

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 04-0024
)
Jewel Bond, d/b/a Bonds Kennel,)
)
Respondent) **Decision and Order**

PROCEDURAL HISTORY

Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint on August 19, 2004. Complainant 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 under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations and Standards]; and the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

Complainant alleges, on May 13, 2003, July 16, 2003, and August 25, 2003, Jewel Bond, d/b/a Bonds Kennel [hereinafter Respondent], violated the Regulations and

Standards (Compl. ¶¶ II-IV). On September 15, 2004, Respondent filed an answer denying the material allegations of the Complaint.

On May 24 and 25, 2005, Administrative Law Judge Victor W. Palmer [hereinafter the ALJ] conducted a hearing in Springfield, Missouri. Brian T. Hill represented Complainant. Respondent represented herself with the assistance of Larry Bond, Seneca, Missouri. On January 9, 2006, after Complainant and Respondent filed post-hearing briefs, the ALJ issued a Decision and Order [hereinafter Initial Decision]: (1) concluding Respondent violated the Animal Welfare Act and the Regulations and Standards; (2) ordering Respondent to cease and desist from violating the Animal Welfare Act and the Regulations and Standards; (3) assessing Respondent a \$10,000 civil penalty; and (4) suspending Respondent's Animal Welfare Act license for 1 year (Initial Decision at 13, 16-17).

On February 16, 2006, Respondent filed an appeal to, and requested oral argument before, the Judicial Officer. On March 16, 2006, Complainant filed a response to Respondent's appeal petition. On April 6, 2006, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision. Based upon a careful review of the record, I affirm, with minor exceptions, the ALJ's Initial Decision.

Complainant's exhibits are designated by "CX." Respondent's exhibits are designated by "RX." References to the transcript are designated by "Tr."

APPLICABLE STATUTORY AND REGULATORY PROVISIONS

7 U.S.C.:

TITLE 7—AGRICULTURE

.....

**CHAPTER 54—TRANSPORTATION, SALE, AND HANDLING
OF CERTAIN ANIMALS**

§ 2131. Congressional statement of policy

The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order—

- (1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;
- (2) to assure the humane treatment of animals during transportation in commerce; and
- (3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is 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 engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

§ 2132. Definitions

When used in this chapter—

.....

(f) The term “dealer” means 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, except that this term does not include—

- (i) a retail pet store except such store which sells any animals to a research facility, an exhibitor, or a dealer; or
- (ii) any person who does not sell, or negotiate the purchase or sale of any wild animal, dog, or cat, and who derives no more than \$500 gross income from the sale of other animals during any calendar year[.]

§ 2149. Violations by licensees

(a) Temporary license suspension; notice and hearing; revocation

If the Secretary has reason to believe that any person licensed as a dealer, exhibitor, or operator of an auction sale subject to section 2142 of this title, has violated or is violating any provision of this chapter, or any rules or regulations or standards promulgated by the Secretary hereunder, he may suspend such person's license temporarily, but not to exceed 21 days, and after notice and opportunity for hearing, may suspend for such additional period as he may specify, or revoke such license, if such violation is determined to have occurred.

(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

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 \$2,500 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 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.

(c) Appeal of final order by aggrieved person; limitations; exclusive jurisdiction of United States Courts of Appeals

Any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale subject to section 2142 of this title, aggrieved by a final order of the Secretary issued pursuant to this section may, within 60 days after entry of such an order, seek review of such order in the appropriate United States Court of Appeals in accordance with the provisions of sections 2341, 2343 through 2350 of title 28, and such court shall have exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of the Secretary's order.

§ 2151. Rules and regulations

The Secretary is authorized to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this chapter.

7 U.S.C. §§ 2131, 2132(f), 2149(a)-(c), 2151.

9 C.F.R.:

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

**CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE,
DEPARTMENT OF AGRICULTURE**

SUBCHAPTER A—ANIMAL WELFARE

PART 1—DEFINITION OF TERMS

§ 1.1 Definitions.

For the purposes of this subchapter, unless the context otherwise requires, the following terms shall have the meanings assigned to them in

this section. The singular form shall also signify the plural and the masculine form shall also signify the feminine. Words undefined in the following paragraphs shall have the meaning attributed to them in general usage as reflected by definitions in a standard dictionary.

....

Dealer means 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: Any dog or other animal whether alive or dead (including unborn animals, organs, limbs, blood, serum, or other parts) for research, teaching, testing, experimentation, exhibition, or for use as a pet; or any dog at the wholesale level for hunting, security, or breeding purposes. This term does not include: A retail pet store, as defined in this section, unless such store sells any animal to a research facility, an exhibitor, or a dealer (wholesale); any retail outlet where dogs are sold for hunting, breeding, or security purposes; or any person who does not sell or negotiate the purchase or sale of any wild or exotic animal, dog, or cat and who derives no more than \$500 gross income from the sale of animals other than wild or exotic animals, dogs, or cats, during any calendar year.

