

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 06-0006
)
Daniel J. Hill and)
Montrose Orchards, Inc.,)
)
Respondents) **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 on January 18, 2006. The Administrator alleges Daniel J. Hill and Montrose Orchards, Inc. [hereinafter Montrose Orchards], operated as an exhibitor under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act], and the regulations issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-2.133) [hereinafter the Regulations], without obtaining the requisite license. Mr. Hill and Montrose Orchards filed a joint Answer contesting the allegations of the Complaint, principally stating they were entitled to a “farm exemption” since all the animals they were charged with exhibiting were farm animals.

Chief Administrative Law Judge Marc R. Hillson [hereinafter the Chief ALJ] conducted a prehearing conference via telephone on July 25, 2006, and scheduled a hearing for December 6, 2006, in Flint, Michigan. At the hearing, Sharlene Deskins represented the Administrator, and Mr. Hill represented himself and Montrose Orchards. The Administrator called two witnesses and introduced seven exhibits. Mr. Hill testified on behalf of himself and Montrose Orchards and introduced three exhibits. Post-hearing briefs were filed on January 26, 2007.

On April 18, 2007, the Chief ALJ issued a Decision [hereinafter Initial Decision]:

- (1) finding that Mr. Hill and Montrose Orchards were exhibitors under the Animal Welfare Act and required to obtain an exhibitor's license to exhibit animals to the public;
- (2) ordering Mr. Hill and Montrose Orchards to cease and desist from violating the Animal Welfare Act and the Regulations, and in particular, to cease and desist from engaging in any activity for which a license is required under the Animal Welfare Act including but not limited to the exhibition of animals; and
- (3) assessing Mr. Hill and Montrose Orchards, jointly and severally, a \$1,000 civil penalty (Initial Decision at 12-13).

On June 18, 2007, Mr. Hill and Montrose Orchards filed a timely appeal of the Chief ALJ's Initial Decision. On July 18, 2007, the Administrator filed his opposition to the appeal petition. The Administrator's opposition included his own appeal petition, challenging portions of the Chief ALJ's Initial Decision. For the reasons stated below, I

find Montrose Orchards violated the Animal Welfare Act by exhibiting animals without obtaining an Animal Welfare Act license. I order Montrose Orchards to cease and desist from committing further violations of the Animal Welfare Act and the Regulations.

Based on the record as presented, I do not find the imposition of a civil penalty is warranted. Furthermore, the Administrator presented no evidence why Mr. Hill should be treated as an independent licensee apart from Montrose Orchards. His actions were actions as Montrose Orchards' president. Absent a statutory or regulatory requirement that corporate officers must be individually licensed, I find Mr. Hill did not violate the Animal Welfare Act or the Regulations, and I dismiss the Complaint against him.

DECISION

Statutory and Regulatory Background

The Animal Welfare Act is a comprehensive statutory scheme, the purpose of which is to “regulate . . . 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.) Specifically, Congress intended the Animal Welfare Act:

- (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 the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

7 U.S.C. § 2131. The Animal Welfare Act defines “animal” for purposes of the statute to include:

any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warmblooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet[.]

7 U.S.C. § 2132(g) (Supp. V 2005). The statute excludes certain groups of animals from the definition. These include:

(1) birds, rats of the genus *Rattus*, and mice of the genus *Mus*, bred for use in research, (2) horses not used for research purposes, and (3) other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber.

7 U.S.C. § 2132(g) (Supp. V 2005).

The Animal Welfare Act requires all dealers and exhibitors of animals to obtain a valid license.

No dealer or exhibitor shall sell or offer to sell or transport or offer for transportation, in commerce, to any research facility or for exhibition or for use as a pet any animal, or buy, sell, offer to buy or sell, transport or offer for transportation, in commerce, to or from another dealer or exhibitor under this chapter any animals, unless and until such dealer or exhibitor shall have obtained a license from the Secretary and such license shall not have been suspended or revoked.

7 U.S.C. § 2134. The statute defines “dealer” and “exhibitor.” A “dealer” is:

any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes, except that this term does not include—

(i) a retail pet store except such store which sells any animals to a research facility, an exhibitor, or a dealer; or

(ii) any person who does not sell, or negotiate the purchase or sale of any wild animal, dog, or cat, and who derives no more than \$500 gross income from the sale of other animals during any calendar year[.]

