

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	AWA Docket No. 04-0015
	)	
Coastal Bend Zoological Association,	)	
formerly known as Corpus Christi	)	
Zoological Association, a Texas	)	
corporation, d/b/a Corpus Christi Zoo;	)	
Robert Brock, an individual; Michelle	)	
Brock, an individual; Bodie Knapp,	)	
an individual, d/b/a Wayne's World	)	
Safari; and Charles Knapp, an individual,	)	<b>Decision and Order as to</b>
	)	<b>Robert Brock and</b>
Respondents	)	<b>Michelle Brock</b>

**PROCEDURAL HISTORY**

Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this disciplinary administrative proceeding by filing a Complaint on March 17, 2004. 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 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].

The Complaint alleges that each of the Respondents, between October 13, 2003, and December 17, 2003, violated the Animal Welfare Act and the Regulations and Standards by mishandling animals; failing to provide animals with requisite veterinary care; and failing to make, keep, and maintain requisite records. The Complaint also alleges that Corpus Christi Zoological Association, Robert Brock, and Michelle Brock failed to obey a consent decision and order and violated the Animal Welfare Act by engaging in activities for which an Animal Welfare Act license is required while unlicensed.

The violations charged took place subsequent to the issuance of a Consent Decision and Order on October 17, 2003. The Consent Decision and Order required that Corpus Christi Zoological Association “place all of its animals . . . by donation or sale, with persons who have demonstrated the ability to provide proper care for said animals in accordance with the Act and the Regulations, and as approved by the complainant.” The Consent Decision and Order imposed cease and desist requirements and, effective December 15, 2003, revoked the exhibitor’s license Corpus Christi Zoological Association held under the Animal Welfare Act.

The most egregious of the violations alleged in the Complaint pertain to the handling of two lions and two tigers that Bodie Knapp moved on December 11, 2003, and

December 17, 2003, from the premises of the Corpus Christi Zoological Association's zoo. All four of the animals were shown to have died soon after Bodie Knapp, using a dart gun, injected them with immobilizing drugs to facilitate their physical handling for transport from the zoo's premises. Charles Knapp, Bodie Knapp's father, was charged on the basis that he accompanied Bodie Knapp when the lions and tigers were darted and helped Bodie Knapp move the animals to the transport truck. Charles Knapp and Bodie Knapp were charged with failing to have a veterinarian provide adequate advice and assistance at the time of the incidents; failing to handle transferred animals in a manner that does not cause trauma, stress, harm, or unnecessary discomfort; and failing to comply with transportation standards. Bodie Knapp was further charged with failing to file requisite reports regarding these and other animals acquired from the Corpus Christi Zoological Association.

Respondents Robert Brock and Michelle Brock were charged individually and as agents of the Corpus Christi Zoological Association. Their alleged violations include acting as animal dealers without having required Animal Welfare Act licenses; failing to record requisite information respecting the animals that were transferred; failing to provide needed veterinary care to animals; failing to handle transferred animals in a manner that does not cause trauma, stress, harm, or unnecessary discomfort; and failing to establish and maintain adequate programs of veterinary care that gave animal care guidance to personnel.

The Corpus Christi Zoological Association was charged with violating the Consent Decision and Order, the Animal Welfare Act, and the Regulations and Standards by engaging in activities for which an Animal Welfare Act license is required after its license was revoked; failing to make, keep, and maintain requisite records of all animals transported, sold, euthanized, or otherwise disposed of; exhibiting or acting as an animal dealer without an Animal Welfare Act license; failing to provide needed veterinary care to animals; failing to handle transferred animals in a manner that does not cause trauma, stress, harm, or unnecessary discomfort; and failing to establish and maintain adequate programs of veterinary care that gave animal care guidance to personnel.

Each Respondent filed an answer denying all of the charges asserted against them. Moreover, Robert Brock and Michelle Brock asserted they were only volunteers assisting Corpus Christi Zoological Association, a non-profit corporation. The Brocks further asserted that the charges were frivolous and asked that they be awarded attorneys' fees. Charles Knapp stated he was merely helping his son and he had no legal liability under the Animal Welfare Act or the Regulations and Standards for the way in which the lions and tigers were darted and transported.

Administrative Law Judge Victor W. Palmer [hereinafter the ALJ] conducted an oral hearing on April 19-22, 2005 (Transcript I), and August 30-31, 2005 (Transcript II), in Corpus Christi, Texas. Colleen A. Carroll, attorney, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the

Administrator. Corpus Christi Zoological Association was unrepresented and did not participate. Roland Garcia, attorney, Greenberg Traurig, LLP, Houston, Texas, represented Robert Brock and Michelle Brock. Phillip Westergren, attorney, Corpus Christi, Texas, represented Bodie Knapp and Charles Knapp.

The ALJ found that the Corpus Christi Zoological Association, Robert Brock, and Michelle Brock violated the Animal Welfare Act and the Regulations and Standards on December 17, 2003, when the Brocks, as the Corpus Christi Zoological Association's agent and on their own behalf, acted as a dealer without a requisite Animal Welfare Act license. The ALJ issued a cease and desist order against the Corpus Christi Zoological Association and the Brocks. In addition, the ALJ assessed a \$2,750 civil penalty against the Brocks and disqualified them from being issued a license under the Animal Welfare Act for 10 years. The ALJ also held that the Brocks should not be awarded attorneys' fees because they violated the Animal Welfare Act.

