

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:) AWA Docket No. 04-0017
)
Ricky M. Watson, an individual;)
Cheri Watson, an individual;)
Tiger's Eyes, Inc., a Texas)
domestic nonprofit corporation,)
d/b/a Noah's Land Wildlife Park;)
and Richard J. Burns, an)
an individual,)
)
Respondents) **Decision and Order as to**
Ricky M. Watson and Cheri Watson

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 May 19, 2004. 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 Ricky M. Watson, Cheri Watson, Tiger's Eyes, Inc., and Richard J. Burns [hereinafter Respondents] willfully violated the Animal Welfare Act and the Regulations and Standards (Compl. ¶¶ 6-12).

The Hearing Clerk served Respondents Ricky M. Watson and Cheri Watson with the Complaint, the Rules of Practice, and a service letter on May 26, 2004.¹ Respondents Ricky M. Watson and Cheri Watson were required by section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) to file an answer to the Complaint within 20 days after service. Respondents Ricky M. Watson and Cheri Watson filed an answer to the Complaint on June 22, 2004, 27 days after the Hearing Clerk served them with the Complaint.

On September 3, 2004, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a "Motion for Adoption of Proposed Decision and Order" [hereinafter Motion for Default Decision] and a proposed "Decision and Order as to Ricky M. Watson and Cheri Watson By Reason of Admission of Facts" [hereinafter Proposed Default Decision as to Ricky M. Watson and Cheri Watson]. On September 20, 2004, the Hearing Clerk served Respondents Ricky M. Watson and Cheri Watson with Complainant's Motion for Default Decision and Complainant's Proposed

¹United States Postal Service Domestic Return Receipts for Article Number 7001 0360 0000 0304 8488 and Article Number 7001 0360 0000 0304 8471.

Default Decision as to Ricky M. Watson and Cheri Watson.² On October 12, 2004, Respondents Ricky M. Watson and Cheri Watson filed objections to Complainant's Motion for Default Decision.

On November 17, 2004, during a teleconference with Respondents Ricky M. Watson and Cheri Watson, representatives of Tiger's Eyes, Inc., counsel for Respondent Richard J. Burns, and counsel for Complainant, Administrative Law Judge Victor W. Palmer [hereinafter the ALJ] denied Complainant's Motion for Default Decision.³

On November 26, 2004, Complainant appealed the ALJ's denial of Complainant's Motion for Default Decision to the Judicial Officer.⁴ On January 5, 2005, Respondent Ricky M. Watson filed a response in opposition to Complainant's Appeal Petition. On January 18, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for consideration and decision.

Based upon a careful review of the record, I disagree with the ALJ's denial of Complainant's Motion for Default Decision. Therefore, I: (1) reverse the ALJ's November 17, 2004, denial of Complainant's Motion for Default Decision; and (2) issue this Decision and Order as to Ricky M. Watson and Cheri Watson based on Respondent

²United States Postal Service Domestic Return Receipts for Article Number 7003 2260 0005 5721 4318 and Article Number 7003 2260 0005 5721 4325.

³Summary of Teleconference; Hearing Notice and Exchange Deadlines at 1, filed by the ALJ on November 22, 2004.

⁴Complainant's Appeal Petition.

Ricky M. Watson's and Respondent Cheri Watson's failure to file a timely answer to the Complaint.

APPLICABLE STATUTORY AND REGULATORY PROVISIONS

7 U.S.C.:

TITLE 7—AGRICULTURE

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**CHAPTER 54—TRANSPORTATION, SALE, AND HANDLING
OF CERTAIN ANIMALS**

§ 2131. Congressional statement of policy

The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order—

- (1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment;
- (2) to assure the humane treatment of animals during transportation in commerce; and
- (3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.

The Congress further finds that it is essential to regulate, as provided in this chapter, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

§ 2132. Definitions

When used in this chapter—

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(h) The term “exhibitor” means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary, and such term includes carnivals, circuses, and zoos exhibiting such animals whether operated for profit or not; but such term excludes retail pet stores, organizations sponsoring and all persons participating in State and country fairs, livestock shows, rodeos, purebred dog and cat shows, and any other fairs or exhibitions intended to advance agricultural arts and sciences, as may be determined by the Secretary[.]

§ 2149. Violations by licensees

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(b) Civil penalties for violation of any section, etc.; separate offenses; notice and hearing; appeal; considerations in assessing penalty; compromise of penalty; civil action by Attorney General for failure to pay penalty; district court jurisdiction; failure to obey cease and desist order

Any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale subject to section 2142 of this title, that violates any provision of this chapter, or any rule, regulation, or standard promulgated by the Secretary thereunder, may be assessed a civil penalty by the Secretary of not more than \$2,500 for each such violation, and the Secretary may also make an order that such person shall cease and desist from continuing such violation. Each violation and each day during which a violation continues shall be a separate offense. No penalty shall be assessed or cease and desist order issued unless such person is given notice and opportunity for a hearing with respect to the alleged violation, and the order of the Secretary assessing a penalty and making a cease and desist order shall be final and conclusive unless the affected person files an appeal from the Secretary’s order with the appropriate United States Court of Appeals. The Secretary shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the person

involved, the gravity of the violation, the person's good faith, and the history of previous violations. . . .

(c) Appeal of final order by aggrieved person; limitations; exclusive jurisdiction of United States Courts of Appeals

Any dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale subject to section 2142 of this title, aggrieved by a final order of the Secretary issued pursuant to this section may, within 60 days after entry of such an order, seek review of such order in the appropriate United States Court of Appeals in accordance with the provisions of sections 2341, 2343 through 2350 of title 28, and such court shall have exclusive jurisdiction to enjoin, set aside, suspend (in whole or in part), or to determine the validity of the Secretary's order.

§ 2151. Rules and regulations

The Secretary is authorized to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this chapter.

7 U.S.C. §§ 2131, 2132(h), 2149(b)-(c), 2151.

28 U.S.C.:

TITLE 28—JUDICIARY AND JUDICIAL PROCEDURE

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PART VI—PARTICULAR PROCEEDINGS

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CHAPTER 163—FINES, PENALTIES AND FORFEITURES

§ 2461. Mode of recovery

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FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT

SHORT TITLE

SECTION 1. This Act may be cited as the “Federal Civil Penalties Inflation Adjustment Act of 1990”.

FINDINGS AND PURPOSE

SEC. 2. (a) FINDINGS.—The Congress finds that—

(1) the power of Federal agencies to impose civil monetary penalties for violations of Federal law and regulations plays an important role in deterring violations and furthering the policy goals embodied in such laws and regulations;

(2) the impact of many civil monetary penalties has been and is diminished due to the effect of inflation;

(3) by reducing the impact of civil monetary penalties, inflation has weakened the deterrent effect of such penalties; and

(4) the Federal Government does not maintain comprehensive, detailed accounting of the efforts of Federal agencies to assess and collect civil monetary penalties.

