

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

AWA Docket No. 07-0207

In re: JAMIE MICHELLE PALAZZO,
an individual, doing business as
Great Cat Adventures; and
JAMES LEE RIGGS,

Respondents

DECISION AND ORDER

Preliminary Statement

On September 28, 2007, Kevin Shea, then the Acting Administrator, Animal and Plant Health Inspection Service (APHIS), initiated this disciplinary proceeding against the Respondent Jamie Michelle Palazzo (Palazzo), an individual doing business as Great Cat Adventures¹ by filing a Complaint alleging willful violations of the Animal Welfare Act, as amended (the “Act” or “AWA”) (7 U.S.C. §2131, *et seq.*) and the Regulations issued pursuant thereto (the “Regulations”) (9 C.F.R. §1.1, *et seq.*).

The Respondent filed her Answer with a Cover Letter² on October 22, 2007. No further action was taken to advance the case until April 23, 2008 when the Hearing Clerk sent out a “No Activity Letter.” In response to the “No Activity Letter,” the Respondent

¹ The original Complaint named only Jamie Michelle Palazzo; the respondent James Lee Riggs was later added in the Amended Complaint. Docket Entries 1 and 11.

² Although the Docket Entry indicates both an Answer and a Cover Letter were filed, when review of this case was commenced, only the cover letter was found in the record which indicated that three copies of the Answer were being filed. Docket Entry 4. In the Complainant’s Response to Motions for Summary Judgment and to Debar Complainant’s Counsel, Ms. Carroll made reference to the 17 page Answer to the Complaint. Docket Entry 8 at page 4. A copy of the Answer and the attachments was included in the Exhibits identified by the Respondents RX 75 but was not admitted during the hearing, but has been added to the record.

filed a pleading styled as a “Complaint”³ in which she sought a summary judgment and removal of Colleen A. Carroll as the Counsel for the Complainant.⁴ Docket Entry 7. The Complainant responded to the Motions and on September 23, 2008, the Complainant filed an Amended Complaint which added James Lee Riggs⁵ (Riggs) as a named Respondent. The Respondents filed their Answer to the Amended Complaint on October 21, 2008.

The oral hearing of this action was commenced in Fort Worth, Texas on Monday, August 24, 2009 and concluded on Thursday, August 27, 2009. Colleen A. Carroll, Esquire, Office of General Counsel, United States Department of Agriculture represented the Complainant. Neither Respondent was represented by counsel; however, Riggs served as the Respondents’ representative, cross examining the Complainant’s witnesses and questioning Ms. Palazzo during direct examination. A total of 27 witnesses testified (26 for the Complainant and Jamie Michelle Palazzo for the Respondents). 204 exhibits were introduced.⁶ Both parties have submitted briefs and this matter now stands ready for disposition.

³ The practice of titling their pleadings as “Complaint” was followed repeatedly throughout the case by the Respondents.

⁴ The Respondents’ pleading concluded with the question: “Doesn’t the “appearance of impropriety” far outweigh the loss of one “rouge [sic] attorney” working one case? Docket Entry 7 at page 3 of Complaint.

⁵ James Lee Riggs was previously involved in two prior disciplinary proceedings. Although not named as a Respondent in the initial case in which the Consent Decision was entered (AWA Docket No. 98-34), Riggs was married to Heidi Berry Riggs (now Heidi Berry) at that the time that the first action was brought against her and Bridgeport Nature Center, Inc. and was engaged in the entity’s touring operation that was the focus of the disciplinary action. Riggs was a named Respondent in a second action, *In re: Heidi Berry Riggs, Bridgeport Nature Center, Inc., and James Lee Riggs, d/b/a Great Cats of the World*, 65 Agric. Dec. 1039 (2006); *Remanded*, 67 Agric. Dec. ____ (January 18, 2008). Riggs’ application for an Animal Welfare Act license in his own name was denied; however, that the appeal of that denial was deferred and not addressed in the 2006 decision.

⁶ The Complainant called 26 witnesses; Jamie Michelle Palazzo was the only witness for the Respondents. The Complainant introduced 160 exhibits (CX 1-11,13, 14, 14A, 14B, 15-30, 32-39, 40A, 40B, 42-82, 84-115, 117-139, 142-147, 152-165, 167,169-171) and the Respondents introduced 44 (RX 4-8, 10-17, 31, 32, 34, 39 (same as CX 40B), 41-47, 50-54, 64, 72, 74, 77-82).

Discussion

Palazzo and Riggs are alleged to have willfully violated the Act and the Regulations on multiple occasions between August of 2006 and August of 2008. The 26 violations alleged in the Amended Complaint run the gamut of seriousness ranging from (a) interference with, threatening, verbally abusing, or harassing APHIS inspectors on two occasions, (b) the use of abuse in training on two occasions, (c) the failure to handle tigers in an appropriate manner on multiple occasions, (d) the failure to have adequate barriers when exhibiting tigers on multiple occasions, (e) the failure to provide adequate veterinary care, (f) the refusal to grant access to inspectors, to (h) simple record keeping violations. At the conclusion of the third day of the hearing, the Complainant moved to withdraw seven of the alleged violations, including some of the more serious violations (both instances of interference with, threatening, verbally abusing or harassing APHIS inspectors, one of the training abuse allegations, and one of the allegations concerning providing adequate veterinary care to their animals, two allegations of careful handling and one of insufficient distance and/or barrier).⁷ Tr. 905-909.