The ALJ further found that Bodie Knapp violated the Animal Welfare Act and the Regulations and Standards on or about December 11, 2003, and December 17, 2003. The ALJ issued a cease and desist order against Bodie Knapp and assessed Bodie Knapp a \$5,000 civil penalty. The ALJ dismissed the charges against Charles Knapp that he violated the Animal Welfare Act.

On November 6, 2006, Robert Brock and Michelle Brock filed a timely petition appealing the ALJ's decision to the Judicial Officer. Neither Bodie Knapp nor the Corpus Christi Zoological Association sought review of the ALJ's decision.

### **Findings of Fact**

1. In May 1996, Robert Brock and Michelle Brock purchased 145.5 acres of land and formed a corporation named Corpus Christi Zoo, Inc. Robert Brock and Michelle Brock were the corporation's officers and directors. On August 6, 1996, Robert Brock and Michelle Brock applied for an Animal Welfare Act exhibitor's license stating they had two rabbits and 160 farm animals and used the business name "The Corpus Christi Zoo, Inc." (CX 24, CX 56, CX 88.)

2. On August 27, 1996, Corpus Christi Zoological Association was formed as a Texas non-profit corporation and filed its articles of incorporation with the Texas Secretary of State (CX 25). Robert Brock and Michelle Brock were listed as directors on the articles of incorporation. However, at the organizational meeting of the board of directors held on November 1, 1996, five persons other than the Brocks became the directors of the Corpus Christi Zoological Association (RX 154). One of these directors was Annie M. Garcia, Michelle Brock's mother (Transcript I (Tr. I) at 1096). The Brocks testified they decided not to serve as directors because their attorney explained to them that they could not serve on the board of directors and also be paid employees of the Corpus Christi Zoological Association (Tr. I at 941). The board of directors of the

Corpus Christi Zoological Association agreed to enter into leases for the land on which the zoo was located with the Brocks and with Roland Garcia, Sr., Michelle Brock's father. The board also agreed to purchase the assets and assume the liabilities of Corpus Christi Zoo, Inc., from the Brocks (RX 154). The Corpus Christi Zoological Association assumed the name "The Corpus Christi Zoo" as its trade name and conducted business in that name (Tr. I at 946; CX 2; Consent Decision and Order at 1).

3. The Brocks failed to make the payments on the 145.5 acres of the land they had purchased for building the zoo. In a letter dated May 6, 1997, Annie M. Garcia, as the chair of the board of directors, responded to a request for information by the Internal Revenue Service stating Roland Garcia assumed the land payments on January 21, 1997, with the agreement that the zoo would lease the land from him for the value of the note payment plus taxes (CX 56). I find that, at all times material to this proceeding, the land on which the zoo facilities stood was owned by the Corpus Christi Zoological Association (Tr. I at 831-35).

4. On April 15, 1997, the board of directors of the Corpus Christi Zoological Association appointed Robert Brock as general manager and Michelle Brock as assistant manager of the zoo (CX 63).

5. On June 12, 1997, the zoo's board of directors met. Michelle Brock reported to the board, among other things, that the operation of the zoo was slow but on schedule and that there was a need for additional volunteers who would only be paid

reimbursement of their expenses. It was further reported that Robert Brock had made arrangements to rent to Steve Dornin, an individual who owned tigers, a small area behind the zoo's fenced area as a temporary holding caged area for Mr. Dornin's tigers until the zoo could find a sponsor for a permanent structure to house the tigers. Annie Garcia reported that application for IRS 501(c)(3) (designation as a non-profit for federal tax purposes) was being processed and was pending. (CX 102.)

6. During another board of directors meeting on November 12, 1997, Michelle Brock made a motion to amend the minutes of a meeting held the week before passed. The minutes show an extensive discussion of many topics, including a discussion of a lawsuit against the zoo concerning the housing of the big cats. During that discussion, Michelle Brock announced that Steve Dornin wanted to sell the big cats to the zoo for \$800. "She said this was a good price considering the regular price of \$2,000." (CX 103.)

7. Under the terms of an employment contract that began on February 4, 1999, the board of directors hired Michelle Brock, at a salary of \$36,000 per year, as executive director to perform the zoo's management duties (CX 65).

8. At a board of directors meeting held in March 2001, it was reported that Robert Brock and Michelle Brock were not renewing their management contract due to Robert Brock's having other work and Michelle Brock's taking care of her grandmother full-time (RX 146).

9. Robert Brock was the manager at the Corpus Christi Zoo from 1997 through 1999 (Tr. I at 941, 946). Michelle Brock followed her husband as the zoo's manager in 1999 and ended her official management role in 2001 (RX 146).

10. In 2002, Sonny Kelm, an investigator for the Animal and Plant Health Inspection Service [hereinafter APHIS], conducted interviews with Robert Brock, Michelle Brock, and Al Bolin, a manager of the zoo at the time (CX 81-CX 82, CX 95). The memoranda Mr. Kelm prepared of these interviews and his testimony respecting his observations indicate that, even though Mr. Bolin was responsible for the on-site management of the zoo, Robert Brock took an active leadership role in the overall conduct of the zoo. Mr. Brock was the person who obtained legal counsel to defend the zoo from the complaint (AWA Docket No. 02-0016) the Administrator had filed against it. Furthermore, Mr. Brock identified himself as the owner of the Corpus Christi Zoo. (CX 81-CX 82.) When Mr. Kelm observed Robert Brock and Al Bolin together at the zoo, Robert Brock was the one giving the orders (Tr. II at 780).

