

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,))	Order Denying Petition for
)	Reconsideration and Ruling Denying
Petitioner))	Motion for Oral Argument

PROCEDURAL HISTORY

On November 24, 2009, I issued a Decision and Order in which I found that Sam Mazzola violated the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; and the regulations and standards issued under the

Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations].¹ On January 25, 2010, Mr. Mazzola filed a timely request that I reconsider my November 24, 2009, Decision and Order, and a motion for oral argument on his petition for reconsideration [hereinafter Petition for Reconsideration].² On February 17, 2010, the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], filed “Complainant’s Opposition to Respondent’s Petition for Reconsideration.”

Petitions for reconsideration should be used sparingly. The purpose of a petition for reconsideration is to seek correction of manifest errors of law or fact. Petitions for reconsideration are not to be used as vehicles merely for registering disagreement with the Judicial Officer’s decisions. A petition for reconsideration is only granted, absent highly unusual circumstances, if the Judicial Officer has committed error or if there is an intervening change in the controlling law. Based upon my review of the record, in light of the issues raised by Mr. Mazzola in his Petition for Reconsideration, I find no error of fact or law necessitating modification of the November 24, 2009, Decision and Order. Moreover, Mr. Mazzola does not assert an intervening change in controlling law, and I find no highly unusual circumstances necessitating modification of the November 24,

¹*In re Sam Mazzola*, __ Agric. Dec. __ (Nov. 24, 2009).

²See *In re Sam Mazzola* (Order Vacating Order Denying Pet. to Reconsider and Ruling Denying Mot. for Oral Argument), __ Agric. Dec. __ (Mar. 1, 2010) (discussing the basis for my conclusion that Mr. Mazzola’s January 25, 2010, Petition for Reconsideration was timely).

2009, Decision and Order. Therefore, I deny Mr. Mazzola's Petition for Reconsideration.

I note that the rules of practice applicable to the instant proceeding³ do not require a petition for reconsideration in order to exhaust administrative remedies. Therefore, review by the appropriate judicial forum is available without a party seeking reconsideration by the Judicial Officer. (7 C.F.R. § 1.145(i).)

DISCUSSION BY THE JUDICIAL OFFICER ON RECONSIDERATION

Mr. Mazzola raises eight issues in his Petition for Reconsideration. First, Mr. Mazzola contends he did not receive notice of the Animal and Plant Health Inspection Service's [hereinafter APHIS] denial of his October 12, 2006, application to renew Animal Welfare Act license number 31-C-0065 (Pet. for Recons. at first unnumbered page).

The record establishes that, by letter dated October 27, 2006, APHIS notified Mr. Mazzola that he could not transfer an Animal Welfare Act license from one person to another and returned the Animal Welfare Act license renewal application submitted by Mr. Mazzola on behalf of World Animal Studios (CX 1 at 11). After several conversations and correspondence between APHIS and Mr. Mazzola (Tr. 1779, 1787-92), in a letter dated November 15, 2006, APHIS notified Mr. Mazzola that Animal Welfare Act license number 31-C-0065 had expired and was no longer valid (CX 1 at 31). In

³The rules of practice applicable to the instant proceeding are 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].

addition to the written notices provided to Mr. Mazzola, APHIS animal care inspector Randall Coleman informed Mr. Mazzola in person on January 5, 2007, that APHIS had denied Mr. Mazzola's Animal Welfare Act license application and that APHIS had notified Mr. Mazzola of the license denial by mail (CX 54 at 12). Therefore, I reject Mr. Mazzola's contention that APHIS failed to notify Mr. Mazzola that his October 12, 2006, application for renewal of Animal Welfare Act license number 31-C-0065 had been denied.

Second, Mr. Mazzola asserts Dr. Goldentyer, Eastern Regional Director, Animal Care Division, APHIS, erroneously informed him that he could not transfer Animal Welfare Act license number 31-C-0065 from a corporation ("World Animal Studios Inc.") to an individual (World Animal Studios). (Pet. for Recons. at first unnumbered page.)

