

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 14-0022
)
 Brian Staples, an individual d/b/a)
 Staples Safari Zoo and Brian)
 Staples Productions,)
)
 Respondent) **Decision and Order**

PROCEDURAL HISTORY

Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this disciplinary administrative proceeding on November 5, 2013, by filing a Complaint. The Administrator instituted the proceeding under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) [hereinafter the Animal Welfare Act]; the regulations and standards issued under the Animal Welfare Act (9 C.F.R. §§ 1.1-3.142) [hereinafter the Regulations]; and 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].

The Administrator alleged Brian Staples willfully violated the Regulations on October 6, 2010, January 10, 2011, January 22, 2011, January 27, 2011, and July 12, 2011.¹ The Hearing Clerk served Mr. Staples with the Complaint, the Rules of Practice, and the Hearing Clerk's

¹Compl. ¶¶ 4-9 at 2-4.

service letter on November 14, 2013.² Mr. Staples failed to file a response to the Complaint with the Hearing Clerk within 20 days after service, as required by 7 C.F.R. § 1.136(a).

On December 26, 2013, in accordance with 7 C.F.R. § 1.139, the Administrator filed a Motion for Adoption of Decision and Order by Reason of Default [hereinafter Motion for Default Decision] and a proposed Decision and Order by Reason of Default [hereinafter Proposed Default Decision]. The Hearing Clerk served Mr. Staples with the Administrator's Motion for Default Decision, the Administrator's Proposed Default Decision, and the Hearing Clerk's service letter on January 3, 2014.³

On January 8, 2014, Mr. Staples filed an Answer and Request for Hearing in which Mr. Staples denied the material allegations of the Complaint.⁴ On January 23, 2014, Mr. Staples filed Respondent, Brian Staples, Verified Response and Objections to Complainant's Motion for Adoption of Decision by Reason of Default and Proposed Order [hereinafter Objections to the Motion for Default Decision]. On February 3, 2014, Administrative Law Judge Jill S. Clifton [hereinafter the ALJ] issued a Ruling Denying Motion for Default Judgment finding Mr. Staples had shown good cause for the ALJ's acceptance of his late-filed answer and denying the Administrator's Motion for Default Decision.

On March 14, 2014, the Administrator filed Complainant's Petition for Appeal

²United States Postal Service Domestic Return Receipt for Article Number 7012 1010 0002 0090 8692.

³United States Postal Service Domestic Return Receipt for Article Number 7012 1010 0002 0093 6947.

⁴Answer and Request for Hearing ¶¶ 4-9 at 1-2.

[hereinafter Appeal Petition] seeking reversal of the ALJ's Ruling Denying Motion for Default Judgment or an order vacating the ALJ's Ruling Denying Motion for Default Judgment and remanding the proceeding to the ALJ for further proceedings in accordance with the Rules of Practice.⁵ On April 18, 2014, Mr. Staples filed a response to the Administrator's Appeal Petition, and on April 21, 2014, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

Based upon a careful review of the record, I reverse the ALJ's Ruling Denying Motion for Default Judgment and adopt, with minor changes, the proposed findings of fact and the proposed conclusions of law in the Administrator's Proposed Default Decision.

DECISION

Statement of the Case

Mr. Staples failed to file a response to the Complaint with the Hearing Clerk within the time prescribed in 7 C.F.R. § 1.136(a). The Rules of Practice (7 C.F.R. § 1.136(c)) provide that the failure to file an answer to a complaint with the Hearing Clerk within the time provided in 7 C.F.R. § 1.136(a) shall be deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to 7 C.F.R. § 1.139, the failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, constitutes a waiver of hearing. Accordingly, the material allegations in the Complaint are adopted as findings of fact. I issue this Decision and Order pursuant to 7 C.F.R. § 1.139.

Findings of Fact

⁵Administrator's Appeal Pet. at 12.

1. Mr. Staples is an individual, d/b/a Staples Safari Zoo and Brian Staples Productions, whose address is 4420 Washington Street, Clayton, Washington 99110 (Post Office Box 1189, Deer Park, Washington 99006).

