

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWA Docket No. 12-0552
)	
Hope Knaust, an individual; Stan Knaust,)	
an individual; and The Lucky Monkey,)	
a partnership,)	
)	
Respondents)	Decision and Order

PROCEDURAL HISTORY

Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], instituted this proceeding by filing a Complaint on July 26, 2012. 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 pursuant to 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 of Agriculture Under Various Statutes (7 C.F.R. §§ 1.130-.151) [hereinafter the Rules of Practice].

The Administrator alleges, on or about February 11, 2008, February 10, 2010, February 17, 2010, February 23, 2010, March 4, 2010, May 3, 2010, and September 7, 2010, Hope Knaust, Stan Knaust, and The Lucky Monkey [hereinafter Respondents] willfully violated the Animal Welfare Act and the Regulations.¹ On August 22, 2012, Respondents filed an

¹Compl. ¶¶ 5-21 at 2-7.

Answer to the Complaint Filed by the Administrator, Animal and Plant Health Inspection Service [hereinafter Answer], in which Respondents admit some of the allegations in the Complaint, deny some of the allegations in the Complaint, and explain some of the allegations in the Complaint.

Pursuant to Chief Administrative Law Judge Peter M. Davenport's [hereinafter the Chief ALJ] August 27, 2012, Order, the parties exchanged witness lists, exhibit lists, and copies of their exhibits. The Administrator's exhibits are identified as "CX" and the exhibit number. Respondents' sole exhibit is Hope Knaust's affidavit, dated April 6, 2010, which was prepared by Morris Smith, an Animal and Plant Health Inspection Service [hereinafter APHIS] investigator, as part of APHIS' investigation of Respondents' violations of the Animal Welfare Act and the Regulations; hence, Respondents' only exhibit is also one of the Administrator's exhibits and it is identified as "CX 7."

On May 16, 2013, the Administrator filed Complainant's Motion for Summary Judgment. On June 28, 2013, Respondents filed Respondents' Response to Complainant's Motion for Summary Judgment. On November 15, 2013, the Chief ALJ issued a Decision and Order in which the Chief ALJ: (1) granted Complainant's Motion for Summary Judgment in part and denied Complainant's Motion for Summary Judgment in part; (2) ordered Respondents to cease and desist from violating the Animal Welfare Act and the Regulations; and (3) revoked Hope Knaust and Stan Knaust's Animal Welfare Act license (Animal Welfare Act license number 74-C-0388).²

²Chief ALJ's Decision and Order at 15-17.

On December 20, 2013, Respondents appealed to the Judicial Officer. On January 6, 2014, the Administrator filed Complainant's Response to Respondents' Petition for Appeal, and on January 13, 2014, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for consideration and decision.

DECISION

Respondents' Appeal Petition

Respondents raise four issues in Respondents' Appeal to Judicial Officer [hereinafter Appeal Petition]. First, Respondents contend the Chief ALJ erroneously failed to rule on Respondents' objection to the Administrator's photographic evidence.² Respondents assert the photographs in question were not authenticated and argue unauthenticated documents cannot be considered on a motion for summary judgment. (Appeal Pet. at 2-3).

In Respondents' Response to Complainant's Motion for Summary Judgment, Respondents objected to the Administrator's photographic evidence, as follows:

None of these photographs are authenticated. . . .

Accordingly, Respondents object to each of these photographs and request that the Administrative Law Judge not consider them as summary judgment evidence or proof.

Respondents' Response to Complainant's Mot. for Summ. J. at 4. The Chief ALJ did not rule on Respondents' objection to the photographs in question; however, the Rules of Practice do not require the Chief ALJ to rule specifically on Respondents' objection. Therefore, I reject Respondents' contention that the Chief ALJ's failure to rule specifically on their objection to the

²CX 12, CX 15-CX 16, CX 18-CX 22, CX 28-CX 29, CX 53, CX 63, CX 67-CX 76, CX 78-CX 111, CX 115-CX 138.

Administrator's photographic evidence, is error.³

The Chief ALJ provides citations to the evidence he relied upon in connection with his consideration of Complainant's Motion for Summary Judgment.⁴ I find nothing in the Chief ALJ's Decision and Order indicating the Chief ALJ considered or relied upon the Administrator's photographic evidence.

Second, Respondents contend the Chief ALJ erroneously failed to rule on Respondents' objection to an interview log prepared by an APHIS investigator, Morris Smith (CX 6). Respondents argue the interview log is hearsay and cannot be considered on a motion for summary judgment. (Appeal Pet. at 3).

In Respondents' Response to Complainant's Motion for Summary Judgment, Respondents objected to the interview log (CX 6), as follows:

The content or substance of a summary judgment affidavit must be otherwise admissible and any hearsay contained in a summary judgment affidavit remains hearsay, beyond the bounds of the court's consideration. *Johnson v. Weld City, Colorado*, 594 F.3d 1202, 1210 (10th Cir. 2010). Respondents therefore object to this exhibit and request that it not be considered in ruling upon Complainant's motion for summary judgment.

Respondents' Response to Complainant's Mot. for Summ. J. at 5. The Chief ALJ did not rule on Respondents' objection to the interview log (CX 6); however, the Rules of Practice do not require the Chief ALJ to rule specifically on Respondents' objection. Therefore, I reject

³Respondents could have, but did not, advance their objection by means of a motion, which would have required the Chief ALJ to rule on Respondents' objection. See *In re Lee Marvin Greenly*, __ Agric. Dec. __, slip op. at 13-14 (July 2, 2013).

⁴See the Chief ALJ's references to exhibits (Chief ALJ's Decision and Order at 5-15).

