within sixty (60) days from the effective date of this order. The certified check or money order shall include the docket numbers (17-0226 and 17-0227) of this proceeding in the memo section of the check or money order.
3. Respondent Linda L. Hager's license is hereby considered permanently revoked within the meaning AWA regulations, section 2.10 (9 C.F.R. § 2.10). Respondents Linda L.

Hager and Edward E. Ruyle are hereby permanently disqualified from obtaining a license in accordance with the AWA regulations, section 2.11 (9 C.F.R. § 2.11).

This Decision and Order shall be final and effective thirty-five (35) days after service of this Decision and Order upon the Respondents, unless there is an appeal to the Judicial Officer under section 1.145 of the Rules of Practice (7 C.F.R. § 1.145) applicable to this proceeding.

Copies of this Decision and Order shall be served by the Hearing Clerk upon all parties.

Issued this 17th day of August 2018, in Washington, D.C.

Channing D. Strother
Acting Chief Administrative Law Judge

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