PART 2—REGULATIONS

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SUBPART D—ATTENDING VETERINARIAN AND ADEQUATE VETERINARY CARE

§ 2.40 Attending veterinarian and adequate veterinary care (dealers and exhibitors).

(a) Each dealer or exhibitor shall have an attending veterinarian who shall provide adequate veterinary care to its animals in compliance with this section.

(1) Each dealer and exhibitor shall employ an attending veterinarian under formal arrangements. In the case of a part-time attending veterinarian or consultant arrangements, the formal arrangements shall include a written program of veterinary care and regularly scheduled visits to the premises of the dealer or exhibitor; and

(2) Each dealer and exhibitor shall assure that the attending veterinarian has appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use.

(b) Each dealer or exhibitor shall establish and maintain programs of adequate veterinary care that include:

(1) The availability of appropriate facilities, personnel, equipment, and services to comply with the provisions of this subchapter;

(2) The use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries, and the availability of emergency, weekend, and holiday care;

(3) Daily observation of all animals to assess their health and well-being; *Provided, however,* That daily observation of animals may be accomplished by someone other than the attending veterinarian; and *Provided, further,* That a mechanism of direct and frequent communication is required so that timely and accurate information on problems of animal health, behavior, and well-being is conveyed to the attending veterinarian;

(4) Adequate guidance to personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, analgesia, tranquilization, and euthanasia; and

(5) Adequate pre-procedural and post-procedural care in accordance with established veterinary medical and nursing procedures.

SUBPART H—COMPLIANCE WITH STANDARDS AND HOLDING PERIOD

§ 2.100 Compliance with standards.

(a) Each dealer, exhibitor, operator of an auction sale, and intermediate handler shall comply in all respects with the regulations set forth in part 2 and the standards set forth in part 3 of this subchapter for the humane handling, care, treatment, housing, and transportation of animals.

PART 3—STANDARDS

SUBPART A—SPECIFICATIONS FOR THE HUMANE HANDLING, CARE, TREATMENT, AND TRANSPORTATION OF DOGS AND CATS

FACILITIES AND OPERATING STANDARDS

§ 3.1 Housing facilities, general.

(a) *Structure*; construction. Housing facilities for dogs and cats must be designed and constructed so that they are structurally sound. They must be kept in good repair, and they must protect the animals from injury, contain the animals securely, and restrict other animals from entering.

....

(c) *Surfaces*—(1) *General requirements*. The surfaces of housing facilities—including houses, dens, and other furniture-type fixtures and objects within the facility—must be constructed in a manner and made of materials that allow them to be readily cleaned and sanitized, or removed or replaced when worn or soiled. Interior surfaces and any surfaces that come in contact with dogs or cats must:

(i) Be free of excessive rust that prevents the required cleaning and sanitization, or that affects the structural strength of the surface[.]

....

(f) *Drainage and waste disposal*. Housing facility operators must provide for regular and frequent collection, removal, and disposal of animal and food wastes, bedding, debris, garbage, water, other fluids and wastes, and dead animals, in a manner that minimizes contamination and disease risks. Housing facilities must be equipped with disposal facilities and drainage systems that are constructed and operated so that animal waste and water are rapidly eliminated and animals stay dry. Disposal and drainage systems must minimize vermin and pest infestation, insects, odors, and disease hazards. All drains must be properly constructed, installed, and maintained. If closed drainage systems are used, they must be equipped with traps and prevent the backflow of gases and the backup of sewage onto the floor. If the facility uses sump or settlement ponds, or other similar systems for drainage and animal waste disposal, the system must be located far enough away from the animal area of the housing facility to prevent odors, diseases, pests, and vermin infestation. Standing puddles of water in animal enclosures must be drained or mopped up so that the animals stay dry. Trash containers in housing facilities and in food storage and food preparation areas must be leakproof and must have tightly fitted lids on them at all times. Dead animals, animal parts, and animal waste must not be kept in food storage or food preparation areas, food freezers, food refrigerators, or animal areas.

....

3.4 Outdoor housing facilities.

....

(c) *Construction*. Building surfaces in contact with animals in outdoor housing facilities must be impervious to moisture. Metal barrels, cars, refrigerators or freezers, and the like must not be used as shelter structures. The floors of outdoor housing facilities may be of compacted earth, absorbent bedding, sand, gravel, or grass, and must be replaced if

there are any prevalent odors, diseases, insects, pests, or vermin. All surfaces must be maintained on a regular basis. Surfaces of outdoor housing facilities—including houses, dens, etc.—that cannot be readily cleaned and sanitized, must be replaced when worn or soiled.

§ 3.6 Primary enclosures.

Primary enclosures for dogs and cats must meet the following minimum requirements:

(a) *General requirements.* . . .