Respondents' contention that the Chief ALJ's failure to rule specifically on their objection to the interview log (CX 6), is error.⁵

The Chief ALJ provides citations to the evidence he relied upon in connection with his consideration of Complainant's Motion for Summary Judgment.⁶ The Chief ALJ considered and relied extensively on the interview log (CX 6);⁷ however, I reject Respondents' contention that the Chief ALJ's consideration of and reliance on hearsay evidence, is error. The Administrative Procedure Act provides for admission and exclusion of evidence, as follows:

§ 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

.....

(d) . . . Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

5 U.S.C. § 556(d).

Similarly, the Rules of Practice provides for exclusion of evidence, as follows:

§ 1.141 Procedure for hearing.

.....

(h) *Evidence*—(1) *In general*. . . .

.....

(iv) Evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely, shall be excluded insofar as practicable.

⁵See note 3.

⁶See note 4.

⁷See the Chief ALJ's references to CX 6 (Chief ALJ's Decision and Order at 6-10, 14).

7 C.F.R. § 1.141(h)(1)(iv). Further, courts have consistently held that hearsay evidence is admissible in proceedings conducted under the Administrative Procedure Act.⁸ Moreover, responsible hearsay has long been admitted in United States Department of Agriculture administrative proceedings.⁹

⁸See, e.g., *Richardson v. Perales*, 402 U.S. 389, 409-10 (1971) (stating, even though inadmissible under the rules of evidence applicable to court procedure, hearsay evidence is admissible under the Administrative Procedure Act); *Bennett v. NTSB*, 66 F.3d 1130, 1137 (10th Cir. 1995) (stating the Administrative Procedure Act (5 U.S.C. § 556(d)) renders admissible any oral or documentary evidence except irrelevant, immaterial, or unduly repetitious evidence; thus, hearsay evidence is not inadmissible *per se*); *Crawford v. United States Dep't of Agric.*, 50 F.3d 46, 49 (D.C. Cir.) (stating administrative agencies are not barred from reliance on hearsay evidence, which need only bear satisfactory indicia of reliability), *cert. denied*, 516 U.S. 824 (1995); *Gray v. United States Dep't of Agric.*, 39 F.3d 670, 676 (6th Cir. 1994) (holding documentary evidence which is reliable and probative is admissible in an administrative proceeding, even though it is hearsay).

⁹*In re Post & Taback, Inc.*, 62 Agric. Dec. 802, 816-17 (2003), *aff'd*, 123 F. App'x 406 (D.C. Cir. 2005); *In re Judie Hansen*, 57 Agric. Dec. 1072, 1110-11 (1998), *appeal dismissed*, 221 F.3d 1342 (Table), 2000 WL 1010575 (8th Cir. 2000) (per curiam), *printed in* 59 Agric. Dec. 533 (2000); *In re David M. Zimmerman*, 57 Agric. Dec. 1038, 1066-67 (1998); *In re Saulsbury Enterprises* (Order Denying Pet. for Recons.), 56 Agric. Dec. 82, 86 (1997); *In re John T. Gray* (Decision as to Glen Edward Cole), 55 Agric. Dec. 853, 868 (1996); *In re Mike Thomas*, 55 Agric. Dec. 800, 821 (1996); *In re Big Bear Farm, Inc.*, 55 Agric. Dec. 107, 136 (1996); *In re Jim Fobber*, 55 Agric. Dec. 60, 69 (1996); *In re Richard Marion, D.V.M.*, 53 Agric. Dec. 1437, 1463 (1994); *In re Dane O. Petty*, 43 Agric. Dec. 1406, 1466 (1984), *aff'd*, No. 3-84-2200-R (N.D. Tex. June 5, 1986); *In re De Graaf Dairies, Inc.*, 41 Agric. Dec. 388, 427 n.39 (1982), *aff'd*, No. 82-1157 (D.N.J. Jan. 24, 1983), *aff'd mem.*, 725 F.2d 667 (3d Cir. 1983); *In re Richard L. Thornton* (Remand Order), 38 Agric. Dec. 1425, 1435, *final decision*, 38 Agric. Dec. 1539 (1979); *In re Maine Potato Growers, Inc.*, 34 Agric. Dec. 773, 791-92 (1975), *aff'd*, 540 F.2d 518 (1st Cir. 1976); *In re Marvin Tragash Co.*, 33 Agric. Dec. 1884, 1894 (1974), *aff'd*, 524 F.2d 1255 (5th Cir. 1975).

Third, Respondents assert, while the Chief ALJ conceded that a court should not make credibility determinations in a summary judgment proceeding, the Chief ALJ erroneously made credibility determinations throughout the Chief ALJ's Decision and Order (Appeal Pet. at 3-4).

Respondents do not cite any portion of the Chief ALJ's Decision and Order that supports their assertion that the Chief ALJ made impermissible credibility determinations, and I cannot locate any credibility determination in the Chief ALJ's Decision and Order. Therefore, I reject Respondents' contention that the Chief ALJ made impermissible credibility determinations in connection with his consideration of Complainant's Motion for Summary Judgment.

Fourth, Respondents contend the Chief ALJ erroneously discounted Hope Knaust's affidavit, dated April 6, 2010 (CX 7) (Appeal Pet. at 4).

Respondents' basis for their assertion that the Chief ALJ discounted Hope Knaust's affidavit is the Chief ALJ correct observation that Hope Knaust's affidavit was prepared not by her attorney, but rather by Morris Smith, an APHIS investigator, as part of APHIS' investigation of Respondents' violations of the Animal Welfare Act and the Regulations (Chief ALJ's Decision and Order at 3-4). I do not find that the Chief ALJ's observation indicates that the Chief ALJ discounted Hope Knaust's affidavit. Moreover, the Chief ALJ repeatedly cites Hope Knaust's affidavit (CX 7) as support for his findings¹⁰ establishing that the Chief ALJ did not discount Hope Knaust's affidavit, but, instead, relied extensively on Hope Knaust's affidavit. Therefore, I reject Respondents' contention that the Chief ALJ erroneously discounted Hope

¹⁰See the Chief ALJ's references to CX 7 (Chief ALJ's Decision and Order at 6-11, 14-15).