11. On October 10, 2003, there was a zoo meeting attended by Michelle Brock and three other individuals at which they discussed the case (AWA Docket No. 02-0016) brought by the Administrator against the zoo. At the meeting, it was decided to settle the case and agree to a consent decision that included the surrender of the zoo's Animal Welfare Act license. (CX 71 at 1.)

12. On October 13, 2003, Colleen A. Carroll, attorney for the Administrator, sent a facsimile transmission to Roland A. Garcia, attorney for the zoo, “to memorialize our conversations regarding settlement . . . .” (CX 62; RX 96). In her concluding paragraph, Ms. Carroll stated:

I also write to reconfirm APHIS’s agreement to assist your client in the placement of its existing regulated animals by December 15, 2003. In the event that such animals are not able to be placed by December 15, 2003, despite the best efforts of respondent, and with APHIS’s assistance, APHIS agrees to move for issuance by December 14, 2003, of an order modifying paragraphs 2 and 3 of the Order (providing for the effective date of revocation and deadline for placement of animals) to provide for an appropriate later effective date and deadline, and to move for additional such orders if necessary.

13. On October 17, 2003, a Consent Decision and Order was issued in resolution of the complaint filed by the Administrator that had alleged the Corpus Christi Zoological Association violated the Animal Welfare Act and the Regulations and Standards on March 13, April 25, May 7, May 10, May 22, and September 4, 2002 (AWA Docket 02-0016; CX 2). The Order required that:

1. Respondent, its 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.
2. Respondent’s Animal Welfare Act license (number 74-C-0407) is revoked, effective December 15, 2003.
3. By December 15, 2003, respondent shall place all of its animals, as that term is defined in the Act and the Regulations, by donation or sale, with persons who have demonstrated the ability to provide proper care for said animals in accordance with the Act and the Regulations, and as approved by the complainant.

14. Neither Robert Brock nor Michelle Brock signed the Consent Decision and Order (CX 2).

15. Efforts to place the animals were undertaken by the zoo, but no one would take its big cats, i.e., the lions and tigers (Tr. I at 986, 998; RX 95). Mr. Garcia informed Ms. Carroll of the difficulty with the placement of the big cats in an e-mail he sent to her on October 16, 2003 (RX 95).

16. In seeking placements for the big cats, Bodie Knapp was approached in late October 2003, and Robert Brock discussed with him the possibility of Mr. Knapp's taking the big cats (Tr. I at 988-89). The zoo had previously placed three lions and two snow macaques with Mr. Knapp on February 3, 2002 (Tr. I at 983). A report of the February 3, 2002, placement had been made by the zoo to APHIS and APHIS did not assert any objections to those transfers (Tr. I at 750-51, 1042-44). Charles Curren, a United States Department of Agriculture animal care inspector, testified that such transfers were allowed because there were not the restrictions of the October 17, 2003, Consent Decision and Order in place when the February 3, 2002, transfers were made (Tr. I at 751).

17. On November 15, 2003, a zoo meeting was held that was attended by Michelle Brock and two other individuals during which discussions covered placement of the animals and possibilities for the zoo after the Animal Welfare Act license terminated (CX 72).

18. On November 18, 2003, Bodie Knapp replied to a proposal from the zoo regarding the terms for Mr. Knapp to take ownership of the zoo. Mr. Knapp's response read as follows:

Robert & Michelle

The following is the agreement you sent us:

- \$12,000 Mortgage to Roland Garcia, rated at 0% interest, \$250/mo payment for 36 months, balance due at 36 months.
- Papers would be from Seller (Corpus Christi Zoological Association) To Buyer (Titled, Corpus Christi Zoological Association )
- Clean out one building per week/Sunday, except Thanksgiving, 3 buildings, (i.e. cleaned out before Christmas)
- Carousel belongs to Brocks
- Michelle's agreement for Lynx & Skunk
- Meet to do Board Papers & Taxes
- Michelle promote park, maybe have you guys bring animals (Good).

The following are clarifiers I would like to see added.

- Mortgage – I understand that the Corpus Christi Zoological Association (CCZA), is in debt to Roland Garcia for \$12,000. Bodie & Jennifer Knapp (Personally) will agree to accept and pay this debt for the association, in turn the association agrees to turnover deed ownership of the real estate to Bodie & Jennifer Knapp (Personally) the terms of the \$12,000 debt payment to Roland Garcia are as follows: rated at 0% interest, \$250/mo payment for 36 months, balance due at 36 months.
- Papers – I do not understand the papers statement, perhaps it is included in the above.
- Clean Out - Cleaning the inside of the buildings would be beneficial, but I was more concerned with the costs associated with removing the larger amounts of debris. I would prefer to have large dumpsters spotted each week for three weeks, and

some plan to remove the larger pieces (roof sections etc.) I would like the same timeline, before Christmas.

- Carousel – I would like to discuss keeping carousel in the park, we have some ideas for it.
- Michelle’s Agreement, I have no problem giving Michelle free access to the park and I plan to keep the lynx. However, this is the first I’ve heard of the Skunk. I do not have the permits to keep Texas Species and I am [sic]

(RX 86). The record only contains the first page of what appears to be a multi-page document.

19. On November 20, 2003, a zoo meeting was held that was attended by Robert Brock and three other individuals at which the board of directors gave Michelle Brock two mobile homes in lieu of payment of back wages (CX 73).