2. At all times material to this proceeding, Mr. Staples operated as an "exhibitor," as that term is defined in the Animal Welfare Act and the Regulations, and held Animal Welfare Act license number 91-C-0060.

3. Mr. Staples operates a moderately-large zoo and animal act. Mr. Staples exhibits wild and exotic animals at various locations. In March 2013, Mr. Staples reported to the Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter APHIS], that he held nineteen nonhuman primates (including three baboons), three large felids, camelids, marsupials, and other exotic, wild, and domestic mammals.

4. Mr. Staples resolved two previous Animal Welfare Act cases (WA 01085 and WA 07002) in accordance with the stipulation procedures set forth in 9 C.F.R. § 4.11.

5. Mr. Staples' violations of the Regulations, which are the subject of the instant proceeding, are serious and include the mishandling of a nonhuman primate that escaped and remained at large for two days.

6. APHIS inspectors inspected Mr. Staples' animals, facilities, and equipment on October 6, 2010, January 22, 2011, January 27, 2011, and July 12, 2011.

7. During each of the inspections referenced in Finding of Fact number 6, APHIS inspectors cited Mr. Staples for noncompliance with the Regulations.

8. On or about October 6, 2010, and July 12, 2011, in Ozark, Missouri, Mr. Staples failed to establish and maintain programs of adequate veterinary care that included the use of

appropriate methods to treat diseases and injuries. Specifically, Mr. Staples, while traveling with animals, maintained expired medications in his animal equipment storage areas, including antiseptic wound dressing spray that had expired nearly four years earlier, Baytril without any visible expiration date, Baytril that had expired two years earlier, Praxiquantel that had expired two years two months earlier, and Neo-Predel that had expired one year earlier.

9. On or about October 6, 2010, the surfaces of Mr. Staples' housing facilities for capuchin monkeys were not constructed of materials that allowed the surfaces to be readily cleaned and sanitized.

10. On or about January 10, 2011, at Meigs, Georgia, Mr. Staples failed to handle a nonhuman primate as carefully as possible in a manner that would not cause physical harm, stress, or unnecessary discomfort to the nonhuman primate. Specifically, a member of Mr. Staples' staff mishandled a capuchin monkey by attempting to transfer the capuchin monkey from one enclosure to another enclosure by carrying the capuchin monkey in his arms, whereupon the capuchin monkey was able to, and did, escape and remained at large for two days, during which time the temperatures were near freezing.

11. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples failed to maintain accurate and complete records of the acquisition of two animals (a fennec fox and a bush baby) and did not have a current animal inventory.

12. On or about January 22, 2011, at Meigs, Georgia, the floors and walls of Mr. Staples' bush baby, ring-tailed lemur, and capuchin monkey shelter were deteriorated, with visible surface peeling.

13. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' food and bedding

storage area contained trash, debris, and toxic substances, including, among other things, bleach, pesticides, and an open bag of lime.

14. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples failed to provide nine nonhuman primates (a macaque, six capuchin monkeys, and two spider monkeys) with adequate shelter from the elements.

15. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' travel enclosure housing a capuchin monkey, a bush baby, and a ring-tailed lemur did not have adequate lighting.

16. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' primary enclosure housing two nonhuman primates (two spider monkeys) did not have adequate space for the monkeys.

17. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' primary enclosure housing a capuchin monkey, a bush baby, and a ring-tailed lemur had not been cleaned and contained excreta and accumulated food waste on the floor and walls.

18. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' enclosure housing a lion, a tiger, and a leopard was not constructed in a manner that was sufficient to contain the animals securely. Specifically, sections of the portable fencing were affixed to each other with brackets that did not ensure the integrity of the enclosure.

19. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' enclosure housing a kangaroo was maintained in a manner that could cause injury to the kangaroo. Specifically, there was a rusty, jagged hole in the gate on the interior of the trailer housing the kangaroo.

20. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' enclosure housing three large felids did not have adequate space for the felids to make normal postural adjustments.

21. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' enclosure housing three large felids was excessively caked with feces combined with urine.

22. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' enclosure housing a kangaroo had an excessive accumulation of excreta caked with feces combined with urine.

23. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' enclosure housing a fennec fox had an accumulation of excreta and food waste on the floor and walls.

24. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples failed to utilize a sufficient number of adequately trained employees to maintain an acceptable level of animal husbandry.

25. On or about January 27, 2011, at Walton County Fairgrounds, Florida, Mr. Staples stored metal pipes and portions of tent supports, with long straps, inside the compartment of a trailer in which Mr. Staples transported three camels, and the camels had access to these materials, which were stored in a manner that could injure the camels.

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction over this matter.
2. At all times material to this proceeding, Mr. Staples was an "exhibitor" as that term is defined in the Animal Welfare Act and the Regulations.
3. On or about October 6, 2010, in Ozark, Missouri, Mr. Staples failed to establish and maintain programs of adequate veterinary care that included the use of appropriate methods to treat diseases and injuries, in willful violation of 9 C.F.R. § 2.40(b)(2).
4. On or about October 6, 2010, Mr. Staples' housing facilities for capuchin monkeys did not have surfaces constructed of materials that allowed the surfaces to be readily

cleaned and sanitized, in willful violation of 9 C.F.R. § 3.75(c).

5. On or about January 10, 2011, at Meigs, Georgia, Mr. Staples failed to handle a nonhuman primate as carefully as possible in a manner that would not cause physical harm, stress, or unnecessary discomfort to the nonhuman primate, in willful violation of 9 C.F.R. § 2.131(b)(1).

6. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples failed to maintain accurate and complete records of the acquisition of two animals (a fennec fox and a bush baby) and did not have a current animal inventory, in willful violation of 9 C.F.R. § 2.75(b).

7. On or about January 22, 2011, at Meigs, Georgia, the floors and walls of Mr. Staples' bush baby, ring-tailed lemur, and capuchin monkey shelter were deteriorated, with visible surface peeling, in willful violation of 9 C.F.R. § 3.75(c)(2).

8. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' food and bedding storage area contained trash, debris, and toxic substances, including, among other things, bleach, pesticides, and an open bag of lime, in willful violation of 9 C.F.R. § 3.75(e).

9. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples failed to provide nine nonhuman primates (a macaque, six capuchin monkeys, and two spider monkeys) with adequate shelter from the elements, in willful violation of 9 C.F.R. § 3.78(b).

10. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' travel enclosure housing a capuchin monkey, a bush baby, and a ring-tailed lemur did not have adequate lighting, in willful violation of 9 C.F.R. § 3.79(c).

11. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' primary enclosure housing two nonhuman primates (two spider monkeys) did not have adequate space for the

monkeys, in willful violation of 9 C.F.R. § 3.80.

12. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' primary enclosure housing a capuchin monkey, a bush baby, and a ring-tailed lemur had not been cleaned and contained excreta and accumulated food waste on the floor and walls, in willful violation of 9 C.F.R. § 3.84(a).

13. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' enclosure housing a lion, a tiger, and a leopard was not constructed in a manner that was sufficient to contain the animals securely, in willful violation of 9 C.F.R. § 3.125(a).

14. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' enclosure housing a kangaroo was maintained in a manner that could cause injury to the kangaroo, in willful violation of 9 C.F.R. § 3.125(a).

15. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' enclosure housing three large felids did not have adequate space for the felids to make normal postural adjustments, in willful violation of 9 C.F.R. § 3.128.

16. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' enclosure housing three large felids had an excessive accumulation of excreta, in willful violation of 9 C.F.R. § 3.131(a).

17. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' enclosure housing a kangaroo had an excessive accumulation of excreta, in willful violation of 9 C.F.R. § 3.131(a).

18. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples' enclosure housing a fennec fox had an accumulation of excreta and food waste on the floor and walls, in willful violation of 9 C.F.R. § 3.131(a).

