

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 Docket No. D-07-0064
)
Sam Mazzola,)
)
Petitioner) **Decision and Order**

PROCEDURAL HISTORY

Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this proceeding by filing a Complaint and Order to Show Cause (AWA Docket No. 06-0010) on February 27, 2006. 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 the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151). On December 8, 2006, the Administrator filed an Amended Complaint, and on January 8, 2008, the Administrator filed a Second Amended Complaint, which is the operative pleading in the instant proceeding.¹ The Administrator alleges, during the period December 13, 2003, through December 18, 2007, Mr. Mazzola willfully violated the Animal Welfare Act and the Regulations (Second Amended Compl. ¶¶ 17-51). On February 12, 2008, Mr. Mazzola filed an Answer in which he denied the allegations in the Second Amended Complaint.

Animal Welfare Act license number 31-C-0065 had been issued to World Animal Studios, Inc., in its capacity as a corporation (CX 1 at 1-8).² On October 10, 2006, Mr. Mazzola submitted a license renewal application for Animal Welfare Act license number 31-C-0065 as an individual in the name of World Animal Studios (CX 1 at 9). On October 27, 2006, the Animal and Plant Health Inspection Service [hereinafter APHIS] denied Mr. Mazzola's renewal application because such a renewal would

¹The Administrator filed two corrections to the Second Amended Complaint: (1) Notice of Correction to Second Amended Complaint filed February 29, 2008; and (2) Errata to Second Amended Complaint filed July 10, 2008.

²The Administrator's exhibits are designated "CX"; Mr. Mazzola's exhibits are designated "RX"; and transcript references are designated "Tr."

constitute a transfer of Animal Welfare Act license number 31-C-0065 from World Animal Studios, Inc., to World Animal Studios, in violation of 9 C.F.R. § 2.5(d) (CX 1 at 11). On November 1, 2006, Mr. Mazzola applied for a new Animal Welfare Act license as an individual (CX 55 at 5; RX 1A). On December 5, 2006, pursuant to 9 C.F.R. § 2.11(a), APHIS denied Mr. Mazzola's application for a new Animal Welfare Act license on the ground that he was unfit to be licensed (CX 55 at 1-2). On February 7, 2007, Mr. Mazzola filed a Petition (AWA Docket No. D-07-0064) requesting a hearing to show he is fit to be licensed. On March 15, 2007, Administrative Law Judge Peter M. Davenport ordered consolidation of the disciplinary proceeding instituted by the Administrator (AWA Docket No. 06-0010) and the Animal Welfare Act licensing proceeding instituted by Mr. Mazzola (AWA Docket No. D-07-0064).

Administrative Law Judge Peter M. Davenport became unavailable due to his deployment to Iraq, and, on July 10, 2007, Chief Administrative Law Judge Marc R. Hillson reassigned the case to Administrative Law Judge Jill S. Clifton [hereinafter the ALJ]. The ALJ conducted 19 days of hearings in Cleveland, Ohio, between March 3, 2008, and July 31, 2008. Bernadette Juarez and Babak A. Rastgoufard, Office of the General Counsel, United States Department of Agriculture, Washington, DC, represented the Administrator. Mr. Mazzola appeared pro se.

On June 12, 2008, the parties filed a joint request for an oral decision from the bench at the close of the hearing. On June 26, 2008, the ALJ granted the parties' request.

On July 31, 2008, the ALJ received the Administrator's and Mr. Mazzola's post-hearing briefs and issued an oral decision from the bench (Notice of Publication of Oral Decision and Order Contained in Enclosed Corrected Transcript Excerpt, filed August 22, 2008 [hereinafter the ALJ's Decision]). The ALJ: (1) concluded Mr. Mazzola violated the Animal Welfare Act and the Regulations by operating as an exhibitor and a dealer without an Animal Welfare Act license, by interfering with, threatening, abusing, and harassing APHIS officials, by refusing to allow APHIS officials to conduct an inspection, by failing to have a written program of veterinary care available for inspection, by failing to assure the safety of animals and the public, and by housing animals in enclosures that lacked structural integrity and height to contain the animals; (2) ordered Mr. Mazzola to cease and desist from violating the Animal Welfare Act and the Regulations; (3) revoked Animal Welfare Act license number 31-C-0065; (4) permanently disqualified Mr. Mazzola from obtaining an Animal Welfare Act license; (5) assessed Mr. Mazzola a \$13,950 civil penalty; and (6) affirmed APHIS' denial of Mr. Mazzola's November 1, 2006, application for an Animal Welfare Act license.

On December 29, 2008, Mr. Mazzola filed a timely "Appeal to the Judicial Officer" [hereinafter Appeal Petition]. On March 13, 2009, the Administrator filed a response to Mr. Mazzola's Appeal Petition and a cross-appeal. On May 11, 2009, Mr. Mazzola filed a response to the Administrator's cross-appeal. On May 13, 2009, the

Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

Based upon a thorough examination of the record, I affirm the ALJ's Decision, except I increase the civil penalty assessed against Mr. Mazzola by the ALJ from \$13,950 to \$21,000. As the ALJ's Decision was orally announced from the bench, I restate the ALJ's findings of fact and conclusions of law. Moreover, I provide additional citations to the record that support the ALJ's findings of fact, as restated. Finally, in order to provide a reviewing court with a guide, I cite to the pages of the ALJ's Decision from which the restated findings of fact are derived.

DECISION

Findings of Fact

1. Sam Mazzola is an individual doing business as World Animal Studios, Inc., Wildlife Adventures of Ohio, Inc., and Animal Zone, and whose mailing address is 9978 N. Marks Road, Columbia Station, Ohio 44028 (CX 1 at 9, 11).
2. At all times material to the instant proceeding, Mr. Mazzola operated as an "exhibitor," as that term is defined in the Animal Welfare Act and the Regulations (CX 1 at 1-9).
3. At all times material to the instant proceeding, Mr. Mazzola held himself out as the president of World Animal Studios, Inc., a former Ohio domestic corporation (CX 1 at 1, 3).

4. On February 20, 1999, the Ohio Secretary of State notified World Animal Studios, Inc., through its registered agent, Mr. Mazzola, that the articles of incorporation (or license to do business in Ohio) for World Animal Studios, Inc., have been canceled, effective February 20, 1999, and that continuation of business as a corporation after February 20, 1999, would be a violation of Ohio law (CX 3 at 10).

5. Despite receiving the notice described in Finding of Fact number 4, Mr. Mazzola, on behalf of World Animal Studios, Inc., continued to renew Animal Welfare Act exhibitor's license number 31-C-0065 issued to World Animal Studios, Inc., during the period 1999 through 2005 (CX 1 at 1-8).

6. Animal Welfare Act license number 31-C-0065 is, and, since February 21, 1999, has been, invalid because the license is issued to a corporation, World Animal Studios, Inc., that ceased to exist.

7. On October 12, 2006, the Administrator received from Mr. Mazzola a license renewal application for Animal Welfare Act license number 31-C-0065, in which Mr. Mazzola changed the licensee's name from "World Animals Studios Inc." to "World Animals Studios" and changed the type of organization from "corporation" to "individual" (CX 1 at 9).

8. By letter dated October 27, 2006, APHIS notified Mr. Mazzola that 9 C.F.R. § 2.5(d) prohibits the transfer of Animal Welfare Act licenses and returned the license renewal application to Mr. Mazzola (CX 1 at 11).

9. On October 27, 2006, and November 1, 2006, Mr. Mazzola submitted additional information to support the renewal of Animal Welfare Act license number 31-C-0065. Specifically, with regard to box 12 on the renewal form pertaining to “social security or tax identification number,” Mr. Mazzola stated the “federal tax id number is my personal federal tax id number.” Mr. Mazzola also stated he had dissolved World Animal Studios, Inc. (CX 1 at 13-14.)

10. After considering Mr. Mazzola’s supplemental information, APHIS notified Mr. Mazzola by letter dated November 15, 2006, that Animal Welfare Act license number 31-C-0065 had not been renewed and was no longer valid (CX 1 at 31).