20. On November 25, 2003, Bodie Knapp signed the proposal identified in Finding of Fact number 18 (RX 86 at 2).

21. On November 28, 2003, the board of directors of the Corpus Christi Zoo met and agreed to accept Mr. Knapp’s offer. Robert Brock and three other individuals attended this meeting (Tr. I at 995-96; RX 140 at 2).

22. Ms. Carroll sent Mr. Garcia, counsel for the zoo, an e-mail on December 2, 2003, listing “approved persons and facilities” located by APHIS that the zoo should contact regarding placement of the animals (CX 76 at 2-6).

23. Mr. Garcia replied inquiring about financial assistance from APHIS to the zoo to provide transportation of the animals to the new facilities (CX 76 at 2).

24. In response, Ms. Carroll stated:

Although we certainly discussed APHIS's agreement to assist in securing facilities for the placement of existing animals (and APHIS has found homes or potential homes for all of the animals), your assumption that APHIS would also transport or provide transportation for those animals is incorrect. I know of no "previous discussions" in which I participated that could have left you with that assumption. The arrangements for the transfer of the animals in this case are between the Corpus Christi Zoo and the facilities, and do not involve APHIS. In fact, APHIS does not provide or arrange for any animal transportation except in confiscation cases pursuant to section 2.129 of the AWA regulations. Moreover, in those cases, all costs are borne by the dealer or exhibitor from whom the animals were confiscated.

(CX 76 at 5).

25. On December 6, 2003, Bodie Knapp began removing animals from the Corpus Christi Zoo (CX 13; RX 157). On December 11, 2003, Bodie Knapp transported two lions from the Corpus Christi Zoo (RX 158).

26. On December 13, 2003, Mr. Garcia e-mailed Ms. Carroll advising her that "none of the exhibitors you identified were willing or able to accept the big cats." Mr. Garcia stated that "[t]he small animals are no problem, and all are gone except the wolf and skunk as I understand it, which are anticipated to be picked up in the next two or three weeks." Mr. Garcia also notified Ms. Carroll that Mr. Knapp had already taken possession of two lions and one tiger with the remaining animals scheduled to be removed within 2 to 3 weeks. (CX 76 at 2.)

27. On December 15, 2003, Ms. Carroll responded to Mr. Garcia by e-mail:

I am dismayed to learn that your client has placed animals without adhering to the terms of the consent decision – to wit: "with persons who have demonstrated the ability to provide proper care for said animals in

accordance with the Act and the Regulations, and as approved by the complainant.” Please immediately provide the identities of those individuals and persons to whom your client has placed the various animals. I look forward to hearing from you soon.

(CX 76 at 9).

28. On December 17, 2003, Bodie Knapp removed and transported a fox, two sheep, a pony, and two tigers from the Corpus Christi Zoo (RX 158).

29. On December 11, 2003, and December 17, 2003, Bodie Knapp administered tranquilizing drugs to sedate the lions and tigers for transport. It was later reported that the lions and tigers died during transport. (Tr. I at 382-89, 417-25.)

### **Conclusion of Law**

During the months of October, November, and December 2003, and specifically on December 6, 2003, December 11, 2003, and December 17, 2003, Robert Brock and Michelle Brock, both as agents for the Corpus Christi Zoological Association and on their own behalf, without a requisite license under the Animal Welfare Act, acted as a dealer, as defined in 7 U.S.C. § 2132 and 9 C.F.R. § 1.1, in that they, in commerce, for compensation or profit, delivered for transportation or negotiated the sale of a fox, two sheep, two lions, and two tigers, as well as other animals, for exhibition, in violation of 7 U.S.C. § 2134 and 9 C.F.R. § 2.1. In addition, these transactions violated the October 17, 2003, Consent Decision and Order that required the Corpus Christi Zoological Association to obtain APHIS’s prior approval of the persons with whom the Corpus Christi Zoological Association placed the animals. Although neither Robert

Brock nor Michelle Brock were parties to the October 17, 2003, Consent Decision and Order, as agents of the Corpus Christi Zoological Association, they were required to ensure that their actions on behalf of the zoo were in conformity with the Consent Decision and Order. Their failure to comply with the requirements of the October 17, 2003, Consent Decision and Order is a violation individually and for the Corpus Christi Zoological Association. For these violations:

1. Robert Brock and Michelle Brock are ordered to cease and desist from violating the Animal Welfare Act and the Regulations and Standards, as authorized under 7 U.S.C. § 2149(b).
2. Robert Brock is assessed a \$2,750 civil penalty, as authorized under 7 U.S.C. § 2149(b), as amended by 28 U.S.C. § 2461 and implemented by 7 C.F.R. § 3.91(a), (b)(2)(v) (2004).
3. Michelle Brock is assessed a \$2,750 civil penalty, as authorized under 7 U.S.C. § 2149(b), as amended by 28 U.S.C. § 2461 and implemented by 7 C.F.R. § 3.91(a), (b)(2)(v) (2004).
4. Robert Brock and Michelle Brock are denied licenses under the Animal Welfare Act for a period of 10 years as authorized under 9 C.F.R. § 2.1(e).

### **Discussion**

Robert Brock and Michelle Brock thwarted effective administration of the Animal Welfare Act by APHIS by negotiating for the placement of and by placing the animals

owned by the Corpus Christi Zoological Association with Bodie Knapp without obtaining APHIS approval as the October 17, 2003, Consent Decision and Order required. They did so largely because they had negotiated favorable terms with Bodie Knapp that would reduce the adverse economic impact of the October 17, 2003, Consent Decision and Order on themselves and Michelle Brock's father.