(2) Primary enclosures must be constructed and maintained so that they:

(i) Have no sharp points or edges that could injure the dogs and cats; [and]

. . . .

(x) Have floors that are constructed in a manner that protects the dogs' and cats' feet and legs from injury, and that, if of mesh or slatted construction, do not allow the dogs' or cats' feet to pass through any openings in the floor[.]

. . . .

ANIMAL HEALTH AND HUSBANDRY STANDARDS

. . . .

§ 3.11 Cleaning, sanitization, housekeeping, and pest control.

(a) *Cleaning of primary enclosures.* Excreta and food waste must be removed from primary enclosures daily, and from under primary enclosures as often as necessary to prevent an excessive accumulation of feces and food waste, to prevent soiling of the dogs or cats contained in the primary enclosures, and to reduce disease hazards, insects, pests and odors. When steam or water is used to clean the primary enclosure, whether by hosing, flushing, or other methods, dogs and cats must be removed, unless the enclosure is large enough to ensure the animals would not be harmed, wetted, or distressed in the process. Standing water must be removed from the primary enclosure and animals in other primary enclosures must be protected from being contaminated with water and other wastes during the cleaning. The pans under primary enclosures with grill-type floors and the ground areas under raised runs with mesh or slatted floors must be cleaned

as often as necessary to prevent accumulations of feces and food waste and to reduce disease hazards pests, insects and odors.

.....

(d) *Pest control.* An effective program for the control of insects, external parasites affecting dogs and cats, and birds and mammals that are pests, must be established and maintained so as to promote the health and well-being of the animals and reduce contamination by pests in animal areas.

9 C.F.R. §§ 1.1; 2.40, .100(a); 3.1(a), (c)(1)(i), (f), .4(c), .6(a)(2)(i), (x), .11(a), (d)

(footnote omitted).

DECISION

Findings of Fact

1. Respondent, doing business as Bonds Kennel, 12250 Highway 43, Seneca, Missouri 64865, is a dog breeder and dealer who currently holds and has annually renewed class B dealer's license number 43-B-0170 since its issuance on March 16, 1993. Respondent was previously licensed as a class "A" dealer from January 10, 1983, until January 10, 1993. (RX 1.) For the past 10 years, Respondent has kept approximately 200 dogs at a time at her facility, which her attending veterinarian, who testified to seeing numerous kennels, has characterized as "a lot of dogs" (Tr. 223). During the period September 4, 2002, through July 23, 2003, Respondent sold 222 puppies in interstate commerce to Okie Pets, P.O. Box 21, Ketchum, Oklahoma 74349, for \$39,690, averaging about \$4,000 per month in sales to this one outlet alone (CX 1; CX 4).

2. Animal dealers are required to comply with the Animal Welfare Act and the Regulations and Standards for the protection of the health and well-being of the animals

in their possession. To assure compliance with the Animal Welfare Act and the Regulations and Standards, the Animal and Plant Health Inspection Service employs animal care inspectors and veterinary medical officers who periodically inspect the facilities that animal dealers operate and prepare written inspection reports of any violations found. The dealer is given a copy of each inspection report; an exit interview is conducted during which the inspection report is reviewed; and the dealer is given the opportunity to correct the deficiencies. (Tr. 5-6, 11-112.)

3. On the basis of periodic inspections of Respondent's facilities, Respondent was charged with violating the Animal Welfare Act and the Regulations and Standards in a disciplinary proceeding that resulted in the entry of a consent decision on September 6, 2002 (CX 70).¹ In the consent decision, Respondent admitted the Secretary of Agriculture had jurisdiction; neither admitted nor denied the remaining allegations of the complaint; agreed to a 30-day suspension of her Animal Welfare Act license; agreed to pay a civil penalty of \$6,000 of which \$4,500 was to be spent for repairs on her facilities on or before August 1, 2002; and agreed to the entry of the following order:

1. Respondent, her agents and employees, successors and assigns, directly or through any corporate or other device, shall not violate the Act and the regulations and standards issued thereunder, and in particular, shall:
 - (a) Construct and maintain housing facilities for animals so that they are structurally sound and in good repair in order to protect the animals from injury, contain them securely, and restrict other animals from entering;

¹*In re Jewel Bond* (Consent Decision), 61 Agric. Dec. 782 (2002).

- (b) Construct and maintain indoor and sheltered housing facilities for animals so that they are adequately ventilated;
- (c) Construct and maintain housing facilities for animals so that surfaces may be readily cleaned and sanitized or be replaced when necessary;
- (d) Provide for the rapid elimination of excess water from housing facilities for animals;
- (e) Provide animals with adequate shelter from the elements;
- (f) Provide a suitable method for the rapid elimination of excess water and wastes from housing facilities for animals;
- (g) Provide sufficient space for animals in primary enclosures;
- (h) Maintain primary enclosures for animals in a clean and sanitary condition;
- (i) Keep the premises clean and in good repair and free of accumulations of trash, junk, waste, and discarded matter, and to control weeds, grasses and bushes;
- (j) Establish and maintain an effective program for the control of pests;
- (k) Establish and maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine; and
- (l) Maintain records of the acquisition, disposition, description, and identification of animals, as required.