11. APHIS personnel conducted inspections or attempted to conduct inspections of Mr. Mazzola’s facilities, records, and animals for the purpose of determining Mr. Mazzola’s compliance with the Animal Welfare Act and the Regulations on numerous occasions during the period material to the instant proceeding, December 13, 2003, through December 18, 2007 (CX 8, CX 12-CX 15, CX 17, CX 20, CX 22-CX 23, CX 115, CX 122, CX 133, CX 138).

12. Mr. Mazzola has a medium-sized business under the Animal Welfare Act (Tr. 5592-93, 8021-22).

13. The gravity of Mr. Mazzola’s violations is great. Specifically, Mr. Mazzola repeatedly handled and housed animals in a manner that risked the safety of the animals and members of the public and failed to comply with the Regulations after having been

repeatedly advised of deficiencies. Mr. Mazzola interfered with, threatened, verbally abused, and harassed APHIS officials in the course of carrying out their duties, despite receiving notice that such behavior was unacceptable from the United States Department of Agriculture, Office of the Inspector General. Mr. Mazzola operated as an exhibitor and as a dealer without an Animal Welfare Act license.

14. Although Mr. Mazzola has no history of previous litigated violations, on March 14, 1994, APHIS issued to Mr. Mazzola a warning for Animal Welfare Act violations documented in connection with investigation OH 94-003 AC (Tr. 8042, 8062-64). Moreover, Mr. Mazzola's violations over the period August 19, 2004, through December 18, 2007, reveal a consistent disregard for, and unwillingness to abide by, the requirements of the Animal Welfare Act and the Regulations. Such an ongoing pattern of violations establishes a "history of previous violations" for the purposes of 7 U.S.C. § 2149(b) and lack of good faith.

15. During the period January 8, 2007, through January 11, 2007, Mr. Mazzola operated as an "exhibitor," as that term is defined in the Animal Welfare Act and the Regulations and transported animals for exhibition at the Ohio Fair Managers Convention, Columbus, Ohio, without an Animal Welfare Act license (Tr. 5545, 5707, 7995-8006; CX 107 at 5, CX 108 at 3, CX 171; ALJ's Decision at 51-53; 7 U.S.C. §§ 2132(h), 2134; 9 C.F.R. §§ 1.1, 2.1(a)(1)).

16. On May 18, 2007, and May 19, 2007, Mr. Mazzola operated as an “exhibitor,” as that term is defined in the Animal Welfare Act and the Regulations and transported animals for exhibition at Vito’s Pizza, Toledo, Ohio, without an Animal Welfare Act license (Tr. 3172-83, 3298-3303, 3309-19; CX 115-CX 116, CX 118, CX 164 at 1; ALJ’s Decision at 61-62; 7 U.S.C. §§ 2132(h), 2134; 9 C.F.R. §§ 1.1, 2.1(a)(1)).

17. On July 26, 2007, Mr. Mazzola operated as an “exhibitor,” as that term is defined in the Animal Welfare Act and the Regulations and transported animals for exhibition at the Fayette County Fair, Washington Court House, Ohio, without an Animal Welfare Act license (Tr. 3319-23; CX 122-CX 123; ALJ’s Decision at 62; 7 U.S.C. §§ 2132(h), 2134; 9 C.F.R. §§ 1.1, 2.1(a)(1)).

18. During the period July 31, 2007, through August 5, 2007, Mr. Mazzola operated as an “exhibitor,” as that term is defined in the Animal Welfare Act and the Regulations and transported animals for exhibition at the Hamilton County Fair, Cincinnati, Ohio, without an Animal Welfare Act license (Tr. 3324-32; CX 124-CX 132; ALJ’s Decision at 62; 7 U.S.C. §§ 2132(h), 2134; 9 C.F.R. §§ 1.1, 2.1(a)(1)).

19. On September 27, 2007, Mr. Mazzola operated as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations and offered to sell two skunks (a black and white skunk and an albino skunk) at Animal Zone pet store, Midway Mall,

Elyria, Ohio, without an Animal Welfare Act license (Tr. 3334-38; CX 133-CX 134; ALJ's Decision at 62-63; 7 U.S.C. §§ 2132(f), 2134; 9 C.F.R. §§ 1.1, 2.1(a)(1)).

20. On October 23, 2007, Mr. Mazzola operated as a "dealer," as that term is defined in the Animal Welfare Act and the Regulations and sold a black and white skunk at Animal Zone pet store, Midway Mall, Elyria, Ohio, without an Animal Welfare Act license (Tr. 1685-95; CX 135-CX 136; ALJ's Decision at 62-63; 7 U.S.C. §§ 2132(f), 2134; 9 C.F.R. §§ 1.1, 2.1(a)(1)).

21. During the period December 16, 2007, through December 18, 2007, Mr. Mazzola intended to operate and/or operated as an "exhibitor," as that term is defined in the Animal Welfare Act and the Regulations at Animal Zone pet store, Midway Mall, Elyria, Ohio, without an Animal Welfare Act license (Tr. 3339-47; CX 137-CX 139; ALJ's Decision at 64-72; 7 U.S.C. §§ 2132(h), 2134; 9 C.F.R. §§ 1.1, 2.1(a)(1)).

22. On December 18, 2007, Mr. Mazzola operated as a "dealer," as that term is defined in the Animal Welfare Act and the Regulations and offered to sell an albino skunk at Animal Zone pet store, Midway Mall, Elyria, Ohio, without an Animal Welfare Act license (Tr. 3346; CX 138-CX 139 at 1-3; ALJ's Decision at 72-73; 7 U.S.C. §§ 2132(f), 2134; 9 C.F.R. §§ 1.1, 2.1(a)(1)).

23. On December 13, 2003, Mr. Mazzola threatened APHIS officials while they were carrying out their duties under the Animal Welfare Act. For example, during the

December 13, 2003, inspection, Mr. Mazzola stated, he should beat [Dr. Kirsten's]³ brains out with a baseball bat. (CX 10 at 1-6; ALJ's Decision at 45-47; 9 C.F.R. § 2.4.)

24. On January 14, 2004, in response to Mr. Mazzola's behavior described in Finding of Fact number 23, the United States Department of Agriculture, Office of the Inspector General, advised Mr. Mazzola that such behavior was unacceptable (CX 10 at 7-9; ALJ's Decision at 45-47; 9 C.F.R. § 2.4).

25. During an attempted APHIS inspection, on August 3, 2006, Mr. Mazzola called an APHIS animal care inspector "incompetent" and an "imbecile" that was too "dumb" to conduct an inspection and stated he was suing the United States Department of Agriculture and "would have" the jobs of both the animal care inspector and his supervisor (Tr. 3239-44, 3247-50; CX 22 at 1, CX 54 at 14-17; ALJ's Decision at 45; 9 C.F.R. § 2.4).

26. On August 3, 2006, Mr. Mazzola failed and refused to make his facilities, animals, and records available to APHIS officials for inspection (Tr. 3238-41, 5374-75; CX 22 at 1, CX 54 at 14-17; ALJ's Decision at 38-39; 9 C.F.R. § 2.126(a)).

27. On August 8, 2006, Mr. Mazzola filed a complaint with the United States Department of Agriculture, Office of the Inspector General, charging that Randall Coleman, an APHIS animal care inspector, solicited a bribe during an inspection when, in fact, the inspector had not solicited a bribe from Mr. Mazzola. The Office of the

³Dr. Kirsten is an APHIS supervisory animal care specialist (CX 10 at 3).

Inspector General determined Mr. Mazzola's complaint was baseless. (CX 54 at 1-13; ALJ's Decision at 39-45; 9 C.F.R. § 2.4.)

28. On February 11, 2004, APHIS notified Mr. Mazzola, in writing, of his failure to maintain and make available for inspection a written program of veterinary care and provided Mr. Mazzola with an opportunity to demonstrate or achieve compliance (Tr. 3119-27; CX 12; ALJ's Decision at 35, 37; 9 C.F.R. § 2.40(a)(1)).

29. On March 18, 2006, Mr. Mazzola had no written program of veterinary care available for inspection (Tr. 3207-09; CX 20 at 1; ALJ's Decision at 37-38; 9 C.F.R. § 2.40(a)(1)).

30. On August 8, 2006, Mr. Mazzola had no written program of veterinary care available for inspection (CX 23 at 1; ALJ's Decision at 35, 37-38; 9 C.F.R. § 2.40(a)(1)).