(b) PURPOSE—The purpose of this Act is to establish a mechanism that shall—

(1) allow for regular adjustment for inflation of civil monetary penalties;

- (2) maintain the deterrent effect of civil monetary penalties and promote compliance with the law; and
- (3) improve the collection by the Federal Government of civil monetary penalties.

DEFINITIONS

SEC. 3. For purposes of this Act, the term—

- (1) “agency” means an Executive agency as defined under section 105 of title 5, United States Code, and includes the United States Postal Service;
- (2) “civil monetary penalty” means any penalty, fine, or other sanction that—
 - (A)(i) is for a specific monetary amount as provided by Federal law; or
 - (ii) has a maximum amount provided for by Federal law; and
 - (B) is assessed or enforced by an agency pursuant to Federal law; and
 - (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts; and
- (3) “Consumer Price Index” means the Consumer Price Index for all-urban consumers published by the Department of Labor.

CIVIL MONETARY PENALTY INFLATION ADJUSTMENT REPORTS

SEC. 4. The head of each agency shall, not later than 180 days after the date of enactment of the Debt Collection Improvement Act of 1996 [Apr. 26, 1996], and at least once every 4 years thereafter—

- (1) by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency, except for any penalty (including any addition to tax and additional amount) under the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.], the Tariff Act of 1930 [19 U.S.C. 1202 et seq.], the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], or the Social Security Act [42 U.S.C. 301 et seq.], by the inflation adjustment described under section 5 of this Act; and
- (2) publish each such regulation in the Federal Register.

COST-OF-LIVING ADJUSTMENTS OF CIVIL
MONETARY PENALTIES

SEC. 5. (a) ADJUSTMENT.—The inflation adjustment under section 4 shall be determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under this subsection shall be rounded to the nearest—

- (1) multiple of \$10 in the case of penalties less than or equal to \$100;
- (2) multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;
- (3) multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;
- (4) multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;
- (5) multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and
- (6) multiple of \$25,000 in the case of penalties greater than \$200,000.

(b) DEFINITION.—For purposes of subsection (a), the term “cost-of-living adjustment” means the percentage (if any) for each civil monetary penalty by which—

- (1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds
- (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

ANNUAL REPORT

SEC. 6. Any increase under this Act in a civil monetary penalty shall apply only to violations which occur after the date the increase takes effect.

LIMITATION ON INITIAL ADJUSTMENT.—The first adjustment of a civil monetary penalty . . . may not exceed 10 percent of such penalty.

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

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PART 3—DEBT MANAGEMENT

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SUBPART E—ADJUSTED CIVIL MONETARY PENALTIES

§ 3.91 Adjusted civil monetary penalties.

(a) *In general.* The Secretary will adjust the civil monetary penalties, listed in paragraph (b), to take account of inflation at least once every 4 years as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. No. 104-134).

(b) *Penalties—*

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(2) *Animal and Plant Health Inspection Service.*

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(v) Civil penalty for a violation of Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of \$2,750; and knowing failure to obey a cease and desist order has a civil penalty of \$1,650.

7 C.F.R. § 3.91(a), (b)(2)(v).

9 C.F.R.:

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

**CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE,
DEPARTMENT OF AGRICULTURE**

SUBCHAPTER A—ANIMAL WELFARE

PART 1—DEFINITION OF TERMS

§ 1.1 Definitions.

For the purposes of this subchapter, unless the context otherwise requires, the following terms shall have the meanings assigned to them in this section. The singular form shall also signify the plural and the masculine form shall also signify the feminine. Words undefined in the following paragraphs shall have the meaning attributed to them in general usage as reflected by definitions in a standard dictionary.

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Exhibitor means any person (public or private) exhibiting any animals, which were purchased in commerce or the intended distribution of which affects commerce, or will affect commerce, to the public for compensation, as determined by the Secretary. This term includes carnivals, circuses, animal acts, zoos, and educational exhibits, exhibiting such animals whether operated for profit or not. This term excludes retail pet stores, horse and dog races, organizations sponsoring and all persons participating in State and county fairs, livestock shows, rodeos, field trials, coursing events, purebred dog and cat shows and any other fairs or exhibitions intended to advance agricultural arts and sciences as may be determined by the Secretary.

PART 2—REGULATIONS

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SUBPART D—ATTENDING VETERINARIAN AND ADEQUATE VETERINARY CARE

§ 2.40 Attending veterinarian and adequate veterinary care (dealers and exhibitors).

(a) Each dealer or exhibitor shall have an attending veterinarian who shall provide adequate veterinary care to its animals in compliance with this section.

(1) Each dealer and exhibitor shall employ an attending veterinarian under formal arrangements. In the case of a part-time attending veterinarian or consultant arrangements, the formal arrangements shall include a written program of veterinary care and regularly scheduled visits to the premises of the dealer or exhibitor; and

(2) Each dealer and exhibitor shall assure that the attending veterinarian has appropriate authority to ensure the provision of adequate veterinary care and to oversee the adequacy of other aspects of animal care and use.

(b) Each dealer or exhibitor shall establish and maintain programs of adequate veterinary care that include:

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(3) Daily observation of all animals to assess their health and well-being; *Provided, however,* That daily observation of animals may be accomplished by someone other than the attending veterinarian; and *Provided, further,* That a mechanism of direct and frequent communication is required so that timely and accurate information on problems of animal health, behavior, and well-being is conveyed to the attending veterinarian[.]

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SUBPART H—COMPLIANCE WITH STANDARDS AND HOLDING PERIOD

§ 2.100 Compliance with standards.

(a) Each dealer, exhibitor, operator of an auction sale, and intermediate handler shall comply in all respects with the regulations set forth in part 2 and the standards set forth in part 3 of this subchapter for the humane handling, care, treatment, housing, and transportation of animals.

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SUBPART I—MISCELLANEOUS

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§ 2.126 Access and inspection of records and property.

(a) Each dealer, exhibitor, intermediate handler, or carrier, shall, during business hours, allow APHIS officials:

- (1) To enter its place of business;
- (2) To examine records required to be kept by the Act and the regulations in this part;
- (3) To make copies of the records;
- (4) To inspect and photograph the facilities, property and animals, as the APHIS officials consider necessary to enforce the provisions of the Act, the regulations and the standards in this subchapter; and
- (5) To document, by the taking of photographs and other means, conditions and areas of noncompliance.

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PART 3—STANDARDS

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SUBPART D—SPECIFICATIONS FOR THE HUMANE HANDLING, CARE, TREATMENT, AND TRANSPORTATION OF NONHUMAN PRIMATES

FACILITIES AND OPERATING STANDARDS

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§ 3.77 Sheltered housing facilities.

