

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 04-0029
)
Bodie S. Knapp, an individual)
d/b/a Wayne's World Safari,)
) **Order Denying Motion**
) **for Reconsideration**
Respondent)

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 31, 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, during the period March 13, 2002, through March 11, 2005, Bodie S. Knapp, d/b/a Wayne's World Safari [hereinafter Respondent], willfully violated

the Regulations and Standards (Compl. ¶¶ 3-9). The Hearing Clerk served Respondent with the Complaint, the Rules of Practice, and a service letter on September 4, 2004.¹ Respondent failed to file an answer to the Complaint within 20 days after service, as required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)).

On January 4, 2005, Chief Administrative Law Judge Marc R. Hillson issued a Decision and Order By Reason of Admission of Facts [hereinafter Initial Decision]: (1) concluding Respondent willfully violated the Regulations and Standards as alleged in the Complaint; (2) directing Respondent to cease and desist from violating the Animal Welfare Act and the Regulations and Standards; and (3) revoking Respondent's Animal Welfare Act license (Initial Decision at 21-23).

On March 11, 2005, Respondent filed a motion for leave to file an affidavit and appealed to, and requested oral argument before, the Judicial Officer. On March 30, 2005, Complainant filed Complainant's Response to Respondent's Appeal Petition, Request for Oral Argument, and Motion for Leave to File Affidavit. On May 18, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision. On May 31, 2005, I issued a Decision and Order: (1) granting Respondent's motion for leave to file affidavit; (2) denying Respondent's request for oral argument; (3) concluding Respondent willfully violated the Regulations and Standards; (4) ordering

¹United States Postal Service Domestic Return Receipt for Article Number 7003 2260 0005 5721 4592.

Respondent to cease and desist from violating the Animal Welfare Act and the Regulations and Standards; and (5) revoking Respondent's Animal Welfare Act license.²

On June 14, 2005, Respondent filed a Motion for Reconsideration of *In re Bodie S. Knapp*, 64 Agric. Dec. ____ (May 31, 2005). On June 28, 2005, Complainant filed Complainant's Response to Respondent's Petition for Reconsideration of Decision of the Judicial Officer. On June 30, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Respondent's Motion for Reconsideration.

CONCLUSIONS BY THE JUDICIAL OFFICER ON RECONSIDERATION

Respondent raises three issues in his Motion for Reconsideration. First, Respondent requests that I reconsider my May 31, 2005, Decision and Order "for the same reasons as set out in his appeal" (Motion for Recons. at 1).

Respondent raised three issues in his Appeal to the Judicial Officer. I have reexamined each of the issues raised in Respondent's Appeal Petition to the Judicial Officer and my responses to those issues. Respondent does not identify specific aspects of the May 31, 2005, Decision and Order that are error, and I find no error in the May 31, 2005, Decision and Order.

Second, Respondent contends the Hearing Clerk did not serve him with Complainant's response to Respondent's Appeal to the Judicial Officer until after I issued

²*In re Bodie S. Knapp*, 64 Agric. Dec. ____ (May 31, 2005).

the May 31, 2005, Decision and Order; thereby unfairly depriving Respondent of an opportunity to address Complainant's response (Motion for Recons. at 1).

The record reveals Complainant filed Complainant's Response to Respondent's Appeal Petition, Request for Oral Argument, and Motion for Leave to File Affidavit on March 30, 2005; however, the Hearing Clerk did not serve Respondent with Complainant's Response to Respondent's Appeal Petition, Request for Oral Argument, and Motion for Leave to File Affidavit until June 6, 2005, 6 days after I issued the May 31, 2005, Decision and Order.³

The Rules of Practice do not provide litigants an opportunity to address a response to an appeal petition. Instead, section 1.145 of the Rules of Practice requires that the Hearing Clerk transmit the record to the Judicial Officer for consideration and decision immediately after an appeal petition and a response to the appeal petition have been filed and requires the Judicial Officer to rule on the appeal as soon as practicable after the Hearing Clerk's transmittal, as follows:

§ 1.145 Appeal to Judicial Officer.

....
 (c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. . . .

³Letter dated May 31, 2005, from Joyce A. Dawson to Phillip Westergren; United States Postal Service Domestic Return Receipt for Article Number 7000 1670 0011 8982 6015.

(i) *Decision of the judicial officer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk . . . , the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal.

7 C.F.R. § 1.145(c), (i).

Therefore, while I do not approve of the Hearing Clerk's delay in serving Respondent with Complainant's Response to Respondent's Appeal Petition, Request for Oral Argument, and Motion for Leave to File Affidavit, I reject Respondent's contention that the delay unfairly deprived Respondent of an opportunity to address Complainant's Response to Respondent's Appeal Petition, Request for Oral Argument, and Motion for Leave to File Affidavit.

Third, Respondent objects to my denial of his March 11, 2005, request for oral argument (Motion for Recons. at 1-2).

Section 1.145(d) of the Rules of Practice gives the Judicial Officer broad discretion to grant, refuse, or limit any request for oral argument, as follows:

§ 1.145 Appeal to Judicial Officer.

. . . .

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. *The Judicial Officer may grant, refuse, or limit any request for oral argument.* Oral

argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

7 C.F.R. § 1.145(d) (emphasis added).

I considered Respondent's March 11, 2005, request for oral argument and refused to grant Respondent's request because Complainant and Respondent had thoroughly addressed the issues and because I found the issues were not complex.⁴ Respondent does not identify the bases for his objection to my refusal to grant his request for oral argument and my reexamination of my ruling on Respondent's request for oral argument reveals no error.

For the foregoing reasons and the reasons set forth in *In re Bodie S. Knapp*, 64 Agric. Dec. ____ (May 31, 2005), Respondent's Motion for Reconsideration is denied.

Section 1.146(b) of the Rules of Practice (7 C.F.R. § 1.146(b)) provides that the decision of the Judicial Officer shall automatically be stayed pending the determination to grant or deny a timely-filed petition to reconsider. Respondent's Motion for Reconsideration was timely filed and automatically stayed *In re Bodie S. Knapp*, 64 Agric. Dec. ____ (May 31, 2005). Therefore, since Respondent's Motion for Reconsideration is denied, I hereby lift the automatic stay, and the Order in *In re Bodie S. Knapp*, 64 Agric. Dec. ____ (May 31, 2005), is reinstated; except that the effective date of

⁴*In re Bodie S. Knapp*, 64 Agric. Dec. ____, slip op. at 44-45 (May 31, 2005).

the Order is the date indicated in the Order in this Order Denying Motion for Reconsideration.

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

ORDER

1. Respondent, his 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.

The cease and desist provisions of this Order shall become effective on the day after service of this Order on Respondent.

2. Respondent's Animal Welfare Act license (Animal Welfare Act license number 74-C-0533) is revoked.

The license revocation provisions 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 this 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 this Order. Respondent must seek judicial review within 60 days after entry of this Order.⁵ The date of entry of this Order is July 5, 2005.

Done at Washington, DC

July 5, 2005

William G. Jenson
Judicial Officer

⁵7 U.S.C. § 2149(c).