31. On December 13, 2003, APHIS notified Mr. Mazzola, in writing, that, during public exhibition, animals must be handled so there is minimal risk of harm to the animals and the public with sufficient distance and/or barriers between the animals and the public so as to assure the safety of the animals and the public and provided Mr. Mazzola with an opportunity to demonstrate or achieve compliance (CX 8-CX 9, CX 162; ALJ's Decision at 34; 9 C.F.R. § 2.131(b)(1) (2004)).⁴

⁴9 C.F.R. § 2.131(b)(1) (2004) was redesignated 9 C.F.R. § 2.131(c)(1) effective August 13, 2004. See 69 Fed. Reg. 42,089, 42,102 (July 14, 2004).

32. On August 19, 2004, Mr. Mazzola, during public exhibition at the Holmes County Fairgrounds in Millersburg, Ohio, allowed customers to enter the primary enclosure containing an adult black bear without sufficient distance or barriers between the animal and the public (Tr. 3134-40; CX 14, CX 53; ALJ's Decision at 32-34; 9 C.F.R. § 2.131(c)(1)).

33. On March 18, 2005, Mr. Mazzola, during public exhibition at the IX Center in Cleveland, Ohio, allowed customers to enter the primary enclosures containing an adult black bear and two adult tigers without sufficient distance or barriers between the animals and the public (Tr. 3140-42, 3184-88; CX 15 at 1, CX 16; ALJ's Decision at 31-32; 9 C.F.R. § 2.131(c)(1)).

34. On August 16, 2005, Mr. Mazzola, during public exhibition at the Holmes County Fairgrounds in Millersburg, Ohio, allowed customers to enter the primary enclosures containing an adult black bear and an adult tiger without sufficient distance or barriers between the animals and the public (Tr. 3188-99; CX 17-CX 18; ALJ's Decision at 30-31; 9 C.F.R. § 2.131(c)(1)).

35. On March 18, 2006, Mr. Mazzola, during public exhibition at the IX Center in Cleveland, Ohio, allowed the public to enter the primary enclosures containing an adult black bear and an adult tiger without sufficient distance or barriers between the animals and the public (Tr. 3199-3202, 3206-07, 3210-15, 3218-26; CX 20 at 2-3, CX 21; ALJ's Decision at 24-30; 9 C.F.R. § 2.131(c)(1)).

36. On May 12, 2006, Mr. Mazzola, during public exhibition at the Posh Nite Club in Akron, Ohio, allowed customers to enter the primary enclosure containing an adult black bear with no distance or barriers between the animal and the public. Specifically, Mr. Mazzola allowed no fewer than seven customers to wrestle the bear and attempt to pin the bear for a prize of \$1,000. (Tr. 425-35, 440, 593-94; CX 31-CX 33, CX 44-CX 45; ALJ's Decision at 20-22; 9 C.F.R. § 2.131(c)(1).)

37. On May 19, 2006, Mr. Mazzola, during public exhibition at the Posh Nite Club in Akron, Ohio, allowed customers to enter the primary enclosure containing an adult black bear with no distance or barriers between the animal and the public. Specifically, Mr. Mazzola allowed no fewer than nine customers to wrestle the bear and attempt to pin the bear for a prize of \$1,000. (Tr. 103-20; CX 34-CX 36, CX 46, CX 102; ALJ's Decision 20-22; 9 C.F.R. § 2.131(c)(1).)

38. On May 19, 2006, Mr. Mazzola allowed members of the public to have their photographs taken with an adult black bear with no distance or barriers between the animal and the public (CX 36 at 45-48; ALJ's Decision at 22-24; 9 C.F.R. § 2.131(c)(1)).

39. On May 26, 2006, Mr. Mazzola, during public exhibition at the Posh Nite Club in Akron, Ohio, allowed customers to enter the primary enclosure containing an adult black bear with no distance or barriers between the animal and the public. Specifically, Mr. Mazzola allowed no fewer than eight customers to wrestle the bear and

attempt to pin the bear for a prize of \$1,000. (CX 37; ALJ's Decision at 20-22; 9 C.F.R. § 2.131(c)(1).)

40. On August 19, 2004, APHIS notified Mr. Mazzola, in writing, of structural deficiencies in the primary enclosures in which Mr. Mazzola housed animals and provided Mr. Mazzola with an opportunity to demonstrate or achieve compliance (Tr. 3147; CX 14 at 2; ALJ's Decision at 15; 9 C.F.R. § 3.125(a)).

41. On March 18, 2005, Mr. Mazzola housed two adult tigers in open-top enclosures at IX Center in Cleveland, Ohio, that lacked adequate structural integrity and height to contain the animals (Tr. 3146-47, 3185; CX 15 at 2, CX 16 at 4; ALJ's Decision at 16-20; 9 C.F.R. §§ 2.100(a), 3.125(a)).

42. On August 16, 2005, Mr. Mazzola housed an adult black bear and two adult tigers in open-top enclosures at the Holmes County Fairgrounds in Millersburg, Ohio, that lacked adequate structural integrity and height to contain the animals (Tr. 3188-90; CX 17 at 2, CX 18 at 6-7; ALJ's Decision at 16-20; 9 C.F.R. §§ 2.100(a), 3.125(a)).

43. On March 18, 2006, Mr. Mazzola housed an adult black bear and an adult tiger in open-top enclosures at the IX Center in Cleveland, Ohio, that lacked adequate structural integrity and height to contain the animals (Tr. 3199-3201; CX 20 at 4; ALJ's Decision at 16-20; 9 C.F.R. §§ 2.100(a), 3.125(a)).

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction in this matter.
2. During the period January 8, 2007, through January 11, 2007, Mr. Mazzola willfully violated 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a)(1) by operating as an “exhibitor,” as that term is defined in the Animal Welfare Act and the Regulations, and by transporting animals for exhibition at the Ohio Fair Managers Convention, Columbus, Ohio, without a valid Animal Welfare Act license.
3. On May 18, 2007, and May 19, 2007, Mr. Mazzola willfully violated 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a)(1) by operating as an “exhibitor,” as that term is defined in the Animal Welfare Act and the Regulations, and by transporting animals for exhibition at Vito’s Pizza, Toledo, Ohio, without a valid Animal Welfare Act license.
4. On July 26, 2007, Mr. Mazzola willfully violated 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a)(1) by operating as an “exhibitor,” as that term is defined in the Animal Welfare Act and the Regulations, and by transporting animals for exhibition at the Fayette County Fair, Washington Court House, Ohio, without a valid Animal Welfare Act license.
5. During the period July 31, 2007, through August 5, 2007, Mr. Mazzola willfully violated 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a)(1) by operating as an “exhibitor,” as that term is defined in the Animal Welfare Act and the Regulations, and by

transporting animals for exhibition at the Hamilton County Fair, Cincinnati, Ohio, without a valid Animal Welfare Act license.

6. On September 27, 2007, Mr. Mazzola willfully violated 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a)(1) by operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, and offering to sell two skunks (a black and white skunk and an albino skunk) at Animal Zone pet store, Midway Mall, Elyria, Ohio, without a valid Animal Welfare Act license.

7. On October 23, 2007, Mr. Mazzola willfully violated 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a)(1) by operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, and selling a black and white skunk at Animal Zone pet store, Midway Mall, Elyria, Ohio, without a valid Animal Welfare Act license.

8. During the period December 16, 2007, through December 18, 2007, Mr. Mazzola willfully violated 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a)(1) by intending to operate and/or operating as an “exhibitor,” as that term is defined in the Animal Welfare Act and the Regulations, at Animal Zone pet store, Midway Mall, Elyria, Ohio, without a valid Animal Welfare Act license.

9. On December 18, 2007, Mr. Mazzola willfully violated 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a)(1) by operating as a “dealer,” as that term is defined in the Animal Welfare Act and the Regulations, and offering to sell an albino skunk at Animal Zone pet store, Midway Mall, Elyria, Ohio, without a valid Animal Welfare Act license.