Knaust's affidavit, dated April 6, 2010.

After careful consideration of the record and the arguments raised by Respondents on appeal, except for minor modifications, I adopt, as the final decision and order in this proceeding, the Chief ALJ's Decision and Order granting Complainant's Motion for Summary Judgment in part and denying Complainant's Motion for Summary Judgment in part.

The Summary Judgment Standard

The Rules of Practice do not specifically provide for the use or exclusion of summary judgment; however, I have consistently held that hearings are futile and summary judgment is appropriate in proceedings in which there is no factual dispute of substance.¹¹ A factual dispute of substance is present if sufficient evidence exists on each side so that a rational trier of fact could resolve the dispute either way and resolution of the dispute is essential to the proper disposition of the claim. The mere existence of some factual dispute will not defeat an otherwise properly supported motion for summary judgment because the factual dispute must be material. The usual and primary purpose of summary judgment is to isolate and dispose of factually unsupported claims or defenses.¹²

¹¹ See *In re Pine Lake Enterprises, Inc.*, 69 Agric. Dec. 157, 162-63 (2010); *In re Kathy Jo Bauck*, 68 Agric. Dec. 853, 858-59 (2009), *appeal dismissed*, No. 10-1138 (8th Cir. Feb. 24, 2010); *In re Animals of Montana, Inc.*, 68 Agric. Dec. 92, 104 (2009). See also *Veg-Mix, Inc. v. United States Dep't of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987) (affirming the Secretary of Agriculture's use of summary judgment under the Rules of Practice and rejecting Veg-Mix, Inc.'s claim that a hearing was required because it answered the complaint with a denial of the allegations).

¹² *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986).

If the moving party supports its motion for summary judgment, the burden shifts to the non-moving party who may not rest on mere allegation or denial in the pleadings, but must set forth facts showing there is a genuine issue of fact for trial.¹³ In setting forth such facts, the non-moving party must identify the facts by reference to depositions, documents, electronically stored information, affidavits, declarations, stipulations, admissions, interrogatory answers, or other materials.¹⁴ In ruling on a motion for summary judgment, all evidence must be considered in the light most favorable to the non-moving party with all justifiable inferences to be drawn in the non-movant's favor.¹⁵ Although Respondents filed Respondents' Response to Complainant's Motion for Summary Judgment, the response is devoid of the type of supporting documentation necessary to show there is a genuine issue for trial, except for references to Hope Knaust's affidavit, dated April 6, 2010 (CX 7).

Discussion

The first three paragraphs of the Complaint identify Hope Knaust, Stan Knaust, and The Lucky Monkey. Aside from correcting the mailing address for Stan Knaust, Respondents admit the allegations in paragraphs 1, 2, and 3 of the Complaint. The Administrator alleges in paragraph 4 of the Complaint that Respondents operate a zoo, which Respondents deny (Answer ¶ 4 at 1). Given the fact that the Animal Welfare Act license held by Hope Knaust and Stan

¹³*Morris v. Covan World Wide Moving, Inc.*, 144 F.3d 377, 380 (5th Cir. 1998); *Conkling v. Turner*, 18 F.3d 1285, 1295 (5th Cir. 1994).

¹⁴*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986).

¹⁵*Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 158-59 (1970).

Knaust is a Class C Animal Welfare Act license for an exhibitor (CX 1 at 2, 5, 7, 10), the characterization of Respondents' business is not material and resolution of the issue of whether Respondents operate a zoo is not required.

The Administrator alleges in paragraph 5 of the Complaint that, on or about February 11, 2008, Respondents willfully violated 9 C.F.R. §§ 2.100(a) and 3.127(d) by failing to enclose their facilities for a zebra by a perimeter fence not less than 6 feet high. Respondents state: "When the zebra was a baby, the wall was four feet high. As the animal grew, Respondents built a six-foot high enclosure." (Answer ¶ 5 at 2).

The Regulations require exhibitors to enclose outdoor facilities with a perimeter fence, as follows:

§ 3.127 Facilities, outdoor.

....
 (d) *Perimeter fence.* . . . [A]ll outdoor housing facilities . . . must be enclosed by a perimeter fence that is of sufficient height to keep animals and unauthorized persons out. Fences less than 8 feet high for potentially dangerous animals, such as, but not limited to, large felines (e.g., lions, tigers, leopards, cougars, etc.), bears, wolves, rhinoceros, and elephants, or less than 6 feet high for other animals must be approved in writing by the Administrator. The fence must be constructed so that it protects the animals in the facility by restricting animals and unauthorized persons from going through it or under it and having contact with the animals in the facility, and so that it can function as a secondary containment system for the animals in the facility. It must be of sufficient distance from the outside of the primary enclosure to prevent physical contact between animals inside the enclosure and animals or persons outside the perimeter fence. Such fence less than 3 feet in distance from the primary enclosure must be approved in writing by the Administrator.

9 C.F.R. § 3.127(d). Respondents admit in their Answer that the perimeter fence for the zebra was only 4 feet high and Respondents make no assertion that they obtained written approval from the Administrator for a fence less than 6 feet high. Accordingly, the violation alleged in

paragraph 5 of the Complaint is established. (CX 4 at 2, CX 7 at 1, CX 65).

