

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 10-0416
)
Jennifer Caudill, a/k/a Jennifer)
Walker, a/k/a Jennifer Herriott)
Walker, an individual; Brent)
Taylor and William Bedford,)
individuals, d/b/a Allen Brothers)
Circus; and Mitchell Kalmanson,)
)
Respondents)

**Ruling Granting Petition to Reopen and Ruling Granting
Request to Issue an Order Dismissing the Proceeding**

Ruling Granting Petition to Reopen

On April 29, 2014, Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], filed “Complainant’s Petition to Reopen Hearing as to Respondent Jennifer Caudill” [hereinafter Petition to Reopen] requesting that I reopen the hearing and receive in evidence a letter, dated November 13, 2013, sent from Elizabeth Goldentyer, D.V.M., Regional Director, Animal Care, Animal and Plant Health Inspection Service, to Ms. Caudill¹ and requesting that I issue an order dismissing this proceeding.

¹The Administrator attached a copy of the letter, dated November 13, 2013, from Dr. Goldentyer to Ms. Caudill, to the Petition to Reopen.

On May 2, 2014, the Hearing Clerk served Ms. Caudill with the Administrator's Petition to Reopen² and, in the Hearing Clerk's April 30, 2014, service letter, informed Ms. Caudill that she had 10 days from the date of service within which to file a response to the Petition to Reopen. Ms. Caudill failed to file a response to the Petition to Reopen, and, on May 15, 2014, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration.

The rules of practice applicable to this proceeding³ set forth the requirements for a petition to reopen a hearing, as follows:

§ 1.146 Petitions for reopening hearing; for rehearing or reargument of proceeding; or for reconsideration of the decision of the Judicial Officer.

(a) *Petition requisite. . . .*

(2) *Petition to reopen hearing.* A petition to reopen a hearing to take further evidence may be filed at any time prior to the issuance of the decision of the Judicial Officer. Every such petition shall state briefly the nature and purpose of the evidence to be adduced, shall show that such evidence is not merely cumulative, and shall set forth a good reason why such evidence was not adduced at the hearing.

7 C.F.R. § 1.146(a)(2). The Administrator filed the Petition to Reopen prior to the issuance of a decision by the Judicial Officer. The Administrator's Petition to Reopen

²United States Postal Service Domestic Return Receipt for Article Number 7003 1010 0001 7367 4664.

³The 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).

identifies the nature and purpose of the evidence to be adduced. Moreover, the evidence to be adduced is not merely cumulative and could not have been adduced during the June 11-13, 2012, hearing conducted in this proceeding, as the November 13, 2013, letter from Dr. Goldentyer to Ms. Caudill did not exist at the time of the hearing. Under these circumstances, I reopen the hearing and receive in evidence the November 13, 2013, letter from Dr. Goldentyer to Ms. Caudill.

*Ruling Granting Request to Issue an Order
Dismissing the Proceeding*

On September 7, 2010, the Administrator instituted this adjudicatory proceeding 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] by filing an Order to Show Cause Why Animal Welfare Licenses 58-C-0947, 55-C-0146, and 58-C-0505 Should Not Be Terminated [hereinafter Order to Show Cause].⁴ The Administrator seeks an order terminating Ms. Caudill's Animal Welfare Act license (Animal Welfare Act license

⁴This proceeding, as it relates to the termination of Animal Welfare Act license number 55-C-0146 held by Brent Taylor and William Bedford and to the termination of Animal Welfare Act license number 58-C-0505 held by Mitchell Kalmanson, is concluded. See, Withdrawal of Order to Show Cause as to Brent Taylor and William Bedford filed by the Administrator on June 4, 2012; Order of Dismissal filed by Chief Administrative Law Judge Peter M. Davenport on June 15, 2012; and *In re Jennifer Caudill* (Decision as to Mitchell Kalmanson), ___ Agric. Dec. ___, Sept. 24, 2012.

number 58-C-0947), pursuant to 9 C.F.R. § 2.12,⁵ which provides for termination of an Animal Welfare Act license after a hearing, as follows:

§ 2.12 Termination of a license.

A license may be terminated during the license renewal process or at any other time for any reason that an initial license application may be denied pursuant to § 2.11 after a hearing in accordance with the applicable rules of practice.

The Regulations also provide for automatic termination of an Animal Welfare Act license if the annual license fee is not timely paid, as follows:

§ 2.5 Duration of license and termination of license.

(a) A license issued under this part shall be valid and effective unless:

.....

(3) The license has expired or been terminated under this part.

(4) The annual license fee has not been paid to the appropriate Animal Care regional office as required. There will not be a refund of the annual license fee if a license is terminated prior to its expiration date.

(b) Any person who is licensed must file an application for a license renewal and an annual report form (APHIS Form 7003), as required by § 2.7 of this part, and pay the required annual license fee. The required annual license fee must be received in the appropriate Animal Care regional office on or before the expiration date of the license or the license will expire and automatically terminate. Failure to comply with the annual reporting requirements or pay the required annual license fee on or before the expiration date of the license will result in automatic termination of the license.

9 C.F.R. § 2.5(a)(3)-(4), (b). The letter, dated November 13, 2013, from Dr. Goldentyer

⁵Order to Show Cause at 14-15.

to Ms. Caudill, establishes that, pursuant to 9 C.F.R. § 2.5, Ms. Caudill's Animal Welfare Act license (Animal Welfare Act license number 58-C-0947) automatically terminated on its expiration date, October 16, 2013, because Ms. Caudill failed to pay the annual license fee on or before the expiration of Animal Welfare Act license number 58-C-0947.

Based upon the record before me, I find the automatic termination of Animal Welfare Act license number 58-C-0947, pursuant to 9 C.F.R. § 2.5, renders moot the instant proceeding in which the Administrator seeks termination of Animal Welfare Act license number 58-C-0947, pursuant to 9 C.F.R. § 2.12.

For the foregoing reasons, the following Ruling and Order are issued.

RULING

The Administrator's Petition to Reopen, filed April 29, 2014, is granted, and the letter, dated November 13, 2013, from Dr. Goldentyer to Ms. Caudill, a copy of which is attached to the Administrator's Petition to Reopen, is received in evidence.

ORDER

1. The instant proceeding is dismissed as moot.
2. All motions pending before me in this proceeding are rendered moot and are dismissed.

Done at Washington, DC

May 16, 2014

William G. Jenson
Judicial Officer