10. On August 3, 2006, Mr. Mazzola willfully violated 9 C.F.R. § 2.4 when he called an APHIS animal care inspector “incompetent” and an “imbecile” that was too “dumb” to conduct an inspection and stated he was suing the United States Department of Agriculture and “would have” the jobs of both the APHIS animal care inspector and the inspector’s supervisor.

11. On August 3, 2006, Mr. Mazzola willfully violated 9 C.F.R. § 2.126(a) by failing and refusing to make his facilities, animals, and records available to APHIS officials for inspection.

12. On August 8, 2006, Mr. Mazzola willfully violated 9 C.F.R. § 2.4 by filing a complaint with the United States Department of Agriculture, Office of the Inspector General, charging that Randall Coleman, an APHIS animal care inspector, solicited a bribe during an inspection when, in fact, the inspector had not solicited a bribe from Mr. Mazzola.

13. On March 18, 2006, Mr. Mazzola willfully violated 9 C.F.R. § 2.40(a)(1) by failing to have a written program of veterinary care available for inspection.

14. On August 8, 2006, Mr. Mazzola willfully violated 9 C.F.R. § 2.40(a)(1) by failing to have a written program of veterinary care available for inspection.

15. On August 19, 2004, Mr. Mazzola willfully violated 9 C.F.R. § 2.131(c)(1) during public exhibition at the Holmes County Fairgrounds in Millersburg, Ohio, by allowing customers to enter the primary enclosure containing an adult black bear without

sufficient distance or barriers between the animal and the general viewing public; thereby failing to assure the safety of the animal and the public.

16. On March 18, 2005, Mr. Mazzola willfully violated 9 C.F.R. § 2.131(c)(1) during public exhibition at the IX Center in Cleveland, Ohio, by allowing customers to enter the primary enclosures containing an adult black bear and two adult tigers without sufficient distance or barriers between the animals and the general viewing public; thereby failing to assure the safety of the animals and the public.

17. On August 16, 2005, Mr. Mazzola willfully violated 9 C.F.R. § 2.131(c)(1) during public exhibition at the Holmes County Fairgrounds in Millersburg, Ohio, by allowing customers to enter the primary enclosures containing an adult black bear and an adult tiger without sufficient distance or barriers between the animals and the general viewing public; thereby failing to assure the safety of the animals and the public.

18. On March 18, 2006, Mr. Mazzola willfully violated 9 C.F.R. § 2.131(c)(1) during public exhibition at the IX Center in Cleveland, Ohio, by allowing the public to enter the primary enclosures containing an adult black bear and an adult tiger without sufficient distance or barriers between the animals and the general viewing public; thereby failing to assure the safety of the animals and the public.

19. On May 12, 2006, Mr. Mazzola willfully violated 9 C.F.R. § 2.131(c)(1) during public exhibition at the Posh Nite Club in Akron, Ohio, by allowing customers to enter the primary enclosure containing an adult black bear with no distance or barriers

between the animal and the general viewing public; thereby failing to assure the safety of the animal and the public.

20. On May 19, 2006, Mr. Mazzola willfully violated 9 C.F.R. § 2.131(c)(1) during public exhibition at the Posh Nite Club in Akron, Ohio, by allowing customers to enter the primary enclosure containing an adult black bear with no distance or barriers between the animal and the general viewing public; thereby failing to assure the safety of the animal and the public.

21. On May 19, 2006, Mr. Mazzola willfully violated 9 C.F.R. § 2.131(c)(1) by allowing members of the public to have their photographs taken with an adult black bear with no distance or barriers between the animal and the general viewing public; thereby failing to assure the safety of the animal and the public.

22. On May 26, 2006, Mr. Mazzola willfully violated 9 C.F.R. § 2.131(c)(1) during public exhibition at the Posh Nite Club in Akron, Ohio, by allowing customers to enter the primary enclosure containing an adult black bear with no distance or barriers between the animal and the general viewing public; thereby failing to assure the safety of the animal and the public.

23. On March 18, 2005, Mr. Mazzola willfully violated 9 C.F.R. §§ 2.100(a), 3.125(a) by housing two adult tigers in open-top enclosures at IX Center in Cleveland, Ohio, that lacked adequate structural integrity and height to contain the animals.

24. On August 16, 2005, Mr. Mazzola willfully violated 9 C.F.R. §§ 2.100(a), 3.125(a) by housing an adult black bear and two adult tigers in open-top enclosures at the Holmes County Fairgrounds in Millersburg, Ohio, that lacked adequate structural integrity and height to contain the animals.

25. On March 18, 2006, Mr. Mazzola willfully violated 9 C.F.R. §§ 2.100(a), 3.125(a) by housing an adult black bear and an adult tiger in open-top enclosures at the IX Center in Cleveland, Ohio, that lacked adequate structural integrity and height to contain the animals.

26. Mr. Mazzola is unfit to hold an Animal Welfare Act license and the issuance of an Animal Welfare Act license to Mr. Mazzola would be contrary to the purposes of the Animal Welfare Act.

Mr. Mazzola's Appeal Petition

Mr. Mazzola raises nine issues in his Appeal Petition. First, Mr. Mazzola asserts the ALJ's finding that he exhibited animals at the Ohio Fair Managers Convention during the period January 8, 2007, through January 11, 2007, without an Animal Welfare Act license, is error. Mr. Mazzola asserts APHIS did not provide him notice that his application for an Animal Welfare Act license had been denied prior to the convention and the ALJ found that he first learned of APHIS' denial of his application after the Ohio Fair Managers Convention took place. Mr. Mazzola also claims his appearance at the

Ohio Fair Managers Convention was booked when he had an Animal Welfare Act license. (Appeal Pet. at the 3rd and 4th unnumbered pages.)

The ALJ found APHIS provided Mr. Mazzola with written notice and Mr. Mazzola's claim that he was "out of town" for each of the United States Postal Service's attempted deliveries of the notice denying his application for an Animal Welfare Act license, not credible (ALJ's Decision at 51). Moreover, contrary to Mr. Mazzola's assertion, the ALJ found that APHIS animal care inspector Randall Coleman provided Mr. Mazzola with notice that APHIS denied his license application in advance of Mr. Mazzola's appearance at the Ohio Fair Managers Convention, as follows:

CX-54, page 12, confirms that on January 5, 2007, Mr. Mazzola was notified by Mr. Coleman that the Eastern Regional Office denied the application and had notified Mr. Mazzola by mail.

ALJ's Decision at 51-52. Finally, whether or not Mr. Mazzola booked his appearance at the Ohio Fair Managers Convention while Animal Welfare Act license number 31-C-0065 was issued to World Animal Studios, Inc., is not relevant. The evidence establishes that Mr. Mazzola did not have an Animal Welfare Act license when he operated as an exhibitor at the Ohio Fair Managers Convention (Tr. 5545, 5707, 7995-8006; CX 54 at 12, CX 55, CX 107 at 5, CX 108 at 3, CX 171). Therefore, I reject Mr. Mazzola's assertion that the ALJ's finding that he operated as an exhibitor without an Animal Welfare Act license during the period January 8, 2007, through January 11, 2007, at the Ohio Fair Managers Convention, is error.

Second, Mr. Mazzola asserts the ALJ's finding that he violated the Animal Welfare Act by intending to exhibit animals and transporting animals for exhibition purposes, at the Cleveland Sport, Travel & Outdoor Show, Cleveland, Ohio, on March 14, 2007, without an Animal Welfare Act license, is error (Appeal Pet. at the 4th and 5th unnumbered pages).

The ALJ made no such finding; instead, the ALJ found the Administrator did not prove that Mr. Mazzola violated the Animal Welfare Act on March 14, 2007 (ALJ's Decision at 59-61).

Third, Mr. Mazzola asserts the ALJ's finding that he exhibited animals at Vito's Pizza, on May 18, 2007, and May 19, 2007, without an Animal Welfare Act license, is error. Mr. Mazzola argues Steve Clark admitted he was the exhibitor. Mr. Mazzola also argues the Administrator never introduced a check issued to Mr. Mazzola by Vito's Pizza, and an APHIS investigator instructed Steve Clark on how to conduct this exhibit and remain in compliance with the Animal Welfare Act. (Appeal Pet. at the 5th unnumbered page.)