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(c) *Lighting.* The sheltered part of sheltered housing facilities must be lighted well enough to permit routine inspection and cleaning of the facility, and observation of the nonhuman primates. Animal areas must be provided a regular diurnal lighting cycle of either natural or artificial light. Lighting must be uniformly diffused throughout animal facilities and provide sufficient illumination to aid in maintaining

good housekeeping practices, adequate cleaning, adequate inspection of animals, and for the well-being of the animals. Primary enclosures must be placed in the housing facility so as to protect the nonhuman primates from excessive light.

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SUBPART F—SPECIFICATIONS FOR THE HUMANE HANDLING, CARE, TREATMENT, AND TRANSPORTATION OF WARMBLOODED ANIMALS OTHER THAN DOGS, CATS, RABBITS, HAMSTERS, GUINEA PIGS, NONHUMAN PRIMATES, AND MARINE MAMMALS

FACILITIES AND OPERATING STANDARDS

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§ 3.126 Facilities, indoor.

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(c) *Lighting*. Indoor housing facilities shall have ample lighting, by natural or artificial means, or both, of good quality, distribution, and duration as appropriate for the species involved. Such lighting shall be uniformly distributed and of sufficient intensity to permit routine inspection and cleaning. Lighting of primary enclosures shall be designed to protect the animals from excessive illumination.

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§ 3.127 Facilities, outdoor.

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(b) *Shelter from inclement weather*. Natural or artificial shelter appropriate to the local climatic conditions for the species concerned shall be provided for all animals kept outdoors to afford them protection and to prevent discomfort to such animals. Individual animals shall be acclimated before they are exposed to the extremes of the individual climate.

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§ 3.128 Space requirements.

Enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal to make normal postural and social adjustments with adequate freedom of movement. Inadequate space may be indicated by evidence of malnutrition, poor condition, debility, stress, or abnormal behavior patterns.

ANIMAL HEALTH AND HUSBANDRY STANDARDS

§ 3.129 Feeding.

(a) The food shall be wholesome, palatable, and free from contamination and of sufficient quantity and nutritive value to maintain all animals in good health. The diet shall be prepared with consideration for the age, species, condition, size, and type of the animal. Animals shall be fed at least once a day except as dictated by hibernation, veterinary treatment, normal fasts, or other professionally accepted practices.

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§ 3.130 Watering.

If potable water is not accessible to the animals at all times, it must be provided as often as necessary for the health and comfort of the animal. Frequency of watering shall consider age, species, condition, size, and type of the animal. All water receptacles shall be kept clean and sanitary.

§ 3.131 Sanitation.

(a) *Cleaning of enclosures.* Excreta shall be removed from primary enclosures as often as necessary to prevent contamination of the animals contained therein and to minimize disease hazards and to reduce odors. When enclosures are cleaned by hosing or flushing, adequate measures shall be taken to protect the animals confined in such enclosures from being directly sprayed with the stream of water or wetted involuntarily.

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(c) *Housekeeping.* Premises (buildings and grounds) shall be kept clean and in good repair in order to protect the animals from injury and to facilitate the prescribed husbandry practices set forth in this subpart. Accumulations of trash shall be placed in designated areas and cleared as necessary to protect the health of the animals.

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§ 3.133 Separation.

Animals housed in the same primary enclosure must be compatible. Animals shall not be housed near animals that interfere with their health or cause them discomfort.

9 C.F.R. §§ 1.1; 2.40(a), (b)(3), .100(a), .126(a); 3.77(c), .126(c), .127(b), .128, .129(a), .130, .131(a), (c), .133.

DECISION

Statement of the Case

Respondents Ricky M. Watson and Cheri Watson failed to file an answer to the Complaint within the time prescribed in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides the failure to file an answer within the time provided in section 1.136(a) of the Rules of Practice (7 C.F.R. § 1.136(a)) and the failure to deny or otherwise respond to an allegation of the complaint shall be deemed, for purposes of the proceeding, an admission of the allegations in the complaint. Further, pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), the failure to file an answer constitutes a waiver of hearing. Accordingly, the material allegations in the Complaint are adopted as findings of fact. This Decision and Order as to Ricky M. Watson and Cheri Watson is issued pursuant to section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent Ricky M. Watson is an individual whose mailing address is 1832 Chalk Road, Harwood, Texas 78632. At all times material to this proceeding, Respondent Ricky M. Watson operated as an exhibitor, as that term is defined in the Animal Welfare Act and the Regulations and Standards. Respondent Ricky M. Watson is an executive director of Respondent Tiger's Eyes, Inc., and directed, managed, and controlled its business activities. The acts, omissions, and failures to act by Respondent Ricky M. Watson alleged in the Complaint were within the scope of Respondent Ricky M. Watson's office and are deemed the acts, omissions, and failures of Respondent Tiger's Eyes, Inc., as well as Respondent Ricky M. Watson, for the purpose of construing or enforcing the Animal Welfare Act and the Regulations and Standards.

2. Respondent Cheri Watson is an individual whose mailing address is 1832 Chalk Road, Harwood, Texas 78632. At all times material to this proceeding, Respondent Cheri Watson operated as an exhibitor, as that term is defined in the Animal Welfare Act and the Regulations and Standards. Respondent Cheri Watson is an executive director of Respondent Tiger's Eyes, Inc., and directed, managed, and controlled its business activities. The acts, omissions, and failures to act by Respondent Cheri Watson alleged in the Complaint were within the scope of Respondent Cheri Watson's office and are deemed the acts, omissions, and failures of Respondent Tiger's Eyes, Inc., as well as Respondent Cheri Watson, for the purpose of construing or enforcing the Animal Welfare Act and the Regulations and Standards.

3. Animal and Plant Health Inspection Service personnel conducted inspections of Respondents' facilities, records, and animals for the purpose of determining Respondents' compliance with the Animal Welfare Act and the Regulations and Standards on March 13, 2001 (213 animals), September 7, 2001, December 18, 2001, February 4, 2002 (280 animals), February 6, 2002, February 21, 2002, March 27, 2002 (217 animals), July 31, 2002, and December 18, 2002 (unable to inspect).

4. On June 24, 2001, Respondents Ricky M. Watson and Cheri Watson, d/b/a Noah's Land Wildlife, entered into a settlement agreement for alleged violations of the Animal Welfare Act and the Regulations and Standards, documented in Animal Welfare investigation No. TX01015-AC.