Although a number of other alleged violations were included in the Amended Complaint, the primary focus of this disciplinary action centers around safety concerns about the manner in which Palazzo and Riggs exhibited their cats, particularly during the sessions in which photographs were taken of the public with the cats for a fee. For their part, the Respondents eschew any wrongdoing, claiming (1) that their conduct was well

⁷ Complainant moved and was granted leave to withdraw the violations alleged in paragraph 6 (interference with an APHIS inspector on two occasions in violation of 9 C.F.R. §2.4 of the Regulations); paragraph 7 (failure to provide adequate veterinary care in violation of 9 C.F.R. §2.40(a), 2.40(a)(2) and 2.40(b)(2)); paragraph 10g & h (failure to handle tigers as carefully as possible in violation of 9 C.F.R. §2.131(b)(1)); one of two dates in paragraph 11 (use of abuse in training in violation of 9 C.F.R. §2.131(b)(2)(i)); and one date of the six alleged in paragraph 12 (failure to have sufficient barriers in violation of 9 C.F.R. §2.131(c)(1)).

within the parameters set forth by USDA for such photograph opportunities in a Consent Decision entered into by Secretary and Riggs' ex-wife, Heidi Berry Riggs (now Heidi Berry) and Bridgeport Nature Center, Inc., an entity then operated by the ex-wife and (2) that the Consent Decision (despite the restrictive and limiting language contained in the document itself) had created a very clear and specific bright line standard allowing exhibition of tigers that were less than six months of age and less than seventy-five pounds in weight which in the name of fairness should now be extended to all exhibitors.⁸

Despite the initially beguiling appeal of a position which is cloaked in and invokes both fairness and equal treatment of similarly situated parties, Palazzo's and Riggs' argument minimizes or overlooks a number of significant factors. First, the language of the Consent Decision was restrictive, limiting its application to the named parties, i.e. Heidi Berry Riggs and Bridgeport Nature Center, Inc.⁹ Second, although Respondent Palazzo purchased certain of the equipment and items that may have previously been owned by Heidi Berry Riggs and or Bridgeport Nature Center, Inc., no evidence was ever introduced that Ms. Palazzo acquired any interest in Bridgeport Nature Center, Inc. and it is clear from the documents transferring ownership of the equipment to her that her purchase of the equipment fell far short of placing her in the shoes of a successor in interest of either Ms. Berry or the corporation.¹⁰ Last, and possibly most

⁸ *In re: Heidi Berry Riggs and Bridgeport Nature Center, Inc.*, (unpublished Consent Decision) AWA Docket No. 98-34, (August 19, 1998).

⁹ The first paragraph of the Order contained in the Consent Decision which provided a cease and desist provision did include agents, employees, and successors and assigns; however, the subsequent provisions omitted that language and were intended to be limited to the Respondents in that case, i.e. Heidi Berry Riggs and Bridgeport Nature Center, Inc. *See*, Affidavit of Frank Martin, RX 50. Even where the subsequent provisions made applicable to employees, it would appear that status would apply only so long as an individual was employed by that employer, absent an application similar to Marine tradition (Once a "Marine," always a "Marine").

¹⁰ Ms. Palazzo consistently maintained that the provisions of the Consent Decision applied to her. CX 19, 146, 168. In a letter of July 17, 2007 to the USDA Inspector General, she wrote: "And, since I worked for

importantly, even assuming *pro arguendo* that the Consent Decision may have represented USDA policy at one time in that case, it is now manifestly clear that USDA has changed its position, finding there to be “an inherent danger present for both the viewing public and the exhibited animal(s) where there is any chance that the public could come into direct contact with juvenile or adult big cats”... and finding that ...“For regulatory purposes, APHIS generally considers big cats to become juveniles when they reach 12 weeks of age.”¹¹CX 20.