The ALJ correctly found Mr. Mazzola was at Vito's Pizza and Steve Clark was "merely a cover" for Mr. Mazzola's own exhibition, as follows:

I also understand, particularly from Dr. Goldentyer's testimony why when it is Mr. Mazzola's animals, and I remember the photograph showing Mr. Mazzola's truck with Mr. Mazzola's company names and the like, that

the use of Mr. Clark's privilege to exhibit was merely a cover, I'll call it, for Mr. Mazzola to exhibit.

ALJ's Decision at 61.

Moreover, Mr. Mazzola's claim that the Administrator did not introduce checks that Vito's Pizza issued to him, is not accurate. The Administrator introduced a 3-page document, CX 164, which included a cover sheet stating, "3 pages of FAX regarding copies of checks for hiring the bear through Sam Mazzola and Steve Clark" (CX 164 at 1); a check dated May 19, 2007 issued to "Billy West III" described by Mr. Mazzola as his "frontman" (CX 138, CX 164 at 2); and a check dated April 21, 2007, issued to "Sam Mazzola" (CX 164 at 3). Mr. Mazzola objected to the admission of CX 164 at 2-3 not because he denied receiving payment from Vito's Pizza, but because the checks he received from Vito's Pizza "were handwritten checks" rather than electronically produced (Tr. 3161). Although, the ALJ admitted into evidence only the cover sheet (Tr. 3176-77; CX 164 at 1), she correctly drew an adverse inference from Mr. Mazzola's refusal to comply with a subpoena she issued requiring Mr. Mazzola to produce documents related to his exhibition of animals:

I also find that the adverse inference from failing to supply the documents in response to the subpoenas or subpoena is particularly important here. We had some printouts from a bank or something in regard to this, as I recall. I didn't find it was persuasive because we didn't have

the full documents. So the failure of Mr. Mazzola to bring his documents is even more problematic.

ALJ's Decision at 62. Even if I were to find the record contained no evidence that Mr. Mazzola received checks from Vito's Pizza (which I do not so find), Mr. Mazzola still violated the Animal Welfare Act because the term "exhibitor" includes animal acts like Mr. Mazzola's animal act, regardless of "whether operated for profit or not."⁵

Moreover, I find no credible evidence to support Mr. Mazzola's claim that an APHIS investigator instructed Steve Clark on how to exhibit animals at Vito's Pizza in compliance with the Animal Welfare Act. Mr. Mazzola testified about a conversation between Steve Clark and Carl LaLonde, an APHIS investigator, to which Mr. Mazzola was not privy (Tr. 5610-11). Mr. Mazzola failed to call Steve Clark as a witness to corroborate his testimony, and Carl LaLonde testified that he advised Steve Clark against "employing" Mr. Mazzola in order to exhibit Mr. Mazzola's animals (Tr. 4048-49). Even if APHIS investigator Carl LaLonde had provided erroneous advice to Mr. Mazzola (and Mr. Mazzola admits that Carl LaLonde provided no advice directly to him), such advice

⁵9 C.F.R. § 1.1. Mr. Mazzola's exhibition of animals also meets the definition of "zoo" and, thus, is regulated under the Animal Welfare Act regardless of compensation (9 C.F.R. § 1.1; 7 U.S.C. § 2132(h)). *See also In re James Petersen*, 53 Agric. Dec. 80, 90-91 (1994) (explaining that "zoos are regarded as exhibitors, regardless of compensation" and citing the 1970 Animal Welfare Act amendments, which expanded the coverage of the Animal Welfare Act to include exhibitors such as circuses, zoos, carnivals, and road shows).

would not absolve Mr. Mazzola of his violations.⁶ In any event, the record establishes that APHIS provided written notice to Mr. Mazzola, Steve Clark, and Vito's Pizza, in advance of the Vito's Pizza exhibition, regarding APHIS' concern that Mr. Mazzola sought to exhibit animals unlawfully (CX 113, CX 142 at 35, 38-39; Tr. 2269-74). Nevertheless, Mr. Mazzola continued with his animal exhibition at Vito's Pizza (Tr. 3172-83, 3298-3303, 3309-19; CX 115-CX 116, CX 118, CX 164 at 1).

Fourth, Mr. Mazzola asserts the ALJ's findings that he exhibited animals at the Fayette County Fair on July 26, 2007, and the Hamilton County Fair during the period July 31, 2007, through August 5, 2007, without an Animal Welfare Act license, are error. Mr. Mazzola admits he did exhibit at these two venues, but argues his filing a motion for reinstatement of Animal Welfare Act license number 31-C-0065 demonstrates a "true attempt to stay within compliance." Mr. Mazzola also states the ALJ never ruled on his motion for reinstatement of Animal Welfare Act license number 31-C-0065. (Appeal Pet. at the 5th and 6th unnumbered pages.)

As an initial matter, Mr. Mazzola did not file the "Motion to Order Reinstatement of 31-C-0065" until February 19, 2008, more than 6 months after the Fayette County Fair and the Hamilton County Fair. Therefore, I conclude Mr. Mazzola's February 19, 2008,

⁶See *In re John D. Davenport*, 57 Agric. Dec. 189, 227 (1998) (stating a respondent acts at his peril if he relies on erroneous advice from a federal employee; it is well settled that individuals are bound by federal statutes and regulations irrespective of advice of federal employees) (citing *FCIC v. Merrill*, 332 U.S. 380, 382-86 (1947)).

filing cannot be a “true attempt to stay in compliance” with the Animal Welfare Act and the Regulations on July 26, 2007, and during the period July 31, 2007, through August 5, 2007. Moreover, a “true attempt to stay in compliance” with the Animal Welfare Act and the Regulations is not “compliance” with the Animal Welfare Act and the Regulations. Therefore, even if I were to conclude that Mr. Mazzola’s filing the Motion to Order Reinstatement of 31-C-0065 constitutes a “true attempt to stay in compliance,” I would not find his filing the motion a defense to his violations of the Animal Welfare Act and the Regulations.

I note the ALJ treated Mr. Mazzola’s Motion to Order Reinstatement of 31-C-0065, which was filed 13 days prior to the commencement of the hearing, as an opening brief (Order Treating Mazzola Motion as Opening Brief, filed Feb. 21, 2008). I do not find the ALJ’s treatment of Mr. Mazzola’s Motion to Order Reinstatement of 31-C-0065, error.

Fifth, Mr. Mazzola asserts the ALJ’s findings that he unlawfully operated as a dealer by offering to sell and by selling skunks and exhibiting tigers at Animal Zone, are error. Specifically, Mr. Mazzola argues he holds an “Ohio propagator permit to sell native Ohio wildlife”; Bill Coburn (who holds an Animal Welfare Act license) owned the skunks; and Billy West owned Animal Zone. (Appeal Pet. at the 6th and 7th unnumbered pages.)

Mr. Mazzola presented no evidence (aside from his own testimony) to support his claims that Mr. Coburn owned the skunks and Mr. West owned Animal Zone.

Mr. Mazzola did not call Mr. Coburn or Mr. West as witnesses, did not introduce any documentary evidence regarding his arrangements with Mr. Coburn or Mr. West, and did not produce documents in response to the ALJ's subpoena regarding these activities. Even if he had, nothing in the Animal Welfare Act limits the definition of "dealer" or "exhibitor" to persons who "own" animals. (7 U.S.C. § 2132(f), (h).) Moreover, Mr. Mazzola cites no law or regulation that exempts him from the Animal Welfare Act's licensing requirements because he holds an Ohio propagator permit, and I am unable to find any such law or regulation.

The evidence supports the ALJ's finding that Mr. Mazzola operated as a dealer and exhibitor at Animal Zone. Beginning in November 2006, APHIS repeatedly notified Mr. Mazzola that he could not exhibit animals without an Animal Welfare Act license (CX 1 at 31, CX 54 at 12-13, CX 55-CX 57, CX 115, CX 122, CX 126, CX 142 at 35, 42) and, in July 2007, notified Mr. Mazzola that he may not sell skunks at his pet store without an Animal Welfare Act license (CX 122). Nevertheless, on September 27, 2007, Mr. Mazzola offered skunks for sale at his pet store (Tr. 3334-38; CX 133-CX 134) and later, on October 23, 2007, sold one of the skunks to Mike Summers (Tr. 1685-95; CX 135-CX 136). The Exotic Animal Sales Agreement for this skunk expressly identifies "World Animal Studios, Inc (Sam Mazzola)" as the breeder (not

Mr. Coburn)—belying Mr. Mazzola’s claim that the skunk was on consignment (CX 135). Moreover, Mr. Mazzola does not deny that a skunk was available for sale and that tigers were on exhibit at his pet store in December 2007.