4. Animal and Plant Health Inspection Service officials inspected

Respondent's facilities on May 13, 2003, July 16, 2003, and August 25, 2003.

5. On May 13, 2003, Respondent failed to keep housing facilities for dogs in good repair. Specifically, three of the easternmost structures, housing 15 dogs, had nails sticking through the roofs, deteriorated plywood decking on the roofs with large portions rotted away, decayed wooden rafters that no longer supported the roof, and a black insulation board under the decking, as well as various wooden supports, had been eaten away by mice. The southwestern structure, housing 11 dogs, had plywood decking on the

roofs that was deteriorated, with large portions rotted away, and the metal roofing portion was loose in several areas allowing rain to enter. Two other structures, housing 49 dogs, had rusted and broken hinges that did not securely attach the doors. The ramps on a newer large dog structure, housing eight dogs, were not properly secured to the building and were warped and free moving. (Tr. 8-10; CX 42 at 1-2.) (9 C.F.R. § 3.1(a).)

6. On May 13, 2003, Respondent failed to maintain surfaces in outdoor housing facilities so they could be readily cleaned and sanitized. Specifically, the wooden surfaces of many of the interiors of the easternmost three structures and a newer large dog structure had not been regularly maintained and showed evidence of chewing and scratching that prevented proper cleaning and sanitizing. Approximately 50 animals were affected. (Tr. 10; CX 42 at 2.) (9 C.F.R. § 3.4(c).)

7. On May 13, 2003, Respondent failed to provide primary enclosures that had floors constructed in a manner that protected dogs' feet and legs from injury. Specifically, the structure housing puppies had openings in the wire floors of the cages of the puppy building so large that the feet of the puppies were allowed to pass through the holes. One yorkie puppy was observed to have a leg completely through the floor of its cage. Eight puppies were affected by this condition. (Tr. 11; CX 42 at 2-3.) (9 C.F.R. § 3.6(a)(2)(x).)

8. On May 13, 2003, Respondent failed to clean primary enclosures and maintain an effective program of pest control. Specifically, there was excessive accumulation of fecal waste due to inadequate cleaning. In addition to dog feces, there

was rodent waste in boxes where dogs were housed, with a buildup of 1½ inches in one box, and mice had chewed through the walls, floors, and exterior areas of the buildings. There was also a wasp nest and bird droppings on rafters of the central, metal structure. (Tr. 11-13; CX 42 at 3-4.) (9 C.F.R. § 3.11(a), (d).)

9. On July 16, 2003, Respondent failed to maintain interior surfaces of housing facilities and surfaces that came in contact with dogs, free of excessive rust, which prevented required cleaning and sanitization. Specifically, the northeast kennel, the whelping building, and the puppy building exterior had rusted metal wire that was excessive and prevented required cleaning and sanitization. (Tr. 14-15; CX 62 at 1.) (9 C.F.R. § 3.1(c)(1)(i).)

10. On July 16, 2003, Respondent failed to have a properly working drainage system in one of the housing facilities. Specifically, the drainage system for waste disposal for the northwest large dog building was not working properly. The drainage system allowed waste to wash out on the ground and the wall of the building, thereby failing to minimize vermin, insect and pest infestation, odors, and disease hazards. (Tr. 15-16; CX 62 at 1-2.) (9 C.F.R. § 3.1(f).)

11. On July 16, 2003, Respondent failed to maintain surfaces in outdoor housing facilities so they could be readily cleaned and sanitized. Specifically, wooden surfaces of the interior of boxes of the kennels were chewed and scratched and in need of repair and proper sealing to allow for cleaning and sanitization. (Tr. 16; CX 62 at 1-2.) (9 C.F.R. § 3.4(c).)

12. On July 16, 2003, Respondent failed to maintain an effective program of pest control. Specifically, Respondent's control of flies at her facility was not sufficient. (Tr. 16; CX 62 at 2.) (9 C.F.R. § 3.11(d).)

13. On August 25, 2003, Respondent failed to maintain surfaces in outdoor housing facilities so they could be readily cleaned and sanitized. Specifically, there was raw, unsealed wood on the door frames of the northeast two buildings. (Tr. 17; CX 67.) (9 C.F.R. § 3.4(c).)

14. On August 25, 2003, Respondent failed to maintain primary enclosures so they had no sharp points or edges that could injure dogs. Specifically, the edge of the metal flooring installed in replacement of earlier defective flooring in dog pens, had sharp points that could injure the dogs in those pens. (Tr. 17; CX 67.) (9 C.F.R. § 3.6(a)(2)(i).)

