

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) EAJA Docket No. 12-0645
)
Craig Perry, an individual, d/b/a)
Perry's Exotic Petting Zoo; and)
Perry's Wilderness Ranch & Zoo,)
Inc., an Iowa corporation,)
) **Ruling Granting Motion**
Applicants) **to Amend Caption**

On November 5, 2012, the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture [hereinafter the Administrator], requested that I amend the caption of this proceeding to make clear that the only applicants for attorney fees and other expenses in this Equal Access to Justice Act proceeding are Craig Perry and Perry's Wilderness Ranch & Zoo, Inc., and that Larry Thorson, counsel for Mr. Perry and Perry's Wilderness Ranch & Zoo, Inc., is not eligible for an award of attorney fees and other expenses in the proceeding (Agency's Pet. for Appeal; and Request to Amend Caption at 11-12).

The Equal Access to Justice Act provides that fees and other expenses shall be awarded to a prevailing party in an adversary adjudication, as follows:

§ 504. Costs and fees of parties

(a)(1) An agency that conducts an adversary adjudication shall award, to a prevailing party other than the United States, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer of the agency finds that the position of the agency was substantially justified or that special circumstances make an award unjust.

5 U.S.C. § 504(a)(1). Similarly, the rules of practice applicable to this Equal Access to Justice Act proceeding¹ provide the applicant must be a party to the adversary adjudication for which the applicant seeks attorney fees and other expenses under the Equal Access to Justice Act, as follows:

§ 1.184 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under EAJA, the applicant must meet one of the following conditions:

- (1) The applicant must be a prevailing party to the adversary adjudication for which it seeks an award; or
- (2) The applicant must be a party to an adversary adjudication arising from an agency action to enforce the party's compliance with a statutory or regulatory requirement in which the demand by the agency was substantially in excess of the decision of the adjudicative officer and the demand is unreasonable when compared with such decision under the facts and circumstances of the case.

7 C.F.R. § 1.184(a).

¹The rules of practice applicable to this Equal Access to Justice Act proceeding are the Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department (7 C.F.R. §§ 1.180-.203).

The adversary adjudication for which the applicants in this proceeding seek attorney fees and other expenses under the Equal Access to Justice Act is *In re Terranova Enterprises, Inc.*, AWA Docket No. 09-0155. A cursory review of that adversary adjudication reveals that Mr. Thorson was not a party, but, rather, served as counsel to Mr. Perry and Perry's Wilderness Ranch & Zoo, Inc., who were parties in that adversary adjudication. Thus, I find Mr. Thorson is not eligible for an award of attorney fees and other expenses in this Equal Access to Justice Act proceeding, and I grant the Administrator's request to amend the caption of this Equal Access to Justice Act proceeding to reflect the fact that Mr. Perry and Perry's Wilderness Ranch & Zoo, Inc., are the only applicants in this proceeding:

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)	
Applicants)	

Done at Washington, DC

February 1, 2013

William G. Jenson
Judicial Officer