7 U.S.C. § 2132(f). An “exhibitor” is:

any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary, and such term includes carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not; but such term excludes retail pet stores, organizations sponsoring and all persons participating in State and country fairs, livestock shows, rodeos, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary[.]

7 U.S.C. § 2132(h).

The Regulations generally mirror the statute with respect to these definitions (9 C.F.R. § 1.1). Additionally, the Animal and Plant Health Inspection Service [hereinafter APHIS] has issued several documents and policies interpreting, to some degree, several of the concepts that are at question in this proceeding. *Program Aid 1117, Licensing and Registration Under the Animal Welfare Act, Guidelines for Dealers, Exhibitors, Transporters, and Researchers* (May 2002), states that “Normal farm-type operations that raise, or buy and sell, animals only for food and fiber . . . are exempt . . .”

from the licensing requirement. (RX 4¹ at 7.) These guidelines also state that “Anyone who arranges and takes part in showing farm animals at agricultural shows, fairs, and exhibits is exempt. However, anyone exhibiting farm animals for nonagricultural purposes (such as petting zoos) must be licensed.” (RX 4 at 15-16.) Additionally, Policy # 26 issued by APHIS in November 1998, states:

Farm animals, such as domestic cattle, horses, sheep, swine, and goats that are used for traditional, production agricultural purposes are exempt from coverage by the AWA. Traditional production agricultural purposes includes use as food and fiber, for improvement of animal nutrition, breeding, management, or production efficiency, or for improvement of the quality of food or fiber.

http://www.aphis.usda.gov/animal_welfare/downloads/policy/policy26.pdf. Absent from the Animal Welfare Act and the Regulations is any provision concerning the applicability of the Animal Welfare Act to situations in which an animal functions as an exempt animal but also meets the criteria for regulation under the Animal Welfare Act.

Facts

Montrose Orchards is a closely-held family corporation whose president is Daniel J. Hill (Tr. 127-28). The main crops at Montrose Orchards, which is located in Montrose, Michigan, are blueberries and apples. Montrose Orchards also grows asparagus, pumpkins, strawberries, and Christmas trees. (Tr. 131.) Several crops are offered to the public on a pick-your-own basis. All products grown at Montrose Orchards

¹Throughout this Decision and Order, “Tr.” refers to the transcript, “CX” refers to the Administrator’s exhibits, and “RX” refers to Mr. Hill and Montrose Orchards’ exhibits.

are offered for sale at a gift shop on the premises. All produce grown on the Montrose Orchards premises is sold directly to the public rather than through middlemen and wholesalers. (Tr. 131-32.) Montrose Orchards also operates a cider press, processing apples into cider. School groups occasionally visit Montrose Orchards to see the cider press operations. Montrose Orchards charges a fee to conduct the group tours.

(Tr. 137-38.) Several animal pens are located at Montrose Orchards. In these pens, Montrose Orchards displays various farm animals including a pig, a cow, several English fallow deer, Barbados sheep, and goats (Tr. 12-13; CX 3). At the entrance to Montrose Orchards' property, a sign directs the public to the different pick-your-own crops. At times, the sign has also pointed the way to the animals. (CX 3 at 1.) The animal pens are fairly large and are not typical of the pens used for animals being raised for commercial purposes (Tr. 53-56). There are signs on the pens identifying the animals contained in the pens (Tr. 14; CX 3 at 5-6, 10).

“Bubble gum” type machines located on the Montrose Orchards premises are available to the public for the purchase of food to feed the animals in the pens (Tr. 31, 147-48). There is also a hand-washing station so that people can wash their hands after contacting the animals (CX 3 at 4; Tr. 31). Montrose Orchards is listed in the *Michigan Directory of Farm Markets* as having animals on the premises (Tr. 14-15).

Montrose Orchards does not charge an admission fee to enter on its premises or to view the animals that are displayed. However, school groups are occasionally given tours

of the facility, particularly Montrose Orchards' cider press, and these groups do pay a fee. (Tr. 137-38.)

Most of the animals raised at Montrose Orchards eventually are slaughtered, creating food for human consumption. Mr. Hill testified that the pig, the cow, the goats, and even the fallow deer are destined for the slaughterhouse, the freezer, and the dinner table. (Tr. 118-19.) He brought to the hearing, but did not offer as an exhibit, what he stated was deer sausage. Mr. Hill identified which of the English fallow deer was the source of the sausage. (Tr. 99-100.)