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. Respondent is a dealer as defined in the Animal Welfare Act and the Regulations and Standards.
3. On May 13, 2003, Respondent willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to keep housing facilities for dogs in good repair as required by section 3.1(a) of the Regulations and Standards (9 C.F.R. § 3.1(a)).
4. On May 13, 2003, July 16, 2003, and August 25, 2003, Respondent willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a))

by failing to maintain surfaces in outdoor housing facilities so they could be readily cleaned and sanitized as required by section 3.4(c) of the Regulations and Standards (9 C.F.R. § 3.4(c)).

5. On May 13, 2003, Respondent willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to provide primary enclosures that had floors constructed in a manner that protected dogs' feet and legs from injury as required by section 3.6(a)(2)(x) of the Regulations and Standards (9 C.F.R. § 3.6(a)(2)(x)).

6. On May 13, 2003, Respondent willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to clean primary enclosures and maintain an effective program of pest control as required by section 3.11(a) and (d) of the Regulations and Standards (9 C.F.R. § 3.11(a), (d)).

7. On July 16, 2003, Respondent willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to maintain interior surfaces of housing facilities and surfaces that came in contact with dogs, free of excessive rust, which prevented cleaning and sanitization as required by section 3.1(c)(1)(i) of the Regulations and Standards (9 C.F.R. § 3.1(c)(1)(i)).

8. On July 16, 2003, Respondent willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to have a properly working drainage system in one of the housing facilities as required by section 3.1(f) of the Regulations and Standards (9 C.F.R. § 3.1(f)).

9. On July 16, 2003, Respondent willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to maintain an effective program of pest control as required by section 3.11(d) of the Regulations and Standards (9 C.F.R. § 3.11(d)).

10. On August 25, 2003, Respondent willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to maintain primary enclosures so they had no sharp points or edges that could injure dogs as required by section 3.6(a)(2)(i) of the Regulations and Standards (9 C.F.R. § 3.6(a)(2)(i)).

11. The appropriate sanctions for deterrence of future violations is the issuance of a cease and desist order, the imposition of a 1-year suspension of Respondent's Animal Welfare Act license, and the assessment of a \$10,000 civil penalty. In concluding that this civil penalty is appropriate, due consideration has been given to the size of Respondent's business, the gravity of Respondent's violations, Respondent's good faith, and Respondent's history of previous violations.

Discussion

Respondent has engaged in business as Bonds Kennel for over 20 years, selling dogs in interstate commerce as a "dealer" licensed under the Animal Welfare Act. Respondent keeps approximately 200 dogs at her facility, which is considered to be large, and averages over \$4,000 per month in sales of dogs and puppies.

On September 6, 2002, Respondent entered into a consent decision with the Animal and Plant Health Inspection Service in which she agreed to a 30-day suspension of her Animal Welfare Act license, the payment of a \$6,000 civil penalty of which \$4,500 was to be spent on repairs to her facility, and the entry of a cease and desist order to not violate the Animal Welfare Act and the Regulations and Standards.² Yet, I find that on May 13, 2003, July 16, 2003, and August 25, 2003, Respondent violated the Regulations and Standards that were of the very type with which she agreed to comply under the terms of the consent decision. Testimony establishing these violations was given by an Animal and Plant Health Inspection Service animal care inspector and a veterinary medical officer. Both were extremely credible witnesses who produced photographic evidence corroborating their observations. I have, however, dismissed a charge in the Complaint alleging an inadequate response to needed emergency veterinary care (Compl. ¶ II A). I dismissed this charge because the Animal and Plant Health Inspection Service animal care inspector did not, at the time of the inspection, treat the matter as an emergency, in that he gave Respondent 2 days to obtain veterinary care and Respondent complied.

Each violation found in the course of the three inspections conducted in 2003 was willful. An act is considered “willful” under the Administrative Procedure Act (5 U.S.C. § 558(c)) if the violator (1) intentionally does an act which is prohibited, irrespective of evil motive or reliance on erroneous advice, or (2) acts with careless disregard of

²See note 1.

statutory requirements.³ Respondent's chronic failure to comply with the Animal Welfare Act and the Regulations and Standards throughout the year that followed her signing the consent decision constitutes obvious and careless disregard of the statutory and regulatory requirements, and Respondent's violations are clearly willful.⁴

Respondent's testimony and actions demonstrate a lack of good faith compliance with the Animal Welfare Act and the Regulations and Standards that apply to her as a licensed dog dealer. Respondent has refused to heed specific Animal and Plant Health Inspection Service instructions. Respondent became so incensed when told by an Animal and Plant Health Inspection Service investigator that a building in her facility still did not meet applicable standards, she removed approximately 10 dogs it housed and put them outside on a cold winter night when the temperature was only 20 degrees Fahrenheit (Tr. 274-78). Respondent's obstinacy, her temper that can blind her to the needs and welfare of her dogs, and the gravity of her violations which ignored basic needs of her dogs, combine to require the imposition of a substantial sanction to achieve compliance

³*In re James E. Stephens*, 58 Agric. Dec. 149, 180 (1999); *In re Arab Stock Yard, Inc.*, 37 Agric. Dec. 293, 306 (1978), *aff'd mem.*, 582 F.2d 39 (5th Cir. 1978).