*Noncompliance with Regulations Governing
Attending Veterinarian and Adequate Veterinary Care*

5. Respondents Ricky M. Watson and Cheri Watson willfully failed to have an attending veterinarian provide adequate veterinary care to their animals, as follows:

a. On March 13, 2001, Respondents Ricky M. Watson and Cheri Watson failed to obtain treatment for a camel with a draining area on the right side of its neck.

b. On September 7, 2001, Respondents Ricky M. Watson and Cheri Watson failed to obtain treatment for a thin black bear (enclosure with wood floor), two tigers with hair loss, and an emaciated pig (drive-thru).

c. On February 4, 2002, Respondents Ricky M. Watson and Cheri Watson failed to obtain treatment for a caracal with hair loss on both sides of his body.

6. On February 4, 2002, Respondents Ricky M. Watson and Cheri Watson willfully failed to establish and maintain a program of adequate veterinary care that included daily observation of all animals to assess their health and well-being, including a mechanism of direct and frequent communication. Specifically, Respondents Ricky M. Watson and Cheri Watson willfully failed to observe and assess the daily health of a caracal with hair loss on both sides of his body and were, therefore, unable to convey accurate information regarding the caracal's health and well-being to the attending veterinarian.

*Noncompliance with Regulations Governing
Miscellaneous Licensee Requirements*

7. On December 18, 2002, Respondents Ricky M. Watson and Cheri Watson willfully failed to have a responsible party available during business hours to permit Animal and Plant Health Inspection Service officials to conduct an inspection of Respondents' animal facilities.

*Noncompliance with Regulations Governing
Humane Handling, Care, and Treatment of Nonhuman Primates*

8. On March 27, 2002, Respondents Ricky M. Watson and Cheri Watson willfully failed to meet the minimum facilities and operating standards for nonhuman primates by failing to provide nonhuman primates with a regular diurnal lighting cycle of

either natural or artificial means. Specifically, Respondents Ricky M. Watson and Cheri Watson willfully failed to adequately light the primates' enclosure.

*Noncompliance with Standards Governing
Humane Handling, Care, and Treatment of Animals
Other Than Dogs, Cats, Rabbits, Hamsters, Guinea Pigs,
Nonhuman Primates, and Marine Mammals*

9. Respondents Ricky M. Watson and Cheri Watson willfully failed to meet the minimum facilities and operating standards for other animals, as follows:

a. Respondents willfully failed to construct indoor and outdoor housing facilities so that they were structurally sound and failed to maintain housing facilities in good repair to protect the animals from injury and contain them in the housing facilities, as follows:

(i) On March 13, 2001, Respondents Ricky M. Watson and Cheri Watson failed to repair the jagged, clawed east-side board of a leopard's shelter box and failed to fill the holes in the bears' enclosure (drive-thru).

(ii) On February 21, 2002, the fencing was detached from the bottom support pole in an enclosure housing two tigers ("Ishon" and "Kisha").

(iii) On March 27, 2002, Respondents Ricky M. Watson and Cheri Watson failed to repair or replace the loose fencing in the new guinea hogs' enclosure, the rusted chain securing the lock in the tigers' enclosure (by the pavilion), and the chain-link fencing that was detached from the cattle panel in the tigers' enclosure (drive-thru).

(iv) On July 31, 2002, Respondents Ricky M. Watson and Cheri Watson failed to repair or replace the rusted pole supporting the shared wall between the leopard's ("Cybil") enclosure and the tiger's enclosure and failed to repair the deteriorated wood floor in a bear's enclosure ("Sugar").

b. Respondents Ricky M. Watson and Cheri Watson willfully failed to store supplies of food in facilities that adequately protected the supplies of food from deterioration, molding, or contamination by vermin, as follows:

(i) On March 13, 2001, Respondents Ricky M. Watson and Cheri Watson stored sacks of cattle feed on the floor and used a food storage bin with a non-fitting lid.

(ii) On September 7, 2001, Respondents Ricky M. Watson and Cheri Watson failed to clean and sanitize the freezer (food storage room) that was littered with old meat wrappers and meat juices and stored thawing meat on the floor.

c. Respondents Ricky M. Watson and Cheri Watson willfully failed to remove and dispose of animal and food wastes, bedding, dead animals, trash, and debris, as follows:

(i) On March 13, 2001, Respondents Ricky M. Watson and Cheri Watson failed to remove decaying animal carcasses, rotting produce and meat, and trash from the food storage room.

(ii) On February 21, 2002, Respondents Ricky M. Watson and Cheri Watson failed to remove approximately 19 boxes of unused soy milk from the food storage room; the milk was present for, at least, 2 weeks.

d. On March 13, 2001, Respondents Ricky M. Watson and Cheri Watson willfully failed to provide ample lighting, by natural or artificial means, or both, of good quality, distribution, and duration as appropriate for the species involved. Specifically, Respondents Ricky M. Watson and Cheri Watson housed two tigers (“Caesar” and “Kisha”) in an enclosure covered with tarpaulins.

e. On or about February 4, 2002, through February 6, 2002, Respondents Ricky M. Watson and Cheri Watson willfully failed to provide adequate natural or artificial shelter to animals kept outdoors. Specifically, Respondents Ricky M. Watson and Cheri Watson provided two tigers (“Ishon” and “Kisha”) with an open-front, metal shelter box that failed to restrict air flow, rain, and snow and failed to help maintain body heat and that was too small to house both animals.

f. On March 27, 2002, Respondents Ricky M. Watson and Cheri Watson willfully failed to construct enclosures so as to provide sufficient space to allow each animal to make normal postural adjustments with adequate freedom of movement. Specifically, Respondents Ricky M. Watson and Cheri Watson housed four adult tigers (drive-thru) in the “lockout” portion of the enclosure measuring approximately 9 feet by 9 feet.

g. On February 21, 2002, Respondents Ricky M. Watson and Cheri Watson willfully failed to provide animals with food that was of sufficient quantity and nutritive value to maintain good animal health and that was prepared with consideration for the age, species, condition, size, and type of animal. Specifically, the oryx (drive-thru) appeared to be malnourished and chased vehicles for food.

h. Respondents Ricky M. Watson and Cheri Watson willfully failed to make potable water accessible to the animals at all times, or as often as necessary for the animals' health and comfort, and failed to keep water receptacles clean and sanitary, as follows:

(i) On September 7, 2001, the water and water troughs provided to two tigers (pavilion) were contaminated with feces, black water, and debris.

(ii) On February 21, 2002, the water and water troughs provided to a leopard contained floating algae.

i. Respondents Ricky M. Watson and Cheri Watson willfully failed to remove excreta from primary enclosures to prevent contamination of animals, minimize disease hazards, and reduce odors, as follows:

(i) On March 13, 2001, Respondents Ricky M. Watson and Cheri Watson failed to remove excessive feces and old bone from the tiger enclosure in the drive-thru and the enclosure "on the hill" housing two tigers.