APHIS employees first inspected Montrose Orchards in September 2003, after observing Montrose Orchards' listing in the *Michigan Directory of Farm Markets* (Tr. 11). The first inspection was conducted by Dr. Kurt Hammel, a veterinary medical officer. He observed the farm animals on display and asked to speak to the person in charge. (Tr. 12-14.) Upon meeting Mr. Hill, Dr. Hammel advised Mr. Hill that the animals were on display and that an exhibitor's license under the Animal Welfare Act was required (Tr. 14). The following month, Dr. Hammel returned to Montrose Orchards, observed much the same situation, and again advised a representative of the facility (not Mr. Hill) that the Animal Welfare Act required a facility to have a license to exhibit animals (Tr. 15-17).

On December 1, 2003, Dr. Hammel again returned to Montrose Orchards, this time accompanied by his supervisor Dr. Rick Kirsten and Thomas Rippy, a senior investigator

for APHIS (Tr. 17-18, 61). They presented Mr. Hill with what Dr. Hammel described as “an official notice of violation,” and Dr. Kirsten advised Mr. Hill of the need to comply with the Animal Welfare Act and the Regulations (Tr. 19).

Dr. Hammel conducted another inspection on June 16, 2004 (Tr. 20). Dr. Hammel completed a search form (CX 2). During this inspection, Dr. Hammel took a number of photographs (CX 3) documenting that a clearly marked sign pointed the way to the animals (CX 3 at 1), that the animal pens were visible from the parking lot (CX 3 at 2), that there was a hand-washing station proximate to the animal pens (CX 3 at 4), and that the animals on display on the date of that inspection included at least four Barbados sheep (CX 3 at 5), a pig (CX 3 at 6), a cow (CX 3 at 8), at least three goats (CX 3 at 7, 9), and at least three English fallow deer (CX 3 at 10). Once again, Dr. Hammel advised Mr. Hill of the need to have an exhibitor’s license issued by APHIS (Tr. 29-30).

Dr. Hammel and Mr. Rippy revisited Montrose Orchards on May 16, 2005 (Tr. 30-31, 62-63). Animals were still on display to the public (Tr. 31). Dr. Hammel observed an animal feeding station where the public could deposit coins and buy food to feed to the animals (Tr. 31). Subsequent inspections occurred in September 2005, May 2006, and August 2006, with the only change being that at the last visit the sign directing visitors to the animals was no longer evident (Tr. 33-38.) Dr. Hammel also visited Montrose Orchards in March and April 2006, but the facility was not open to the public at that time (Tr. 34-35).

Throughout the course of these inspections, Mr. Hill consistently maintained that it was lawful for Montrose Orchards to exhibit animals without an exhibitor's license.

Mr. Hill claimed that the Montrose Orchards facilities fell under several exemptions to the Animal Welfare Act. (Tr. 76-77, 114-18; CX 4, CX 5.) Mr. Hill persistently inquired of APHIS personnel who inspected Montrose Orchards as to whether there was an official interpretation of the Animal Welfare Act or the Regulations which supported APHIS' contention that Montrose Orchards was required to have an exhibitor's license. Mr. Hill went so far as to inquire of the Office of Administrative Law Judges whether there was case law in which there was a ruling which would indicate whether Montrose Orchards was entitled to an exemption from the exhibitor's license requirement (RX 1). Office of Administrative Law Judges attorney James Hurt (who Mr. Hill refers to as Judge Hurt) responded that Office of Administrative Law Judges decides cases and does not give advisory opinions. Mr. Hurt referred Mr. Hill to the APHIS website. (RX 1, RX 2.)

The exemptions Mr. Hill contends apply to the Montrose Orchards operation are:

- the farm animal exemption (7 U.S.C. § 2132(g) (Supp. V 2005)); and
- the under \$500 in sales exemption (7 U.S.C. § 2132(f)(ii)).

In the Answer, at the hearing, and in the Appeal Petition, Mr. Hill consistently argued that all the animals exhibited at Montrose Orchards were raised for food and Montrose Orchards had less than \$500 in sales of animals in any year. Furthermore, Mr. Hill maintained at the hearing, and again in his brief, that if an official written

interpretation of the Animal Welfare Act and Regulations indicates Montrose Orchards is not entitled to an exemption, it would seek an exhibitor's license (CX 5).

