

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re: ) AWA Docket No. 15-0080  
)  
Timothy L. Stark, an individual, )  
)  
) **Order Denying Petition**  
Respondent ) **For Reconsideration**

**PROCEDURAL HISTORY**

On August 8, 2016, Kevin Shea, Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [Administrator], filed Complainant's Petition for Reconsideration requesting that I reconsider *Stark*, AWA Docket No. 15-0080, 2016 WL 4184323 (U.S.D.A. July 15, 2016). On September 6, 2016, Timothy L. Stark filed Objection to Complainant's Petition for Reconsideration, and on September 7, 2016, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture, transmitted the record to the Office of the Judicial Officer for consideration of, and a ruling on, Complainant's Petition for Reconsideration.

**DISCUSSION**

The rules of practice applicable to this proceeding<sup>1</sup> provide that a party to a proceeding may file a petition for reconsideration of the decision of the Judicial Officer. The purpose of a petition for reconsideration is to seek correction of manifest errors of law or fact. Petitions for reconsideration are not to be used as vehicles merely for registering disagreement with the Judicial

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<sup>1</sup>The 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) [Rules of Practice].

Officer's decisions. A petition for reconsideration is only granted, absent highly unusual circumstances, if the Judicial Officer has committed error or if there is an intervening change in the controlling law.

The Administrator raises three issues in Complainant's Petition for Reconsideration. First, the Administrator contends I erroneously established a *de facto* time-bar on the institution of proceedings to terminate Animal Welfare Act<sup>2</sup> licenses based upon convictions of violating federal, state, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals (Complainant's Pet. for Recons. ¶ II at the fifth unnumbered page, ¶ IVa at the eighth through tenth unnumbered pages).

The Administrator's contention that my dismissal of the Administrator's February 26, 2015, Order to Show Cause is based upon an application of a *de facto* time-bar has no merit. As I stated in the July 15, 2016, Decision and Order, my dismissal of the Order to Show Cause is based on all of the facts in this proceeding. While the seven-year-one-month-nine-day period between Mr. Stark's conviction and the Administrator's institution of this proceeding was one of many factors that I considered when I dismissed the Order to Show Cause,<sup>3</sup> I did not establish a *de facto* time-bar for the institution of proceedings to terminate Animal Welfare Act licenses based upon convictions of violating federal, state, or local laws or regulations pertaining to the transportation, ownership, neglect, or welfare of animals.

Second, the Administrator contends that I erroneously failed to adopt his determination that Mr. Stark's January 17, 2008, conviction of violating the Endangered Species Act renders

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<sup>2</sup>Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159).

<sup>3</sup>Stark, AWA Docket No. 15-0080, 2016 WL 4184323, at \*5 (U.S.D.A. July 15, 2016).

Mr. Stark's continued licensure contrary to the purposes of the Animal Welfare Act (Complainant's Pet. for Recons. ¶ IVa at the eighth unnumbered page).

The Administrator's determination that Mr. Stark's January 17, 2008, conviction of violating the Endangered Species Act renders Mr. Stark's continued licensure contrary to the purposes of the Animal Welfare Act is not dispositive of this case. The Regulations provide that an Animal Welfare Act license may be terminated after a hearing in accordance with the Rules of Practice.<sup>4</sup> The Rules of Practice provide that, post-hearing, an administrative law judge shall issue a decision which becomes the final decision of the Secretary of Agriculture, unless a party to the proceeding appeals the administrative law judge's decision to the Judicial Officer.<sup>5</sup> If the administrative law judge's decision is appealed to the Judicial Officer, the Judicial Officer issues the final order for the Secretary of Agriculture.<sup>6</sup> While the Judicial Officer may give weight to the Administrator's determination regarding whether a respondent's Animal Welfare Act license should be terminated, the Rules of Practice do not require that the Judicial Officer adopt the Administrator's determination. Therefore, I reject the Administrator's contention that my failure to adopt the Administrator's determination, is error.

Third, the Administrator contends I erroneously concluded, in order to terminate an Animal Welfare Act license pursuant to 9 C.F.R. § 2.12, the Administrator must prove more than the respondent's conviction of violating a federal, state, or local law or regulation pertaining to the

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<sup>4</sup>9 C.F.R. § 2.12.

<sup>5</sup>7 C.F.R. § 1.142(c)(4).

<sup>6</sup>7 C.F.R. § 1.145(i).

transportation, ownership, neglect, or welfare of animals (Complainant's Pet. for Recons. ¶ II at the fifth unnumbered page, ¶ IVb at the eleventh through the nineteenth unnumbered pages).

An Animal Welfare Act license may be terminated for any reason that an initial Animal Welfare Act license application may be denied pursuant to 9 C.F.R. § 2.11.<sup>7</sup> An initial Animal Welfare Act license application may be denied based solely upon an applicant's conviction of violating a federal, state, or local law or regulation pertaining to the transportation, ownership, neglect, or welfare of animals.<sup>8</sup> However, the Administrator did not institute this proceeding based only on Mr. Stark's conviction of violating the Endangered Species Act. Instead, the Administrator's February 26, 2015, Order to Show Cause identifies as a basis for termination of Mr. Stark's Animal Welfare Act license a previous finding that Mr. Stark harmed the animals in his custody.<sup>9</sup> As fully discussed in *Stark*, AWA Docket No. 15-0080, 2016 WL 4184323 (U.S.D.A. July 15, 2016), the record is devoid of any evidence that Mr. Stark has been found to have harmed the animals in his custody.

For the foregoing reasons, the following Order is issued.

### **ORDER**

Complainant's Petition for Reconsideration, filed August 8, 2016, is denied.

Done at Washington, DC

September 8, 2016

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William G. Jenson  
Judicial Officer

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<sup>7</sup>9 C.F.R. § 2.12.

<sup>8</sup>9 C.F.R. § 2.11(a)(6).

<sup>9</sup>Order to Show Cause ¶ 4 at 2.