

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In re: ) AWA Docket No. 03-0003  
)  
Winifred M. Canavan, d/b/a )  
Westport Aquarium, )  
)  
Respondent ) **Remand Order**

**PROCEDURAL HISTORY**

The Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter Complainant], instituted this disciplinary administrative proceeding by filing a “Complaint” on December 4, 2002. Complainant 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 Standards]; 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].

Complainant alleges Winifred M. Canavan, d/b/a Westport Aquarium [hereinafter Respondent], committed willful violations of the Regulations and Standards (Compl. ¶¶ II-VI).

In accordance with section 1.138 of the Rules of Practice (7 C.F.R. § 1.138), Complainant and Respondent agreed to the entry of a consent decision. On July 24, 2003, former Chief Administrative Law Judge James W. Hunt [hereinafter the former Chief ALJ], entered a “Consent Decision and Order.” On April 14, 2004, Complainant and Respondent filed a “Joint Motion to Modify Order” requesting a modification of the former Chief ALJ’s July 24, 2003, Consent Decision and Order. On April 16, 2004, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on the Joint Motion to Modify Order.

### **CONCLUSIONS BY THE JUDICIAL OFFICER**

Section 1.143(a) of the Rules of Practice identifies the person who shall rule on motions and requests, as follows:

#### **§ 1.143 Motions and requests.**

(a) *General.* All motions and requests shall be filed with the Hearing Clerk, and served upon all the parties, except (1) requests for extensions of time pursuant to § 1.147, (2) requests for subpoenas pursuant to § 1.149, and (3) motions and requests made on the record during the oral hearing. *The Judge shall rule upon all motions and requests filed or made prior to the filing of an appeal of the Judge’s decision pursuant to § 1.145, except motions directly relating to the appeal. Thereafter, the Judicial Officer will rule on any motions and requests, as well as the motions directly relating to the appeal.*

7 C.F.R. § 1.143(a) (emphasis added).

No appeal has been filed in this proceeding, and the Joint Motion to Modify Order does not relate to an appeal. The former Chief ALJ retired from federal service effective August 1, 2003. Accordingly, the proceeding cannot be remanded to the former Chief ALJ and must be assigned to another administrative law judge.

For the foregoing reasons, the following Order should be issued.

**ORDER**

The proceeding is remanded to Acting Chief Administrative Law Judge Marc R. Hillson for assignment to an administrative law judge in accordance with 5 U.S.C. § 3105 to rule on the Joint Motion to Modify Order.

Done at Washington, DC

April 20, 2004

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William G. Jenson  
Judicial Officer