The Supreme Court recently made it abundantly clear that enforcement policy can be changed from time to time. *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. ___, (April 28, 2009). The Administrative Procedures Act, 5 U.S.C. §551 *et seq.*, sets forth the full extent of judicial authority to review executive agency action for procedural correctness and allows the setting aside of agency action which is “arbitrary” or “capricious.” 5 U.S.C. §706(2)(A). In exercising what the Court has termed its “narrow” standard of review, the Court requires agencies to examine relevant data and articulate a satisfactory explanation for its action. *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983). While an agency may be required to demonstrate there are good reasons for a new policy, it need not demonstrate

them. [referring to Heidi and Jay Riggs, Bridgeport Nature Center in a prior paragraph] And, bought all their equipment and continued with my own license, this clearly applies to me as well.” Exhibit 15 to the Answer to the Original Complaint. The 6 month and 75 pound standard was also repeatedly referenced in other correspondence. CX 24, 40A, RX 32. While the equipment that Palazzo purchased may have at one time been owned by either Heidi Berry Riggs or Bridgeport Nature Center, Inc., the Bill of Sale(s) for the equipment were executed by James Lee Riggs as the seller. RX 45-46. After establishing a new §501(c)(3) entity named Center for Animal Research and Education (CARE), Bridgeport Nature Center, Inc. allowed its Animal Welfare Act license to lapse. Tr. 430-431. Ms. Berry testified that she and CARE requested that Palazzo and Riggs remove references to Bridgeport from Great Cat Adventures promotional material on the internet and that neither she nor Bridgeport transferred any equipment or other property to Palazzo. CX 170, 171, Tr. 428-430, 435.

¹¹ According to Dr. Gibbens’ testimony, the policy precluding direct public contact with juvenile tigers was in effect in 2004 (CX 2), was placed on Department website in 2005 (RX 58) long before either Dr. Kay Carter-Corker’s August 8, 2007 letter (CX 20) or the 12 week definition that contained in the letter from Mary E. Moore, DVM, USDA, Animal Care-Eastern Region dated April 14, 2006 (RX 37). Tr. 701-702.

that “the reasons for the new policy are *better* than the old; it suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates.” (Emphasis in original) Slip Op. at 11. In this case, it is evident that first, the Secretary has been delegated authority under 7 U.S.C. §2151 “to promulgate such rules, regulations, and orders as he may deem necessary in order to effectuate the purposes of this chapter;” second, that the inherent risk to the public from direct contact with juvenile and adult big cats amply justifies the imposition of appropriate safeguards; and last, the policy revision reflects the “belief” of the agency that the revised standard is “better” designed to protect the public.

Both Riggs and Ms. Palazzo are experienced animal handlers, with extensive experience working with big cats on a daily basis. Riggs has well over 20 years of experience¹² and in the 2006 *Bridgeport* decision, Riggs was acknowledged by both Dr. Bellin and Mr. Swartz to be an expert in handling exotic cats. 65 Agric. Dec. 1039, 1055. Ms. Palazzo’s experience is not as lengthy, having started with part-time work in 1998 for Bridgeport Nature Center, Inc., advancing to full time employment in 1999 and remaining employed by Bridgeport until October of 2004.¹³ Tr. 943, 948-949. While at Bridgeport, she was trained both by Bridgeport staff as well as by outside consultants hired by Bridgeport to put on training and educational programs. Tr. 943-947. The Animal Welfare Act license is issued in Jamie Palazzo’s name and she purchased most if not all of the vehicles, trailers, sound system, cameras, computers, tents, portable fencing and other equipment used for the road tours from Riggs. CX 1, 3-7, RX 45-47. Although

¹² CX 142.

¹³ In October of 2004, Ms. Palazzo applied for an Animal Welfare Act License in her own name. CX 1.

Ms. Palazzo took pains to distance herself from Riggs with USDA during the license application and renewal process,¹⁴ it is clear that in addition to being the father of her children, Riggs travels with Ms. Palazzo for the road exhibitions, he participates in the operation of the business on a daily basis,¹⁵ and that he advises and continues to exert significant influence over her, much of it to her ultimate detriment.

The record does reflect that Ms. Palazzo did make repeated requests¹⁶ to Dr. Robert Gibbens to either homologate the *Bridgeport* standards or to articulate exactly what would be allowed under the Regulations which lamentably were initially unanswered; however, it is abundantly clear from the evidence that beginning in April of 2006 and continuing throughout 2007, Ms. Palazzo and Riggs were repeatedly notified that big cats were considered to be “juveniles” upon reaching 12 weeks of age and that after reaching that age, the cats were no longer considered suitable for direct public contact.¹⁷ While it appears that Ms. Palazzo’s obdurate and implacable unwillingness to accept a standard of tigers becoming juveniles upon attaining 12 weeks of age is based upon contrary but

¹⁴ Tr. 700, 703-704, 1028, 1033-1034, RX 31. Riggs’ name was added as an authorized person in April of 2005 for a brief period and then was removed in January of the following year. CX 142.

¹⁵ Riggs appears in one of the photographs in CX 13 and is featured prominently in many of the photographs in CX 22. Animal Care Inspector Radel testified that she understood him to be a very integral part of the operation. Tr. 236. Ms. Palazzo has referred to Jay (Riggs) as “my husband for all intensive purposes. He lives here and works for and with me. He consults me, as do our Vet and Lawyer.” CX 24.