19. On or about January 22, 2011, at Meigs, Georgia, Mr. Staples failed to utilize a sufficient number of adequately trained employees to maintain an acceptable level of animal husbandry, in willful violation of 9 C.F.R. § 3.132.

20. On or about January 27, 2011, at Walton County Fairgrounds, Florida, Mr. Staples stored metal pipes and portions of tent supports, with long straps, inside the compartment of a trailer in which Mr. Staples transported three camels, and the camels had access to these materials, which were stored in a manner that could injure the camels, in willful violation of 9 C.F.R. §§ 3.137(a)(2) and 3.138(f).

21. On or about July 12, 2011, in Ozark, Missouri, Mr. Staples failed to establish and maintain programs of adequate veterinary care that included the use of appropriate methods to treat diseases and injuries, in willful violation of 9 C.F.R. § 2.40(b)(2).

The Administrator's Appeal Petition

The Administrator contends the ALJ erroneously denied the Administrator's Motion for Default Decision (Appeal Pet. at 7-10).

The ALJ denied the Administrator's Motion for Default Decision because the ALJ found Mr. Staples had shown good cause for the ALJ's acceptance of his late-filed Answer, as follows:

1. APHIS's Motion for Adoption of Decision and Order by Reason of Default (filed December 26, 2013, with proposed Decision and Order by Reason of Default) is DENIED, because the Respondent, Brian Staples, an individual, has shown good cause for me to accept, for now, the Answer he filed late. *See* Respondent Staples' Verified Response and Objections, including 5 Exhibits, filed January 23, 2014.

Ruling Denying Mot. for Default Judgment ¶ 1 at 1 (emphasis in original). The Rules of Practice provide, if meritorious objections to a motion for a default decision have been filed, the administrative law judge shall deny the complainant's motion for a default decision with

supporting reasons, as follows:

§ 1.139 Procedure upon failure to file an answer or admission of facts.

The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.

7 C.F.R. § 1.139.

Mr. Staples raised five objections to the Administrator's Motion for Default Decision in his Objections to the Motion for Default Decision. While the ALJ did not identify any objection which she found to be meritorious, the ALJ's Ruling Denying Motion for Default Judgment specifically references Mr. Staples' Objections to the Motion for Default Decision; therefore, I infer the ALJ found meritorious some or all of the objections raised in Mr. Staples' Objections to the Motion for Default Decision. I do not find that Mr. Staples raised any meritorious objection to the Administrator's Motion for Default Decision. Consequently, I conclude the ALJ's Ruling Denying Motion for Default Judgment, is error, and I reverse the ALJ's ruling.

First, Mr. Staples asserts, on July 16, 2011, he requested amendment of APHIS' January 2011 inspection reports, which reports serve as the basis for most of the violations alleged in the Complaint, and, on August 29, 2011, Gregory S. Gaj, D.V.M., an APHIS supervisory animal care specialist, responded to Mr. Staples' request. Based upon this exchange, coupled with subsequent inspections, during which no violations were found, Mr. Staples believed the issues arising from the January 2011 inspections had been resolved. (Objections to the Mot. for

Default Decision at 1; Exhibit 1 and Exhibit 2).

Dr. Gaj's August 29, 2011, response to Mr. Staples' July 16, 2011, request establishes that, except for minor modifications, APHIS rejected Mr. Staples' request for amendment of the January 2011 inspection reports. Moreover, findings, during inspections subsequent to January 2011, that Mr. Staples was fully compliant with the Animal Welfare Act and the Regulations are not relevant to the January 2011 citations for noncompliance with the Regulations which are the subject of this proceeding. In short, Mr. Staples' Objections to the Motion for Default Decision contain no support for his belief that the issues in the January 2011 inspection reports had been resolved, and I reject Mr. Staples' contention that his belief constitutes a meritorious basis for denial of the Administrator's Motion for Default Decision.

Second, Mr. Staples contends the Complaint sent by the Hearing Clerk to his address in Clayton, Washington, was not delivered and was returned to the Hearing Clerk (Objections to the Mot. for Default Decision at 1-2).