The Administrator alleges in paragraph 6 of the Complaint that, on or about February 10, 2010, Respondents failed to employ an attending veterinarian under formal arrangements in willful violation of 9 C.F.R. § 2.40(a)(1), and, specifically, Respondents' arrangements did not include a current written program of veterinary care with regularly scheduled visits to Respondents' facility, none having been made since 2008.¹⁶ Respondents deny this allegation in their Answer claiming Dr. Snyder was the attending veterinarian, who Respondents believed had come to Respondents' facility in 2008 for an on-site visit (Answer ¶ 6 at 2). While Respondents may have considered Dr. Snyder to have been their attending veterinarian, merely entertaining such a belief is not sufficient. The Regulations require that, in the case of a part-time attending veterinarian, formal arrangements include a written program of veterinary care and regularly scheduled visits to the exhibitor's premises.¹⁷ Hope Knaust's affidavit states, on February 10, 2010, Donovan Fox cited her for not having a written program of veterinary care and she was given a week to get a veterinarian and to have the program of veterinary care signed (CX 7 at 2). Thus, at the time of the February 10, 2010, inspection, a current written program of veterinary care did not exist (CX 2 at 1, CX 4 at 2-3, CX 5). Dr. Snyder confirmed that he last signed a program of veterinary care for Respondents' facility in 2008 and that he had not visited Respondents' facility, except possibly to sell hay to Respondents in 2009 (CX 5,

¹⁶Hope Knaust "thought" Dr. David Snyder had been to Respondents' facility in 2009 (CX 7 at 2). Dr. Snyder confirmed that he sold hay to Respondents in 2009 and presumably had been to Respondents' facility to deliver the hay (CX 6 at 2).

¹⁷See 9 C.F.R. § 2.40(a)(1).

CX 6 at 2). The protracted hiatus between Dr. Snyder's professional visits to Respondents' facility cannot be considered sufficiently regular to comply with 9 C.F.R. § 2.40(a)(1).

Accordingly, the violation alleged in paragraph 6 of the Complaint is established.

The Administrator also alleges recurring violations of 9 C.F.R. § 2.40(a)(1) on or about February 17, 2010,¹⁸ February 23, 2010,¹⁹ March 4, 2010,²⁰ and May 3, 2010.²¹ Hope Knaust admits the violations of 9 C.F.R. § 2.40(a)(1) on February 10, 2010, and February 17, 2010, by stating Respondents were waiting for Dr. Snyder to visit Respondents' facility:²²

Regarding the PVC, I told Don [Fox] we were still waiting for Dr. Snyder to come out and inspect the property. Dr. Snyder told Stanley he was coming on 02/17/10. Apparently, Don went and talked to Dr. Snyder and he told Don he was not going to be our vet. Dr. Snyder called Stanley the next day, on 02/18/10, and said he could not pass or sign our vet plan.

CX 7 at 5.²³ Hope Knaust also admitted the February 23, 2010, violation of 9 C.F.R.

§ 2.40(a)(1), as follows:

Again, I was first again cited for not having a written program of veterinary care. It is true that Don Fox cited this on his inspection reports dated, 02/10/10 and

¹⁸Compl. ¶ 10 at 3.

¹⁹Compl. ¶ 12 at 4.

²⁰Compl. ¶ 15 at 5.

²¹Compl. ¶ 18 at 6.

²²Dr. Snyder did go Respondents' facility at some point before February 19, 2010, but did not go to the residence because he could see from the driveway that the animals and the facility were in very bad condition (CX 6 at 3).

²³I infer Hope Knaust's references to a "PVC" are references to a program of veterinary care.

02/17/10. I did not know until 03/19/10 that Dr. Snyder was refusing to come back out[.²⁴]

CX 7 at 8. The same extract implicitly admits the March 4, 2010, violation of 9 C.F.R. § 2.40(a)(1) alleged in paragraph 15 of the Complaint. Hope Knaust's affidavit further addresses Respondents' inability to secure services of a veterinarian, until arrangements were made for the services of Dr. Tim Holt on March 4, 2010. Dr. Holt first visited Respondents' facility on March 5, 2010 (CX 7 at 13). Even after Dr. Holt's visit, the evidence is clear that no written program of veterinary care was signed (CX 61 at 1).

Despite Respondents' professed belief that Dr. Snyder continued to be their attending veterinarian, the record establishes that Dr. Snyder had advised Stan Knaust that he (Dr. Snyder) could not sign a program of veterinary care and could not continue to serve as attending veterinarian for Respondents (CX 6 at 3). Moreover, a letter dated February 19, 2010, received by APHIS on February 22, 2010, from Dr. Snyder makes clear that Dr. Snyder had no intention of serving as attending veterinarian for Respondents (CX 11). Indeed, Dr. Snyder's letter expressly states he could not endorse renewal of Hope Knaust and Stan Knaust's Animal Welfare Act license, citing the pain and suffering of Respondents' animals, the lack of feed for Respondents' animals, and the lack of manpower and funding to keep Respondents' animals in a satisfactory health status. Dr. Snyder's five-year relationship with Respondents and his observation of the severe deterioration of conditions at Respondents' facility, which is consistent

²⁴Dr. Snyder had communicated his intention not to continue as Respondents' veterinarian to Stan Knaust (CX 6 at 3); however, Stan Knaust apparently failed to share that information with Hope Knaust.

with observations described by APHIS inspector Donovan Fox, lends significant credence to the allegations concerning the failure of Respondents to provide adequate care for the animals at their facility (CX 4, CX 6, CX 11).