(ii) On December 18, 2001, Respondents Ricky M. Watson and Cheri Watson housed two muntjacs in an enclosure littered with fecal pellets and a urine-soaked rug.

(iii) On February 4, 2002, Respondents Ricky M. Watson and Cheri Watson failed to remove excessive feces and old bones from the enclosure “on the hill” housing two tigers (“Jean Paul” and “Henrietta”) and housed ferrets in an enclosure with excessive feces.

(iv) On February 6, 2002, Respondents Ricky M. Watson and Cheri Watson failed to remove excessive feces and old bones from the enclosure “on the hill” housing two tigers (“Jean Paul” and “Henrietta”) and from the enclosure housing two tigers in the drive-thru.

(v) On February 21, 2002, Respondents Ricky M. Watson and Cheri Watson failed to remove excessive feces and old bones from two enclosures housing tigers in the drive-thru.

(vi) On March 27, 2002, Respondents Ricky M. Watson and Cheri Watson failed to remove excessive feces and old bones from two tiger enclosures (the end enclosure and “Puppy’s” lockout).

j. Respondents Ricky M. Watson and Cheri Watson willfully failed to keep premises clean and in good repair, as follows:

(i) On September 7, 2001, Respondents Ricky M. Watson and Cheri Watson failed to remove the decaying meat, old meat wrappers, and thawed but unfed meat from the food storage room.

(ii) On December 18, 2001, spilled feed littered the floor in the food storage room.

k. On January 12, 2002, Respondents Ricky M. Watson and Cheri Watson willfully housed incompatible animals together. Specifically, a white female tiger (“Jewel”) was attacked and severely injured by her cage mate.

Conclusions of Law

Violations of Regulations Governing Attending Veterinarians and Adequate Veterinary Care

1. On March 13, 2001, September 7, 2001, and February 4, 2002, Respondents Ricky M. Watson and Cheri Watson willfully violated section 2.40(a) of the Regulations and Standards (9 C.F.R. § 2.40(a)) by failing to have their attending veterinarian provide adequate care to their animals.

2. On February 4, 2002, Respondents Ricky M. Watson and Cheri Watson willfully violated section 2.40(b)(3) of the Regulations and Standards (9 C.F.R. § 2.40(b)(3)) by failing to establish and maintain a program of adequate veterinary care that included daily observation of all animals to assess their health and well-being, including a mechanism of direct and frequent communication with the attending veterinarian.

*Violations of Regulations Governing
Miscellaneous Licensee Requirements*

3. On December 18, 2002, Respondents Ricky M. Watson and Cheri Watson willfully violated sections 2.100(a) and 2.126(a) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), .126(a)) by failing to have a responsible party available during business hours to permit Animal and Plant Health Inspection Service officials to conduct an inspection of Respondents' animal facilities.

*Violations of Regulations Governing
Humane Handling, Care, and Treatment of Nonhuman Primates*

4. On March 27, 2002, Respondents Ricky M. Watson and Cheri Watson willfully violated sections 2.100(a) and 3.77(c) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 3.77(c)) by failing to provide nonhuman primates with a regular diurnal lighting cycle of either natural or artificial means.

*Violations of Standards Governing
Humane Handling, Care, and Treatment of Animals
Other Than Dogs, Cats, Rabbits, Hamsters, Guinea Pigs,
Nonhuman Primates, and Marine Mammals*

5. Respondents Ricky M. Watson and Cheri Watson willfully violated section 2.100(a) of the Regulations and Standards (9 C.F.R. § 2.100(a)) by failing to meet the minimum facilities and operating standards for other animals, as follows:

a. *Structural strength*

On March 13, 2001, February 21, 2002, March 27, 2002, and July 31, 2002, Respondents Ricky M. Watson and Cheri Watson willfully failed to comply with sections 2.100(a) and 3.125(a) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 3.125(a)).

b. *Storage*

On March 13, 2001, and September 7, 2001, Respondents Ricky M. Watson and Cheri Watson willfully failed to comply with sections 2.100(a) and 3.125(c) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 3.125(c)).

c. *Waste disposal*

On March 13, 2001, and February 21, 2002, Respondents Ricky M. Watson and Cheri Watson willfully failed to comply with sections 2.100(a) and 3.125(d) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 3.125(d)).

d. *Lighting*

On March 13, 2001, Respondents Ricky M. Watson and Cheri Watson willfully failed to comply with sections 2.100(a) and 3.126(c) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 3.126(c)).

e. *Shelter from inclement weather*

On or about February 4, 2002, through February 6, 2002, Respondents Ricky M. Watson and Cheri Watson willfully failed to comply with sections 2.100(a) and 3.127(b) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 3.127(b)).

f. *Space*

On March 27, 2002, Respondents Ricky M. Watson and Cheri Watson willfully failed to comply with sections 2.100(a) and 3.128 of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 3.128).

g. *Feeding*

On February 21, 2002, Respondents Ricky M. Watson and Cheri Watson willfully failed to comply with sections 2.100(a) and 3.129(a) of the Regulations and Standards (9 C.F.R. § 2.100(a), 3.129(a)).

h. *Watering*

On September 7, 2001, and February 21, 2002, Respondents Ricky M. Watson and Cheri Watson willfully failed to comply with sections 2.100(a) and 3.130 of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 3.130).

i. *Cleaning of enclosures*

On March 13, 2001, December 18, 2001, February 4, 2002, February 6, 2002, February 21, 2002, and March 27, 2002, Respondents Ricky M. Watson and Cheri Watson willfully failed to comply with sections 2.100(a) and 3.131(a) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 3.131(a)).

j. *Housekeeping*

On September 7, 2001, and December 18, 2001, Respondents Ricky M. Watson and Cheri Watson willfully failed to comply with sections 2.100(a) and 3.131(c) of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 3.131(c)).

k. *Separation*

On January 12, 2002, Respondents Ricky M. Watson and Cheri Watson willfully failed to comply with sections 2.100(a) and 3.133 of the Regulations and Standards (9 C.F.R. §§ 2.100(a), 3.133).

COMPLAINANT'S APPEAL PETITION

Complainant contends the ALJ's denial of Complainant's Motion for Default Decision is error. Complainant requests that I issue an order reversing the ALJ's November 17, 2004, denial of Complainant's Motion for Default Decision and issue a decision and order in accordance with the Rules of Practice. (Complainant's Appeal Pet. at 3-9.)

During a November 17, 2004, teleconference with, *inter alia*, Complainant's counsel, Respondent Ricky M. Watson, and Respondent Cheri Watson, the ALJ denied Complainant's Motion for Default Decision. In a November 22, 2004, filing, the ALJ made reference to his November 17, 2004, denial of Complainant's Motion for Default Decision, as follows:

Complainant's Motion for Adoption of Proposed Decision and Order, filed September 3, 2004, is **DENIED**.

