

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 09-0155
)
Terranova Enterprises, Inc.,)
a Texas corporation, d/b/a Animal)
Encounters, Inc.; Douglas Keith)
Terranova, an individual; Will)
Ann Terranova, an individual;)
Farin Fleming, an individual;)
Sloan Damon, an individual;)
Craig Perry, an individual, d/b/a)
Perry’s Exotic Petting Zoo;)
Perry’s Wilderness Ranch & Zoo,)
Inc., an Iowa corporation; Eugene)
“Trey” Key, III, an individual; and)
Key Equipment Company, Inc.,)
an Oklahoma corporation, d/b/a)
Culpepper & Merriweather Circus,))
)
Respondents) **Remand Order**

On January 17, 2012, Craig Perry and Perry’s Wilderness Ranch & Zoo, Inc. [hereinafter the Applicants], instituted this administrative proceeding under the Equal Access to Justice Act (5 U.S.C. § 504) and the Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department (7 C.F.R. §§ 1.180-.203) [hereinafter EAJA Rules of Practice] by filing an “Application for Award of Attorney’s Fees and Expenses” [hereinafter EAJA Application]. On February 3, 2012,

Kevin Shea, Acting Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], filed a motion to strike the Applicants' EAJA Application. On February 6, 2012, Administrative Law Judge Janice K. Bullard [hereinafter the ALJ] filed an Order deferring a ruling on the Applicants' EAJA Application to the jurisdiction of the Judicial Officer.

The EAJA Rules of Practice provide that the Judicial Officer's jurisdiction is triggered when an Equal Access to Justice Act applicant or agency counsel seeks review of an adjudicative officer's¹ initial decision on the fee application (7 C.F.R. § 1.201(a)). As there has been no request for review of an initial decision on the Applicants' EAJA Application, I have no jurisdiction over this Equal Access to Justice Act proceeding and I remand the proceeding to the ALJ for further proceedings in accordance with the Equal Access to Justice Act and the EAJA Rules of Practice.

On remand, the ALJ might consider issuing an order amending the caption in this proceeding to reflect the fact that only Mr. Perry and Perry's Wilderness Ranch & Zoo, Inc., have filed an EAJA Application and that they are Applicants, not "Respondents," as stated in the current case caption. In addition, I note the docket number assigned by the Hearing Clerk to this Equal Access to Justice Act proceeding is identical to the docket number assigned to a related proceeding that was instituted by the Administrator under

¹The term "*Adjudicative Officer*" means "an administrative law judge, administrative judge, or other person assigned to conduct a proceeding covered by EAJA." (7 C.F.R. § 1.180(b).)

the Animal Welfare Act and is now pending before me, *In re Terranova Enterprises, Inc.*, AWA Docket No. 09-0155. In order to avoid any confusion between the two proceedings, the ALJ might consider requesting that the Hearing Clerk assign a new docket number to this Equal Access to Justice Act proceeding.

For the foregoing reasons, the following Order is issued.

ORDER

This proceeding is remanded to Administrative Law Judge Janice K. Bullard for further proceedings in accordance with the Equal Access to Justice Act and the EAJA Rules of Practice.

Done at Washington, DC

May 23, 2012

William G. Jenson
Judicial Officer