The Administrator alleges in paragraph 7 of the Complaint that, on or about February 10, 2010, Respondents failed to provide adequate veterinary care to a camel with extensive hair loss and visibly red and irritated skin, in willful violation of 9 C.F.R. §§ 2.40(a) and 2.40(b)(2). Respondents deny the allegation in their Answer, stating the camel had been taken to the veterinarian just prior to February 10, 2010, and treated (Answer ¶ 7 at 2). Respondents' assertion that the camel was treated prior to the February 10, 2010, inspection is refuted by Dr. Snyder's statement that the camel was not brought to his clinic until February 11, 2010 (CX 6 at 1-2). Moreover, as Dr. Snyder's account confirms that the camel required veterinary care, the February 10, 2010, violation of 9 C.F.R. § 2.40(b)(2) is established. Because Respondents took the camel to the veterinarian on February 11, 2010, and the camel received care, I decline to find a repeat violation of 9 C.F.R. § 2.40(b)(2) as to the camel on February 23, 2010, as alleged in paragraph 13 of the Complaint. Hope Knaust attempts to minimize the need for veterinary care as to the other animals (CX 7 at 8-9); however, the February 23, 2010, inspection report prepared by Donovan Fox (CX 13 at 1-2) and the affidavit of APHIS veterinarian, Dr. Daniel Jones (CX 10 at 7), support the existence violations of 9 C.F.R. § 2.40(b)(2) as to a capybara, a kangaroo, two fallow deer, and a sheep on February 23, 2010.²⁵

²⁵Hope Knaust's affidavit references an opinion given by Dr. Holt regarding need for veterinary care for the fallow deer on February 23, 2010 (CX 7 at 9); however, Respondents did not contact Dr. Holt until March 4, 2010, and Dr. Holt did not see Respondents' animals until March 5, 2010 (CX 7 at 13, 17). The lack of adequate veterinary care was confirmed

Respondents were cited for repeat violations of 9 C.F.R. § 2.40(b)(2) on March 4, 2010, for the capybara, the kangaroo, and two fallow deer. Absent any factual evidence that the animals were treated, the March 4, 2010, violations of 9 C.F.R. § 2.40(b)(2), as alleged in paragraph 16 of the Complaint, are established (CX 50-52, CX 54-CX 55).

The Administrator alleges in paragraph 8 of the Complaint that, on or about February 10, 2010, Respondents failed to maintain accurate records of the acquisition and disposition of animals, in willful violation of 9 C.F.R. § 2.75(b). Respondents deny the allegation, but Respondents' Answer and Hope Knaust's affidavit inconsistently state the records were corrected on the date of the February 10, 2010, inspection (Answer ¶ 8 at 2; CX 7 at 2). Given that Respondents admit corrections were made, Respondents have admitted the existence of deficiencies, and the February 10, 2010, violation of 9 C.F.R. § 2.75(b)(2). While the correction of a violation can be taken into account when determining the sanction to be imposed, the correction does not alter the fact that a violation occurred.²⁶

The Administrator alleges in paragraph 9(a)-(f) of the Complaint that, on or about

when APHIS confiscated the animals on March 5, 2010 (CX 50-CX 52, CX 54-CX 55).

²⁶*In re Lee Marvin Greenly*, __ Agric. Dec. __, slip op. at 30 (Aug. 5, 2013); *In re Tri-State Zoological Park of Western Maryland, Inc.*, __ Agric. Dec. __, slip op. at 63 (Mar. 22, 2013); *In re Lorenza Pearson*, 68 Agric. Dec. 685, 727-28 (2009), *aff'd*, 411 F. App'x 866 (6th Cir. 2011); *In re Jewel Bond*, 65 Agric. Dec. 92, 109 (2006), *aff'd per curiam*, 275 F. App'x 547 (8th Cir. 2008); *In re Eric John Drogosch*, 63 Agric. Dec. 623, 643 (2004); *In re Reginald Dwight Parr*, 59 Agric. Dec. 601, 644 (2000), *aff'd per curiam*, 273 F.3d 1095 (5th Cir. 2001) (Table); *In re Susan DeFrancesco*, 59 Agric. Dec. 97, 112 n.12 (2000); *In re Michael A. Huchital*, 58 Agric. Dec. 763, 805 n.6 (1999); *In re James E. Stephens*, 58 Agric. Dec. 149, 184-85 (1999).

February 10, 2010, Respondents failed to meet the minimum standards in 9 C.F.R. §§ 3.75(b), 3.75(c)(1), 3.75(c)(3), 3.125(a), 3.127(b), and 3.127(c), in willful violation of 9 C.F.R.

§ 2.100(a). Respondents deny the allegations in paragraph 9 of the Complaint averring

Respondents' facilities had been cleaned consistent with existing seasonal conditions (Answer ¶ 9 at 2-3). However, Hope Knaust admits in her affidavit the existence of uninstalled cabinets in the primate building, the disrepair of the fences enclosing a camel and Axis deer, the failure to have a heat source for the capybaras, and the lack of shelter for eight alpacas (CX 7 at 2-4).

Accordingly, the violation of 9 C.F.R. § 3.75(b) alleged in paragraph 9(a) of the Complaint is established, the violation of 9 C.F.R. § 3.125(a) alleged in paragraph 9(d) of the Complaint is established, and the violation of 9 C.F.R. § 3.127(b) alleged in paragraph 9(e) of the Complaint is established. Hope Knaust's affidavit affirms the content of the Answer and I find the affidavit to be sufficient to raise a factual dispute of substance as to the violation of 9 C.F.R. § 3.75(c)(1) alleged in paragraph 9(b) of the Complaint, the violation of 9 C.F.R. § 3.75(c)(3) alleged in paragraph 9(c) of the Complaint, and the violation of 9 C.F.R. § 3.127(c) alleged in paragraph 9(f) of the Complaint and additional evidence will be required if these alleged violations are to be established.