APHIS first learned on December 13, 2003, just 2 days before the revocation of Corpus Christi Zoological Association's Animal Welfare Act license was to take effect, that animals had been placed with unapproved persons. In an e-mail sent by its attorney on December 15, 2003, APHIS expressed dismay that Corpus Christi Zoological Association was not adhering to the terms of the October 17, 2003, Consent Decision and Order and asked for the identities of the persons with whom the Corpus Christi Zoological Association's animals had been placed.

Despite this warning by APHIS that Corpus Christi Zoological Association was not in compliance with the terms of the Consent Decision and Order, 2 days later, on December 17, 2003, the placement of animals with Bodie Knapp was completed at a time when neither Corpus Christi Zoological Association nor the Brocks had a valid license as required by the Animal Welfare Act. The Brocks had arranged the deal with Bodie Knapp. (Findings of Fact numbers 16, 18, and 20.) The deal benefitted the Brocks, and, during the months of October, November, and December 2003, the Brocks controlled the meetings during which the deal was approved. Whether they had official status as

members of the board of directors is uncertain, but they were the ones who negotiated the deal with Bodie Knapp and at least one of the Brocks participated at each of the zoo meetings where the deal and its terms were approved. The only others in attendance and voting at these meetings were the zoo's onsite caretakers and occasionally a volunteer. As a result of the deal, the two caretakers were made to vacate the premises. The Brocks, on the other hand, obtained a commitment that Michelle would keep a carousel, that Michelle would be allowed to continue to house animals she personally owned at the zoo, and that a loan her father had made to the zoo would be repaid. The Brocks also benefitted from a zoo meeting on November 20, 2003, in which two mobile homes were given to Michelle Brock in lieu of back wages owed Michelle (Finding of Fact number 19). The fact that the two caretakers voted for these results raises a strong inference that they recognized themselves to be subordinates of the Brocks.

At any rate, when the remaining zoo animals were transferred to Bodie Knapp on December 17, 2003, it was the culmination of the deal the Brocks had made with him; a deal the Brocks took no steps to stop after being warned that their arrangements for animal transfers were not in compliance with the October 17, 2003, Consent Decision and Order. They allowed the final transfer of animals to Bodie Knapp to proceed after the revocation of the zoo's Animal Welfare Act license. They thereby, together with the zoo, became subject to sanction for acting as a dealer without an Animal Welfare Act license.

The Administrator has requested that the Brocks be made subject to a cease and desist order, that civil penalties be assessed against the Brocks as agents of the zoo, and that the Brocks be disqualified for 10 years from becoming licensed under the Animal Welfare Act.

I agree with the Administrator that the Brocks should be made subject to a cease and desist order and that the Brocks should be assessed civil penalties and disqualified from future licensing under the Animal Welfare Act. I base this sanction on the fact that, throughout October, November, and December 2003, and specifically on December 17, 2003, the Brocks acted as a dealer while unlicensed and did so not merely as the zoo's agent, but as a way to reduce adverse personal consequences to themselves due to the zoo's closing and to secure payment of a loan the zoo still owed to Michelle Brock's father.

The record evidence does not support the Administrator's assertion that the Brocks violated the regulations that require the making and keeping of records concerning the disposition of animals. Respondents have provided exhibits showing such records were in fact made. (RX 157-RX 158.)

The Administrator also asserted that Robert Brock and Michelle Brock violated regulations governing the provision of veterinary care to animals, transportation of animals in proper enclosures, and careful handling of animals so as not to cause them behavioral stress, physical harm, or unnecessary discomfort. Under the arrangements for

and the circumstances of the transfer of the zoo's animals to Bodie Knapp, Mr. Knapp assumed each of these responsibilities. He was the one who sedated the lions and tigers. He personally removed the animals from the zoo's premises. Again, the record does not support the Administrator's allegations in this area.

The Administrator argued that both the Corpus Christi Zoological Association and a predecessor corporation, The Corpus Christi Zoo, Inc., were alter egos of Robert Brock and Michelle Brock. The record evidence, however, fails to adequately substantiate these alter ego arguments. The minutes of the Corpus Christi Zoological Association show that, although the Brocks formed this non-profit corporation and were listed as directors on its articles of incorporation, they were replaced at the very first organizational meeting by a very active board of directors who conducted frequent meetings that, prior to the end of 2003, were well attended with extensive discussions and decision-making respecting the zoo's promotion, funding, and operation. Officers other than the Brocks were elected that included a treasurer who kept and spent the Corpus Christi Zoological Association's funds in an account separate and apart from any belonging to or controlled by the Brocks. The predecessor for-profit corporation, The Corpus Christi Zoo, Inc., was not operated by the Brocks after the not-for-profit Corpus Christi Zoological Association purchased its assets and liabilities and assumed its name during the Corpus Christi Zoological Association's August 27, 1996, organizational meeting. (Tr. I at 928.)

*In re Marysville Enterprises, Inc.*, 59 Agric. Dec. 299, 315 (2000), upon which the Administrator relies, lists six factors to be examined before the corporate form may be ignored. When those six factors are examined in the light of the present facts, there is an insufficient showing that the Brocks were the alter egos of the Corpus Christi Zoological Association.