Summary of Teleconference; Hearing Notice and Exchange Deadlines at 1 (emphasis in original).

The ALJ did not explicitly conclude that Respondents Ricky M. Watson and Cheri Watson filed meritorious objections to Complainant's Motion for Default Decision.

However, section 1.139 of the Rules of Practice (7 C.F.R. § 1.139) requires that an administrative law judge deny, with supporting reasons, a complainant's motion for a default decision if the administrative law judge finds the respondent has filed meritorious objections to the motion, and requires that an administrative law judge issue a decision, without further procedure or hearing, if the administrative law judge finds the respondent has failed to file meritorious objections to the motion. Therefore, I infer, based on the ALJ's November 17, 2004, denial of Complainant's Motion for Default Decision, the ALJ found meritorious some or all of Respondents Ricky M. Watson's and Respondent Cheri Watson's October 12, 2004, objections to Complainant's Motion for Default Decision. I disagree with the ALJ's finding that Respondent Ricky M. Watson and Respondent Cheri Watson filed meritorious objections to Complainant's Motion for Default Decision. Instead, I find Respondent Ricky M. Watson's and Respondent Cheri Watson's objections, filed October 12, 2004, are without merit, and I conclude a decision, without further procedure or hearing, must be issued.

Respondents Ricky M. Watson and Cheri Watson are deemed, for purposes of this proceeding, to have admitted the allegations in the Complaint because they failed to file an answer to the Complaint within 20 days after the Hearing Clerk served them with the Complaint. The Hearing Clerk served Respondents Ricky M. Watson and Cheri Watson with the Complaint, the Rules of Practice, and the Hearing Clerk's service letter on

May 26, 2004.⁵ Sections 1.136(a), 1.136(c), 1.139, and 1.141(a) of the Rules of Practice state the time within which an answer must be filed and the consequences of failing to file a timely answer, as follows:

§ 1.136 Answer.

(a) *Filing and service.* Within 20 days after the service of the complaint . . . , the respondent shall file with the Hearing Clerk an answer signed by the respondent or the attorney of record in the proceeding

(c) *Default.* Failure to file an answer within the time provided under paragraph (a) of this section shall be deemed, for purposes of the proceeding, an admission of the allegations in the Complaint, and failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation, unless the parties have agreed to a consent decision pursuant to § 1.138.

§ 1.139 Procedure upon failure to file an answer or admission of facts.

The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing.

§ 1.141 Procedure for hearing.

(a) *Request for hearing.* Any party may request a hearing on the facts by including such request in the complaint or answer, or by a separate request, in writing, filed with the Hearing Clerk within the time in which an answer may be filed Failure to request a hearing within the time

⁵See note 1.

allowed for the filing of the answer shall constitute a waiver of such hearing.

7 C.F.R. §§ 1.136(a), (c), .139, .141(a).

Moreover, the Complaint informs Respondents Ricky M. Watson and Cheri Watson of the consequences of failing to file a timely answer, as follows:

The respondents shall file an answer with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 et seq.). Failure to file an answer shall constitute an admission of all the material allegations of this complaint.

Compl. at 10.

Similarly, the Hearing Clerk informed Respondents Ricky M. Watson and Cheri Watson in the May 19, 2004, service letter that a timely answer must be filed pursuant to the Rules of Practice and that failure to file a timely answer to any allegation in the Complaint would constitute an admission of that allegation, as follows:

May 19, 2004

Mr. Ricky M. Watson
1832 Chalk Road
Harwood, Texas 78632

Ms. Cheri Watson
1832 Chalk Road
Harwood, Texas 78632

Tiger's Eyes, Inc.
d/b/a Noah's Land Wildlife Park
c/o Ricky M. Watson
1033 Highway 304
Harwood, Texas 78632

Mr. Richard J. Burns
719 Laurel Grove Lane
Pearland, Texas 77584

Dear Sir/Madame:

Subject: In re: Ricky M. Watson, an individual; Cheri Watson, an individual; Tiger's Eyes, Inc., a Texas domestic nonprofit corporation, doing business as Noah's Land Wildlife Park; and Richard J. Burns, an individual - AWA Docket No. 04-0017

Enclosed is a copy of a Complaint, which has been filed with this office under the Animal Welfare Act, as amended.

Also enclosed is a copy of the Rules of Practice which govern the conduct of these proceedings. You should familiarize yourself with the rules in that the comments which follow are not a substitute for their exact requirements.

The rules specify that you may represent yourself personally or by an attorney of record. Unless an attorney files an appearance in your behalf, it shall be presumed that you have elected to represent yourself personally. Most importantly, you have 20 days from the receipt of this letter to file with the Hearing Clerk an original and three copies of your written and signed answer to the complaint. It is necessary that your answer set forth any defense you wish to assert, and to specifically admit, deny or explain each allegation of the complaint. Your answer may include a request for an oral hearing. Failure to file an answer or filing an answer which does not deny the material allegations of the complaint, shall constitute an admission of those allegations and a waiver of your right to an oral hearing.

In the event this proceeding does go to hearing, the hearing shall be formal in nature and will be held and the case decided by an Administrative Law

Judge on the basis of exhibits received in evidence and sworn testimony subject to cross-examination.

You must notify us of any future address changes. Failure to do so may result in a judgment being entered against you without your knowledge. We also need your present and future telephone number.

Your answer, as well as any motions or requests that you may hereafter wish to file in this proceeding, should be submitted in quadruplicate to the Hearing Clerk, OALJ, Room 1081, South Building, United States Department of Agriculture, Washington, D.C. 20250-9200.

Questions you may have respecting the possible settlement of this case should be directed to the attorney whose name and telephone number appears on the last page of the complaint.

Sincerely,

/s/

Joyce A. Dawson
Hearing Clerk

On June 22, 2004, 27 days after the Hearing Clerk served Respondents Ricky M.

Watson and Cheri Watson with the Complaint, Respondents Ricky M. Watson and Cheri Watson filed an answer dated June 21, 2004.

On September 3, 2004, in accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), Complainant filed a Motion for Default Decision and a Proposed Default Decision as to Ricky M. Watson and Cheri Watson. On September 20, 2004, the Hearing Clerk served Respondents Ricky M. Watson and Cheri Watson with Complainant's Motion for Default Decision and Complainant's Proposed Default

Decision as to Ricky M. Watson and Cheri Watson.⁶ On October 12, 2004, Respondents Ricky M. Watson and Cheri Watson filed objections to Complainant's Motion for Default Decision.

Respondents Ricky M. Watson and Cheri Watson raise five objections to Complainant's Motion for Default Decision. First, Respondent Cheri Watson contends Respondent Richard J. Burns was never associated with the business of Respondent Ricky M. Watson's and Respondent Cheri Watson's "sanctuary" (Respondent Cheri Watson's Oct. 12, 2004, filing at 1).