The Administrator alleges additional violations of the minimum standards in paragraphs 11, 14, 17, and 20 of the Complaint based upon inspections of Respondents' facility on February 17, 2010, February 23, 2010, March 4, 2010, and May 3, 2010 (CX 9, CX 13, CX 25, CX 61). Hope Knaust admits in her affidavit that certain of the violations cited on February 17, 2010, including the existence of tools in the food storage building and the fact that the facility's only full time employee had departed and had not been replaced, leaving the burden

for caring for the significant number of animals primarily upon her, with only limited assistance from Stan Knaust who no longer resided on the premises (CX 7 at 5-8; Answer ¶ 2 at 1).²⁷ Accordingly, I find, on or about February 17, 2010, Respondents' food storage building contained tools, in violation of 9 C.F.R. § 3.75(b), as alleged in paragraph 11(a) of the Complaint; and Respondents failed to employ a sufficient number of trained personnel to care for Respondents' animals, in violation of 9 C.F.R. §§ 3.85 and 3.132, as alleged in paragraph 11(e) of the Complaint. Hope Knaust affirms in her affidavit the content of the Answer and I find the affidavit to be sufficient to raise a factual dispute of substance as to the violation of 9 C.F.R. § 3.75(e) alleged in paragraph 11(a) of the Complaint; the violation of 9 C.F.R. § 3.75(c)(1) alleged in paragraph 11(b) of the Complaint; the violation of 9 C.F.R. § 3.75(c)(3) alleged in paragraph 11(c) of the Complaint; the violation of 9 C.F.R. § 3.84(b)(3) alleged in paragraph 11(d) of the Complaint; the violation of 9 C.F.R. § 3.127(b) alleged in paragraph 11(f) of the Complaint; and the violation of 9 C.F.R. § 3.127(c) alleged in paragraph 11(g) of the Complaint and additional evidence will be required if these alleged violations are to be established.

The same insufficiency of staff was again cited on February 23, 2010 (CX 13 at 3); however, Hope Knaust states in her affidavit that by February 23, 2010, a number of the animals had been sold and a new employee had been hired (CX 7 at 10). While Hope Knaust admits the existence of a horse carcass, as alleged in paragraph 11(j) of the Complaint, she explains that the horse had died only the night before and that the APHIS inspectors arrived before Respondents

²⁷Dr. Snyder commented on the deterioration of Respondents' facility after "Stanley and Hope split up[.]" (CX 6 at 2).

had time to remove it (CX 7 at 12). The February 23, 2010, inspection report also cited Respondents with failing to provide sufficient food for the animals (CX 13 at 4-5). Respondents deny the allegation (Answer ¶ 14 at 5-6); however, given the malnourished condition of the animals confiscated on March 5, 2010, the only logical conclusion that can be reached is that the animals were not being fed adequate amounts of food (CX 50-CX 52, CX 54-CX 55, CX 112). Accordingly, I find, on or about February 23, 2010, Respondents failed to provide sufficient food to their animals, in violation of 9 C.F.R. § 3.129, as alleged in paragraph 14(h) of the Complaint; and Respondents failed to remove a bloated equine carcass adjacent to the llama enclosure, in violation of 9 C.F.R. § 3.131(c), as alleged in paragraph 14(j) of the Complaint. Hope Knaust affirms the content of the Answer in her affidavit and I find the affidavit to be sufficient to raise a factual dispute of substance as to the violation of 9 C.F.R. § 3.75(a) alleged in paragraph 14(a) of the Complaint; the violation of 9 C.F.R. § 3.84(a) alleged in paragraph 14(b) of the Complaint; the violation of 9 C.F.R. § 3.85 alleged in paragraph 14(c) of the Complaint; the violation of 9 C.F.R. § 3.125(a) alleged in paragraph 14(d) of the Complaint; the violation of 9 C.F.R. § 3.125(c) alleged in paragraph 14(e) of the Complaint; the violation of 9 C.F.R. § 3.127(b) alleged in paragraph 14(f) of the Complaint; the violation of 9 C.F.R. § 3.127(c) alleged in paragraph 14(g) of the Complaint; and the violation of 9 C.F.R. § 3.130 alleged in paragraph 14(i) of the Complaint and additional evidence will be required if these alleged violations are to be established.

The violations cited on March 4, 2010, include an allegation in paragraph 17(b) of the Complaint that the primate structure was not constructed in a manner to provide adequate heat, in violation of 9 C.F.R. § 3.76(a). That allegation appears to be inartfully drawn as the evidence

indicates that, rather than the problem being in the structure's construction, the problem was the lack of fuel for the heating element which had to be replenished to raise the temperature to an acceptable level (CX 7 at 14). Hope Knaust fails to deny that fencing for a pig and llama was in disrepair and asserts the llama shelter violation was corrected that day (CX 7 at 14-15). The failure to provide sufficient food was also cited and is established by the examination of the animals following their confiscation on March 5, 2010 (CX 50-CX 52, CX 54-CX 55, CX 112). Accordingly, I find, on or about March 4, 2010, Respondents' fencing for animals, including fencing for Respondents' llamas and pig, was in disrepair, in violation of 9 C.F.R. § 3.125(a), as alleged in paragraph 17(c) of the Complaint; Respondents failed to provide adequate shelter for llamas, in violation of 9 C.F.R. § 3.127(b), as alleged in paragraph 17(d) of the Complaint; and Respondents failed to provide sufficient food to Respondents' animals, in violation of 9 C.F.R. § 3.129, as alleged in paragraph 17(f) of the Complaint. Hope Knaust affirms the content of the Answer in her affidavit and I find the affidavit to be sufficient to raise a factual issue of substance as to the violations of 9 C.F.R. §§ 3.75(a) and 3.75(e) alleged in paragraph 17(a) of the Complaint; the violation of 9 C.F.R. § 3.76(a) alleged in paragraph 17(b) of the Complaint; the violation of 9 C.F.R. § 3.127(b) (as it relates to adequate shelter for a camel and a capybara) alleged in paragraph 17(d) of the Complaint; the violation of 9 C.F.R. § 3.127(c) alleged in paragraph 17(e) of the Complaint; the violation of 9 C.F.R. § 3.130 alleged in paragraph 17(g) of the Complaint; and the violation of 9 C.F.R. § 3.132 alleged in paragraph 17(h) of the Complaint and additional evidence will be required if these alleged violations are to be established.

