

opposing Mr. Mazzola's Motion to Reopen. On May 13, 2009, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Mr. Mazzola's Motion to Reopen. The two documents Mr. Mazzola requests that I admit into evidence in support of his appeal petition are attached to Mr. Mazzola's Motion to Reopen; however, the video was not included in the Hearing Clerk's transmission to the Judicial Officer.

First, Mr. Mazzola requests that I admit into evidence a copy of an expired Animal Welfare Act license issued to "Sam F. Mazzola DBA: World Animal Studios, Inc.," which Mr. Mazzola has marked as MAZ-1 (Motion to Reopen ¶¶ 1-3). Mr. Mazzola asserts MAZ-1 proves Dr. Goldentyer "was less than truthful when she said that 'never' did APHIS issue a license to Sam Mazzola as a DBA to a corporation." (Motion to Reopen ¶ 1.) Mr. Mazzola does not provide a transcript citation to support his assertion that Dr. Goldentyer stated the Animal and Plant Health Inspection Service [hereinafter APHIS] "never" issued a license to Sam Mazzola, d/b/a World Animal Studios, Inc. Contrary to Mr. Mazzola's assertion, Dr. Goldentyer acknowledges the possibility that an Animal Welfare Act license could have been mistakenly issued to Sam Mazzola, d/b/a World Animal Studios, Inc., and testified as to the APHIS response to such an error, as follows:

JUDGE CLIFTON: . . . if, for example, the records were to show that the licensee was Sam Mazzola doing business as World Animal Studios, Inc., would it have been error to require Mr. Mazzola to go through a brand new application process when it was determined that the corporation was not valid?

[DR. GOLDENTYER:]

THE WITNESS: We would have flagged an application in which an individual was doing business as a corporation because really that's two different legal entities.

Now, if it's - - I don't know how we would've handled that because you're asking about a renewal. So, really we should have never gotten into a situation where we were licensing on one license two legal entities. That should never occur in the first place.

So, I'm not exactly sure what we would've done about it, but we would've had - - we would not renew that. We would definitely have to get that corrected.

Tr. 6536-37. Therefore, I find no basis upon which to reopen the proceeding to admit MAZ-1 into evidence in support of Mr. Mazzola's appeal petition.

Second, Mr. Mazzola requests that I admit into evidence a copy of a 2-page completed APHIS complaint/search form which Mr. Mazzola has marked as MAZ-2 and MAZ-3 (Motion to Reopen ¶¶ 4-5). This document was introduced by Mr. Mazzola during the hearing in the instant proceeding (Tr. 6733), and Jill S. Clifton, the administrative law judge who conducted the hearing, admitted the document into evidence (Tr. 6825-26). See RX 52 at 7-8. Under these circumstances, I find no purpose to be served by reopening the proceeding to admit MAZ-2 and MAZ-3 into evidence in support of Mr. Mazzola's appeal petition.

Third, Mr. Mazzola requests that I admit into evidence a video which Mr. Mazzola states he has marked as MAZ-4 (Motion to Reopen ¶¶ 6-7). Mr. Mazzola states the video depicts a bear exhibit conducted by another Animal Welfare Act licensee only days after the conclusion of the hearing in the instant proceeding, July 31, 2008 (Motion to Reopen

¶¶ 6-7). Mr. Mazzola asserts an APHIS inspector inspected the bear exhibit, observed Animal Welfare Act violations similar to those at issue in the instant proceeding, and failed to “write this exhibitor a non compliance inspection.” (Motion to Reopen ¶ 6.) Mr. Mazzola argues the video proves the Administrator arbitrarily enforces the Animal Welfare Act.

The issue in the instant proceeding is whether Mr. Mazzola violated the Animal Welfare Act. Alleged violations by another Animal Welfare Act licensee and the Administrator’s response to those alleged violations are not at issue in the instant proceeding. Therefore, I find no basis upon which to reopen the proceeding to admit MAZ-4 into evidence in support of Mr. Mazzola’s appeal petition.

For the foregoing reasons, I deny Mr. Mazzola’s Motion to Reopen.

Done at Washington, DC

October 27, 2009

William G. Jenson
Judicial Officer