

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) **AWA Docket No. 02-0010**
)
David McCauley)
)
Respondent)

DECISION

I find that Respondent David McCauley (hereinafter “Respondent”) willfully violated the Animal Welfare Act (“the Act”). As a result of this finding, I am assessing a civil penalty of \$10,000 against Respondent, am revoking his license to operate as a dealer under the Act, and am ordering him to cease and desist from violating the Act (7 U.S.C. § 2131 et seq.).

PROCEDURAL HISTORY

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.), by a complaint (hereinafter “Complaint”) filed by the Administrator, Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, alleging that the Respondent willfully violated the Act and the regulations issued pursuant to the Act (9 C.F.R. § 1.1 et seq.).

A copy of the Complaint and the Rules of Practice governing proceedings under the Act was served on Respondent by the Office of the Hearing Clerk. Respondent filed a timely answer and Complainant filed a motion to set a date for hearing. Respondent participated in two pre-hearing telephone conferences where hearing dates were set—first, on December 3, 2002, where a July 16, 2003 hearing date was set by Chief Administrative

Law Judge James W. Hunt, and second, after Judge Hunt postponed the hearing, with me on July 28, 2003. At the latter conference, the case was set for hearing in San Antonio, Texas beginning on October 22, 2003. A summary of both of the teleconferences was duly served on Respondent. On August 26, 2003, with the agreement of the parties, the beginning date of the hearing was changed from October 22 to October 23, and a memorandum signed by me was served on both parties. On October 2, 2003, I issued a notice setting the specific time and location of the hearing in San Antonio, which was also served upon both parties.

Respondent failed to appear at the hearing. The Rules of Practice specify the options available for failure to appear. In particular, by not appearing at the hearing, Respondent is deemed to have “waived the right to an oral hearing in the proceeding and to have admitted any facts which may be presented at the hearing. Such failure by the respondent shall constitute an admission of all the material allegations of fact contained in the complaint.” 7 C.F.R.

§ 1.141(e)(1). The Rules provide Complainant with a choice of two options—either to proceed as if there was a failure to file an answer or as if all material allegations were admitted, or to present evidence to the administrative law judge. Complainant opted to present the in-person testimony of two witnesses, and submitted 43 exhibits.¹

DISCUSSION

The uncontradicted evidence overwhelmingly demonstrates that for many months Respondent knowingly and willfully operated as a “Dealer” of “Exotic animals” without a

¹ The exhibits are numbered 1 to 35, and 37 to 44. There is no exhibit 36.

license (9 C.F.R. § 1.1). Respondent was fully aware that he was unlicensed and even engaged in a variety of deceptive measures to hide that he was unlicensed.

In his Answer, Respondent, blaming the stress of marital difficulties leading to a divorce, admits letting his class B license lapse. Complainant showed at hearing that Respondent was issued a class B dealer's license which clearly indicated that it would expire on November 9, 1999. CX 40. In August, 1999, APHIS issued Respondent a letter reminding him that he needed to renew his license before November 9, 1999. CX 41. On November 16, 1999, Respondent wrote the Agency that he had forgotten to renew his license, due to his domestic difficulties, and asked for a 30-day extension of the license renewal date. CX 42. In that letter, Respondent stated that he had a temporary facility for his wallaby business. On December 2, 1999, Respondent was informed that the Agency did not grant extensions on license renewals and that since the license was for a specific location, any new location would have to be inspected for compliance in any event. CX 43. Between November 10, 1999 and sometime after March, 2002, when he filed his Answer, Respondent did not have a dealer's license. Tr. 28.

Even though his license was suspended, Respondent continued to operate his business. Numerous exhibits document that Respondent advertised wallabies for sale in trade publications published at the time he was unlicensed. CX 1-12, 25-28. Further, the Agency established that Respondent had made at least two sales during the period that he was unlicensed.

