

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	AWA Docket No. 10-0416
)	
Jennifer Caudill, a/k/a Jennifer)	
Walker, a/k/a Jennifer Herriott)	
Walker, an individual; Brent)		
Taylor and William Bedford,)	Rulings Denying:	Motion to Confirm
individuals, d/b/a Allen Brothers)		Status of the Proceeding; Motion to
Circus; and Mitchel Kalmanson,)		Strike; Motion for Fees, Costs, and
)	Expenses; Motion for Sanctions; and
Respondents)		Motion for a Monetary Advance

Preliminary Statement

On November 5, 2012, Mitchel Kalmanson filed “Respondent, Mitchel Kalmanson’s Response and Motion to Strike Complainant’s Request for Extension of Time to File Petition for Appeal & Sanction(s) and Fee(s) in Favor of Kalmanson” [hereinafter Kalmanson’s November 5, 2012, Motions] in which Mr. Kalmanson requests that the Judicial Officer: (1) confirm the status of this proceeding; (2) strike the October 10, 2012, Order extending the time for filing an appeal of Chief Administrative Law Judge Peter M. Davenport’s [hereinafter the Chief ALJ] Decision and Order as to Mitchell Kalmanson; (3) award Mr. Kalmanson fees, expenses, and costs; (4) sanction (a) the Administrator, Animal and Plant Health Inspection

Service, United States Department of Agriculture [hereinafter the Administrator], the official who instituted this proceeding; (b) Dr. Elizabeth Goldentyer, a witness called by the Administrator in this proceeding; and (c) Colleen Carroll, the attorney who represents the Administrator in this proceeding; and (5) advance money to Mr. Kalmanson which money would be used for Mr. Kalmanson's defense in this proceeding.

On November 16, 2012, the Administrator filed "Complainant's Response to Motions Filed by Respondent Mitchel Kalmanson" in which the Administrator opposes Kalmanson's November 5, 2012, Motions. On January 18, 2013, the Hearing Clerk transmitted the record to the Office of the Judicial Officer for rulings on Kalmanson's November 5, 2012, Motions.

Ruling Denying Motion to Confirm Status of the Proceeding

Mr. Kalmanson requests that I confirm that this proceeding has been bifurcated and that he has been severed from the other respondents (Kalmanson's November 5, 2012, Motions at 3 ¶ 1). The record does not contain any order bifurcating the proceeding or any order severing Mr. Kalmanson from the other respondents; therefore, I deny Mr. Kalmanson's request that I confirm that this proceeding has been bifurcated and that Mr. Kalmanson has been severed from the other respondents.

Ruling Denying Motion to Strike

On October 4, 2012, the Administrator requested an extension of time within which to appeal the Chief ALJ's Decision and Order as to Mitchell Kalmanson. The Administrator

requested that the time for filing the Administrator's appeal petition be extended to 30 days after service on the Administrator's counsel of an initial decision as to Jennifer Caudill (Complainant's Request for Extension of Time to File Petition for Appeal at 2). On October 10, 2012, I granted the Administrator's request (Order Extending Time for Filing Appeal Petition).

Mr. Kalmanson moves to strike the Order Extending Time for Filing Appeal Petition on the ground that he will be prejudiced by this extension of time because the Administrator will attempt to tie his appeal of the Chief ALJ's Decision and Order as to Mitchell Kalmanson to the initial decision and order that is issued as to Jennifer Caudill (Kalmanson's November 5, 2012, Motions at 3 ¶ 2).

Mr. Kalmanson's claim of prejudice is premature as the Chief ALJ has not yet issued a decision as to Jennifer Caudill and the Administrator has not yet appealed the Chief ALJ's Decision and Order as to Mitchell Kalmanson. Therefore, I deny Mr. Kalmanson's motion to strike the October 10, 2012, Order Extending Time for Filing Appeal Petition.

Ruling Denying Motion for Fees, Costs, and Expenses

Mr. Kalmanson requests that I award him fees, costs, and expenses incurred in connection with his November 5, 2012, filing (Kalmanson's November 5, 2012, Motions at 4 ¶ 4). This proceeding is a license termination proceeding to determine whether Mr. Kalmanson is unfit to be licensed as an exhibitor under the Animal Welfare Act. The

issue of whether Mr. Kalmanson is entitled to fees, costs, and expenses is not before me. Therefore, I deny Mr. Kalmanson's motion for fees, costs, and expenses incurred in connection with Mr. Kalmanson's November 5, 2012, filing.

Ruling Denying Motion for Sanctions

Mr. Kalmanson requests that I assess monetary sanctions against the Administrator, Dr. Goldentyer, and Ms. Carroll for their purported fraud and fabrication of evidence (Kalmanson's November 5, 2012, Motions at 4 ¶ 5). This proceeding is a license termination proceeding to determine whether Mr. Kalmanson is unfit to be licensed as an exhibitor under the Animal Welfare Act. The issue of whether monetary sanctions should be assessed against the Administrator, Dr. Goldentyer, and Ms. Carroll is not before me. Therefore, I deny Mr. Kalmanson's motion for the assessment of monetary sanctions against the Administrator, Dr. Goldentyer, and Ms. Carroll.

Mr. Kalmanson also requests that I disbar Ms. Carroll and preclude Ms. Carroll from prosecuting any United States Department of Agriculture matter based upon Ms. Carroll's purported egregious behavior, abuse of process, abuse of her role as an officer of the court, and attempt to fabricate evidence (Kalmanson's November 5, 2012, Motions at 4 ¶ 7).

As an initial matter, I have no jurisdiction to disbar Ms. Carroll. However, the rules

of practice applicable to this proceeding¹ do provide for debarment from United States Department of Agriculture proceedings (7 C.F.R. § 1.141(d)). This proceeding is a license termination proceeding to determine whether Mr. Kalmanson is unfit to be licensed as an exhibitor under the Animal Welfare Act. The issue of whether Ms. Carroll is unfit to act as counsel in any proceeding before the United States Department of Agriculture is not before me. Therefore, I deny Mr. Kalmanson's motion to disbar Ms. Carroll and to preclude Ms. Carroll from prosecuting any United States Department of Agriculture matter.

Ruling Denying Motion for a Monetary Advance

Mr. Kalmanson requests that I provide him with a monetary advance to be used for his defense in this proceeding (Kalmanson's November 5, 2012, Motions at 4 ¶ 6). I deny Mr. Kalmanson's request for a monetary advance as I have no jurisdiction to provide Mr. Kalmanson a monetary advance from United States Department of Agriculture funds. Moreover, I am required to endeavor to avoid even the appearance of bias and a monetary advance to Mr. Kalmanson from my personal funds may result in my appearing to be biased.

Done at Washington, DC

January 24, 2013

¹The 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).

William G. Jenson
Judicial Officer