Seventh, Mr. Mazzola asserts the ALJ’s finding that he refused to allow an APHIS official to inspect his animals, facilities, and records, is error. Specifically, Mr. Mazzola asserts there is no evidence of this violation, argues he was “within my rights to refuse inspector Randy Coleman to inspect,” states APHIS animal care inspector Randall Coleman solicited a bribe from him, and contends the violation is “null and void” because he “signed papers with [the Office of the Inspector General]” stating that he “would not be held liable for offering money or any other part of investigation.” (Appeal Pet. at the 7th through 9th unnumbered pages.)

Mr. Mazzola does not deny that he refused to allow APHIS animal care inspector Randall Coleman to inspect his animals on August 3, 2006. Instead, Mr. Mazzola argues, without citation to any authority, that he was within his rights to refuse to allow Randall Coleman to inspect and that the inspection was never refused because he asked Dr. Harlen to inspect instead of Randall Coleman (Appeal Pet. at the 8th unnumbered page). I have long held that a dealer’s or an exhibitor’s refusal to allow inspection by a particular APHIS official constitutes a refusal of inspection in violation of 9 C.F.R. § 2.126(a), even if the dealer or exhibitor is willing to allow another APHIS official to

conduct the inspection.⁷ Moreover, the ALJ's finding that Mr. Mazzola refused to allow APHIS animal care inspector Randall Coleman to conduct an inspection on August 3, 2006 (ALJ's Decision at 38-39), is fully supported by the evidence (Tr. 3238-41, 5374-75; CX 22 at 1, CX 54 at 14-17). Therefore, I reject Mr. Mazzola's assertion that the ALJ's conclusion that he violated 9 C.F.R. § 2.126(a) on August 3, 2006, is error.

Moreover, Mr. Mazzola cites nothing in the record (aside from his own testimony) to support his claim that Randall Coleman solicited a bribe from him during the attempted inspection on August 3, 2006. Although Mr. Mazzola claims there were "two witnesses to this conversation" (Appeal Pet. at the 8th unnumbered page), Mr. Mazzola failed to call either one of them as a witness during the hearing. The Office of the Inspector General investigated Mr. Mazzola's claim of soliciting a bribe and found the claim baseless (CX 54 at 1-13). After a review of the record, I find no basis for reversing the ALJ's finding that Mr. Mazzola's claim that Randall Coleman solicited a bribe from Mr. Mazzola, is false (ALJ's Decision at 39-45).

Further still, nothing in the record supports Mr. Mazzola's claim that this violation is "null and void" because he "signed papers with [the Office of the Inspector General]" stating that he "would not be held liable for offering money or any other part of

⁷See *In re Judie Hansen*, 57 Agric. Dec. 1072, 1122-23 (1998), (stating, since a respondent may not choose her inspector, the respondent's refusal to allow a particular APHIS official to inspect is a violation of 9 C.F.R. § 2.126, even if the respondent had been willing to allow another APHIS official to conduct the inspection).

investigation” (Appeal Pet. at the 9th unnumbered page). Mr. Mazzola introduced no evidence from the Office of the Inspector General even though he identified an Office of the Inspector General inspector as a potential witness (Respondent’s List of Witnesses and Exhibits, filed Jan. 18, 2007). Even if Mr. Mazzola had introduced an agreement stating that he “would not be held liable for offering money or any other part of investigation,” such agreement would not exculpate him from violations of the Animal Welfare Act and the Regulations.

Eighth, Mr. Mazzola asserts the ALJ’s findings that he failed to make his written program of veterinary care available to APHIS officials for inspection, are error. Specifically, Mr. Mazzola argues he had a “hard cover book . . . at each and every inspection” and that during “[o]ne inspection its [sic] fine the next the same book is not.” (Appeal Pet. at the 9th and 10th unnumbered pages.)

The record supports the ALJ’s findings that Mr. Mazzola violated the Regulations by failing to make a written program of veterinary care available for inspection on March 18, 2006, and August 8, 2006 (Tr. 3207-09; CX 20 at 1, CX 23 at 1). Mr. Mazzola cites no evidence supporting his theory that APHIS officials alternately accepted and rejected his written program of veterinary care. Therefore, I reject Mr. Mazzola’s contention that the ALJ’s conclusions that he violated 9 C.F.R. § 2.40(a)(1) on March 18, 2006, and August 8, 2006, are error.

Ninth, Mr. Mazzola asserts the ALJ's findings that he violated the handling regulations when he allowed members of the public to wrestle his bear and allowed members of the public to be photographed with his adult black bear and adult tiger without any distance or barriers, are error. Specifically, Mr. Mazzola argues that the ALJ's decision is inconsistent with her decision in another case, that 9 C.F.R. § 2.131 refers to two separate "publics" and allows "touching an animal," that numerous people have wrestled his bear "without serious injury" and have been photographed "with bears, lions, tigers, and other animals without any injuries," that he never received an official warning from any APHIS supervisor that APHIS wanted his business to change or close, and that the ALJ was wrongly influenced by Ms. Juarez, who coached witnesses. (Appeal Pet. at the 10th through 12th unnumbered pages.)

Mr. Mazzola's reliance on the ALJ's decision in *In re Bridgeport Nature Center, Inc.*, AWA Docket No. 00-0032, is misplaced. I issued an order directing the ALJ to "issue a complete decision addressing all the issues in the proceeding, including the question of violations." *In re Bridgeport Nature Center, Inc.* (Remand Order), ___ Agric. Dec. ___, slip op. at 4 (Jan. 18, 2008). The ALJ has not yet issued a decision in *Bridgeport* following my issuance of the Remand Order. In any event, in her Decision in the instant proceeding, the ALJ acknowledges that she previously "misunderstood" APHIS' interpretation of the handling regulations:

. . . I looked at the phrase "public" as it is contained in Section 2.131(c)(1) of Title 9 of the Code of Federal Regulations; and the other

phrase, “general viewing public,” and I assumed that because they were different, that they were meant to refer to different subsets. I now know otherwise. I know now that APHIS uses them interchangeably and with good reason.

ALJ’s Decision at 11-13. Thus, regardless of what the ALJ may have tentatively found in *Bridgeport*, here she found that Mr. Mazzola repeatedly violated the handling regulations by failing to provide sufficient distance and/or barriers between his animals and the public (ALJ’s Decision at 20-35).

Mr. Mazzola’s interpretation of the handling regulations to require distance and/or barriers between animals and the “general viewing public,” but not the “public” who are the “people participating in the [e]vent by touching an animal,” is inconsistent with the evidence and case law. (Appeal Pet. at 10th unnumbered page.) In 1989, when APHIS proposed the current version of 9 C.F.R. § 2.131(c)(1), APHIS expressly stated that exhibitors have “no right” to allow direct contact between dangerous animals (like large felids and adult bears) and “the public.” (49 Fed. Reg. 10,835, 10,880 (Mar. 15, 1989); CX 169.) Thus the regulatory history, the testimony of APHIS officials, and United States Department Agriculture decisions show that APHIS treats “public” and “general viewing public” synonymously for purposes of interpreting and enforcement of 9 C.F.R. § 2.131(c)(1).⁸ Moreover, contrary to Mr. Mazzola’s assertion that the “public” is exempt

⁸49 Fed. Reg. at 10,880 (Mar. 15, 1989); Tr. 1023-25, 1029-31; *In re The International Siberian Tiger Foundation*, 61 Agric. Dec. 53, 78 (2002) (“Respondents’ lions and tigers are simply too large, too strong, too quick, and too unpredictable for a
(continued...)”)

from the requirements of 9 C.F.R. § 2.131(c)(1), the United States Court of Appeals for the Fourth Circuit has upheld APHIS' interpretation of 9 C.F.R. § 2.131(c)(1) to require distance and/or barriers between juvenile and adult big cats and the public (including customers involved in photographic sessions). *Antle v. Johanns*, 264 F. App'x 271, 2008 WL 398864 (4th Cir. Feb. 12, 2008) (per curiam) (CX 151). The Fourth Circuit affirmed the United States District Court for the District of South Carolina's decision which held:

In light of the text of 9 C.F.R. § 2.131, specifically the requirement in subsection (c)(1) of "sufficient distance and/or barriers between the [photographed] animal and the general viewing public," the Court is not prepared to conclude the Department of Agriculture's interpretation is unreasonable.