⁴*See In re James E. Stephens*, 58 Agric. Dec. 149, 180 (1999) (stating the respondents' chronic failure to comply with the Animal Welfare Act and the Regulations and Standards over a period of almost 4 months presents an obvious and careless disregard of statutory and regulatory requirements; when an Animal Welfare Act licensee disregards statutory and regulatory requirements over such a period of time, the licensee's violations are clearly willful.)

with, and deter future violations of, the Animal Welfare Act and the Regulations and Standards.

I have accepted the recommendations of Animal and Plant Health Inspection Service officials which I conclude fully accord with the Animal Welfare Act's sanction and civil penalty provisions. If each Regulation and Standard that I find to have been violated is treated as a single violation, Respondent committed 11 violations. Arguably, there were multiple violations of several of the Regulations and Standards. Therefore, the \$10,000 civil penalty I assess is far less than may be imposed by applying the \$2,750 per violation amount authorized by the Animal Welfare Act and the Federal Civil Penalties Inflation Adjustment Act of 1990 against, at a minimum, 11 violations.⁵ A 1-year suspension of Respondent's Animal Welfare Act license is also presently indicated in that the prior, lesser 30-day suspension of Respondent's Animal Welfare Act license was not an effective deterrent. The recommended inclusion of cease and desist provisions is also appropriate.

Respondent's Request for Oral Argument

Respondent's request for oral argument before the Judicial Officer, which the Judicial Officer may grant, refuse, or limit,⁶ is refused because the issues are not complex and oral argument would appear to serve no useful purpose.

⁵See 7 U.S.C. § 2149(b); 28 U.S.C. § 2461 (note); 7 C.F.R. § 3.91(a), (b)(2)(v).

⁶7 C.F.R. § 1.145(d).

Respondent's Appeal Petition

Respondent raises six issues in Respondent's "Appeal to the Department's Judicial Officer" [hereinafter Respondent's Appeal Petition]. First, Respondent contends the ALJ erroneously concluded she violated sections 3.1(a), 3.4(c), and 3.6(a)(2)(x) of the Regulations and Standards (9 C.F.R. §§ 3.1(a), .4(c), .6(a)(2)(x)) on May 13, 2003; sections 3.1(a), (c)(1)(i), and (f), 3.4(c), and 3.11(e) of the Regulations and Standards (9 C.F.R. §§ 3.1(a), (c)(1)(i), (f), .4(c), .11(e))⁷ on July 16, 2003; and sections 3.6(a)(2) and 3.11(c) of the Regulations and Standards (9 C.F.R. §§ 3.6(a)(2), .11(c)) on August 25, 2003, because she corrected the violations (Respondent's Appeal Pet. at 1-3).

I disagree with Respondent's contention that the ALJ erroneously found she violated the Regulations and Standards because she corrected the violations. Each Animal Welfare Act licensee must always be in compliance in all respects with the Animal Welfare Act and the Regulations and Standards. While Respondent's corrections of her Animal Welfare Act violations are commendable and can be taken into account when determining the sanction to be imposed, Respondent's corrections of her violations do not eliminate the fact that the violations occurred.⁸ Therefore, even if I were to find

⁷The ALJ did not conclude Respondent violated section 3.11(e) of the Regulations and Standards (9 C.F.R. § 3.11(e)) on July 16, 2003. I infer, based on the record before me, Respondent intended to refer to the ALJ's conclusion that Respondent violated section 3.11(d) of the Regulations and Standards (9 C.F.R. § 3.11(d)) on July 16, 2003 (Initial Decision at 12).

⁸*In re Eric John Drogosch*, 63 Agric. Dec. 623, 643 (2004); *In re Reginald Dwight* (continued...)

that, subsequent to Respondent's violations of the Regulations and Standards, Respondent corrected the violations, I would not find the ALJ's Initial Decision error.

Second, Respondent contends her violations of section 3.11(a) and (d) of the Regulations and Standards (9 C.F.R. § 3.11(a), (d)) on May 13, 2003, were not repeated because the violations were not found in the same location as they were found during the Animal and Plant Health Inspection Service October 23, 2001, inspection (Respondent's Appeal Pet. at 2).