In particular, Jacqueline Freeman, who was a Senior Investigator for APHIS at the time in question, testified that Respondent had sold a red kangaroo to the Racine Zoo in

Racine, Wisconsin in August, 2000, at a time when he did not have a license. Tr. 8-18. Exhibits CX 13-24 unequivocally document this transaction. Moreover, Complainant showed that Respondent

McCauley arranged to have a fake Bill of Sale prepared by Arnold Sorensen of Someday Farms to make it appear that Sorensen made the sale rather than McCauley. Sorensen stated in CX 24 that Respondent “begged” him to do so because Respondent had no license.

Complainant further demonstrated that in April, 2001 Respondent sold a wallaby to Silver Streak Kennels in Morris, New York. Tr. 16-19, CX. 31-33. Respondent remained unlicensed at this time, and once again used Arnold Sorensen's name and the business name of Someday Farms on the shipping papers to attempt to cover this fact. CX 29-30. However, the payments for this wallaby were made out to Dave's Animal Farm. CX 33. Subsequently, Arnold Sorensen e-mailed Ms. Freeman stating that Respondent's use of Sorensen's personal and business name for this New York transaction was unauthorized. CX 35.

Thus, Complainant has clearly established that Respondent, knowing that he was unlicensed, continued to advertise and transact his business over a period of at least 18 months. Given that Respondent (1) knew he was operating without a license, (2) placed at least 16 advertisements for business during the time he was unlicensed, (3) made at least two sales of exotic animals for which a license was required, and (4) engaged in deceptive practices in an attempt to conceal his role in both transactions, a civil penalty of \$10,000 and revocation of Respondent's license, which had been subsequently reissued, is an appropriate remedy.

Findings of Fact

1. Respondent David McCauley is an individual whose mailing address is Post Office Box

358, McQueeney, Texas 78123.

2. Respondent, operating as Dave's Animal Farm, being fully aware that his license to operate under the Animal Welfare Act had expired, continued to operate his business as a class B dealer of Exotic animals between November, 1999 and sometime after March, 2002.

3. During the period when he was unlicensed, Respondent continued to advertise his business as a Dealer in wallabies in trade journals.

4. At least twice during the period he was unlicensed, Respondent made sales for which a license was required. In particular, in August, 2000, Respondent sold a red kangaroo to the Racine Zoo in Racine Wisconsin, and in April, 2001 sold a wallaby to Silver Streak Kennels in Morris, New York.

5. Wallabies and Kangaroos are Exotic animals as defined by 9 C.F.R. § 1.1.

6. Respondent acted knowingly and willfully, to the extent that he deliberately utilized the name and address of another business during the course of his transactions.

CONCLUSIONS OF LAW

1. The Secretary has jurisdiction in this matter.

2. Respondent, at all times material hereto, was operating as a Dealer as defined in the Act and the regulations. (9 C.F.R. § 1.1)

3. Respondent, at all times material hereto, was operating as a “Dealer” as defined in the Act and the regulations without having obtained a license, in willful violation of chapter 54 of the Act (7 U.S.C. § 2134 et seq) and the regulations (9 C.F.R. 2.1(a)(1)).

Respondent’s violations include, but are not limited to, the purchase and the sale of a kangaroo on or about August 2, 2000, the sale of a wallaby on or about April 19, 2001, and the offer for sale of wallabies through periodic advertisements in at least 16 instances.

For the foregoing reasons, I issue the following order:

1. Respondent, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, shall not operate as a Dealer without being licensed as required.
2. Respondent is assessed a civil penalty of \$10,000, which shall be paid by a certified check or money order made payable to the Treasurer of the United States.
3. Respondent’s class B license is hereby revoked.

The provisions of this order shall become effective on the first day after this decision becomes final.

Unless appealed pursuant to the Rules of Practice at 7 C.F.R. § 1.145(a), this decision becomes final without further proceedings 35 days after service as provided in the Rules of Practice, 7 C.F.R. 1.142(c)(4).

Copies of this decision shall be served upon the parties.

Done at Washington, D.C.
This 30th day of January, 2004

Marc R. Hillson
Marc R. Hillson
Administrative Law Judge