The record establishes and the Administrator concedes that the Hearing Clerk sent the Complaint to Mr. Staples' address in Clayton, Washington, and the United States Postal Service returned the Complaint to the Hearing Clerk marked as undeliverable because of the lack of a mail receptacle at the Clayton, Washington, address.⁶ However, the Hearing Clerk's inability to serve Mr. Staples with the Complaint at the Clayton, Washington, address is not relevant because, on November 14, 2013, the Hearing Clerk served Mr. Staples with the Complaint at

⁶Objections to the Mot. for Default Decision Exhibit 3; Administrator's Appeal Pet. CX 3.

Mr. Staples' other address, Post Office Box 1189, Deer Park, Washington 99006.⁷ While Mr. Staples states the Deer Park, Washington, address is actually the mailing address for J. Craig Barrile, Mr. Staples concedes that Post Office Box 1189, Deer Park, Washington 99006, is also his address and describes his relationship with Mr. Barrile, as follows:

The [Deer Park, Washington,] address is listed as Respondent's address on his [Animal Welfare Act] license. It actually is the mailing address for J. Craig Barrile, the registered agent for Staples Safari Zoo, a Washington nonprofit corporation. Mr. Barrile is an attorney and longtime friend of Respondent who had handled various matters for Respondent over the years. As Respondent spends a great deal of time on the road, he entrusted Mr. Barrile to accept his mail and notify him of items related to his [Animal Welfare Act] license.

Objections to the Mot. for Default Decision at 2. Therefore, I reject Mr. Staples' contention that the Hearing Clerk's inability to serve Mr. Staples with the Complaint at his Clayton, Washington, address constitutes a meritorious basis for denying the Administrator's Motion for Default Decision.

Third, Mr. Staples contends J. Craig Barrile, who signed the certified return receipt for the Complaint at Mr. Staples' Deer Park, Washington, address, on November 14, 2013, neglected to give the Complaint to Mr. Staples until December 31, 2013, 27 days after Mr. Staples' answer was required to be filed with the Hearing Clerk (Objections to the Mot. for Default Decision at 2-4).

I have long held that proper service by certified mail is made when a respondent is served with a certified mailing at his or her address and someone signs for the document.⁸ Mr. Staples

⁷See note 2.

⁸*In re Ow Duk Kwon*, 55 Agric. Dec. 78, 93 (1996) (stating proper service is made when a respondent is served with a certified mailing at his or her last known address and

states that the Deer Park, Washington, address is his address and that he specifically designated Mr. Barrile, who signed for the Complaint, to accept his mail, including mail related to Mr. Staples' Animal Welfare Act license. Therefore, Mr. Barrile's failure to convey the Complaint to Mr. Staples until after the time for filing an answer had expired does not constitute a meritorious basis for denying the Administrator's Motion for Default Decision.

Fourth, Mr. Staples, citing *In re Deora Sewnanan* (Order Vacating Decision), 60 Agric. Dec. 688 (2001), and *In re Vaughn Gallop*, 40 Agric. Dec. 217 (1981), contends his late-filed response to the Complaint constitutes a meritorious basis for denying the Administrator's Motion for Default Decision (Objections to the Mot. for Default Decision at 4).

someone signs for the document); *In re ENA Meat Packing Corp.*, 51 Agric. Dec. 669, 671 (1992) (stating a default is not inappropriate where the respondent's employee, who signed the receipt for the certified letter enclosing the complaint, did not advise the respondent's officials of the document); *In re Shulamis Kaplinsky*, 47 Agric. Dec. 613, 619 (1988) (stating the excuse, occasionally given in an attempt to justify the failure to file a timely answer, that the person who signed the certified receipt card failed to give the complaint to the respondent in time to file a timely answer has been and will be routinely rejected); *In re Arturo Bejarano, Jr.*, 46 Agric. Dec. 925, 929 (1987) (stating a default order is proper where the respondent's sister signed the certified receipt card and forgot to give the complaint to the respondent when she saw him two weeks later); *In re Roy Carter*, 46 Agric. Dec. 207, 211 (1987) (stating a default order is proper where a timely answer is not filed; the respondent was properly served where his mother signed the certified receipt card but failed to deliver the complaint to the respondent); *In re Carl D. Cuttone*, 44 Agric. Dec. 1573, 1576 (1985) (stating Carl D. Cuttone was properly served where the complaint was sent to his last known business address and was signed for by Joseph A. Cuttone, who failed to deliver the complaint to the respondent), *aff'd per curiam*, 804 F.2d 153 (D.C. Cir. 1986) (unpublished); *In re Joseph Buzun*, 43 Agric. Dec. 751, 754-56 (1984) (Joseph Buzun was properly served where the complaint sent by certified mail to his residence was signed for by someone named Buzun, who failed to deliver the complaint to the respondent).