¹⁶ In her testimony, Ms. Palazzo indicated that she wanted “clarification of some of the gray areas in the regulations, and I hoped to maybe come up with a magical age or weight limit to try to make sure that everybody is under the same understanding.” Tr. 1039-1040. *See*: In her letter of August 29, 2005 to Dr. Gibbens, Ms. Palazzo responded to an undated Dear Applicant letter (CX 2) which then defined a juvenile cat as over three months and asked for a hearing... if you feel I am not in compliance...CX 7. In her letter of July 17, 2007, she noted that there had been no response to her August 29, 2005 letter. CX 19. The July 2007 letter was answered by Dr. Kay Carter Corker and the 12 week standard was reaffirmed. CX 20. In a later letter dated August 16, 2007, she proposed a schedule using the six month standard, but indicating that she wanted to follow the Regulations. CX 24. This letter was also responded to and Palazzo was again informed of the 12 week standard. CX 29. Ms. Palazzo again wrote on October 12, 2007, reaffirming her intention to use a 6 month standard, but again asking for a meeting “so I can operate in compliance.” CX 40A. Although her letter was answered, no meeting was arranged and she was advised that she would continue to be cited without reference to any standard. The answer to her August of 2008 request for an exact age and weight standard was also denied (without referencing the 12 week standard). CX 145.

¹⁷ RX 37.

erroneous advice advanced by Riggs, it is also clear that such reliance will not now shelter her from disciplinary action being taken against her as the Judicial Officer has held that reliance upon erroneous advice is misplaced. *In re: Arab Stockyard, Inc.*, 37 Agric. Dec. 293, 306 (1978); *aff'd sub nom. Arab Stockyard v. United States*, 582 F.2d 39 (5th Cir. 1978). As the ability to hold an Animal Welfare Act license is clearly a privilege and not a right, it behooves those wishing to avail themselves of that privilege to comply with the corresponding regulatory requirements that accompany the license. While authority to perform acts in a licensee's name can be delegated, the responsibilities that accompany the license cannot.

The evidence concerning the 19 alleged violations which remain is summarized as follows:

1. August 9, 2006: Failure to handle tigers as carefully as possible in a manner that does not cause behavioral stress, physical harm, or unnecessary discomfort and use of physical abuse to train, work, or handle animals. (9 C.F.R. §2.131(b)(1) and §2.131(b)(2)(i)). On August 9, 2006 at the Boone County Fairgrounds in Belvedere, Illinois, Jamie Palazzo was observed by Chad Moore, an Animal Care Inspector, spraying a tiger with a water hose to encourage it to enter an enclosure. Moore completed an Inspection Report citing Ms. Palazzo with a violation of Section 2.131(b)(1) (9 C.F.R. §2.131(b)(1)) a violation of failing to handle animals in manner so as to avoid trauma, overheating, excessive cooling, behavioral stress, physical harm or unnecessary discomfort. CX 8. Ms. Palazzo appealed the violation report, admitting that she had sprayed the tiger, but claimed the spraying was an incidental spray which “may have startled” the animal, but denying that it would have been traumatic. CX 9. Although Ms.

Palazzo (in her letter to Dr. Gibbens [CX 9]), Nancy Brown, and Joe Schreibvogel all expressed the opinion that cats enjoy water and playing in water (Tr. 722, 869-870), given evidence of a similar prior violation by Ms. Palazzo¹⁸, while I do not find that the incident involved the more serious violation of the use of physical abuse to the animal, I will find a violation of Section 2.131(b)(1).

2. October 2006 to November 2007: Failure to keep, make and maintain records that fully and correctly disclosed required information. (9 C.F.R. §2.75(b)). Wayne Edwards testified that he was involved with Great Cat Adventures between 2005 until October of 2008, starting initially as a volunteer in 2005 and in 2007 taking on the greater role of booking of their schedule and sending out material to the various fairs. Tr. 182. In March of 2008, while still associated with Riggs and Ms. Palazzo, he went to work at the Oklahoma Wildlife Preserve, a 110 acre facility located in Atoka, Oklahoma, a corporation owned or controlled by Riggs and Ms. Palazzo that also applied for an Animal Welfare Act license, with Edwards as listed as the president.¹⁹ Edwards testified that all of the cats owned by Great Cat Adventures were always older than the birth dates recorded for them by the Respondents so that they could be used with the public longer.²⁰ Tr. 191-192, 199-201. He also testified that on occasion although the means of acquisition of animals on APHIS Forms 7020 were marked as being “Donations,” in fact, he had handed the transferor an envelope with \$1,000 in it. CX 136, 137, Tr. 211-212.

While Edwards acknowledged leaving Great Cat Adventures on less than good terms, his

¹⁸ The prior incident was treated only as a violation of Section 2.131(b)(1) and as not physical abuse under 2.131(b)(2)(i). RX 51.

¹⁹ The appeal of the license denial was dismissed on March 11, 2009 when Edwards failed to appear at the oral hearing. *In re Wayne Edwards, d/b/a Oklahoma Wildlife Preserve, Inc.*, AWA Docket No. D-08-0149.