"World Animal Studios Inc." was the original holder of Animal Welfare Act license number 31-C-0065. Mr. Mazzola continued to renew Animal Welfare Act license number 31-C-0065 in the name of "World Animal Studios Inc." through 2005 (CX 1 at 1-8). On October 12, 2006, Mr. Mazzola submitted to APHIS 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). APHIS notified Mr. Mazzola that 9 C.F.R. § 2.5(d) prohibits transfer of Animal

Welfare Act licenses from one person to another and returned the license renewal application to Mr. Mazzola (CX 1 at 11). Mr. Mazzola submitted additional information to support renewal of Animal Welfare Act license number 31-C-0065, including a statement that he had dissolved World Animal Studios, Inc. (CX 1 at 13-14). 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).

The Regulations prohibit the transfer of an Animal Welfare Act license from one person to another, as follows:

§ 2.5 Duration of license and termination of license.

....

(d) Licenses are issued to specific persons for specific premises and do not transfer upon change of ownership, nor are they valid at a different location.

9 C.F.R. § 2.5(d). Mr. Mazzola's October 12, 2006, application to renew Animal Welfare Act license number 31-C-0065 in the name of "World Animal Studios" was an attempt to transfer Animal Welfare Act license number 31-C-0065 from one person ("World Animal Studios Inc." - a corporation) to another ("World Animal Studios" - an individual); therefore, I reject Mr. Mazzola's contention that Dr. Goldentyer provided him erroneous information.

Third, Mr. Mazzola contends Animal Welfare Act license number 31-C-0065 was always issued to “Sam Mazzola d/b/a World Animal Studios Inc.” (Pet. for Recons. at first and second unnumbered pages).

Copies of Animal Welfare Act license number 31-C-0065 included in the record establish the license was issued to “WORLD ANIMAL STUDIOS INC.” (CX 1 at 6, 8). Similarly, each license renewal form indicates the licensee is “World Animal Studios Inc.” (CX 1 at 1-5, 7, 9). Therefore, I reject Mr. Mazzola’s contention that Animal Welfare Act license number 31-C-0065 was always issued to “Sam Mazzola d/b/a World Animal Studios Inc.”

Fourth, Mr. Mazzola requests that I reconsider *In re Sam Mazzola*, __ Agric. Dec. __ (Nov. 24, 2009), in its entirety and that I provide him an opportunity “to present oral arguments to each and every count in” *In re Sam Mazzola*, __ Agric. Dec. __ (Nov. 24, 2009) (Pet. for Recons. at second unnumbered page).

Administrative Law Judge Jill S. Clifton conducted a 19-day hearing in the instant proceeding, received approximately 170 exhibits into evidence, and heard testimony from 19 witnesses. In addition, Mr. Mazzola filed a post-hearing brief, an appeal petition, a response to the Administrator’s cross-appeal, and a Petition for Reconsideration. Mr. Mazzola has had ample opportunity to present his position in the instant proceeding. Under the circumstances, I conclude oral argument would serve no useful purpose, and I deny Mr. Mazzola’s request for oral argument.

Fifth, Mr. Mazzola contends, in order to revoke an Animal Welfare Act license, a valid license must exist. Mr. Mazzola asserts, since I revoked Animal Welfare Act license number 31-C-0065 in *In re Sam Mazzola*, __ Agric. Dec. ___, slip op. at 43 (Nov. 24, 2009), Animal Welfare Act license number 31-C-0065 must exist in some form. (Pet. for Recons. at second unnumbered page.)

The Secretary of Agriculture is authorized under 7 U.S.C. § 2149(a) to revoke a violator's Animal Welfare Act license, even if the license is cancelled prior to revocation. *In re Eric John Drogosch*, 63 Agric. Dec. 623, 648-49 (2004). Therefore, I reject Mr. Mazzola's argument that, in order to revoke an Animal Welfare Act license, a valid license must exist at the time of revocation.