The Hearing Clerk served Mr. Staples with the Complaint on November 14, 2013;⁹ therefore, pursuant to 7 C.F.R. § 1.136(a), Mr. Staples was required to file a response to the Complaint with the Hearing Clerk no later than December 4, 2013. Mr. Staples filed a response to the Complaint on January 8, 2014, one month four days after his answer to the Complaint was due. Mr. Staples' failure to file a timely answer to the Complaint is deemed, for the purposes of this proceeding, an admission of the allegations of the Complaint and constitutes a waiver of hearing.¹⁰

Moreover, the cases cited by Mr. Staples do not support his position that a late-filed response to a complaint constitutes a meritorious basis for denying a motion for default decision. In *In re Deora Sewnanan* (Order Vacating Decision), 60 Agric. Dec. 688 (2001), I vacated a default decision issued by an administrative law judge because the record contained no proof that Ms. Sewnanan had been served with the complaint. In *In re Vaughn Gallop* (Order Vacating Default Decision and Remanding Proceeding), 40 Agric. Dec. 217 (1981), former Judicial Officer Donald A. Campbell vacated a default decision issued by an administrative law judge and remanded the proceeding to the administrative law judge to determine if just cause existed for affording Mr. Gallop an opportunity for a hearing based upon the possibility that Mr. Gallop's answer had been mishandled in the mail. Therefore, I reject Mr. Staples' contention that his late-filed answer to the Complaint constitutes a meritorious basis for denial of the Administrator's Motion for Default Decision.

⁹See note 2.

¹⁰7 C.F.R. §§ 1.136(c), .139, .141(a).

Fifth, Mr. Staples, citing *In re Arizona Livestock Auction, Inc.*, 55 Agric. Dec. 1121 (1996), contends the Administrator's request for relief in the Complaint and the sanctions proposed by the Administrator in the Proposed Default Decision are inconsistent and the purported inconsistency constitutes a meritorious basis for denying the Administrator's Motion for Default Decision (Objections to the Mot. for Default Decision at 4).

In the Complaint, the Administrator requested issuance of an order authorized by the Animal Welfare Act,¹¹ whereas, in the Proposed Default Decision, the Administrator proposed issuance of an order requiring Mr. Staples to cease and desist from violating the Animal Welfare Act and the Regulations, suspending Mr. Staples' Animal Welfare Act license for a period of one year, and assessing Mr. Staples a \$16,857 civil penalty.¹² The Secretary of Agriculture is authorized to impose, on licensed exhibitors who violate the Animal Welfare Act or the Regulations, the sanctions proposed by the Administrator in the Proposed Default Decision;¹³ therefore, I disagree with Mr. Staples' contention that the request for relief in the Complaint (an order authorized by the Animal Welfare Act) and the specific sanctions proposed in the Proposed Default Decision are inconsistent. Moreover, *In re Arizona Livestock Auction, Inc.*, 55 Agric. Dec. 1121 (1996), does not support Mr. Staples' contention that an inconsistency between the relief requested in a complaint and the sanction proposed in a proposed default decision constitutes a meritorious basis for denying a motion for a default decision. In *In re Arizona*

¹¹Compl. at 5.

¹²Mot. for Default Decision at 2; Proposed Default Decision at 5.