1. Though the Corpus Christi Zoological Association was initially formed at the direction of the Brocks, they turned over its control at the initial organizational meeting to a board of directors that did not include them.

2. The Brocks appear to have been under the direction and control of the Corpus Christi Zoological Association's officers and board of directors until late 2003; therefore, the Brocks could not be said to have controlled the corporation until late 2003.

3. The corporate funds were not commingled with individual funds belonging to the Brocks.

4. Persons other than the Brocks functioned as the Corpus Christi Zoological Association's directors and officers.

5. Corporate formalities, such as keeping minutes and corporate records, appear to have been observed.

Under these circumstances, the corporate form of the licensee cannot be disregarded. The Administrator respected the corporate form at the time he entered into the October 17, 2003, Consent Decision and Order with the Corpus Christi Zoological

Association. The Brocks were not asked either to sign or to be included as parties subject to the terms of the October 17, 2003, Consent Decision and Order.

However, 7 U.S.C. § 2139 provides that, when construing violations of the Animal Welfare Act, acts of an agent shall be deemed acts of the licensee “as well as such person.” In other words, an agent’s act will be construed to be a violation of the Animal Welfare Act and the Regulations and Standards by the licensee for whom the agent acts and may also be a personal violation by the agent that can subject the agent to the imposition of sanctions under the Animal Welfare Act. On December 17, 2003, it was a violation of the Animal Welfare Act and the Regulations and Standards for both the Corpus Christi Zoological Association and the Brocks to engage in conduct encompassed by the dealer definition when neither the Corpus Christi Zoological Association nor the Brocks had a valid Animal Welfare Act license.

Therefore, I conclude Robert Brock and Michelle Brock violated the Animal Welfare Act and the Regulations and Standards on that date when the Brocks, as the Corpus Christi Zoological Association’s agent and on their own behalf, acted in the capacity of a dealer while unlicensed, by allowing animals to be transferred to Bodie Knapp under the deal negotiated by the Brocks. Under these circumstances, Robert Brock and Michelle Brock should be made subject to a cease and desist order, Robert Brock and Michelle Brock should be assessed appropriate civil penalties, and Robert Brock and Michelle Brock should be disqualified for 10 years from obtaining an Animal

Welfare Act license. The maximum civil penalty for a single violation is \$2,750 under 7 U.S.C. § 2149(b), as amended by 28 U.S.C. § 2461 and implemented by 7 C.F.R. § 3.91(a),(b)(2)(v) (2004). The entry of an order to cease and desist from continuing the violation is also authorized. Both sanctions are appropriate under the circumstances of this violation by Robert Brock and Michelle Brock. Moreover, a violation of the Animal Welfare Act or the Regulations and Standards constitutes grounds for denial of a license, and I conclude the recommendation by the Administrator that both Brocks should be disqualified from becoming licensed under the Animal Welfare Act for 10 years, is appropriate.

In assessing the civil penalty, I have given due consideration to the fact that a small business was involved and there is no prior history of violations by Robert Brock or Michelle Brock. On the other hand, I have also considered the fact that Robert Brock and Michelle Brock have shown a lack of good faith and that the circumstances of their conduct make the violation grave in nature. One of the ways their lack of good faith is shown is by their testimony at the hearing. As an example, Robert Brock testified that, during 2003, his participation with the Corpus Christi Zoo was limited to “donat[ing] money and stuff . . . when they contacted [him],” and volunteering “from time to time.” (Tr. I at 969.) However, earlier he testified that he served on the board of directors of the zoo until late 2004 (Tr. I at 914). Further, Robert Brock attempted to bolster his testimony that he sought to place the animals with the persons approved by APHIS by

introducing a list with notations he testified he made in December 2003 (Tr. I at 1179-85; RX 83). On cross-examination, Robert Brock admitted that the list was a photo copy of a portion of the complaint that he first received after its filing in March 2004 (Tr. I at 1192-95). When Michelle Brock testified, she implied that an APHIS investigator was seeking bribes to provide easier inspections of facilities and easier approval of plans (Tr. II at 196-200). Cross-examination showed her accusations to be without factual basis (Tr. II at 354-56).

Robert Brock and Michelle Brock deliberately confounded the objectives of the October 17, 2003, Consent Decision and Order to reduce its adverse economic consequences for themselves and a family member. The Brocks also did not respect the oath they gave to give only truthful testimony at the hearing. I find the imposition of the maximum civil penalty of \$2,750 each on Robert Brock and Michelle Brock for violations of the Animal Welfare Act and the Regulations and Standards, together with the other sanctions, necessary to deter the Brocks and others from engaging in similar conduct in the future so that the ability of APHIS to achieve the objectives of the Animal Welfare Act is maintained.

### **Robert Brock and Michelle Brock's Appeal Petition**

Robert Brock and Michelle Brock filed an Appeal Petition. The arguments raised are the same arguments raised before the ALJ and rejected by him. In fact, substantial

portions of the Appeal Petition are identical to Robert Brock and Michelle Brock's Proposed Findings of Fact and Conclusions of Law and Reply to Complainant's Brief.

With no new arguments presented, I find no cause to overturn the ALJ's well-reasoned decision. Because the ALJ addressed the issues raised by the Brocks and nothing new was raised by the Brocks, I find it unnecessary to comment on each issue in the Appeal Petition. However, I will discuss a few points raised by the Brocks.