²⁰ Joseph Schreibvogel’s and Michelle Higdon’s affidavits indicate that Riggs asked Michelle Higdon, Schreibvogel’s office manager at the time to alter the birth date of a cat. CX 158, 167. On cross examination, Schreibvogel indicated that he did not witness the incident, but it had been reported to him while he was on the road. Tr. 840.

testimony was considered generally credible and it is buttressed by more than the more than ample documentary evidence of far too many unexplained inconsistencies in the maintenance of the records which fully warrant an inference of multiple willful violations. *E.g.* CX 22@ 30-31, 32-33, 35-36, 37-38, 39-40, 48-49, 50-51.

3. March 7, 2007: Failure to provide access to facilities, records and animals. (9 C.F.R. §2.126(a)). Animal Care Inspector (ACI) Thomasina Barney testified that on March 7, 2007, she attempted to inspect Ms. Palazzo's Amarillo facility at 10:40 AM; however, there was no facility representative on the premises to allow access. Tr. 439-440, CX 10. Inspector Barney indicated that she had been told "if there is no one there and you can't contact anybody to go ahead and write an attempted inspection with the date and time that you were there." Tr. 439. Although the Regulations are clear that APHIS was authorized to inspect the Amarillo facility on March 7, 2007 during normal business hours, the evidence also reflected that APHIS had previously been notified that the principals of the business would be on the road in Gonzales, Louisiana on March 8 through 11, 2007 and that given the distance from the Amarillo location, that they likely would be en route. Tr. 448-449, 953-954, RX 77. Further it appears that although Inspector Barney (who acknowledged seeing the January 26, 2007 itinerary) called the cell phone of Paula Reams, the local employee who could have provided access, she failed to leave a voice message as to the reason for the call, but merely left a business card at the facility. Tr. 448-451. As her folder did not include Ms. Palazzo's cell phone number, she did not call Ms. Palazzo or leave a message with her so that she could contact her employee to come in and provide access. Tr. 450-451. Given the circumstances and APHIS's demonstrated ability to contact Ms. Palazzo on the road on

multiple other occasions, while a technical violation may arguably have occurred at the Amarillo location, the evidence falls short of constituting a willful violation warranting sanction.²¹

4. March 2007: Failure to have a veterinarian provide adequate veterinary care to two felids having ringworm. (9 C.F.R. §2.40(a), 240(a)(2) and 240(b)(2)). The affidavit of Joseph Schreibvogel indicated that in March of 2007 when the Respondents returned two animals that had been on loan, a baby mountain lion and a baby lion, they had ringworm and that he had them treated by his veterinarian.²² CX 117. Although the violation alleged in the Amended Complaint was to have occurred in March of 2007, his testimony at the hearing concerned animals returned to GW Exotic Animal Park in November of 2007. He indicated that the animal(s) had been on treatment, but that his veterinarian placed the animal on a different protocol. Tr. 829. Earlier testimony from Wayne Edwards indicated that the animals often contracted ringworm, but that if an animal needed veterinary care, they got it. Tr. 198-199. Schreibvogel also testified that he felt that Palazzo genuinely cared for the animals in her care. Tr. 855. The record also contains a number of Certificates of Veterinary Inspection covering the month of March of 2007 indicating that the animals had been inspected by a veterinarian and were exhibiting no signs or symptoms of infectious, contagious or communicable diseases. CX 97-100. Accordingly, I find insufficient evidence of a violation of failing to provide adequate veterinary care.

²¹ Despite testimony of what could be interpreted as inadequate efforts to contact or to allow adequate time for a responsible person to come in to provide the required access at a time when the operation was not open for business with the general public, the Complainant chose to continue to include it as an alleged violation. Tr. 907. No evidence was introduced concerning any requirement that licensees operating at more than one location be staffed during normal business hours at all locations.

²² Schreibvogel indicated that he was on the road when the animals were returned. Tr. 840.

5.-7. April 20-22, 2007: Failure to handle tigers as carefully as possible in a manner that does not cause behavioral stress, physical harm, or unnecessary discomfort and failure to handle animals during public exhibition so there was a minimal risk to the animals and to the public, with sufficient distance and/or barriers. (9 C.F.R. §2.131(b)(1) and §2.131(c)(1)). In this and several of the succeeding alleged violations, Ms. Palazzo and Riggs are alleged in separate paragraphs of the Amended Complaint with having violated both Sections 2.131(b)(1) and 2.131(c)(1). In enacting the Animal Welfare Act, Congress found that regulation was necessary “to insure that animals intended for use....for exhibition purposes...are provided humane care and treatment. Congressional statement of policy. 7 U.S.C. §2131. Section 2.131(b)(1) was promulgated with that intent clearly in mind as it requires “Handling of all animals shall be done as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort.” 9 C.F.R. §2.131(b)(1). The barrier requirements found in Section 2.131(c)(1) are less clearly directly related to provisions of humane care and treatment, but nonetheless have been found supportable because in the event of injury to the general public, it might become necessary to euthanize the animal that caused the injury.

