

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	AWA Docket No. 04-0017
	)	
Ricky M. Watson, an individual;	)	
Cheri Watson, an individual;	)	
Tiger's Eyes, Inc., a Texas	)	
domestic nonprofit corporation,	)	
d/b/a Noah's Land Wildlife Park;	)	
and Richard J. Burns, an	)	
individual,	)	
	)	
Respondents	)	<b>Order Granting Motion to Withdraw Appeal Petition and Vacate Decision</b>

The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a Complaint on May 19, 2004. Ricky M. Watson and Cheri Watson failed to file timely answers to the Complaint, and on September 3, 2004, Complainant filed a motion for a default decision, which Administrative Law Judge Victor W. Palmer [hereinafter the ALJ] denied.

On November 26, 2004, Complainant appealed the ALJ's denial of Complainant's motion for a default decision, and on February 23, 2005, I issued a Decision and Order as

to Ricky M. Watson and Cheri Watson reversing the ALJ's denial of Complainant's motion for a default decision.<sup>1</sup>

On June 1, 2005, Complainant filed a motion to withdraw his appeal petition and vacate the February 23, 2005, Decision and Order as to Ricky M. Watson and Cheri Watson. On June 2, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Complainant's motion.

A party's motion to withdraw its own appeal petition is generally granted; however, withdrawal of an appeal petition is not a matter of right. In considering whether to grant a motion to withdraw an appeal petition, the Judicial Officer must consider the public interest.<sup>2</sup> Based on the record before me, I find no basis for denying

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<sup>1</sup>*In re Ricky M. Watson* (Decision as to Ricky M. Watson and Cheri Watson), 64 Agric. Dec. \_\_\_\_ (Feb. 23, 2005). *See also In re Ricky M. Watson* (Order Denying Pet. to Reconsider as to Ricky M. Watson and Cheri Watson), 64 Agric. Dec. \_\_\_\_ (Apr. 13, 2005).

<sup>2</sup>*See Ford Motor Co. v. NLRB*, 305 U.S. 364, 370 (1939) (stating where the NLRB petitions for enforcement of its order against an employer and jurisdiction of the court has attached, permission to withdraw the petition rests in the sound discretion of the court to be exercised in light of the particular circumstances of the case); *American Automobile Mfrs. Ass'n v. Commissioner, Massachusetts Dep't of Env'tl. Prot.*, 31 F.3d 18, 22 (1st Cir. 1994) (stating the court of appeals has broad discretion to grant or deny voluntary motions to dismiss appeal); *HCA Health Services of Virginia v. Metropolitan Life Ins. Co.*, 957 F.2d 120, 123 (4th Cir. 1992) (stating an appellant's motion to voluntarily dismiss its own appeal is generally granted, although courts of appeal have discretionary authority not to dismiss the case in appropriate circumstances); *United States v. State of Washington, Dep't of Fisheries*, 573 F.2d 1117, 1118 (9th Cir. 1978) (stating the court has discretionary authority to decline to grant the appellants' motion to dismiss their own appeal); *In re Hartford Packing Co.*, 60 Agric. Dec. 851, 853 (2001) (Order Granting Motion to Withdraw Appeal) (stating a party's motion to withdraw its

(continued...)

Complainant's motion to withdraw his appeal petition and vacate the February 23, 2005, Decision and Order as to Ricky M. Watson and Cheri Watson.

For the foregoing reasons, the following Order should be issued.

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<sup>2</sup>(...continued)

own appeal petition is generally granted; however, withdrawal of an appeal petition is not a matter of right); *In re Vermont Meat Packers, Inc.*, 48 Agric. Dec. 158 (1989) (Order Permitting Withdrawal of Appeal) (stating withdrawal of appeal is not a matter of right); *In re Smith Waller*, 34 Agric. Dec. 373, 374 (1975) (Order Granting Motion to Withdraw Appeal) (stating the rules of practice do not permit a party to withdraw an appeal as a matter of right; in considering whether to grant a motion to withdraw an appeal, the Judicial Officer must consider the public interest); *In re Henry S. Shatkin*, 34 Agric. Dec. 296, 297 (1975) (Order Granting Motion to Withdraw Appeal) (stating the rules of practice do not permit a party to withdraw an appeal as a matter of right; in considering whether to grant a motion to withdraw an appeal, the Judicial Officer must consider the public interest).

**ORDER**

Complainant's June 1, 2005, motion to withdraw his appeal petition is granted. The Judicial Officer's February 23, 2005, Decision and Order as to Ricky M. Watson and Cheri Watson and the Judicial Officer's April 13, 2005, Order Denying Petition to Reconsider as to Ricky M. Watson and Cheri Watson are vacated. This proceeding is remanded to the ALJ for further proceedings in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.130-.151).

Done at Washington, DC

June 3, 2005

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William G. Jenson  
Judicial Officer