

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWA Docket No. 05-0026
)	
Craig A. Perry, an individual; Perry's)	
Wilderness Ranch & Zoo, Inc., an Iowa)	
corporation; and Le Anne Smith,)	
an individual,)	
)	Decision and Order as to
Respondents)	Le Anne Smith

PROCEDURAL HISTORY

On July 14, 2005, Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this proceeding by filing a Complaint. The Administrator instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; the regulations and standards issued pursuant to the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary of Agriculture Under Various Statutes (7 C.F.R. §§ 1.130-.151).

The Administrator alleges, during the period October 26, 2002, through June 15, 2005, Le Anne Smith willfully violated the Animal Welfare Act and the Regulations.¹ On August 8, 2005, Ms. Smith filed an answer in which she denied the material allegations of the Complaint.²

On November 16-20, 2009, and December 7-11, 2009, in Chicago, Illinois, and on January 11-13, 2010, in Cedar Rapids, Iowa, the ALJ conducted a hearing. Colleen A. Carroll, Office of the General Counsel, United States Department of Agriculture, Washington,

¹Compl. at 5-13, 15-18 ¶¶ 14-20, 24-25, 27, 29-35, 36i-36q, and 36s. The Administrator also alleges Craig A. Perry; Perry's Wilderness Ranch & Zoo, Inc. [hereinafter PWR]; American Furniture Warehouse; Jeff Burton; and Shirley Stanley willfully violated the Animal Welfare Act and the Regulations. On April 21, 2006, Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] entered a Consent Decision and Order as to American Furniture Warehouse; thereby, concluding this proceeding as it relates to American Furniture Warehouse. On June 5, 2007, the ALJ amended the case caption by deleting the reference to American Furniture Warehouse (ALJ's Order Amending Case Caption). On November 16, 2009, the ALJ issued a Decision and Order as to Jeff Burton and Shirley Stanley. Neither Mr. Burton nor Ms. Stanley appealed the ALJ's November 16, 2009, Decision and Order as to Jeff Burton and Shirley Stanley, which is now final. Therefore, this proceeding, as it relates to Mr. Burton and Ms. Stanley, is concluded. On April 19, 2010, the ALJ amended the case caption by deleting the references to Mr. Burton and Ms. Stanley (ALJ's Order Amending Case Caption and Revising Post-Hearing Schedule).

²Answer for Craig A. Perry, Perry's Wilderness Ranch & Zoo, Inc., and Leann [sic] Smith, Request for Hearing and Further Request the Hearing be Held at or Near Cedar Rapids, Iowa.

DC, represented the Administrator. Larry J. Thorson, Ackley, Kopecky & Kingery, L.L.P., Cedar Rapids, Iowa, represented Ms. Smith.³

³Mr. Thorson also represented Mr. Perry and PWR.

On March 30, 2012, after the parties submitted post hearing briefs, the ALJ filed a Decision and Order: (1) concluding Ms. Smith was not an “exhibitor,” as that term is defined in the Animal Welfare Act and the Regulations; (2) concluding Ms. Smith did not violate the Animal Welfare Act or the Regulations, as alleged in the Complaint; and (3) dismissing the Complaint, as it relates to Ms. Smith.⁴

On July 5, 2012, the Administrator filed Complainant’s Petition for Appeal of Initial Decisions and Orders [hereinafter Appeal Petition], and, on July 26, 2012, Ms. Smith filed Respondents’ Response to Complainant’s Appeal and Respondents’ Brief.⁵ On August 3, 2012, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

Based upon a careful review of the record, I affirm the ALJ’s Decision and Order and dismiss the Complaint, as it relates to Ms. Smith.⁶

⁴ALJ’s Decision and Order at 1, 20 ¶¶ 1, 23.

⁵On March 29, 2012, the ALJ issued a Decision and Order as it relates to Mr. Perry and PWR. The Administrator’s Appeal Petition and Respondents’ Response to Complainant’s Appeal and Respondents’ Brief apply to the ALJ’s March 29, 2012, Decision and Order as to Mr. Perry and PWR and to the ALJ’s March 30, 2012, Decision and Order as to Ms. Smith.

⁶In this Decision and Order as to Le Anne Smith, references to the transcript are indicated as “Tr.” and the page number and Ms. Smith’s exhibits are identified as “RXT” and the exhibit number.

DECISION

The Administrator asserts Ms. Smith was a de facto partner in the business operated by Mr. Perry and PWR or a de facto principal of PWR and played a critical role in the operation of Mr. Perry and PWR's business. The Administrator contends Ms. Smith is jointly responsible with Mr. Perry and PWR for violations of the Animal Welfare Act and the Regulations alleged in paragraphs 14-20, 24-25, 27, 29-35, 36i-36q, and 36s of the Complaint; therefore, the ALJ erroneously dismissed the Complaint as it relates to Ms. Smith. (Appeal Pet. at 42-46.)