¹³See 7 U.S.C. § 2149(a)-(b).

Livestock Auction, Inc., 55 Agric. Dec. 1121 (1996), I vacated a default decision issued by an administrative law judge and dismissed the complaint because the Secretary of Agriculture lacked jurisdiction.

Sanction

The United States Department of Agriculture's current sanction policy is set forth in *In re S.S. Farms Linn County, Inc.* (Decision as to James Joseph Hickey and Shannon Hansen), 50 Agric. Dec. 476, 497 (1991), *aff'd*, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3):

[The sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.]

The recommendations of administrative officials charged with the responsibility for achieving the congressional purpose of the regulatory statute are highly relevant to any sanction to be imposed and are entitled to great weight in view of the experience gained by administrative officials during their day-to-day supervision of the regulated industry. However, I have repeatedly stated the recommendations of administrative officials as to the sanction are not controlling, and, in appropriate circumstances, the sanction imposed may be considerably less, or different, than that recommended by administrative officials.¹⁴

¹⁴ *In re Lee Marvin Greenly* (Decision as to Lee Marvin Greenly and Minnesota Wildlife Connection, Inc.), ___ Agric. Dec. ___, slip op. at 33-34 (Aug. 5, 2013); *In re Sam Mazzola*, 68 Agric. Dec. 822, 849 (2009), *dismissed*, 2010 WL 2988902 (6th Cir. Oct. 27, 2010); *In re Lorenza Pearson*, 68 Agric. Dec. 685, 731 (2009), *aff'd*, 411 F. App'x 866 (6th Cir. 2011); *In re Amarillo Wildlife Refuge, Inc.*, 68 Agric. Dec. 77, 89 (2009); *In re Alliance Airlines*, 64 Agric. Dec. 1595, 1608 (2005); *In re Mary Jean Williams* (Decision as to Deborah Ann Milette), 64 Agric. Dec. 364, 390 (2005); *In re Geo. A. Heimos Produce Co.*, 62 Agric. Dec. 763, 787 (2003), *appeal dismissed*, No. 03-4008 (8th Cir. Aug. 31, 2004); *In re Excel Corp.*, 62 Agric. Dec. 196, 234 (2003), *enforced as modified*, 397 F.3d 1285 (10th Cir. 2005); *In re Steven Bourk* (Decision as to Steven Bourk and Carmella Bourk), 61 Agric. Dec.

When determining the amount of any civil monetary penalty to be assessed, the Animal Welfare Act requires the Secretary of Agriculture to give due consideration to the size of the business of the person involved, the gravity of the violation, the person's good faith, and the history of previous violations.¹⁵

The Administrator seeks assessment of a \$16,857 civil penalty against Mr. Staples, an order requiring Mr. Staples to cease and desist from violating the Animal Welfare Act and the Regulations, and an order suspending Mr. Staples' Animal Welfare Act license for a period of one year.¹⁶ Mr. Staples contends the Administrator's proposed sanction is "grossly excessive in light of the nature of the violations and [his] lack of history of prior violations."¹⁷

Mr. Staples is deemed to have admitted the allegations in the Complaint that he operated a moderately large zoo and animal act, that his violations are serious, and that he resolved two previous Animal Welfare Act cases in accordance with the stipulation procedures set forth in 9 C.F.R. § 4.11.¹⁸ Moreover, Mr. Staples is deemed to have admitted that he committed the 19 violations of the Animal Welfare Act and the Regulations alleged in the Complaint. This ongoing pattern of violations establishes a "history of previous violations" for the purposes of 7 U.S.C. § 2149(b) and a lack of good faith.

Mr. Staples could be assessed a maximum civil penalty of \$190,000 for his 19 violations

¹⁵7 U.S.C. § 2149(b).

¹⁶See note 12.

¹⁷Objections to the Mot. for Default Decision at 7.