Section 3.11(a) of the Regulations and Standards (9 C.F.R. § 3.11(a)) provides standards for cleaning primary enclosures and section 3.11(d) of the Regulations and Standards (9 C.F.R. § 3.11(d)) provides standards for pest control. *Repeated* means more

⁸(...continued)

Parr, 59 Agric. Dec. 601, 644 (2000), *aff'd per curiam*, 273 F.3d 1095 (5th Cir. 2001) (Table); *In re Susan DeFrancesco*, 59 Agric. Dec. 97, 112 n.12 (2000); *In re Michael A. Huchital*, 58 Agric. Dec. 763, 805 n.6 (1999); *In re James E. Stephens*, 58 Agric. Dec. 149, 184-85 (1999); *In re Marilyn Shepherd*, 57 Agric. Dec. 242, 274 (1998); *In re John D. Davenport*, 57 Agric. Dec. 189, 219 (1998), *appeal dismissed*, No. 98-60463 (5th Cir. Sept. 25, 1998); *In re Samuel Zimmerman*, 56 Agric. Dec. 1419, 1456 n.8 (1997), *aff'd*, 173 F.3d 422 (3d Cir. 1998) (Table), printed in 57 Agric. Dec. 869 (1998); *In re David M. Zimmerman*, 56 Agric. Dec. 433, 466 (1997), *aff'd*, 156 F.3d 1227 (3d Cir. 1998) (Table), printed in 57 Agric. Dec. 46 (1998); *In re Volpe Vito, Inc.*, 56 Agric. Dec. 269, 272-73 (1997) (Order Denying Pet. for Recons.); *In re John Walker*, 56 Agric. Dec. 350, 367 (1997); *In re Mary Meyers*, 56 Agric. Dec. 322, 348 (1997); *In re Volpe Vito, Inc.*, 56 Agric. Dec. 166, 254 (1997), *aff'd*, 172 F.3d 51, 1999 WL 16562 (6th Cir. 1999) (not to be cited as precedent under 6th Circuit Rule 206) (Table), printed in 58 Agric. Dec. 85 (1999); *In re Big Bear Farm, Inc.*, 55 Agric. Dec. 107, 142 (1996); *In re Pet Paradise, Inc.*, 51 Agric. Dec. 1047, 1070 (1992), *aff'd*, 61 F.3d 907, 1995 WL 309637 (7th Cir. 1995) (not to be cited per 7th Circuit Rule 53(b)(2)).

than once.⁹ Therefore, multiple failures to clean primary enclosures constitute repeated violations of section 3.11(a) of the Regulations and Standards (9 C.F.R. § 3.11(a)) even if different primary enclosures are involved in each violation. Further, multiple failures to comply with the standards for pest control constitute repeated violations of section 3.11(d) of the Regulations and Standards (9 C.F.R. § 3.11(d)) even if the manner in which a respondent fails to comply with the pest control standards differs each time the violation occurs.

Third, Respondent states the Animal and Plant Health Inspection Service inspector, David Brigance, “was a little harsh” when he wrote an inspection report (CX 67) alleging Respondent violated section 3.4(c) of the Regulations and Standards (9 C.F.R. § 3.4(c)) on August 25, 2003 (Respondent’s Appeal Pet. at 3).

Respondent neither denies she violated section 3.4(c) of the Regulations and Standards (9 C.F.R. § 3.4(c)) on August 25, 2003, nor contends the ALJ erroneously concluded she violated section 3.4(c) of the Regulations and Standards (9 C.F.R. § 3.4(c)) on August 25, 2003. Therefore, I find the issue of whether Mr. Brigance “was a little harsh,” irrelevant.

Fourth, Respondent contends the ALJ assured Respondent during a pre-hearing conference that the hearing would concern only the May 13, 2003, July 16, 2003, and August 25, 2003, Animal and Plant Health Inspection Service inspections of her facility.

⁹Merriam-Webster’s Collegiate Dictionary 991 (10th ed. 1997).

Respondent asserts that, contrary to the ALJ's assurance, the ALJ received evidence of violations that had nothing to do with the findings during the May 13, 2003, July 16, 2003, and August 25, 2003, inspections of her facility and she was not prepared to defend against the allegations of these additional violations (Respondent's Appeal Pet. at 3-4).

As an initial matter, the record does not support Respondent's contention that the ALJ assured her during a pre-hearing conference that the hearing would concern only the May 13, 2003, July 16, 2003, and August 25, 2003, Animal and Plant Health Inspection Service inspections of her facility. The record contains a summary of one pre-hearing conference conducted by the ALJ with Complainant's counsel, Respondent, and Larry Bond on October 21, 2004.¹⁰ The summary of the pre-hearing conference does not indicate that the ALJ assured Respondent that the hearing would concern only the May 13, 2003, July 16, 2003, and August 25, 2003, Animal and Plant Health Inspection Service inspections of her facility.

Moreover, even if I were to find the ALJ assured Respondent that the hearing would concern only the May 13, 2003, July 16, 2003, and August 25, 2003, Animal and Plant Health Inspection Service inspections of her facility and the hearing concerned violations that occurred on other occasions, I would find, at most, harmless error because the ALJ did not conclude that Respondent violated the Animal Welfare Act or the

¹⁰Notice of Hearing and Exchange Deadline filed by the ALJ on October 28, 2004.