Although Ms. Palazzo and Riggs are alleged to have violated both the expeditious and careful handling and barrier and distance provisions of the Regulations at the Kidfest event in Ridgeland, Mississippi from April 20 to 22, 2007, the testimony elicited by the Complainant was focused upon the walking of the cats on leashes and the absence of what was considered adequate barriers or distance between the cats and the public, rather than any stress or discomfort suffered by the cats from a lack of humane treatment.

Although Robert McFarland expressed some fears over safety concerns and indicated that Great Cat Adventures would not be asked to return to the event, his testimony indicated that the leopard he observed during the VIP educational presentation on April 20, 2006 was on a leash held by Ms. Palazzo within an area separated from the public by barriers or a fence.²³ Tr. 83-88, 94-98. No USDA employee observed the incident and Denver Osborne, a competitor and the only other witness to an earlier incident, did not testify and his affidavit allowed neither confrontation or cross examination by the Respondents. CX 152. Significantly, no report of violation was prepared by either Veterinary Medical Officer (VMO) Tami Howard or by Richard Rummel on behalf of the Mississippi Department of Wildlife, Fisheries and Parks. CX 11, 14, 14A, 14B. Accordingly, I will find the evidence insufficient to support a willful violation of either the handling or the barrier provisions on the date of the alleged infraction.

8. July 17, 2007: Failure to handle tigers as carefully as possible in a manner that does not cause behavioral stress, physical harm, or unnecessary discomfort and failure to handle animals during public exhibition so there was a minimal risk to the animals and to the public, with sufficient distance and/or barriers. (9 C.F.R. §2.131(b)(1) and §2.131(c)(1)). VMO Kurt Hammel was present in Fowlerville, Mississippi on July 16 and 17, 2006²⁴ and testified that he observed the Respondents exhibiting tigers which he considered too large for direct public contact. Tr. 153-180. Although VMO Hammel observed one of the larger tigers in the photograph area, he did not witness any

²³ There was no evidence of any public contact or photographs being taken during the VIP event. In his affidavit, McFarland's indicated that the public was separated from the podium or stand by an aluminum picket type of fence, with an estimated five feet between the podium or stand and the fence. CX 152. Regrettably, no diagram was made by the investigators setting forth the distance with any precision.

²⁴ VMO Hammel's letter to Dr. Kirsten dated July 26, 2007 indicates that he had been informed by Dr. Jones of the Western Regional Office that Jay Riggs might be exhibiting without a license and that he should conduct an inspection to see who was holding the license. CX 17.

photographs being taken with the tiger. Tr. 177. CX 17. He did take three photographs, two of which were relied on as being evidence of direct public contact reflecting a blonde female with glasses who had come from the audience area feeding a juvenile tiger, who was later identified as Heidi Nelson, an employee of Great Cat Adventures.²⁵ CX 16 (2 and 3 of 3), Tr. 164, 989. Ms. Palazzo denied allowing any person from the public to come into contact with a tiger identified as too large for the public and testified that they have “been putting plants in the audience that work for us for years....It adds to the entertainment...” Tr. 989-990. On cross examination, Hammel conceded that if Nelson was an employee, it would not be a violation for her to sit there with the tiger. Tr. 164. Given the lack of direct observation of “public” contact by anyone other than an individual identified (without contradiction) as an employee, I conclude that there is insufficient evidence to support a violation of either provision of the Regulations relating to “public” exhibition on the alleged date.

9. August 16, 2007: Failure to handle tigers as carefully as possible in a manner that does not cause behavioral stress, physical harm, or unnecessary discomfort and failure to handle animals during public exhibition so there was a minimal risk to the animals and to the public, with sufficient distance and/or barriers. (9 C.F.R. §2.131(b)(1) and §2.131(c)(1)). Melissa Kay Radel, an Animal Care Inspector with APHIS, testified that she and Veterinary Medical Officer Debra Sime were present at the Steele County Fair in Owatonna, Minnesota and observed the Respondents’ exhibit on August 16, 2007. Tr. 221-222. Radel identified a number of photographs she took during the inspection, including two which clearly show a juvenile tiger being carried by Ms. Palazzo through a

²⁵ In his cross examination of VMO Hammel, Mr. Riggs suggested that Ms. Nelson appeared in an earlier photograph. CX 13 (2 of 3). In her testimony, Ms. Palazzo identified the individual in CX 16 as Heidi Nelson, an employee at the time. Tr. 989.

public area without a barrier between the cat and the public. CX 22 (21 and 22 of 57). Other photos show audience members feeding juvenile tigers that were considered too large and too old for direct public contact. CX 20, 22 (10-18 of 57). The inspectors' examination of the records found a number of discrepancies in the records further documenting the record keeping violation discussed previously. The documents examined indicated the youngest tiger to be approximately 8 weeks old and the cubs that were represented to be 14 weeks old on the health certificate were in fact 24 weeks old. CX 28. Although I find no evidence of the exhibition causing trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort to the animals, I do find that more than ample evidence was introduced that there was more than minimal risk in the handling of the animals without sufficient distance and/or barriers being present between the animals and the general public establishing the barrier violation.

