

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	
)	
James Lee Riggs, an individual;)	AWA Docket No. 11-0024
Eric John Drogosch, an individual;)	
Thomas R. Lease, an individual; and)	
Joseph M. Estes, an individual,)	Decision and Order as to
)	ONLY Eric John Drogosch
Respondents)	by Reason of Default

1. The Complaint, filed on October 21, 2010, alleged among other things, that the Respondent Eric John Drogosch (frequently herein “Respondent Drogosch” or “Respondent”), in 2008, 2009, and 2010, willfully violated the Animal Welfare Act, as amended (7 U.S.C. § 2131, *et seq.*) (frequently herein the “Animal Welfare Act” or the “AWA” or the “Act”), and the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 *et seq.*) (frequently herein the “Regulations” or the “Standards”).

Parties and Counsel

2. The Complainant, the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (herein frequently “APHIS” or “Complainant”), is represented by Colleen A. Carroll, Esq., Office of the General Counsel (Marketing Division), United States Department of Agriculture, 1400 Independence Avenue, S.W., Washington D.C. 20250-1417.

3. The Respondent, Eric John Drogosch, has failed to appear.

Procedural History

4. The Complainant's Motion for Adoption of Decision and Order as to Respondent Eric Drogosch by Reason of Default, filed January 19, 2011, is before me. That Motion has not been served on Respondent Drogosch. The address the Hearing Clerk uses for Respondent Drogosch is

Eric John Drogosch
d/b/a Great Cats Adventures
690 Highway 69/75
Atoka OK 74525

A copy of that Motion (for default decision) was mailed by certified mail to Respondent Drogosch at that address and went "UNCLAIMED."¹ Thereafter, on February 24, 2011, the copy of that Motion (for default decision) was re-mailed "by ordinary mail", in accordance with 7 C.F.R. § 1.147(c)(1) of the Rules of Practice. That mailing was returned to the Hearing Clerk marked by the US Postal Service:

"03/02/2011"
"RETURN TO SENDER"
"NOT DELIVERABLE AS ADDRESSED"
"UNABLE TO FORWARD".

5. Respondent Drogosch did not file an answer to the Complaint, which is why he is in default. The Hearing Clerk mailed a copy of the Complaint by certified mail to Respondent Drogosch at his address shown in paragraph 4. What was included in that mailing by

1. The envelope bears Certified Mail Return Receipt 7009 1680 0001 9851 9725 and includes the following remarks by postal authorities: "1-27" "2-2", 2-11" (showing the 3 dates in 2011 when notice was left), and "02/15/11" "RETURN TO SENDER", "UNCLAIMED", "UNABLE TO FORWARD".

certified mail, mailed by the Hearing Clerk on October 22, 2010, was a copy of the Complaint, a copy of the Rules of Practice governing proceedings under the Act (7 C.F.R. §§ 1.130-1.151), and a copy of the Hearing Clerk's "notice letter" dated October 22, 2010.

6. The mailing of the Complaint by certified mail went "UNCLAIMED."² Thereafter, on November 23, 2010, the contents of the envelope, described in paragraph 5, were re-mailed "by ordinary mail", in accordance with 7 C.F.R. § 1.147(c)(1) of the Rules of Practice, again to Respondent Drogosch's address shown in paragraph 4. The ordinary mailing of the Complaint is presumed delivered; it was NOT returned to the Hearing Clerk by the US Postal Service. The delivery and, thus, service of the Complaint on Respondent Drogosch, happened on November 23, 2010 (the date it was re-mailed by ordinary mail), in accordance with 7 C.F.R. § 1.147(c)(1) of the Rules of Practice. The 20th day after service of the Complaint on Respondent Drogosch was December 13, 2010; thus the time for Respondent Drogosch to file an answer to the Complaint expired on December 13, 2010. Respondent Drogosch still, to this day, has not filed an answer, or anything, in response to the Complaint.

7. Respondent Drogosch failed to update his address with the Hearing Clerk, despite the instructions to do so in the Hearing Clerk's "notice letter" dated October 22, 2010. Consequently, I proceed, even though the ordinary mailing of the Complaint was the last mailing presumed delivered.

2. The envelope bears Certified Mail Return Receipt 7009 1680 0001 9851 9459 and includes the following marks by postal authorities: "10-25" "11-6", 11-9" (showing the 3 dates in 2010 when notice was left), and "RETURNED TO SENDER, UNCLAIMED."

8. The Rules of Practice provide that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. 7 C.F.R. §1.136(c). Further, the failure to file an answer constitutes a waiver of hearing. 7 C.F.R. § 1.139.

