

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	AWA Docket No. 06-0010
	)	
Sam Mazzola, an individual d/b/a	)	
World Animal Studios, Inc.,	)	
a former Ohio domestic	)	
corporation and Wildlife	)	
Adventures of Ohio, Inc.,	)	
a former Florida domestic stock	)	
corporation currently licensed as	)	
a foreign corporation in Ohio,	)	
	)	
Respondent	)	
	)	
	)	and
	)	
In re:	)	AWA No. D-07-0064
	)	
Sam Mazzola,	)	
	)	
Petitioner	)	<b>Supplemental Ruling Denying Mr. Mazzola's Motion to Reopen</b>

On March 13, 2009, Sam Mazzola filed a motion to reopen the case [hereinafter the Motion to Reopen] to allow two documents and a video to be entered as evidence in support of Mr. Mazzola's appeal petition. On April 6, 2009, the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], filed "APHIS's Response to Mazzola's Motion to Reopen the Case"

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. On October 27, 2009, I issued a Ruling Denying Mr. Mazzola's Motion to Reopen. In the Ruling Denying Mr. Mazzola's Motion to Reopen, I noted the two documents Mr. Mazzola requested that I admit into evidence were attached to Mr. Mazzola's Motion to Reopen; however, the video was not included in the Hearing Clerk's transmission to the Judicial Officer.

After Mr. Mazzola received the Ruling Denying Mr. Mazzola's Motion to Reopen, Mr. Mazzola contacted me, by telephone, and informed me that he had filed three copies of the video on three compact disks with his Motion to Reopen. Mr. Mazzola requested that I locate the compact disks (marked MAZ-4) and issue a supplemental ruling after having viewed the video. After an exhaustive search for the compact disks, an employee of the Office of the Judicial Officer located two of the three compact disks. I provided one of the two compact disks to counsel for the Administrator. On November 19, 2009, counsel for the Administrator, by telephone, informed me that, after having viewed the video, the Administrator continued to oppose Mr. Mazzola's request that I admit the video into evidence and declined to supplement APHIS's Response to Mazzola's Motion to Reopen the Case.

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 official 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. The Administrator is entitled to exercise prosecutorial discretion. The Administrator neither is prevented from instituting an Animal Welfare Act disciplinary proceeding against Mr. Mazzola when not instituting a proceeding as to others who are similarly situated nor is constrained to institute disciplinary proceedings as to all similarly situated persons. Mr. Mazzola has no right to have the Animal Welfare Act go unenforced against him, even if Mr. Mazzola can demonstrate that he is not as culpable as others who have not had Animal Welfare Act disciplinary proceedings instituted against them. The Animal Welfare Act does not need to be enforced everywhere to be enforced somewhere, and the Administrator has broad discretion in deciding against whom to institute Animal Welfare Act disciplinary proceedings. Therefore, even after viewing the video, 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

November 20, 2009

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William G. Jenson  
Judicial Officer