10. September 7, 2007: Failure to handle tigers as carefully as possible in a manner that does not cause behavioral stress, physical harm, or unnecessary discomfort and failure to handle animals during public exhibition so there was a minimal risk to the animals and to the public, with sufficient distance and/or barriers. (9 C.F.R. §2.131(b)(1) and §2.131(c)(1)). Veterinary Medical Officer Susan Kingston testified that she and Ken Kirsten, another Veterinary Medical Officer were present at the Shoppes at College Hill in Bloomington, Illinois at the direction of the Regional Office on September 7, 2007 for the purpose of checking the Respondents' exhibit. Tr. 290-292. She was accompanied by VMO Kirsten as her supervisor was concerned that it could be a potentially hostile situation, or a volatile situation. Tr. 291. When they arrived, they were too early for the

performance, but saw that some pictures were being taken. They waited, looked at the exhibits of the animals displayed there, later watching the educational program and the subsequent picture taking session. *Id.* During the photograph sessions, they observed and VMO Kingston photographed a number of instances in which juvenile tigers were being photographed with the general public, including small children, having direct contact with the animals. Tr. 291-293, CX 32. The photographs clearly indicate the general public with the juvenile tigers in several of the photographs actually touching the tigers without the presence of any barriers. Again, although I do not find any evidence of the exhibition causing trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort to the animals, I do find that more than ample evidence was introduced that there was more than minimal risk in the handling of the animals without sufficient distance and/or barriers being present between the animals and the general public in violation of the barrier provision.

11. October 5, 2007: Failure to handle tigers as carefully as possible in a manner that does not cause behavioral stress, physical harm, or unnecessary discomfort and failure to handle animals during public exhibition so there was a minimal risk to the animals and to the public, with sufficient distance and/or barriers. (9 C.F.R. §2.131(b)(1) and §2.131(c)(1)). On October 5, 2007, ACIs Cathy Niebruegge and Karl Thornton were present at the Tulsa State Fair in Tulsa, Oklahoma and observed the Great Cat Adventures exhibit. While there the two ACIs observed and Karl Thornton photographed Palazzo exhibiting a juvenile tiger that had been brought from its primary enclosure to a platform located in the exhibit area where the individual general public was being photographed in close proximity to the tiger. Tr. 373-380, CX 37. The photographs

corroborate the information contained on the Inspection Report and reflect Ms. Palazzo holding the tiger with a leash and feeding it a bottle with the members of the general public being photographed only 3-5 feet away without any barrier being present between them. CX 39. Noting that the Inspection Report cited Palazzo only for a barrier violation, in absence of any evidence of stress to the animal, I will find only the violation of the barrier provision.

The Amended Complaint asked for revocation of Ms. Palazzo's license. No testimony was proffered at the hearing concerning the proposed penalty as it was the Complainant's intention to include such information in the brief. Tr. 1075. In the Sanctions portion of the Complainant's Post Hearing Brief, the Complainant asserts that Respondent Jamie Palazzo's should not remain licensed as an animal exhibitor and her license should be revoked. The Complainant also seeks a \$35,750.00 civil penalty from Respondent James Lee Riggs. In seeking revocation of Ms. Palazzo's license, the Complainant argues that "Palazzo has rejected the Secretary's interpretation of the handling Regulations" and "respondents have repeatedly fulfilled their pledge not to comply with the regulations." Complainant's Brief at 33. Notwithstanding the fact that Ms. Palazzo as the license holder is ultimately responsible for complying with the Secretary's Regulations, I find her undue and erroneous reliance upon James Lee Riggs less culpable than that of Riggs who now has a documented history of both flaunting the Secretary's Regulations and for attempting to shield himself from responsibility by corporate artifice, manipulation of others and by working under the licenses of others. Accordingly, given her responsibilities as a parent, I find that the remedial purpose of the Regulations will be served by a lengthy period of suspension of Ms. Palazzo's license

and does not require a revocation which would involve permanent disqualification of her as a licensee.

Based upon all of the evidence in this action, including the testimony of the witnesses and exhibits admitted during the hearing, the following Findings of Fact, Conclusions of Law and Order will be entered.

