

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,) **Order Denying Petition to Reconsider**
) **as to Ricky M. Watson and Cheri**
Respondents) **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 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 Default

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

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. On February 23, 2005, I issued a Decision and Order as to Ricky M. Watson and Cheri Watson reversing the ALJ's denial of Complainant's Motion for Default Decision and concluding Respondents Ricky M. Watson and Cheri Watson willfully violated the Animal Welfare Act and the Regulations and Standards.⁵

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.

⁵*In re Ricky M. Watson* (Decision as to Ricky M. Watson and Cheri Watson), 64 Agric. Dec. ____ (Feb. 23, 2005).

On March 18, 2005, Respondents Ricky M. Watson and Cheri Watson filed a petition to reconsider *In re Ricky M. Watson* (Decision as to Ricky M. Watson and Cheri Watson), 64 Agric. Dec. ____ (Feb. 23, 2005). On April 7, 2005, Complainant filed “Complainant’s Reply to Respondents’ Petition for Reconsideration.” On April 11, 2005, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Respondents Ricky M. Watson’s and Cheri Watson’s petition to reconsider.

CONCLUSIONS BY THE JUDICIAL OFFICER ON RECONSIDERATION

Respondents Ricky M. Watson and Cheri Watson request that I reduce the \$17,050 civil penalty assessed against each of them in *In re Ricky M. Watson* (Decision as to Ricky M. Watson and Cheri Watson), 64 Agric. Dec. ____, slip op. at 43 (Feb. 23, 2005). Respondents Ricky M. Watson and Cheri Watson state six bases for their request that I reduce the civil penalty. First, Respondents Ricky M. Watson and Cheri Watson contend they were not “willfully neglectful” as alleged in the Complaint (Pet. to Reconsider at 1).

As an initial matter, I cannot locate, and Respondents Ricky M. Watson and Cheri Watson do not cite, any allegation in the Complaint that Respondents Ricky M. Watson and Cheri Watson were “willfully neglectful”; however, Complainant alleges Respondents Ricky M. Watson and Cheri Watson “willfully violated” the Animal Welfare Act and the Regulations and Standards (Compl. ¶¶ 8-14).

Respondents Ricky M. Watson and Cheri Watson are deemed, for purposes of this proceeding, to have admitted the allegations in the Complaint that they willfully violated the Animal Welfare Act and the Regulations and Standards because they failed to file an

answer to the Complaint within 20 days after the Hearing Clerk served them with the Complaint.⁶ Therefore, I find no basis upon which to conclude Respondents Ricky M. Watson's and Cheri Watson's violations of the Animal Welfare Act and the Regulations and Standards were not willful.

Second, Respondents Ricky M. Watson and Cheri Watson contend the reason for their late-filed answer was their effort to rationally explain the allegations of the Complaint (Pet. to Reconsider at 1).

Often, as Respondents Ricky M. Watson and Cheri Watson suggest, preparation of an answer that explains each allegation of a complaint is more difficult and time consuming than preparation of an answer that merely admits or denies each allegation of the complaint. However, I do not find Respondents Ricky M. Watson's and Cheri Watson's reason for failing to file a timely answer relevant to their request that I reduce the \$17,050 civil penalty assessed against each of them in *In re Ricky M. Watson* (Decision as to Ricky M. Watson and Cheri Watson), 64 Agric. Dec. ____, slip op. at 43 (Feb. 23, 2005).

Third, Respondents Ricky M. Watson and Cheri Watson contend, while they often maintained more than 200 animals, they did not operate a large business because the vast majority of their animals were free-roaming on more than 200 acres of grassland and required less care and attention than animals that were caged. Consequently,

⁶7 C.F.R. § 1.136(a), (c).

Respondents Ricky M. Watson and Cheri Watson state they “never needed more than 2 paid workers.” Moreover, Respondents Ricky M. Watson and Cheri Watson state their income from customers was approximately \$1,000 per month. (Pet. to Reconsider at 1.)

One of the factors that I must consider when determining the amount of the civil penalty to be assessed for violations of the Animal Welfare Act and the Regulations and Standards is the size of the violator’s business.⁷ I based my finding that Respondents Ricky M. Watson and Cheri Watson operated a large business on the number of animals Respondents Ricky M. Watson and Cheri Watson are deemed to have admitted that they maintained at their facility. Respondents Ricky M. Watson and Cheri Watson confirm this number in their petition to reconsider *In re Ricky M. Watson* (Decision as to Ricky M. Watson and Cheri Watson), 64 Agric. Dec. ____ (Feb. 23, 2005) (Pet. to Reconsider at 1). Moreover, while the number of Respondents Ricky M. Watson’s and Cheri Watson’s paid employees and the income from customers would indicate Respondents Ricky M. Watson’s and Cheri Watson’s business was not large, the 200 or more acres on which Respondents Ricky M. Watson and Cheri Watson assert they operated the business supports my conclusion that Respondents Ricky M. Watson and Cheri Watson operated a large business. Therefore, I decline to reconsider my conclusion that Respondents Ricky M. Watson and Cheri Watson operated a large business.

