

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWA Docket No. 03-0035
)	
ZooCats, Inc., a Texas corporation;)	
Marcus Cook, a/k/a Marcus)	
Cline-Hines Cook, an individual;)	
and Melissa Coody, a/k/a Misty)	
Coody, an individual, jointly doing)	
business as Zoo Dynamics and)	
ZooCats Zoological Systems; Six)	
Flags Over Texas, Inc., a Delaware)	Order Denying ZooCats, Inc., Marcus
corporation; and Marian Buehler,)	Cook, and Melissa Coody's Motion to
an individual,)	Reopen and Order Lifting Stay Order as
)	to ZooCats, Inc., Marcus Cook, and
Respondents)	Melissa Coody

PROCEDURAL HISTORY

I issued *In re ZooCats, Inc.* (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), 68 Agric. Dec. 737 (2009). Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], and ZooCats, Inc., Marcus Cook, and Melissa Coody [hereinafter Respondents] filed petitions to reconsider that decision, and I, subsequently, issued *In re ZooCats, Inc.* (Order Denying Respondents' Petition to Reconsider and Administrator's Petition to Reconsider), 68 Agric. Dec. 1072 (2009).

On December 23, 2009, Respondents filed a motion for a stay of the Orders in *In re ZooCats, Inc.* (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), 68 Agric. Dec.

737 (2009), and *In re ZooCats, Inc.* (Order Denying Respondents' Petition to Reconsider and Administrator's Petition to Reconsider), 68 Agric. Dec. 1072 (2009), pending the outcome of proceedings for judicial review. On January 8, 2010, I granted Respondents' motion for a stay. *In re ZooCats, Inc.* (Stay Order as to ZooCats, Inc., Marcus Cook, and Melissa Coody), ___ Agric. Dec. ___ (Jan. 8, 2010).

On October 5, 2011, the Administrator filed a Motion to Lift Stay Order stating proceedings for judicial review are concluded. On November 28, 2011, Respondents filed Respondents' Motion to Reopen the Case to Take Newly Discovered Evidence and Response to Complaints' [sic] Motion to Lift Stay Order [hereinafter Motion to Reopen]. On December 12, 2011, the Administrator filed Complainant's Reply to Motion to Reopen. On December 13, 2011, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for rulings on the Respondents' Motion to Reopen and the Administrator's Motion to Lift Stay Order.

RULING

Respondents' Motion to Reopen

Respondents assert, during the last several months, they have discovered new evidence which supports many of Respondents' claims (Mot. to Reopen at 5 ¶ 11). Respondents also assert the Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter APHIS], has inspected Respondents to determine their compliance with the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter Animal Welfare Act], and the regulations and standards issued under the Animal Welfare Act (7 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations]. Respondents assert, after each of those APHIS inspections, Respondents have received "a perfect report[.]" (Mot. to Reopen at 6 ¶ 13.) Respondents

request that I reopen the hearing to allow the newly discovered evidence to be submitted (Mot. to Reopen at 6 ¶ 14). Respondents cite, but do not discuss the applicability of, *State v. Powell*, 4 So. 447 (La. 1888), and *State v. Kezer*, 918 S.W.2d 874 (Mo. Ct. App. 1996).

Under the rules of practice applicable to this proceeding,¹ a petition to reopen a hearing to take further evidence must be filed prior to the issuance of the Judicial Officer's decision.² I issued *In re ZooCats, Inc.* (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), 68 Agric. Dec. 737 (2009), on July 27, 2009; therefore, Respondents' Motion to Reopen, filed November 28, 2011, must be denied. Neither *State v. Powell*, 4 So. 447 (La. 1888), nor *State v. Kezer*, 918 S.W.2d 874 (Mo. Ct. App. 1996), addresses reopening a hearing under the Rules of Practice, and I find these two cases, cited by Respondents, inapposite.

Administrator's Motion to Lift Stay Order

Respondents do not dispute the Administrator's assertion that proceedings for judicial review are concluded. I issued the January 8, 2010, Stay Order as to ZooCats, Inc., Marcus Cook, and Melissa Coody pending the outcome of proceedings for judicial review. As

¹The rules of practice applicable to this 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].

²7 C.F.R. § 1.146(a)(2). See *In re Lion Raisins, Inc.* (Rulings Denying Respondents' Mot. for Consolidation and Pet. to Reopen Evidence or for Rehearing), 68 Agric. Dec. 1098, 1099-1101 (2009) (denying as late-filed the respondents' petition to reopen the hearing filed 3 months 10 days after the Judicial Officer issued the decision); *In re PMD Brokerage Corp.* (Order Denying Pet. for Recons. and Pet. for New Hearing on Remand), 61 Agric. Dec. 389, 396-99 (2002) (denying the respondent's petition to reopen the hearing filed 1 month 15 days after the Judicial Officer issued the decision on remand); *In re Potato Sales Co.* (Order Denying Pet. to Reopen Hearing to Take Further Evidence as to Potato Sales Co., Inc.), 55 Agric. Dec. 708 (1996) (denying the respondent's petition to reopen the hearing as untimely because the respondent filed the petition to reopen the hearing 2 months after the Judicial Officer issued the decision).

proceedings for judicial review are concluded, the Administrator's Motion to Lift Stay Order is granted, and the Orders in *In re ZooCats, Inc.* (Decision as to ZooCats, Inc., Marcus Cook, and Melissa Coody), 68 Agric. Dec. 737 (2009), and *In re ZooCats, Inc.* (Order Denying Respondents' Petition to Reconsider and Administrator's Petition to Reconsider), 68 Agric. Dec. 1072 (2009), shall be effective as provided in the following Order.

ORDER

1. Respondents' Motion to Reopen, filed November 28, 2011, is denied.

Paragraph 1 of this Order shall become effective upon service of this Order on Respondents.

2. ZooCats, Inc., Marcus Cook, and Melissa Coody, their 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) failing to handle animals as expeditiously and carefully as possible in a manner that does not cause the animals trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort;

(b) using physical abuse to train, work, or otherwise handle animals;

(c) failing, during public exhibition, to handle animals so there is minimal risk of harm to the animals and the public, with sufficient distance and/or barriers between the animals and the general viewing public, so as to assure the safety of the animals and the public;

(d) failing to remove excreta from primary enclosures as often as necessary to prevent the contamination of animals contained in the enclosures;

- (e) utilizing an insufficient number of adequately trained employees to maintain a professionally acceptable level of husbandry practices;
- (f) failing to provide a suitable method to rapidly eliminate excess water from enclosures housing animals;
- (g) failing to provide food that is wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain the good health of animals;
- (h) failing to feed animals at least once a day, except as dictated by hibernation, veterinary treatment, normal fasts, or other professionally accepted practices;
- (i) failing to have an attending veterinarian evaluate the diet plan for each animal, the amount of food necessary for each animal, and the food supplements necessary for each animal;
- (j) failing to follow the prescribed dietary recommendations of Respondents' attending veterinarian;
- (k) failing to establish and maintain a program of adequate veterinary care that includes the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries; and
- (l) failing to have formal arrangements for regularly scheduled veterinary visits to Respondents' premises.

Paragraph 2 of this Order shall become effective 1 day after service of this Order on Respondents.

3. Animal Welfare Act license number 74-C-0426, issued to ZooCats, Inc., is permanently revoked.

Paragraph 3 of this Order shall become effective 60 days after service of this Order on ZooCats, Inc.

Done at Washington, DC

December 13, 2011

William G. Jenson
Judicial Officer