Respondents failed to submit any factual evidence concerning the violations cited in the May 3, 2010, and September 7, 2010, inspections reports (CX 39, CX 61), and, in Respondents'

Response to Complainant's Motion for Summary Judgment, Respondents rely solely upon pleadings. Consistent with the burden shifting requirements,²⁸ the violations cited on May 3, 2010, and September 7, 2010, are deemed established. Accordingly, I find, on or about May 3, 2010, Respondents' failed to employ an attending veterinarian under formal arrangements that included a current written program of veterinary care, in violation of 9 C.F.R. § 2.40(a)(1), as alleged in paragraph 18 of the Complaint; Respondent failed to maintain accurate records of the acquisition and disposition of animals, in violation of 9 C.F.R. § 2.75(b), as alleged in paragraph 19 of the Complaint; and Respondents' enclosure for animals, including sheep, goats, and pigs, were in disrepair, in violation of 9 C.F.R. § 3.125(a), as alleged in paragraph 20 of the Complaint.²⁹ I also find, on or about September 7, 2010, Respondents failed to provide APHIS officials access to Respondents' facility, in violation of 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126, as alleged in paragraph 21 of the Complaint.

The evidence compels the conclusion that Respondents lacked sufficient resources both in funding and personnel for continued operation of, or correction of the conditions at, Respondents' facility. The conditions observed reflect an appalling lack of adequate and necessary veterinary care and husbandry practices despite repeated citations, serious overall

²⁸See note 13.

²⁹Paragraph 20 of the Complaint alleges, on or about March 4, 2010, Respondents' enclosures for animals, including sheep, goats, and pigs, were in disrepair, in willful violation of 9 C.F.R. §§ 2.100(a) and 3.125(a). Subsequent to filing the Complaint, the Administrator asserted the date of the violation alleged in paragraph 20 of the Complaint is erroneous and the correct date is "May 3, 2010." (Correction of Complaint filed May 16, 2013).

deterioration in the standard of care of Respondents' animals and physical facilities, and repeated deficiencies at Respondents facility. The seriousness of the conditions at Respondents' facility ultimately resulted in confiscation of some of the animals at Respondents' facility on March 5, 2010, including Hobo, a monkey that provided Hope Knaust with her main source of income.³⁰ The subsequent evaluation of the confiscated animals reflects unacceptable neglect in their care, with many animals observed as being malnourished and requiring immediate veterinary care for anemia, lice, and parasites (CX 50-CX 52, CX 54-CX 55).

Findings of Fact

1. Hope Knaust and Stan Knaust are individuals and are partners operating The Lucky Monkey, a general partnership also sometimes known as The Lucky Monkey Petting Zoo. Hope Knaust lives at Respondents' facility in Terrell, Texas, and Stan Knaust lives in Irving, Texas. (Answer ¶¶ 1-3 at 1-2).
2. Hope Knaust and Stan Knaust hold a Class C Animal Welfare Act exhibitors license (Animal Welfare Act license number 74-C-0388). (Answer ¶¶ 1-3 at 1-2; CX 1).
3. On or about February 11, 2008, Respondents failed to enclose facilities for a zebra with a fence not less than 6 feet high. (Answer ¶ 5 at 2; CX 4 at 2, CX 7 at 1, CX 65).
4. On or about February 10, 2010, February 17, 2010, February 23, 2010, March 4, 2010, and May 3, 2010, Respondents failed to employ an attending veterinarian under formal arrangements and, specifically, Respondents' arrangements with their part-time attending

³⁰Confiscation was undertaken pursuant to 7 U.S.C. § 2146 which permits confiscation of any animal found to be suffering as a result of a failure to comply with any provision of the Animal Welfare Act or any regulation or standard issued under the Animal Welfare Act.

veterinarian did not include a current written program of veterinary care and regularly scheduled visits to Respondents' premises. (CX 2, CX 4-CX 7, CX 9, CX 13, CX 25, CX 61).

5. On or about February 10, 2010, Respondents failed to provide adequate veterinary care to a camel with extensive hair loss and visibly red and irritated skin, later diagnosed to have external parasites and a secondary infection. (CX 2 at 1-2, CX 4 at 3, CX 6 at 1-2).

6. On or about February 10, 2010, and May 3, 2010, Respondents failed to maintain accurate records of the acquisition and disposition of the animals. (CX 2 at 2, CX 4 at 3, CX 7 at 2, CX 61 at 1-2).

7. On or about February 10, 2010, Respondents' nonhuman primate building contained uninstalled cabinets, the enclosures housing a camel and Axis deer were in disrepair, an enclosure for the capybaras lacked a heat source, and an enclosure for eight alpacas lacked adequate shelter. A heat source was provided for the capybaras that same day. (CX 2 at 2-5, CX 7 at 2-4).