Regulations and Standards on dates other than May 13, 2003, July 16, 2003, and August 25, 2003.

However, the ALJ did find two violations that are not alleged in the Complaint. Specifically, the ALJ found, on July 16, 2003, Respondent violated section 3.1(a) of the Regulations and Standards (9 C.F.R. § 3.1(a)) and, on August 25, 2003, Respondent violated section 3.11(c) of the Regulations and Standards (9 C.F.R. § 3.11(c)) (Initial Decision at 12-13). As Complainant did not allege these violations in the Complaint, I decline to conclude Respondent violated section 3.1(a) of the Regulations and Standards (9 C.F.R. § 3.1(a)) on July 16, 2003, and section 3.11(c) of the Regulations and Standards (9 C.F.R. § 3.11(c)) on August 25, 2003.

Fifth, Respondent asserts the ALJ “was running interference for the Complainant” with respect to the issue of the date the Hearing Clerk served Respondent with the Consent Decision and Order (CX 70) issued in *In re Jewel Bond* (Consent Decision), 61 Agric. Dec. 782 (2002) (Respondent’s Appeal Pet. at 4).

As an initial matter, I do not find the ALJ “was running interference for the Complainant.” Instead, I find the ALJ was merely attempting to discern whether Complainant had proof of the date the Hearing Clerk served Respondent with the Consent Decision and Order (CX 70). Moreover, I find the date the Hearing Clerk served Respondent with the Consent Decision and Order (CX 70) is not relevant to this proceeding, and, even if I were to find the ALJ’s inquiry (Tr. 211-14) error (which I do not so find), I would find the ALJ’s inquiry harmless error.

Sixth, Respondent contends the ALJ did not allow her to rerun a videotape (CX 75) during her cross examination of Dr. Jeffrey Baker (Respondent's Appeal Pet. at 5).

I disagree with Respondent's contention that the ALJ prohibited Respondent's use of the videotape during her cross-examination of Dr. Baker. The record establishes that, while the ALJ expressed a preference that Respondent cross-examine Dr. Baker without using the videotape, the ALJ did not prohibit Respondent's use of the videotape (Tr. 157-62).

For the foregoing reasons, the following Order should be issued.

ORDER

1. Jewel Bond, her agents and employees, successors and assigns, directly or indirectly through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations and Standards and, in particular, shall cease and desist from:

- (a) Failing to keep housing facilities for dogs in good repair;
- (b) Failing to maintain surfaces in outdoor housing facilities so they can be readily cleaned and sanitized;
- (c) Failing to provide primary enclosures that have floors constructed in a manner that protects dogs' feet and legs from injury;
- (d) Failing to clean primary enclosures;
- (e) Failing to maintain an effective program of pest control;

- (f) Failing to maintain interior surfaces of housing facilities and surfaces that come in contact with dogs free of excessive rust that prevents cleaning and sanitization;
- (g) Failing to have a properly working drainage system in housing facilities; and
- (h) Failing to maintain primary enclosures so they have no sharp points or edges that can injure dogs.

Paragraph 1 of this Order shall become effective on the day after service of this Order on Respondent.

2. Respondent is assessed a \$10,000 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the Treasurer of the United States and sent to:

Brian T. Hill
United States Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW
Room 2343-South Building
Washington, DC 20250-1417

Payment of the civil penalty shall be sent to, and received by, Brian T. Hill within 60 days after service of this Order on Respondent. Respondent shall state on the certified check or money order that payment is in reference to AWA Docket No. 04-0024.

3. Respondent's Animal Welfare Act license is suspended for a period of 1 year and continuing thereafter until Respondent demonstrates to the Animal and Plant

Health Inspection Service that she is in full compliance with the Animal Welfare Act, the Regulations and Standards, and this Order, including payment of the civil penalty assessed in this Order. When Respondent demonstrates to the Animal and Plant Health Inspection Service that she has satisfied this condition, a supplemental order shall be issued in this proceeding upon the motion of the Animal and Plant Inspection Service, terminating the suspension of Respondent's Animal Welfare Act license.

Paragraph 3 of this Order shall become effective 60 days after service of this Order on Respondent.

RIGHT TO JUDICIAL REVIEW

Respondent has the right to seek judicial review of the Order issued in this Decision and Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341, 2343-2350. Such court has exclusive jurisdiction to enjoin, to set aside, to suspend (in whole or in part), or to determine the validity of the Order issued in

this Decision and Order. Respondent must seek judicial review within 60 days after entry of the Order issued in this Decision and Order.¹¹ The date of entry of the Order issued in this Decision and Order is May 19, 2006.

Done at Washington, DC

May 19, 2006

William G. Jenson
Judicial Officer

¹¹7 U.S.C. § 2149(c).