Respondent Ricky M. Watson's and Respondent Cheri Watson's business relationship with Respondent Richard J. Burns is not relevant to Complainant's Motion for Default Decision. Therefore, even if I were to find Respondent Richard J. Burns was never associated with Respondent Ricky M. Watson's and Respondent Cheri Watson's sanctuary, I would not find Respondent Cheri Watson's objection to Complainant's Motion for Default Decision meritorious.

Second, Respondents Ricky M. Watson and Cheri Watson contend, due to Respondent Cheri Watson's being out of town when the Hearing Clerk served them with the Complaint, they were not able to file a timely response to the Complaint (Respondent Ricky M. Watson's Oct. 12, 2004, filing at 1; Respondent Cheri Watson's Oct. 12, 2004, filing at 1).

⁶See note 2.

Section 1.147(f) of the Rules of Practice specifically provides that the time for filing any document authorized under the Rules of Practice may be extended, as follows:

§ 1.147 Filing; service; extensions of time; and computation of time.

.....
(f) *Extensions of time.* The time for the filing of any document or paper required or authorized under the rules in this part to be filed may be extended by the Judge or the Judicial Officer as provided in §1.143, if, in the judgment of the Judge or the Judicial Officer, as the case may be, there is good reason for the extension. In all instances in which time permits, notice of the request for extension of the time shall be given to the other party with opportunity to submit views concerning the request.

7 C.F.R. § 1.147(f).

Respondents Ricky M. Watson and Cheri Watson could have, but did not, file a motion to extend the time for filing a response to the Complaint. Moreover, Respondents Ricky M. Watson and Cheri Watson admit Respondent Cheri Watson returned home 10 days prior to the date their response to the Complaint was required to be filed with the Hearing Clerk (Respondent Ricky M. Watson's Oct. 12, 2004, filing at 1; Respondent Cheri Watson's Oct. 12, 2004, filing at 1). Under these circumstances, I do not find Respondent Ricky M. Watson's and Cheri Watson's excuse for failing to file a timely response to the Complaint a meritorious basis for denying Complainant's Motion for Default Decision.

Third, Respondent Cheri Watson contends she tried to contact the Hearing Clerk's Office, but the telephone number listed was not valid and she could not find the correct

telephone number through directory assistance (Respondent Cheri Watson's Oct. 12, 2004, filing at 1).

The Hearing Clerk's service letter, which the Hearing Clerk served on Respondents Ricky M. Watson and Cheri Watson on May 26, 2004, along with the Complaint and the Rules of Practice, provides the correct telephone number, fax number, and address for the Office of the Hearing Clerk. Moreover, the Rules of Practice describes how a party may obtain an extension of time. Therefore, I reject Respondent Cheri Watson's contention that she was not able to contact the Office of the Hearing Clerk. Moreover, I conclude Respondent Cheri Watson's purported inability to contact the Office of the Hearing Clerk by telephone is not a meritorious basis for denying Complainant's Motion for Default Decision.

Fourth, Respondents Ricky M. Watson and Cheri Watson contend their violations of the Animal Welfare Act and the Regulations and Standards resulted from a lack of adequate financial resources (Respondent Ricky M. Watson's Oct. 12, 2004, filing at 1; Respondent Cheri Watson's Oct. 12, 2004, filing at 1-2).

Respondents Ricky M. Watson's and Cheri Watson's lack of financial resources to comply with the Animal Welfare Act and the Regulations and Standards is neither a meritorious basis for denying Complainant's Motion for Default Decision nor relevant to this proceeding.⁷

⁷See *In re Dennis Hill*, 63 Agric. Dec. ____, slip op. at 70 (Oct. 8, 2004) (stating the (continued...))

Fifth, Respondents Ricky M. Watson and Cheri Watson contend they disposed of their animals, ceased all activities governed by the United States Department of Agriculture, and have not requested renewal of their Animal Welfare Act license (Respondent Ricky M. Watson's Oct. 12, 2004, filing at 1; Respondent Cheri Watson's Oct. 12, 2004, filing at 1-2).

Respondents Ricky M. Watson's and Cheri Watson's disposal of animals after the violations of the Animal Welfare Act and the Regulations and Standards occurred, ceasing all activities governed by the United States Department of Agriculture, and failure to renew their Animal Welfare Act license are not meritorious bases for denying Complainant's Motion for Default Decision.⁸

The Rules of Practice provide that an answer must be filed within 20 days after service of the complaint (7 C.F.R. § 1.136(a)), and Respondent Ricky M. Watson's and Cheri Watson's answer to the Complaint was required to be filed no later than June 15, 2004. Respondents Ricky M. Watson and Cheri Watson filed an Answer to the Complaint on June 22, 2004, 27 days after the Hearing Clerk served Respondents Ricky M. Watson and Cheri Watson with the Complaint. Respondents Ricky M.

⁷(...continued)
respondent's short-term economic downturn is neither a meritorious basis for denying the complainant's motion for a default decision nor relevant to the proceeding).

⁸See *In re Dennis Hill*, 63 Agric. Dec. ___, slip op. at 70 (Oct. 8, 2004) (the respondent's disposal, or intention to dispose, of animals after the Animal Welfare Act violations occurred is neither a meritorious basis for denying the complainant's motion for a default decision nor relevant to the proceeding).

Watson's and Cheri Watson's failure to file a timely answer to the Complaint is deemed, for purposes of this proceeding, an admission of the allegations in the Complaint and constitutes a waiver of hearing (7 C.F.R. §§ 1.136(c), .139, .141(a)).

Accordingly, there are no issues of fact on which a meaningful hearing could be held in this proceeding. Application of the default provisions of the Rules of Practice does not deprive Respondents Ricky M. Watson and Cheri Watson of rights under the due process clause of the Fifth Amendment to the Constitution of the United States.⁹

SANCTION

Respondents Ricky M. Watson and Cheri Watson, by their failure to file an answer within 20 days after the Hearing Clerk served them with the Complaint, are deemed to have admitted the allegations in the Complaint.¹⁰

⁹See *United States v. Hulings*, 484 F. Supp. 562, 567-68 (D. Kan. 1980) (concluding a hearing was not required under the Fifth Amendment to the Constitution of the United States where the respondent was notified that failure to deny the allegations of the complaint would constitute an admission of those allegations under the Rules of Practice and the respondent failed to specifically deny the allegations). See also *Father & Sons Lumber and Building Supplies, Inc. v. NLRB*, 931 F.2d 1093, 1096 (6th Cir. 1991) (stating due process generally does not entitle parties to an evidentiary hearing where the National Labor Relations Board has properly determined that a default summary judgment is appropriate due to a party's failure to file a timely response); *Kirk v. INS*, 927 F.2d 1106, 1108 (9th Cir. 1991) (rejecting the contention that the administrative law judge erred by issuing a default judgment based on a party's failure to file a timely answer).