One of the Brocks' main arguments is that they were not agents of the Corpus Christi Zoo (Appeal Pet. at 8, 29-31). However, Robert Brock's own testimony belies that argument. When asked when he resigned from the board of directors of the Corpus Christi Zoological Association, Robert Brock responded, "I had been on the board, you know, like when I signed it to Bodie, we signed off to Bodie Knapp in November I think, late November '03." (Tr. I at 914.) Further testimony by Robert Brock also demonstrates he acted as an agent for the Corpus Christi Zoo. When asked about the United States Department of Agriculture's list of facilities that possibly would take animals from the zoo, Robert Brock responded:

We didn't get it till in December, and Bodie and I's dealings were, like they started October something, 25th or 28th, and then we started meeting. We talked -- I faxed stuff to him I think on the 16th or 17th of November, and we met around the 18th or 17th, and then there's a couple back and forth. We faxed stuff back and forth after that.

....

Well, after we had done the deal and Bodie started picking up animals in the first week of December, and then I think it wasn't until late December or early January before we could get a hold of anybody at Wayne's World, and as I understand it, and I didn't do the phone call, but as

I understand I think Jennifer and Michelle spoke, and they had been told they could not have any contact with us, and USDA told them that they couldn't take over the park.

Tr. I at 918-19.

This testimony by Robert Brock that he served on the board of directors of the zoo through at least 2003 and his testimony that the Brocks and Mr. Knapp were negotiating about the transfer of the animals from the zoo leads me to conclude that the Brocks were acting as agents of the zoo and negotiated the transfer of the animals to Bodie Knapp.

The Brocks cite four cases to support their position that they were not agents of the zoo. However, the principle from each case cited by the Brocks, while accurate, fails to give the total picture of the law of agency. As an example, the Brocks cite to *Grace Cmty. Church v. Gonzales*, 853 S.W.2d 678 (Tex. App. 1993), for the proposition that “[a]n agent is one who is authorized by the principal to transact business or manage some affair on the principal’s behalf.” (Appeal Pet. at 30.) However, the Brocks fail to mention the next sentence that states: “The agency relationship does not depend on express appointment or assent by the principal; rather it may be implied from the conduct of the parties under the circumstances.” *Grace Cmty. Church*, 853 S.W.2d at 680.

Under the circumstances, it is understandable that the Administrator and others, including Bodie Knapp, viewed the Brocks as agents for the zoo.<sup>1</sup> One of the Brocks

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<sup>1</sup>Corporations such as the zoo can only conduct business through its agents. *W.G. Construction Co. v. Occupational Safety and Health Review Comm’n*, 459 F.3d 604, 607 (5th Cir. 2006).

participated in every zoo board of directors meeting in 2002 and 2003 (CX 71-CX 74, CX 77); the Brocks negotiated with Mr. Knapp for transfer of the animals; and even as late as January 4, 2004, Michelle Brock was still seeking legal advice from her brother for the zoo<sup>2</sup> (CX 75 at 2).

Through their entire association with the Corpus Christi Zoo, Robert Brock and Michelle Brock acted in a manner consistent with individuals who had the authority to act for the zoo. They were original incorporators of the zoo, they served in zoo management, they participated in board of director meetings, and they negotiated the sale of the animals to Bodie Knapp.<sup>3</sup> Considering counsel for the zoo, Michelle Brock's brother, never informed the Brocks or anybody else that the Brocks did not have the authority to act on the zoo's behalf, I conclude the zoo approved of the Brocks' actions on its behalf.

Therefore, Robert Brock and Michelle Brock were agents for the Corpus Christi Zoo.

The Brocks also argue that the animals were a donation to Bodie Knapp, not a "purchase or sale"; therefore, the Brocks' position is that the Animal Welfare Act "dealer" provision was not triggered. "Most important, there was no 'purchase or sale' of any animals which could possibly invoke the 'dealer' statute. *See* 7 U.S.C. § 2132. *See also* 9 C.F.R. § 1.1. It is undisputed that the Zoo was placing the animals with Mr. Knapp

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<sup>2</sup>Michelle Brock contacted her brother for legal advice for the zoo even though he informed APHIS on December 21, 2003, that he no longer represented the zoo (CX 76 at 10).

<sup>3</sup>Even in August 2004, Michelle Brock was the person responsible for approving who took over the zoo (Tr. I at 831-32).

as a ‘donation,’ not as a ‘sale’ for any money.” (Appeal Pet. at 10.) The ALJ’s discussion addressing the consideration received by the Brocks as a result of the deal with Bodie Knapp is sufficient to conclude there was a sale of the animals that required the Brocks to be licensed dealers. However, even more telling regarding whether Bodie Knapp purchased the animals is the answer to the Complaint filed by the Corpus Christi Zoo and the Brocks. In the answer, the zoo and the Brocks state unequivocally that Bodie Knapp purchased the animals from the zoo. “Bodie and Jennifer Knapp of Wayne’s World Safari had purchased the animals and park operations as of November 25, 2003.” (Answer at 2; RX 89 at 2.)

**Robert Brock and Michelle Brock’s Motion for Injunction and  
Supplement to Appeal Petition**

On January 8, 2008, Robert Brock and Michelle Brock filed a motion to enjoin the United States Department of Agriculture, Marketing and Regulatory Programs, Financial Management Division [hereinafter Financial Management Division], from making demands on the Brocks for payment of the civil penalty assessed by the ALJ and to sanction the Financial Management Division for its premature demands for payment of the assessed civil penalty.