Discussion

After careful review of the facts and the applicable law, I conclude Montrose Orchards is an exhibitor as that term is defined in the Animal Welfare Act (7 U.S.C. § 2132(h)). Furthermore, I find Montrose Orchards' operations were in interstate commerce or at least affected commerce and the exhibition of animals at the Montrose Orchards facility is an inducement to the public to visit and purchase products from Montrose Orchards' primary operation. I deem that this inducement provides an economic benefit to Montrose Orchards and, therefore, is a form of compensation.

The Administrator, in the Complaint, named Montrose Orchards, Inc., and Daniel J. Hill, its president, as Respondents. While, as discussed below, the evidence establishes that Montrose Orchards is required to have an Animal Welfare Act license to exhibit animals, nothing in the record points to any reason that Mr. Hill personally must obtain an Animal Welfare Act exhibitor's license. Testimony in the record indicates that Montrose Orchards is a family-owned corporation that has a corporate meeting annually (Tr. 127-30). The Administrator presented no evidence to justify ignoring the corporate form. Furthermore, the Administrator has presented no citation to a statute or regulation that creates an Animal Welfare Act licensing requirement for the president, any officer, or any owner of an otherwise valid corporation. Finally, the Administrator did not present

any evidence that Mr. Hill, in his personal capacity, is responsible for exhibiting animals at Montrose Orchards without an Animal Welfare Act license. Therefore, I dismiss the Complaint with regard to Daniel J. Hill.

Montrose Orchards, on the other hand, is an exhibitor and must have an Animal Welfare Act license if it intends to continue exhibiting its animals. I find that, while the animals on display at Montrose Orchards were ultimately raised for food, the fact that they also were exhibited requires an exhibitor's license.

The "in commerce" requirements of the Animal Welfare Act are interpreted liberally.² While Montrose Orchards often obtains animals for free, it also buys some animals and it sells some animals at auction (Tr. 143-44, 159-62). Montrose Orchards is listed in the *Michigan Directory of Farm Markets*, it is mentioned in numerous websites as a place to purchase a variety of products, it is in the process of developing its own website, and it accepts credit cards as a form of payment for purchases (Tr. 50-51, 132-33). Congress indicated that it wanted to extend the application of the Animal Welfare Act broadly to cover any activity that "affects" commerce, rather than require the activity actually be in interstate commerce (7 U.S.C. § 2131). The purchase and sale of animals at auction, the acceptance of credit cards for purchases, and the use of internet sites for promotion of the business lead me to the conclusion that Montrose Orchards is a

²For example, the Department of Justice's Office of Legal Counsel concluded "that the Animal Welfare Act applies to activities that take place entirely within one State, as well as to those that involve traffic across State lines." (3 U.S. Op. Off. Legal Counsel 326 (1979).)

business that Congress intended to be regulated under the Animal Welfare Act when it exhibits animals to its produce buying/picking customers.

Montrose Orchards also contends that because it does not charge an admission fee to view the animals on display, it does not meet the statutory definition of “exhibitor” in that Montrose Orchards does not exhibit “to the public for compensation.” (7 U.S.C. § 2132(h).) Montrose Orchards’ argument ignores the next clause in the definition “as determined by the Secretary.” The Judicial Officer, acting for the Secretary of Agriculture, has long held that the use of displayed animals to attract customers to a facility is sufficient to meet the compensation requirement, even though no money changes hands in exchange for the right to view the animals. *In re Lloyd A. Good, Jr.*, 49 Agric. Dec. 156 (1990). In *Good*, the Judicial Officer affirmed the ALJ’s finding that the display of a dolphin at a resort was for the purpose of attracting visitors to the resort. “Although it is true that no fee, as such, is charged for viewing the dolphin’s performance, the exhibition is maintained with the expectation of economic benefit to the resort. The dolphin act is an unitemized service which the resort provides to its patrons as well as an advertised attraction to draw patrons to the resort’s premises.” *Id.* at 163. It is not unreasonable to assume that the business model of Montrose Orchards is such that the viewing of the animals on display is indeed an attempt to differentiate Montrose Orchards from other similar operations, and as such the analysis in *Good*, that the animals are

displayed in this manner with the intention of providing an economic benefit to Montrose Orchards, is applicable.