Sixth, Mr. Mazzola contends my revocation of Animal Welfare Act license number 31-C-0065 and disqualification of Mr. Mazzola from obtaining an Animal Welfare Act license are imposed because he "wants a court to hear [his] case" (Pet. for Recons. at second unnumbered page.)

Mr. Mazzola's intention to seek judicial review of my Decision and Order is not a factor that I considered when determining revocation of Animal Welfare Act license number 31-C-0065 and disqualification of Mr. Mazzola from obtaining an Animal Welfare Act license are appropriate sanctions. Based on my review of the record, I conclude revocation of Animal Welfare Act license number 31-C-0065 and

disqualification of Mr. Mazzola from obtaining an Animal Welfare Act license are warranted in law and justified by the facts.

Seventh, Mr. Mazzola contends *In re Sam Mazzola*, __ Agric. Dec. ____ (Nov. 24, 2009), unfairly changes the lives of individuals other than himself and “animals that we all love” (Pet. for Recons. at second unnumbered page).

Mr. Mazzola does not indicate how *In re Sam Mazzola*, __ Agric. Dec. ____ (Nov. 24, 2009), unfairly changes the lives of individuals, other than himself, or animals. Mr. Mazzola is the sole respondent and sole petitioner in the instant proceeding. Therefore, I find no merit in Mr. Mazzola’s contention that *In re Sam Mazzola*, __ Agric. Dec. ____ (Nov. 24, 2009), unfairly changes the lives of individuals other than himself, and “animals that we all love.”

Eighth, Mr. Mazzola contends *In re Sam Mazzola*, __ Agric. Dec. ____ (Nov. 24, 2009), violates the purpose of the Animal Welfare Act and abandons animals the Animal Welfare Act is designed to protect (Pet. for Recons. at second unnumbered page).

The purposes of the Animal Welfare Act are set forth in a congressional statement of policy, as follows:

§ 2131. Congressional statement of policy

The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order—

(1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;

(2) to assure the humane treatment of animals during transportation in commerce; and

(3) to protect owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is essential to regulate, as provided in this chapter, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

7 U.S.C. § 2131. I have carefully reviewed *In re Sam Mazzola*, ___ Agric. Dec. ___ (Nov. 24, 2009), and find the Decision and Order is consistent with the purposes of the Animal Welfare Act. Moreover, the Secretary of Agriculture is not the owner of the animals in question; therefore, I conclude the Secretary cannot “abandon” the animals. Further still, *In re Sam Mazzola*, ___ Agric. Dec. ___ (Nov. 24, 2009), does not require Mr. Mazzola to abandon his animals.

For the foregoing reasons and the reasons set forth in *In re Sam Mazzola*, ___ Agric. Dec. ___ (Nov. 24, 2009), Mr. Mazzola’s Petition for Reconsideration is denied.

The Rules of Practice provide that the decision of the Judicial Officer shall automatically be stayed pending the determination to grant or deny a timely-filed petition for reconsideration (7 C.F.R. § 1.146(b)). Mr. Mazzola’s Petition for Reconsideration was timely filed and automatically stayed *In re Sam Mazzola*, ___ Agric. Dec. ___ (Nov. 24, 2009). Therefore, since Mr. Mazzola’s Petition for Reconsideration is denied, I

hereby lift the automatic stay, and the Order in *In re Sam Mazzola*, __ Agric. Dec. __ (Nov. 24, 2009), is reinstated; except that the effective date of the Order is the date indicated in the Order in this Order Denying Petition for Reconsideration and Ruling Denying Motion for Oral Argument.

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.⁴ The date of entry of the Order in this Decision and Order is March 29, 2010.

Done at Washington, DC

March 29, 2010

William G. Jenson
Judicial Officer

⁴7 U.S.C. § 2149(c).