¹⁸Compl. ¶ 2 at 1.

of the Animal Welfare Act and the Regulations.¹⁹ After examining all the relevant circumstances, in light of the United States Department of Agriculture's sanction policy, and taking into account the requirements of 7 U.S.C. § 2149(b), the remedial purposes of the Animal Welfare Act, and the recommendations of the Administrator, I conclude a cease and desist order, suspension of Mr. Staples' Animal Welfare Act license for a period of nine months, and assessment of a \$11,000 civil penalty against Mr. Staples²⁰ are appropriate and necessary to ensure Mr. Staples' compliance with the Animal Welfare Act and the Regulations in the future, to deter others from violating the Animal Welfare Act and the Regulations, and to fulfill the remedial purposes of the Animal Welfare Act.

For the foregoing reasons, the following Order is issued.

ORDER

1. Mr. Staples, his agents and employees, successors and assigns, directly or 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 establish and maintain programs of adequate veterinary

¹⁹7 U.S.C. § 2149(b) provides that the Secretary of Agriculture may assess a civil penalty of not more than \$10,000 for each violation of the Animal Welfare Act and the Regulations.

²⁰I assess Mr. Staples a \$2,000 civil penalty for his January 10, 2011, failure to handle a nonhuman primate as carefully as possible in a manner that would not cause physical harm, stress, or unnecessary discomfort to the nonhuman primate, in willful violation of 9 C.F.R. § 2.131(b)(1). I assess Mr. Staples a \$500 civil penalty for each of his other 18 willful violations of the Regulations.

care that include the use of appropriate methods to treat diseases and injuries;

- b. failing to construct housing facilities for nonhuman primates with surfaces made of materials that can be readily cleaned and sanitized;
- c. failing to maintain accurate and complete records showing the acquisition, disposition, and identification of animals;
- d. failing to handle nonhuman primates as carefully as possible in a manner that will not cause physical harm, stress, or unnecessary discomfort to the nonhuman primates;
- e. failing to store supplies of food and bedding in a manner that protects the supplies from spoilage, contamination, and vermin infestation;
- f. failing to provide nonhuman primates with outdoor facilities that provide adequate shelter from the elements at all times;
- g. failing to provide travel enclosures for nonhuman primates with lighting sufficient to permit routine inspection and cleaning of the enclosures and observation of the nonhuman primates;
- h. failing to provide primary enclosures for nonhuman primates with sufficient space for the nonhuman primates in the enclosures;
- i. failing to remove excreta and food waste from inside each indoor primary enclosure for nonhuman primates daily;
- j. failing to maintain indoor and outdoor housing facilities in good repair to protect the animals from injury and to contain the animals;
- k. failing to construct and maintain enclosures so as to provide

sufficient space to allow each animal to make normal postural adjustments;

1. failing to remove excreta from primary enclosures as often as necessary to prevent contamination of the animals contained in the primary enclosures, to minimize disease hazards, and to reduce odors; and
 - m. failing to utilize a sufficient number of adequately trained employees to maintain an acceptable level of husbandry practices.

Paragraph one of this Order shall become effective upon service of this Order on

Mr. Staples.

2. Mr. Staples' Animal Welfare Act license (Animal Welfare Act license number 91-C-0060) is suspended for a period of nine months and continuing thereafter until Mr. Staples has demonstrated compliance with the Animal Welfare Act and the Regulations.

Paragraph two of this Order shall become effective 60 days after service of this Order on Mr. Staples.

3. Mr. Staples is assessed a \$11,000 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:

Colleen A. Carroll
United States Department of Agriculture
Office of the General Counsel
Marketing, Regulatory, and Food Safety 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, Ms. Carroll within 60 days after service of this Order on Mr. Staples. Mr. Staples shall state on the certified check or money order that payment is in reference to AWA Docket No. 14-0022.

RIGHT TO JUDICIAL REVIEW

Mr. Staples 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. Staples must seek judicial review within 60 days after entry of the Order in this Decision and Order.²¹ The date of entry of the Order in this Decision and Order is June 26, 2014.

Done at Washington, DC

June 26, 2014

William G. Jenson
Judicial Officer

²¹7 U.S.C. § 2149(c).