Antle v. Johanns, No. 4:06-1008, 2007 WL 5209982 at **8-9 (D.S.C. June 5, 2007) (CX 150).

Moreover, whether or not Mr. Mazzola's customers sustained injuries in connection with his exhibitions is not relevant to determining whether Mr. Mazzola violated 9 C.F.R. § 2.131(c)(1). Injuries sustained by members of the public who have

⁸(...continued)
person (or persons) to restrain the animal or for a member of the public in contact with one of the lions or tigers to have the time to move to safety. . . . Given the size, quickness, strength, and unpredictability of Respondents' animals, Respondents should have known that some distance or barrier between Respondents' animals and the general viewing public is necessary so as to assure the safety of Respondents' animals and the public."); *In re William Joseph Vergis*, 55 Agric. Dec. 148, 154 (1996) ("The record clearly demonstrates that Respondent, in willful violation of 9 C.F.R § 2.131(b)(1), failed to handle Sarang so that there was minimal risk of harm to Sarang, Ms. Revella, and other members of the public").

direct contact with dangerous animals are the consequences of an exhibitor's failure to comply with 9 C.F.R. § 2.131(c)(1) and are not the basis for finding violations of 9 C.F.R. § 2.131(c)(1). *In re The International Siberian Tiger Foundation*, 61 Agric. Dec. 53, 86 (2002).

Mr. Mazzola also claims he never received a warning from any APHIS supervisor that APHIS wanted his business to change or close.⁹ As an initial matter, because Mr. Mazzola's violations of 9 C.F.R. § 2.131 were willful and involved public safety and health, Mr. Mazzola's disqualification from obtaining an Animal Welfare Act license (based on these violations) is excepted from the Administrative Procedure Act's requirement that notice and opportunity to demonstrate or achieve compliance be provided (5 U.S.C. § 558(c)). Even if I were to find that APHIS was required to provide Mr. Mazzola with notice and opportunity to demonstrate compliance, Mr. Mazzola cites no law or regulation requiring that an APHIS supervisory official provide such notice. In any event, the record establishes that APHIS provided Mr. Mazzola notice of its interpretation of 9 C.F.R. § 2.131(c)(1) and an opportunity to demonstrate compliance (CX 8, CX 14-CX 15, CX 17, CX 20, CX 42, CX 87-CX 88, CX 106, CX 166;

⁹On at least six occasions, Mr. Mazzola acknowledged receiving the Regulations, including 9 C.F.R. § 2.131(c)(1), which has remained unchanged since 1989, 54 Fed. Reg. 36,123 (Aug. 31, 1989), and represented that he was in compliance with them (CX 1 at 1-5, 9) ("I hereby acknowledge receipt of and certify to the best of my knowledge I am in compliance with all the regulations and standards in 9 CFR, Subpart A, Parts 1, 2 and 3.").

Tr. 3113-17, 6394-97, 6723-24), including written notice from a supervisory official: Dr. Kay Carter-Corker, Animal Care, Assistant Regional Director — Eastern Region (CX 162).

I find no basis in the record that supports Mr. Mazzola's claim that the ALJ was wrongly influenced by Ms. Juarez and that Ms. Juarez was "coaching" witnesses.

**Mr. Mazzola's Motion To Reinstate
Animal Welfare Act License Number 31-C-0065**

On December 30, 2008, Mr. Mazzola filed a motion to reinstate World Animal Studios, Inc.'s Animal Welfare Act license number 31-C-0065, which expired November 15, 2006 (CX 1 at 12). The Ohio Secretary of State canceled the articles of incorporation (or license to do business in Ohio) for World Animal Studios, Inc., effective February 20, 1999, and informed Mr. Mazzola that continuation of business as a corporation after February 20, 1999, would be in violation of the law (CX 3 at 10). Mr. Mazzola admits that he dissolved World Animal Studios, Inc. (CX 1 at 13), and Mr. Mazzola failed to provide APHIS with the license renewal application and renewal fee before the expiration of Animal Welfare Act license number 31-C-0065. Therefore, I deny Mr. Mazzola's motion that I reinstate World Animal Studios, Inc.'s Animal Welfare Act license number 31-C-0065.

The Administrator's Cross-Appeal

The Administrator raises three issues in "Complainant's Opposition to Respondent's Appeal Petition, Response to Respondent's Motion to the Judicial Officer Seeking Reinstatement of Animal Welfare Act License 31-C-0065 and Cross-Appeal"

[hereinafter Cross-Appeal]. First, the Administrator contends the ALJ erroneously failed to find that Mr. Mazzola operated as an exhibitor on March 14, 2007, and that Mr. Mazzola transported animals for exhibition on March 14, 2007, without an Animal Welfare Act license, in willful violation of 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a)(1), as alleged in paragraph 19 of the Second Amended Complaint (Cross-Appeal at 23-28).

I have reviewed the Administrator's evidence that Mr. Mazzola willfully violated 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a)(1) on March 14, 2007, and, while I find some evidence to support the Administrator's allegation, I do not find the evidence strong enough to justify reversal of the ALJ's dismissal of paragraph 19 of the Second Amended Complaint.

Second, the Administrator contends the ALJ erroneously excluded from evidence CX 165, a compact disc containing a television broadcast concerning Mr. Mazzola's involvement in the exhibition and transportation of animals on March 14, 2007, as alleged in paragraph 19 of the Second Amended Complaint (Cross-Appeal at 28).

The ALJ excluded CX 165 (Tr. 3060-72) because it "muddies my case rather than assists it." (Tr. 3071.) I have reviewed CX 165 and find it relevant, material, and not unduly repetitious. Therefore, I reverse the ALJ and admit CX 165 into evidence. However, even with the admission of CX 165, I do not find the evidence of the violation alleged in paragraph 19 of the Second Amended Complaint sufficient to reverse the ALJ's dismissal of paragraph 19 of the Second Amended Complaint.

Third, the Administrator contends the ALJ's assessment of only a \$13,950 civil penalty against Mr. Mazzola, is error (Cross-Appeal at 28-44).

Administrative law judges and the Judicial Officer have significant discretion when imposing a civil penalty under the Animal Welfare Act. The Animal Welfare Act provides that the Secretary of Agriculture may assess a civil penalty of not more than \$3,750 for each violation of the Animal Welfare Act or the Regulations (7 U.S.C. § 2149(b)).¹⁰ The United States Department of Agriculture's sanction policy provides that the administrative law judges and the Judicial Officer must give appropriate weight to sanction recommendations of administrative officials, as follows:

[T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

In re S.S. Farms Linn County, Inc. (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991). The Administrator recommended the assessment of a \$35,000 civil penalty against Mr. Mazzola (Tr. 8047). However, I have

¹⁰Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), the Secretary of Agriculture, effective September 2, 1997, adjusted the civil penalty that may be assessed under 7 U.S.C. § 2149(b) for each violation of the Animal Welfare Act and the Regulations by increasing the maximum civil penalty from \$2,500 to \$2,750 (7 C.F.R. § 3.91(b)(2)(v) (2005)). Subsequently, the Secretary of Agriculture adjusted the civil penalty that may be assessed under 7 U.S.C. § 2149(b) for each violation of the Animal Welfare Act and the Regulations occurring after June 23, 2005, by increasing the maximum civil penalty from \$2,750 to \$3,750 (7 C.F.R. § 3.91(b)(2)(ii) (2006)).

repeatedly stated the recommendations of administrative officials as to the sanction are not controlling, and, in appropriate circumstances, the sanction imposed may be considerably less, or different, than that recommended by administrative officials.¹¹

With respect to the civil penalty, the Secretary of Agriculture is required to give due consideration 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.¹²

Mr. Mazzola operated a medium-sized business (Tr. 5592-93, 8021-22).