Based on the filings of the parties, I find the Brocks are correct that the Financial Management Division prematurely demanded payment of the civil penalty assessed by the ALJ. Nonetheless, I am dismayed that this issue is before me, as it is apparent from the parties’ January 2008 filings that the Brocks made no effort to communicate directly with

the Financial Management Division regarding the demand for payment despite the instructions to do so in demand letters sent by the Financial Management Division to the Brocks. While I decline to sanction the Financial Management Division for its apparent inadvertent premature demand for payment, in order to resolve this issue, I instruct counsel for the Administrator to inform the Financial Management Division that no funds are currently due from the Brocks. The civil penalties assessed against Robert Brock and Michelle Brock in this Decision and Order as to Robert Brock and Michelle Brock are not due until 60 days after service of this decision and order on the Brocks.

As for the portion of the Brocks' January 8, 2008, filing that constitutes a supplement to their Appeal Petition, the Brocks did not file a motion for an opportunity to supplement their Appeal Petition or to file a second appeal petition. The Brocks filed the supplement to their Appeal Petition well after the deadline for filing an appeal petition had passed. I find the Brocks' supplement to their Appeal Petition constitutes a supernumerary, late-filed appeal petition. Therefore, I strike those aspects of the Brocks' January 8, 2008, filing which do not relate to the Financial Management Division's premature demand for payment.

#### **Attorneys' Fees**

The Equal Access to Justice Act, 5 U.S.C. § 504, and the regulations promulgated under the Equal Access to Justice Act, identify the appropriate procedures to be followed when a party seeks an award of attorneys' fees. Failure of the party to follow the

procedures makes an award of fees inappropriate. The Brocks' request for an award of attorneys' fees does not comply with the statutory and regulatory requirements.

Therefore, the Brocks' request for attorneys' fees is denied.

### **The Administrator's Points of Error**

The Administrator raised points with which he disagreed with the ALJ's decision. The primary area of disagreement was the ALJ's conclusion that the Corpus Christi Zoo was not the alter ego of the Brocks. While the zoo appears to have been a Garcia family enterprise, I find ample evidence that the Garcia family maintained sufficient corporate formalities to maintain a distinction between the Garcia family and the zoo. Therefore, the Administrator's argument is without merit.

I do find it necessary to specifically address the Administrator's argument that "Corporate and individual funds were commingled." (Response to Appeal Pet. at 8.) The Administrator's use of the term "commingling of funds" is exactly opposite the common usage. Here, the Brocks took personal funds and provided them to the zoo.

"Commingling" is the act of a fiduciary in taking "funds of his beneficiary, client, employer, or ward" and mingling those funds with his own, such as when an attorney takes client funds and places them in his account rather than in a trust account. *Black's Law Dictionary* 271 (6th ed. 1990). Had the Brocks taken funds generated by the zoo and placed them in personal accounts, a finding of commingling would have been appropriate.

In closing, I find it appropriate to issue a comment on this proceeding. At various times during my tenure as Judicial Officer, I have noted that a case is ripe for settlement. This case is one of those cases that I found ripe for settlement. With recent personnel additions in the Office of the Judicial Officer, I will be selecting some cases to attempt a mediated solution. That was done in this proceeding. I had the attorney examiner in my office contact the parties in an effort to assist them reach a settlement. The attorney examiner reported back to me that settlement was not possible.<sup>4</sup> That was disappointing considering the Brocks indicated that they did not want an Animal Welfare Act license (Tr. II at 7) and the most significant sanction imposed by the ALJ was a prohibition on the Brocks' receiving a license for 10 years. It seems to me that with agreement on that part of the sanction, the remaining issues could have been resolved.

For the forgoing reasons, the following Order is issued.

### **ORDER**

1. Robert Brock and Michelle Brock shall cease and desist from violating the Animal Welfare Act and the Regulations and Standards. The cease and desist provisions of this Order shall become effective on the day after service of this Order on Robert Brock and Michelle Brock.

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<sup>4</sup>I do not know if it was one or both parties who were impediments to settlement.

2. Robert Brock is assessed a \$2,750 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the Treasurer of the United States.

3. Michelle Brock is assessed a \$2,750 civil penalty. The civil penalty shall be paid by certified check or money order made payable to the Treasurer of the United States.

4. The payments of the civil penalties shall be sent, within 60 days of service of this Order, to:

Colleen A. Carroll  
Office of the General Counsel  
U.S. Department of Agriculture  
1400 Independence Avenue, SW  
Room 2343 South Building  
Washington, DC 20250-1417

5. Robert Brock and Michelle Brock are disqualified from receiving licenses under the Animal Welfare Act for a period of 10 years. The disqualification periods shall become effective on the 60th day after service of this Order on Robert Brock and Michelle Brock.

**RIGHT TO JUDICIAL REVIEW**

Robert Brock and Michelle Brock have the right to seek judicial review of the Order in this Decision and Order as to Robert Brock and Michelle Brock in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341-2350. Robert Brock and Michelle Brock must seek judicial review within 60 days after entry of the Order in this Decision and Order as to Robert Brock and Michelle Brock.<sup>5</sup> The date of entry of the Order in this Decision and Order as to Robert Brock and Michelle Brock is January 24, 2008.

Done at Washington, DC

January 24, 2008

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William G. Jenson  
Judicial Officer

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<sup>5</sup>7 U.S.C. § 2149(c).