Montrose Orchards contends that at least two exemptions – the under \$500 per year in sales exemption and the farm animal exemption – allow Montrose Orchards to avoid the Animal Welfare Act’s license requirements. Neither exemption benefits Montrose Orchards. First, the under \$500 in sales exemption is actually an exclusion from the definition of a dealer under the Animal Welfare Act (7 U.S.C. § 2132(f)(ii)). The Administrator does not allege that Montrose Orchards is required to have a license as a dealer – the Administrator alleges that Montrose Orchards is required to have a license as an exhibitor. This exemption does not apply to Montrose Orchards’ operation. Montrose Orchards’ reliance on this exemption is misplaced.

Next, Montrose Orchards relies on the farm animal exception to the definition of animals that are protected under the Animal Welfare Act to contend that it does not need a license to exhibit its animals. There is no dispute that Montrose Orchards does, in fact, raise many or most of the animals it displays for eventual use as food. Furthermore, the Animal Welfare Act exempts “farm animals . . . used or intended for use as food[.]” (7 U.S.C. § 2132(g) (Supp. V 2005).) The Administrator contends that the primary intention with respect to these animals was not for use as food, but as animals to be exhibited. I find that, in reality, Montrose Orchards’ animals serve two purposes—they are being exhibited first and used for food later. If the animals were raised only for use as

food, it is reasonable to assume that large pens openly visible to the public, signs directing the public to the animals, signs identifying the animals, food dispensing machines from which the public can purchase food to feed the animals, hand-washing stations for the use of the public after visiting the animals, and the listing in the *Michigan Directory of Farm Markets* as a facility where animals are displayed, would not be evident. It is equally evident that if the animals were intended only for display to the public, the animals would not wind up on the dinner table and the venison sausage Mr. Hill brought to the hearing might still be on the hoof.

There is no clear guidance, either in the Animal Welfare Act, the Regulations, or previous Judicial Officer decisions, regarding the applicability of the Animal Welfare Act to a person whose animals have two purposes, one covered by the Animal Welfare Act and one exempt from Animal Welfare Act requirements.³ In order to resolve that lack of clarity, I hold, as a matter of law, that when a person utilizes animals for multiple purposes, at least one of which is exempt from the Animal Welfare Act requirements, and at least one of which requires an Animal Welfare Act license, that person must obtain an Animal Welfare Act license that covers each and all regulated purposes. Here, the displayed animals are unquestionably one of the means that Montrose Orchards uses to

³APHIS hints at this multi-purpose possibility in *Program Aid 1117, Licensing and Registration Under the Animal Welfare Act, Guidelines for Dealers, Exhibitors, Transporters, and Researchers* (RX 4). In the introduction to Program Aid 1117, APHIS notes that the various exemptions apply to persons/organizations whose animal business participates “only” in exempt operations. “Normal farm-type operations that raise, or buy and sell, animals only for food and fiber . . . are exempt by law[.]” *Id.* at 7.

attract customers to its facilities; therefore, Montrose Orchards must obtain an Animal Welfare Act license to continue exhibiting its animals.

The Administrator sought assessment of a \$4,000 civil penalty against Montrose Orchards. The Chief ALJ assessed Montrose Orchards a \$1,000 civil penalty. The primary basis for the Chief ALJ's decision regarding the sanction was that Mr. Hill's repeated efforts to obtain a written interpretation of APHIS' reasoning why the exemptions Montrose Orchards claimed did not apply demonstrated good faith. The Chief ALJ further found that Montrose Orchards was not a scofflaw who was trying to squirm out of a statutory requirement, but simply wanted APHIS to show, in writing, why Montrose Orchards was not covered by one of the claimed Animal Welfare Act exemptions. The Administrator appealed the Chief ALJ's sanction determination arguing Montrose Orchards' actions did not show good faith.

Mr. Hill, as president of Montrose Orchards, reviewed the Animal Welfare Act and the Regulations and determined, in his view, that, because Montrose Orchards' animals were destined for slaughter and the dinner table, Montrose Orchards fell under the exemption to the requirements of the Animal Welfare Act for "farm animals . . . intended for use as food[.]" (7 U.S.C. § 2132(g) (Supp. V 2005).) While there was no testimony from the APHIS investigators regarding their response to Montrose Orchards' claim of exemption and request for written explanation why the exemption did not apply, the Administrator now argues that "providing [Montrose Orchards] with copies of the Act

and regulations does constitute responding to [Montrose Orchards] in writing.”