¹⁰See 7 C.F.R. § 1.136(c).

With respect to the civil monetary penalty, the Secretary of Agriculture is required to give due consideration to the size of the business of the person involved, the gravity of the violation, the person's good faith, and the history of previous violations.¹¹

During 3 of the 9 days on which Respondents Ricky M. Watson and Cheri Watson violated the Animal Welfare Act and the Regulations and Standards, they maintained between 213 and 280 animals at Respondents' facility.¹² Therefore, I find Respondents Ricky M. Watson and Cheri Watson had a large business.

Many of Respondents Ricky M. Watson's and Cheri Watson's violations are serious violations which directly jeopardized the health and well-being of Respondents Ricky M. Watson's and Cheri Watson's animals.

Respondents Ricky M. Watson's and Cheri Watson's willful violations on 9 days during the period March 13, 2001, through December 18, 2002, reveals a consistent disregard for, and unwillingness to abide by, the requirements of the Animal Welfare Act and the Regulations and Standards. An ongoing pattern of violations establishes a "history of previous violations" for the purposes of section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) and a lack of good faith.

The United States Department of Agriculture's current sanction policy is set forth in *In re S.S. Farms Linn County, Inc.* (Decision as to James Joseph Hickey and Shannon

¹¹See 7 U.S.C. § 2149(b).

¹²Compl. ¶ 5.

Hansen), 50 Agric. Dec. 476, 497 (1991), *aff'd*, 991 F.2d 803, 1993 WL 128889 (9th Cir. 1993) (not to be cited as precedent under 9th Circuit Rule 36-3):

[T]he sanction in each case will be determined by examining the nature of the violations in relation to the remedial purposes of the regulatory statute involved, along with all relevant circumstances, always giving appropriate weight to the recommendations of the administrative officials charged with the responsibility for achieving the congressional purpose.

The recommendations of administrative officials charged with the responsibility for achieving the congressional purpose of the regulatory statute are highly relevant to any sanction to be imposed and are entitled to great weight in view of the experience gained by administrative officials during their day-to-day supervision of the regulated industry. *In re S.S. Farms Linn County, Inc.*, 50 Agric. Dec. at 497.

Complainant seeks assessment of a \$28,600 civil penalty against Respondent Ricky M. Watson, assessment of a \$28,600 civil penalty against Respondent Cheri Watson, and a cease and desist order. Complainant also proposes that Respondents Ricky M. Watson and Cheri Watson be assessed a civil penalty that represents 20 percent of the maximum possible civil penalty. (Complainant's Motion for Default Decision at 3.)

I find that Respondent Ricky M. Watson and Respondent Cheri Watson each committed 31 violations of the Animal Welfare Act and the Regulations and Standards. Respondents Ricky M. Watson and Cheri Watson could be assessed a maximum civil penalty of \$2,750 for each of their violations of the Animal Welfare Act and the

Regulations and Standards.¹³ After examining all the relevant circumstances, in light of the United States Department of Agriculture's sanction policy, and taking into account the requirements of section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)), the remedial purposes of the Animal Welfare Act, and the recommendations of the administrative officials, I conclude that a cease and desist order, assessment of a \$17,050 civil penalty against Respondent Ricky M. Watson,¹⁴ and assessment of a \$17,050 civil penalty against Respondent Cheri Watson¹⁵ are appropriate and necessary to ensure Respondents Ricky M. Watson's and Cheri Watson's compliance with the Animal Welfare Act and the Regulations and Standards in the future, to deter others from

¹³Section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) provides that the Secretary of Agriculture may assess a civil penalty of not more than \$2,500 for each violation of the Animal Welfare Act and the Regulations and Standards. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note), the Secretary of Agriculture adjusted the civil penalty that may be assessed under section 19(b) of the Animal Welfare Act (7 U.S.C. § 2149(b)) for each violation of the Animal Welfare Act and the Regulations and Standards by increasing the maximum civil penalty from \$2,500 to \$2,750 (7 C.F.R. § 3.91(b)(2)(v)). Therefore, Respondents Ricky M. Watson and Cheri Watson could each be assessed a maximum civil penalty of \$85,250.

¹⁴The \$17,050 civil penalty which I assess against Respondent Ricky M. Watson represents 20 percent of the maximum civil penalty which I conclude could be assessed against Respondent Ricky M. Watson for his 31 violations of the Animal Welfare Act and the Regulations and Standards.

¹⁵The \$17,050 civil penalty which I assess against Respondent Cheri Watson represents 20 percent of the maximum civil penalty which I conclude could be assessed against Respondent Cheri Watson for her 31 violations of the Animal Welfare Act and the Regulations and Standards.

violating the Animal Welfare Act and the Regulations and Standards, and to fulfill the remedial purposes of the Animal Welfare Act.

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

ORDER

1. Respondents Ricky M. Watson and Cheri Watson, their agents and employees, successors and assigns, directly or indirectly through any corporate or other device, shall cease and desist from violating the Animal Welfare Act and the Regulations and Standards.

The cease and desist provisions of this Order shall become effective on the day after service of this Order on Respondents Ricky M. Watson and Cheri Watson.

2. Respondents Ricky M. Watson and Cheri Watson are each assessed a \$17,050 civil penalty. The civil penalties shall be paid by certified checks or money orders made payable to the Treasurer of the United States and sent to:

Bernadette R. Juarez
United States Department of Agriculture
Office of the General Counsel
Marketing Division
1400 Independence Avenue, SW
Room 2343-South Building
Washington, DC 20250-1417

Payment of the civil penalties shall be sent to, and received by, Bernadette R. Juarez within 60 days after service of this Order on Respondents Ricky M. Watson and Cheri Watson. Respondents Ricky M. Watson and Cheri Watson shall state on the

certified checks or money orders that payment is in reference to AWA Docket No. 04-0017.

RIGHT TO JUDICIAL REVIEW

Respondents Ricky M. Watson and Cheri Watson have the right to seek judicial review of this Order in the appropriate United States Court of Appeals in accordance with 28 U.S.C. §§ 2341, 2343-2350. Such court has exclusive jurisdiction to enjoin, to set aside, to suspend (in whole or in part), or to determine the validity of this Order. Respondents Ricky M. Watson and Cheri Watson must seek judicial review within 60 days after entry of this Order.¹⁶ The date of entry of this Order is February 23, 2005.

Done at Washington, DC

February 23, 2005

William G. Jenson
Judicial Officer

¹⁶See 7 U.S.C. § 2149(c).