Mr. Mazzola's violations during the period August 19, 2004, through December 18, 2007, reveal a consistent disregard for, and unwillingness to abide by, the requirements of the Animal Welfare Act and the Regulations. Mr. Mazzola's ongoing pattern of violations establishes a "history of previous violations" for the purposes of 7 U.S.C. § 2149(b) and a lack of good faith. Moreover, many of Mr. Mazzola's violations of the Animal Welfare Act and the Regulations are serious violations. Mr. Mazzola's operation as a dealer and exhibitor without an Animal Welfare Act license; Mr. Mazzola's interference with APHIS officials carrying out duties under the Animal Welfare Act; and Mr. Mazzola's

¹¹*In re Lorenza Pearson*, __ Agric. Dec. __, slip op. at 69 (July 13, 2009); *In re Amarillo Wildlife Refuge, Inc.*, __ Agric. Dec. __, slip op. at 16 (Jan. 6, 2009); *In re Alliance Airlines*, 64 Agric. Dec. 1595, 1608 (2005); *In re Mary Jean Williams* (Decision as to Deborah Ann Milette), 64 Agric. Dec. 364, 390 (2005); *In re Geo. A. Heimos Produce Co.*, 62 Agric. Dec. 763, 787 (2003), *appeal dismissed*, No. 03-4008 (8th Cir. Aug. 31, 2004); *In re Excel Corp.*, 62 Agric. Dec. 196, 234 (2003), *enforced as modified*, 397 F.3d 1285 (10th Cir. 2005); *In re Steven Bourk* (Decision as to Steven Bourk and Carmella Bourk), 61 Agric. Dec. 25, 49 (2002).

¹²See 7 U.S.C. § 2149(b).

refusal to make his facilities, animals, and records available to APHIS officials for inspection are particularly egregious violations because they thwart the ability of the Secretary of Agriculture to carry out the purposes of the Animal Welfare Act.

After examining all the relevant circumstances, in light of the United States Department of Agriculture's sanction policy, and taking into account the requirements of 7 U.S.C. § 2149(b), and the remedial purposes of the Animal Welfare Act, I conclude assessment of a \$21,000 civil penalty is appropriate and necessary to ensure Mr. Mazzola's compliance with the Animal Welfare Act and the Regulations in the future, to deter others from violating the Animal Welfare Act and the Regulations, and to fulfill the remedial purposes of the Animal Welfare Act. Specifically, I assess Mr. Mazzola a civil penalty of: (1) \$2,000 for each of the five periods during which he operated as an exhibitor without an Animal Welfare Act license, in violation of 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a)(1) (Conclusion of Law number 2 - January 8, 2007, through January 11, 2007; Conclusion of Law 3 - May 18, 2007, and May 19, 2007; Conclusion of Law number 4 - July 26, 2007; Conclusion of Law number 5 - July 31, 2007, through August 5, 2007; and Conclusion of Law number 8 - December 16, 2007, through December 18, 2007); (2) \$500 for each instance in which Mr. Mazzola sold or offered to sell skunks without an Animal Welfare Act license, in violation of 7 U.S.C. § 2134 and 9 C.F.R. § 2.1(a)(1) (Conclusion of Law number 6 - September 27, 2007; Conclusion of Law number 7 - October 23, 2007; and Conclusion of Law number 9 - December 18,

2007); (3) \$2,000 for one of the two instances in which Mr. Mazzola interfered with an APHIS official carrying out his duties under the Animal Welfare Act, in violation of 9 C.F.R. § 2.4 (Conclusion of Law number 10 - August 3, 2006); (4) \$2,000 for Mr. Mazzola's failure to make his facility, animals, and records available to APHIS officials for inspection, in violation of 9 C.F.R. § 2.126 (Conclusion of Law number 11 - August 3, 2006); (5) \$300 for each instance in which Mr. Mazzola had no written program of veterinary care available for inspection, in violation of 9 C.F.R. § 2.40(a)(1) (Conclusion of Law number 13 - March 18, 2006; and Conclusion of Law number 14 - August 8, 2006); (6) \$500 for each day during which Mr. Mazzola allowed members of the public to enter a primary enclosure with animals, in violation of 9 C.F.R. § 2.131(c)(1) (Conclusion of Law number 15 - August 19, 2004; Conclusion of Law number 16 - March 18, 2005; Conclusion of Law number 17 - August 16, 2005; Conclusion of Law number 18 - March 18, 2006; Conclusion of Law number 19 - May 12, 2006; Conclusion of Law number 20 - May 19, 2006; and Conclusion of Law number 22 - May 26, 2006); (7) \$500 for each instance in which Mr. Mazzola allowed members of the public to be photographed with an animal with no distance or barriers between the animal and the members of the public, in violation of 9 C.F.R. § 2.131(c)(1) (Conclusion of Law number 21 - May 19, 2006); and (8) \$300 for each instance in which Mr. Mazzola housed an animal in an enclosure that lacked structural integrity and height to contain the animal, in violation of 9 C.F.R. § 3.125(a) (Conclusion of Law number 23 -

March 18, 2005; Conclusion of Law number 24 - August 16, 2005; and Conclusion of Law number 25 - March 18, 2006). I did not assess Mr. Mazzola a civil penalty for his filing a complaint with the United States Department of Agriculture, Office of the Inspector General, because I do not want to impose a sanction that would in any way discourage the public from reporting fraud, waste, abuse, or criminal activity to the United States Department of Agriculture, Office of the Inspector General. Instead, my Order instructs Mr. Mazzola to cease and desist from filing any false charge with the United States Department of Agriculture, Office of the Inspector General, in an effort to interfere with any APHIS official in the course of carrying out his or her duties under the Animal Welfare Act.

For the foregoing reasons, the following Order is issued.

ORDER

1. Mr. Mazzola, his agents, 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, in particular, shall cease and desist from:
 - a. operating as an exhibitor without an Animal Welfare Act license;
 - b. operating as a dealer without an Animal Welfare Act license;
 - c. interfering with, threatening, abusing, or harassing any APHIS official in the course of carrying out his or her duties under the Animal Welfare Act;

- d. filing any false charge with the United States Department of Agriculture, Office of the Inspector General, in an effort to interfere with any APHIS official in the course of carrying out his or her duties under the Animal Welfare Act;
- e. failing or refusing to make facilities, animals, and records available to an APHIS official for inspection;
- f. failing to have a written program of veterinary care available for inspection;
- g. allowing a member of the public to enter a primary enclosure containing an adult bear or an adult tiger without sufficient distance or barriers between the animals and the public so as to assure the safety of the animals and the public; and
- h. housing any bear or tiger in an enclosure that lacks adequate structural integrity and height to contain the animal.

Paragraph 1 of this Order shall become effective 1 day after service of this Order on Mr. Mazzola.

2. Animal Welfare Act license number 31-C-0065 is revoked.

Paragraph 2 of this Order shall become effective 60 days after service of this Order on Mr. Mazzola.

3. Mr. Mazzola is permanently disqualified from obtaining a license under the Animal Welfare Act and the Regulations.

Paragraph 3 of this Order shall become effective immediately upon service of this Order on Mr. Mazzola.

4. Mr. Mazzola is assessed a \$21,000 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:

Babak Rastgoufard
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, Babak Rastgoufard within 60 days after service of this Order on Mr. Mazzola. Mr. Mazzola shall state on the certified check or money order that payment is in reference to AWA Docket No. 06-0010.

5. Mr. Mazzola's Petition opposing APHIS' denial of Mr. Mazzola's November 1, 2006, Animal Welfare Act license application, is denied.

Paragraph 5 of this Order shall become effective immediately upon service of this Order on Mr. Mazzola.

RIGHT TO JUDICIAL REVIEW

Mr. Mazzola has the right to seek judicial review of the Order in this Decision and Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341-2350. Mr. Mazzola must seek judicial review within 60 days after entry of the Order in this Decision and Order.¹³ The date of entry of the Order in this Decision and Order is November 24, 2009.

Done at Washington, DC

November 24, 2009

William G. Jenson
Judicial Officer

¹³7 U.S.C. § 2149(c).