(Complainant’s Opposition to the Respondent’s Appeal at 13.) The Administrator also claims that providing Montrose Orchards with two inspection reports that state in their entirety: “The facility is exhibiting animals to the public without a valid USDA license. This is a violation of section 2.1. No covered activities are permitted without a valid USDA license” (CX 1, CX 6) is the appropriate response to Montrose Orchards’ request for an explanation about the applicability of the exemptions. (Complainant’s Opposition to the Respondent’s Appeal at 13, n.8.)

Just as the Chief ALJ would not impose upon APHIS a duty to respond to such an inquiry in writing, I too find that APHIS has no legal obligation to respond in writing. I do consider APHIS’ response to Montrose Orchards, or lack thereof, as a factor in my sanction decision. In further examining factors to determine the appropriate sanction, I find the lack of discussion in the Animal Welfare Act and the Regulations regarding animals that have a dual purpose, left a significant ambiguity whether Montrose Orchards was required to obtain an Animal Welfare Act license to exhibit its animals – which ultimately became food.

The Animal Welfare Act also requires that I consider the violator’s size of business, the gravity of the violation, good faith, and history of previous violations (7 U.S.C. § 2149(b)). Montrose Orchards’ animal business is very small. I agree with the Chief ALJ that Montrose Orchards’ effort to get an interpretation of the Animal Welfare

Act and the Regulations, as well as Montrose Orchards' assurance that it would obtain an Animal Welfare Act license if such a written policy existed, demonstrated good faith.

Normally, I would find a refusal to obtain an Animal Welfare Act license to be a serious violation. However, considering the ambiguity of the Animal Welfare Act and the Regulations as applied to the facts before me, combined with Montrose Orchards' efforts to clarify the ambiguity, I find this violation to be minor. Therefore, I find a civil penalty is not warranted.

Findings of Fact

1. Respondent Montrose Orchards, Inc., is a family-owned Michigan corporation located in Montrose, Michigan. Respondent Daniel J. Hill is the president of Montrose Orchards.

2. Montrose Orchards operates a business which offers the public an opportunity to purchase apples, blueberries, Christmas trees, asparagus, pumpkins, and other products. Most products are sold in the Montrose Orchards' gift shop, and some products are also offered to the public on a pick-your-own basis.

3. Montrose Orchards exhibits to the public a number of animals, including, at various times, a pig, a cow, English fallow deer, Barbados sheep, and goats. These animals were displayed in large pens. There were signs directing the public to these pens. There were signs on some of the pens identifying the animal(s) inside the pens. There

were food dispensing machines from which the public could buy food to feed the animals, and a hand-washing station near the pens available for public use.

4. During a series of inspections occurring between September 2003 and August 2006, APHIS inspectors consistently indicated to Montrose Orchards that an exhibitor's license was required to exhibit Montrose Orchards' animals. Just as consistently, Montrose Orchards, through its president Mr. Hill, insisted that the display of animals was exempt from the exhibitor's license requirement.

5. Mr. Hill, on behalf of Montrose Orchards, made numerous inquiries to the United States Department of Agriculture requesting a written statement that the exhibition of Montrose Orchards' animals required an exhibitor's license. APHIS did not provide the requested statement.

6. Most of the animals exhibited by Montrose Orchards, eventually, are slaughtered and used for food.

Conclusions of Law

1. Between September 2003 and August 2006, Montrose Orchards was an exhibitor under the Animal Welfare Act. As such, Montrose Orchards was required to obtain an exhibitor's license to exhibit the animals on its premises to the public.

2. Daniel J. Hill was president of Montrose Orchards. As president, he was not required to obtain an Animal Welfare Act license in his own name. Therefore, the Complaint with regard to Mr. Hill is dismissed.

ORDER

Montrose Orchards, its agents and employees, successors and assigns, directly or indirectly through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations, and in particular, shall cease and desist from engaging in any activity for which a license is required under the Animal Welfare Act, including but not limited to the exhibition of animals, until such time Montrose Orchards obtains the appropriate Animal Welfare Act license. This Order shall become effective on the day after service on Montrose Orchards.

RIGHT TO JUDICIAL REVIEW

Montrose Orchards 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. Montrose Orchards 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 May 16, 2008.

Done at Washington, DC

May 16, 2008

William G. Jenson
Judicial Officer

⁴7 U.S.C. § 2149(c).