Findings of Fact

1. Jamie Michelle Palazzo is an individual residing in Haltom City, Texas. She is licensed under the Animal Welfare Act as a Class C Exhibitor, holding License No. 74-C-0627 and does business as Great Cat Adventures.
2. James Lee Riggs is an individual residing in Haltom City, Texas. During 2006 and 2007, he traveled with Great Cat Adventures and operated an “exhibitor,” acting for or employed by Jamie Palazzo.
3. Ms. Palazzo operates a moderate sized business, exhibiting wild and exotic animals, including Bengal, Royal White Bengal, and Siberian tigers, cougars, and leopards for profit.²⁶ Described in promotional literature as a wildlife refuge dedicated to the care of big cats, in order to fund the refuge, the enterprise spends much of the year on the road touring the nation giving educational shows and providing opportunities for the general public to be photographed with the animals. CX-156.
4. Although Ms. Palazzo previously was an employee of Bridgeport Nature Center, Inc. and purchased equipment from Respondent Riggs which likely was used by Bridgeport Nature Center, Inc.’s road operation while giving educational shows and providing opportunities for the general public to be photographed with the animals, there

²⁶ The promotional literature indicates that the business has more than 35 big cats and feeds 3,000 pounds of meat per week. CX-156. The 2007 records of Bridgeport Animal Hospital, LLC listed 39 animals. CX-106.

is no evidence that she ever purchased any interest in Bridgeport Nature Center, Inc., or in any other way became a “successor in interest” to Bridgeport Nature Center, Inc.

5. AHIS at least since 2004 has consistently maintained that there is an inherent danger for both the viewing public and the exhibited animal(s) where there is any chance that the general public could come into direct contact with juvenile or adult big cats, including lions, tigers, jaguars, leopards and cougars, and considering big cats to become juveniles when they reach 12 weeks of age.

6. On August 9, 2006 at the Boone County Fairgrounds in Belvedere, Illinois, Ms. Palazzo was observed using a stream of water from a hose to encourage a tiger to enter its enclosure which may have “startled” the animal causing it unnecessary behavioral stress.

7. From October of 2006 to November of 2007, the Respondents failed to keep records that fully and correctly disclosed required information. The records on multiple occasions reflected numerous inconsistent entries as to birth dates of the animals with the inference that the Respondents’ intent was that the animals might continue to be exhibited for a longer periods of time and also reflected inaccurate information as to the means of acquisition of certain of the animals.

8. On August 16, 2007 at the Steele County Fair in Owatonna, Minnesota, Ms. Palazzo was observed carrying a juvenile tiger through a public area without a barrier between the cat and the general public and the Respondents allowed audience members to feed juvenile tigers that were too large and too old for direct public contact without a sufficient barrier between the cat and the general public.

9. On September 7, 2007 at the Shoppes at College Hill in Bloomington, Illinois, the Respondents allowed juvenile tigers to be photographed with the general public,

including small children, having direct contact with the animals without barriers being present.

10. On October 5, 2007 at the Tulsa State Fair in Tulsa, Oklahoma, Respondents allowed juvenile tigers to be photographed with the general public, including small children, without sufficient barriers being present.

Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. Between October of 2006 and November of 2007, Respondents failed to keep, make and maintain records or forms that fully and correctly disclosed the required information regarding animals owned, held, leased, or otherwise in their possession or control, or transported, sold, euthanized, or otherwise disposed of, and in many instances, Respondents' records contained incorrect or conflicting dates of birth, incorrect, conflicting, or missing acquisition and disposition dates, and incorrect, conflicting or missing identification of animal custody or ownership, in willful violation of 9 C.F.R. §2.75(b).
3. The Respondent Jamie Palazzo failed to handle a tiger as carefully as possible in a manner that did not cause behavioral stress, physical harm, or unnecessary discomfort in willful violation of 9 C.F.R. §2.131(b)(1) on August 9, 2006 (Boone County Fairgrounds, Belvedere, Illinois)
4. The Respondents failed to handle animals during public exhibition in such a manner as to allow only minimal risk to the animals and to the public with sufficient distance and or barriers between the animals and the general viewing public so as to

assure the safety of the animals and the general public in willful violation of 9 C.F.R. §2.131(c)(1) on the following dates:

- a. August 16, 2007 (Steele County Fair, Owatonna, Minnesota)
- b. September 7, 2007 (Shoppes at College Hill, Bloomington, Illinois)
- c. October 5, 2007 (Oklahoma State Fair, Tulsa, Oklahoma)

Order

1. The Respondents, their agents, employees, successors and assigns, directly or indirectly through any corporate or other device are **ORDERED** to cease and desist from further violations of the Act and the Regulations.
2. Animal Welfare Act License No. 74-C-0627 issued to Jamie Palazzo, doing business as Great Cat Adventures, as a Class C Exhibitor is hereby **SUSPENDED** for a period of three years.
3. The Respondent James Lee Riggs is assessed a civil penalty in the amount of \$10,000.00. The civil penalty shall be paid by certified check or money order made payable to the Treasurer of the United States and sent to:

Colleen A. Carroll, Esquire
United States Department of Agriculture
Office of the General Counsel
1400 Independence Avenue SW
South Building
Washington, D.C. 20250-1417

4. This Decision and Order shall be effective 35 days after this decision is served upon the Respondent unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145.

Copies of this Decision and Order shall be served upon the Parties by the Hearing Clerk's Office.

Done at Washington, D.C.
January 5, 2010

PETER M. DAVENPORT
Administrative Law Judge

Copies to: Colleen A. Carroll, Esquire
Jamie Michelle Palazzo
James Lee Riggs

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