8. On or about February 17, 2010, Respondents' food storage building contained tools and Respondents failed to employ a sufficient number of trained personnel to care for the nonhuman primates and to provide minimally acceptable husbandry to the other animals. (CX 4 at 7-9, CX 7 at 5-8, CX 9 at 2, 4-6, CX 10 at 3, 5-6).

9. On or about February 23, 2010, Respondents failed to have an attending veterinarian provide adequate veterinary care to a capybara, a kangaroo, two fallow deer, and a sheep (CX 13 at 1-2). The failure to provide adequate veterinary care to the capybara, the kangaroo, and the two fallow deer continued until March 4, 2010. (CX 25 at 1-2, CX 50-CX 52, CX 54-CX 55).

10. On or about February 23, 2010, Respondents failed to provide sufficient food for their animals, and Respondents failed remove a bloated equine carcass from the area adjacent to the llama enclosure. (CX 7 at 12, CX 13 at 4-5, CX 14 at 5-6, CX 50-CX 52, CX 54-CX 55).

11. On or about March 4, 2010, Respondents failed to maintain fencing for animals in a state of repair, allowing a pig and a llama to escape their enclosures; failed to provide sufficient food for their animals; and failed to provide adequate shelter from inclement weather for llamas. (CX 7 at 14-16, CX 25 at 2-4, CX 50-CX 52, CX 54-CX 55).

12. Conditions observed on March 4, 2010, resulted in the confiscation of some of Respondents' animals by the APHIS on March 5, 2010. Subsequent examination of the confiscated animals reflected neglect in their care, with many animals being observed as being malnourished and requiring immediate veterinary care for anemia, lice, and parasites. (CX 50-CX 52, CX 54-CX 55).

13. On or about May 3, 2010, Respondents' enclosures for animals, including sheep, goats, and pigs, were in disrepair. (CX 61 at 2-3).

14. On or about September 7, 2010, Respondents failed to provide APHIS officials access to Respondents' facility. (CX 39).

Conclusions of Law

1. The Secretary of Agriculture has jurisdiction over this matter.

2. On or about February 11, 2008, Respondents willfully violated 9 C.F.R. §§ 2.100(a) and 3.127(d) by failing to enclose their facilities for a zebra with a fence not less than 6 feet high.

3. On or about February 10, 2010, February 17, 2010, February 23, 2010, March 4,

2010, and May 3, 2010, Respondents willfully violated 9 C.F.R. § 2.40(a)(1) by failing to employ an attending veterinarian under formal arrangements.

4. On or about February 10, 2010, February 23, 2010, and March 4, 2010, Respondents willfully violated 9 C.F.R. § 2.40(b)(2) by failing to obtain adequate veterinary care for Respondents' animals visibly exhibiting the need for veterinary care.

5. On or about February 10, 2010, and May 3, 2010, Respondents willfully violated 9 C.F.R. § 2.75(b) by failing to maintain accurate records of the acquisition and disposition of animals.

6. On or about February 10, 2010, Respondents' facility did not meet the minimum standards, in willful violation of 9 C.F.R. §§ 2.100(a), 3.75(b), 3.125(a), and 3.127(b).

7. On or about February 17, 2010, Respondents' facility did not meet the minimum standards, in willful violation of 9 C.F.R. §§ 2.100(a), 3.75(b), 3.85, and 3.132.

8. On or about February 23, 2010, Respondents' facility did not meet the minimum standards, in willful violation of 9 C.F.R. §§ 2.100(a), 3.129, and 3.131(c).

9. On or about March 4, 2010, Respondents' facility did not meet the minimum standards, in willful violation of 9 C.F.R. §§ 2.100(a), 3.125(a), 3.127(b), and 3.129.

10. On or about May 3, 2010, Respondents' facility did not meet the minimum standards, in willful violation of 9 C.F.R. §§ 2.100(a) and 3.125(a).

11. On September 7, 2010, Respondents willfully violated 7 U.S.C. § 2146(a) and 9 C.F.R. § 2.126 by failing to provide APHIS officials access to Respondents' facilities.

12. Factual disputes of substance exist as to the violations of the Animal Welfare Act and the Regulations alleged in paragraphs 9(b)-(c), 9(f), 11(a) (as it relates to Respondents'

alleged violation of 9 C.F.R. § 3.75(e)), 11(b)-(d), 11(f)-(g), 13 (as it relates to Respondents' failing to obtain veterinary care for a camel), 14(a)-(g), 14(i), 17(a)-(b), 17(d) (as it relates to Respondents' failing to provide adequate shelter for a camel and a capybara), 17(e), and 17(g)-(h) of the Complaint.

13. An order revoking Hope Knaust and Stan Knaust's Animal Welfare Act license (Animal Welfare Act license number 74-C-0388) is appropriate.

14. An order instructing Respondents to cease and desist from violations of the Animal Welfare Act and the Regulations is appropriate.

For the foregoing reasons, the following Order is issued.

ORDER

1. Respondents and their agents, employees, successors, and assigns, directly or indirectly through any corporate or other device, are ordered to cease and desist from violations of the Animal Welfare Act and the Regulations. Paragraph 1 of this Order shall become effective upon service of this Order on Respondents.

2. Hope Knaust and Stan Knaust's Animal Welfare Act license (Animal Welfare Act license number 74-C-0388) is revoked. Paragraph 2 of this Order shall become effective 60 days after service of this Order on Respondents.

RIGHT TO JUDICIAL REVIEW

Respondents have 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. Respondents must seek judicial review within 60 days after entry of the Order in this Decision and Order.³¹ The date of entry of the Order in this Decision and Order is April 9, 2014.

Done at Washington, DC

April 9, 2014

William G. Jenson
Judicial Officer

³¹7 U.S.C. § 2149(c).