9. Accordingly, the material allegations in the Complaint, which are admitted by Respondent Drogosch's default, are adopted and set forth herein as Findings of Fact. This Decision and Order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139. *See* 7 C.F.R. §1.130 *et seq.*

Mixed Findings of Fact and Conclusions

10. The Secretary of Agriculture has jurisdiction over the parties and the subject matter.

11. Respondent Eric John Drogosch is an individual who does or has done business as Great Cat Adventures, with a last known business mailing address of 690 Highway 69/75, Atoka, Oklahoma 74525. At all times material herein, Respondent Drogosch was (1) operating as an exhibitor, as that term is defined in the Animal Welfare Act and the Regulations; or (2) acting for or employed by an exhibitor (respondent Palazzo), and his acts, omissions, or failures within the scope of his employment or office are, pursuant to section 2139 of the Act (7 U.S.C. § 2139), deemed to be his own acts, omissions, or failures, as well as the acts, omissions, or failures of respondent Palazzo. Respondent Drogosch previously held AWA license number 74-C-0536, which license was revoked in 2004, by order of the Secretary.³

3. *In re Eric John Drogosch, dba Animal Adventures America*, 63 Agric. Dec. 623 (2004) (Decision and Order).

12. From approximately February 26, 2010, through September 1, 2010, Respondent Drogosch operated as an exhibitor and/or a dealer, without having a valid license to do so, in willful violation of section 2134 of the Act (7 U.S.C. § 2134), and sections 2.1 and 2.10 of the Regulations. 9 C.F.R. §§ 2.1, 2.20.

13. On or about the following five dates, Respondent Drogosch failed to handle tigers as carefully as possible in a manner that does not cause behavioral stress, physical harm, or unnecessary discomfort, in willful violation of section 2.131(b)(1) of the Regulations. 9 C.F.R. § 2.131(b)(1).

- a. September 29, 2008 (Tulsa Fair Grounds, Tulsa, Oklahoma)
- b. February 27, 2009 (Brownwood Intermediate School, Brownwood, Texas)
- c. April 11, 2009 (Great Cat Adventures, Atoka, Oklahoma)
- d. March 3, 2009 (Dublin Elementary School, Dublin, Texas)
- e. August 7, 2008 (Washington Town and Country Fair, Washington, Missouri)

14. On or about the following five dates, Respondent Drogosch failed to handle animals during public exhibition so there was minimal risk of harm 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 animals and the public, in willful violation of section 2.131(c)(1) of the Regulations. 9 C.F.R. § 2.131(c)(1).

- a. September 29, 2008 (Tulsa Fair Grounds, Tulsa, Oklahoma)

- b. February 27, 2009 (Brownwood Intermediate School, Brownwood, Texas)
- c. April 11, 2009 (Great Cat Adventures, Atoka, Oklahoma)
- d. March 3, 2009 (Dublin Elementary School, Dublin, Texas)
- e. August 7, 2008 (Washington Town and Country Fair, Washington, Missouri)

15. Respondent Drogosch has previously been found to have violated the Act and the Regulations. Respondent Drogosch has knowingly failed to obey cease-and-desist orders.⁴ Respondent Drogosch has not shown good faith. Respondent Drogosch, after having specifically been advised that the failure to handle animals during public exhibition so there was minimal risk of harm 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 animals and the public, is a violation, has knowingly continued to violate the handling Regulations, and to do so in a manner that presents a serious risk of harm to both people and animals.

16. The following Order is authorized by the Animal Welfare Act and is warranted in light of Respondent Drogosch's history of noncompliance, refusal to adhere to the requirements of the Animal Welfare Act, and continued handling of wild and exotic animals in a manner that poses a danger of harm to the public and to the animals.

4. *In re Eric John Drogosch, dba Animal Adventures America*, 63 Agric. Dec. 623 (2004) (Decision and Order).

Order

17. Respondent Eric John Drogosch, and his agents and employees, successors and assigns, directly or through any corporate or other device, shall **cease and desist** from violating the Animal Welfare Act and the Regulations and Standards issued thereunder.

18. The foregoing **cease-and-desist** provision of this Order (paragraph 17) shall be effective on the day after this Decision is served on Respondent Drogosch.

19. Respondent Eric John Drogosch, for his violations AND for his knowing failures to obey cease-and-desist orders, is assessed civil penalties totaling **\$13,750.00** (*see* 7 U.S.C. § 2149), which he shall pay by certified check(s), cashier's check(s), or money order(s), made payable to the order of "**Treasurer of the United States,**" within 90 days after this Decision becomes final. [*See* paragraph 21.]

20. Respondent Drogosch shall reference **AWA Docket No. 11-0024** on his certified check(s), cashier's check(s), or money order(s). Payments of the civil penalties **shall be sent by a commercial delivery service, such as FedEx or UPS**, to, and received by, Colleen A. Carroll, Esq., at the following address:

United States Department of Agriculture
Office of the General Counsel, Marketing Division
Attn.: Colleen A. Carroll, Esq.
South Building, Room 2343, Stop 1417
1400 Independence Avenue, SW
Washington, DC 20250-1417.

Finality

21. This Decision and Order shall be final without further proceedings 35 days after service upon Respondent Drogosch, unless an appeal to the Judicial Officer is filed with the Hearing Clerk within 30 days after service, pursuant to section 1.145 of the Rules of Practice (7 C.F.R. § 1.145, see enclosed Appendix A).

Copies of this Decision and Order, including Appendix A, shall be served by the Hearing Clerk **upon each** of the parties (including every respondent, not just Respondent Drogosch).

Done at Washington, D.C.
this 25th day of April 2011

s/ Jill S. Clifton

Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
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Washington DC 20250-9203
202-720-4443
Fax: 202-720-9776