⁷7 U.S.C. § 2149(b).

Fourth, Respondents Ricky M. Watson and Cheri Watson assert they operated a tax-exempt, non-profit sanctuary and all new, tax-exempt, non-profit sanctuaries go through “growing pains.” Moreover, Respondents Ricky M. Watson and Cheri Watson assert their “record is better than most new sanctuaries.” (Pet. to Reconsider at 1-2.)

Neither the tax-exempt status nor the non-profit status of Respondents Ricky M. Watson’s and Cheri Watson’s sanctuary is relevant to the civil penalty assessed against Respondents Ricky M. Watson and Cheri Watson. Moreover, the failure of other new sanctuaries to comply with the Animal Welfare Act and the Regulations and Standards is not relevant to the civil penalty assessed against Respondents Ricky M. Watson and Cheri Watson for their violations of the Animal Welfare Act and the Regulations and Standards.

Fifth, Respondents Ricky M. Watson and Cheri Watson assert they “continuously tried to do the right thing as far as [the] animals were concerned” (Pet. to Reconsider at 1-2).

Respondents Ricky M. Watson’s and Cheri Watson’s assertion regarding the treatment of their animals is belied by the 31 willful violations of the Animal Welfare Act and the Regulations and Standards each are deemed to have committed. Moreover, as stated in *In re Ricky M. Watson* (Decision as to Ricky M. Watson and Cheri Watson), 64 Agric. Dec. ___, slip op. at 40 (Feb. 23, 2005), 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.

Sixth, Respondents Ricky M. Watson and Cheri Watson contend they: (1) ceased operations, (2) allowed their Animal Welfare Act license to lapse, and (3) do not intend to apply for another Animal Welfare Act license (Pet. to Reconsider at 2).

Respondents Ricky M. Watson's and Cheri Watson's cessation of all activities regulated under the Animal Welfare Act and intention to refrain from activities regulated under the Animal Welfare Act are not bases for reducing the \$17,050 civil penalty assessed against each of them. Respondents Ricky M. Watson and Cheri Watson each committed 31 willful violations of the Animal Welfare Act and the Regulations and Standards. Respondents Ricky M. Watson and Cheri Watson could each be assessed a maximum civil penalty of \$85,250 for their violations of the Animal Welfare Act and the Regulations and Standards.⁸ The civil penalty assessed against Respondents Ricky M. Watson and Cheri Watson is only 20 percent of the maximum civil penalty which I conclude could be assessed against each of them. Moreover, the civil penalty which I assess against Respondents Ricky M. Watson and Cheri Watson are not only appropriate and necessary to deter Respondent Ricky M. Watson and Respondent Cheri Watson from future violations of the Animal Welfare Act and the Regulations and Standards, but also

⁸Section 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)).

appropriate and necessary to deter others from violating the Animal Welfare Act and the Regulations and Standards. Therefore, even if I were to find that Respondents Ricky M. Watson and Cheri Watson would never again engage in activities regulated under the Animal Welfare Act, I would assess each of them a \$17,050 civil penalty.

For the foregoing reasons and the reasons set forth in *In re Ricky M. Watson* (Decision as to Ricky M. Watson and Cheri Watson), 64 Agric. Dec. ____ (Feb. 23, 2005), Respondents Ricky M. Watson's and Cheri Watson's petition to reconsider is denied.

Section 1.146(b) of the Rules of Practice (7 C.F.R. § 1.146(b)) provides that the decision of the Judicial Officer shall automatically be stayed pending the determination to grant or deny a timely-filed petition to reconsider. Respondents Ricky M. Watson's and Cheri Watson's petition to reconsider was timely filed and automatically stayed *In re Ricky M. Watson* (Decision as to Ricky M. Watson and Cheri Watson), 64 Agric. Dec. ____ (Feb. 23, 2005). Therefore, since Respondents Ricky M. Watson's and Cheri Watson's petition to reconsider is denied, I hereby lift the automatic stay, and the Order in *In re Ricky M. Watson* (Decision as to Ricky M. Watson and Cheri Watson), 64 Agric. Dec. ____ (Feb. 23, 2005), is reinstated; except that the effective date of the Order is the date indicated in the Order in this Order Denying Petition to Reconsider as to Ricky M. Watson and Cheri Watson.

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.⁹ The date of entry of this Order is April 13, 2005.

Done at Washington, DC

April 13, 2005

William G. Jenson
Judicial Officer

⁹See 7 U.S.C. § 2149(c).