The Administrator correctly points out that, when people act together in the exhibition of animals, they can be held jointly and severally liable for violations of the Animal Welfare Act and the Regulations. As stated by the former Judicial Officer, Donald A. Campbell:

With respect to complainant's cross appeal, respondent Betty White was an active participant in the business, and the essence of the violations is the operation of the business while the facilities did not meet the required standards.

It is of no particular relevance that the license for the facility was held in the name of Gus White III, alone; the business was operated by both. Nor is it of any particular significance whether she was providing the "normal assistance" one spouse would give the other. . . . Any two people who acted together as they did should be held jointly responsible. When two persons act together in the exhibition of animals, it is not necessary that their relationship meet all the technical requirements for a partnership or joint venture in order to hold that both are exhibitors and jointly and severally liable for violations.

In re Gus White III, 49 Agric. Dec. 123, 154 (1990).

However, Ms. Smith, who the ALJ found to be an “extremely credible” witness,⁷ testified extensively and provided an affidavit regarding her minimal connection with the business conducted by Mr. Perry and PWR.⁸ Ms. Smith’s testimony and affidavit were corroborated by numerous witnesses, including Animal and Plant Health Inspection Service [hereinafter APHIS] employees called by the Administrator.⁹

⁷ALJ’s Decision and Order at 18 ¶ 22.

⁸Tr. 2031-46, 2066, 2068-73, 2075-77, 2270-73, 2278-79, 2301-11, 2670-74, 2676-78; RXT 41.

⁹Charles Curren, an APHIS inspector who inspected a traveling exhibit operated by Mr. Perry and PWR, testified he did not have any contact with Ms. Smith and did not know Ms. Smith (Tr. 265-66). Mary Louise Bogdala, the wife of one of Mr. Perry and PWR’s customers at the 2004 Lake County Fair in Grayslake, Illinois, testified she had no reason to believe Ms. Smith was involved with the operation of PWR (Tr. 382). Dr. Susan Brockus, the State Public Health Veterinarian at the Iowa Department of Public Health, when asked about Ms. Smith’s involvement with the incident that forms the basis for the violations of the Regulations alleged in paragraphs 33 and 34 of the Complaint, testified “I don’t recall her name at all.” (Tr. 395.) Timothy Jones, the APHIS investigator who investigated the incident that forms the basis for the violations of the Regulations alleged in paragraphs 33 and 34 of the Complaint, testified “I’m not familiar with who LeAnne [sic] Smith is.” (Tr. 405.)

Dr. Steven Bellin, an APHIS veterinary medical officer who inspected Mr. Perry and PWR’s business on numerous occasions during the period relevant to this proceeding, testified Ms. Smith informed him that she was not an owner of the business or the animals and may have informed him that she was not an employee (Tr. 484-85); testified, until August 2001, he had assumed that Ms. Smith was an owner of the business operated by Mr. Perry and PWR, but Mr. Perry informed Dr. Bellin that Ms. Smith had no ownership interest or responsibilities in the enterprise (Tr. 1045-46); and testified he did not normally see Ms. Smith when inspecting exhibits on the road (Tr. 1079). Dr. James M. Slattery, a veterinarian who performed services for Mr. Perry and PWR, testified he dealt exclusively with Mr. Perry and Mr. Perry’s employee, Mike, and Ms. Smith was not involved in Mr. Perry and PWR’s business (Tr. 759).

Lindsay Pierce, one of Mr. Perry's employees, testified, while she knew who Ms. Smith was, she never talked to Ms. Smith and Ms. Smith never attended any exhibition of animals attended by Ms. Pierce (Tr. 884). Carl H. LaLonde, Jr., an APHIS investigator who investigated some of the violations of the Regulations alleged in the Complaint, testified he does not know Ms. Smith and, prior to the hearing in this proceeding, had never heard of Ms. Smith (Tr. 1200-01). Shanon Janey, a volunteer at PWR, testified Ms. Smith does not participate in Mr. Perry and PWR's business and normally does not travel to exhibitions with Mr. Perry (Tr. 1676). Michael Pacek, a volunteer at PWR, testified Ms. Smith did not work for Mr. Perry or PWR and does not make any decisions about the business (Tr. 1763-64). Erich Adolph Cook, a volunteer at PWR, testified Ms. Smith did not have anything to do with Mr. Perry and PWR's business or animals (Tr. 1871-73). Court Garloff, Ms. Smith's neighbor and a volunteer at PWR, in answer to a question regarding Ms. Smith's role in PWR, testified she lives there and takes care of her children (Tr. 2103).

Based upon the record before me, I reject the Administrator's characterization of Ms. Smith's role in the operation of the business conducted by Mr. Perry and PWR as "critical," and I reject the Administrator's assertion that Ms. Smith was a de facto partner in the business operated by Mr. Perry and PWR or a de facto principal of PWR. Therefore, I reject the Administrator's contention that the ALJ's dismissal of the Complaint as it relates to Ms. Smith, is error.

For the foregoing reasons, the following Order is issued.

ORDER

The Complaint, as it relates to Le Anne Smith, filed by the Administrator on July 14, 2005, is dismissed.

Done at Washington, DC

September 11, 2013

William G. Jenson
Judicial Officer