

2011 JUN -9 AM 8:50

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

RECEIVED

In re: ) AWA Docket No. 07-0176  
 )  
Reginald Derksen, ) Consent Decision  
 ) and Order  
Respondent )

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. § 2131 et seq.) (hereafter "AWA" or "Act"), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent willfully violated the Act and the regulations and standards issued pursuant to the Act (9 C.F.R. § 1.1 et seq.). This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

The respondent admits the jurisdictional allegations in paragraph I of the complaint and specifically admits that the Secretary has jurisdiction in this matter, neither admits nor denies the remaining allegations, waives oral hearing and further procedure, and consents and agrees, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

The complainant agrees to the entry of this decision.

Findings of Fact

1. Reginald Derksen, hereinafter referred to as the respondent, is an individual with a mailing address of 40250 212<sup>th</sup> Street, Huron, South Dakota 57350-7923.

2. The respondent, at all times material herein, was licensed and operating as a dealer as defined in the Act and the regulations.

Conclusions

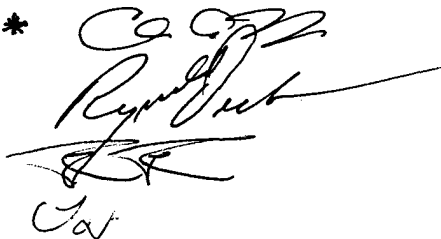
The respondent having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, such decision will be entered.

Order

1. Respondent agrees to surrender his Animal Welfare Act license immediately. Respondent is permanently disqualified from applying for a license or being licensed under the Act. The Respondent agrees to never apply for a license under the Animal Welfare Act. The Respondent shall not engage in any activity for which the Act requires a license.

2. Respondent cannot engage in any activity requiring a AWA license either individually, through a corporation (including a limited liability corporation), a partnership or as any other business entity. The Respondent shall not acquire any additional dogs. \*

(once)

  
C.D.

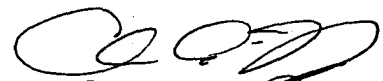
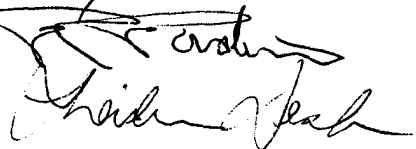
This consent decision resolves all matters that could be raised between the parties through the date of this consent decision.

---

\* To clarify, the respondent will not acquire any additional dogs for his business for which he was licensed as a dealer from this date through August 15, 2011.

---

The respondent, even though his license is surrendered, is granted an exemption to dispose of his remaining inventory according to the terms of this consent decision. Dogs can be sold to other individuals/dealers who are licensed by the AWA through this exemption. The USDA will provide an exemption letter to respondent to give him authority to sell to AWA licensees.

  
Reginald D. [unclear]  
  
[unclear]

3. The Respondent must humanely dispose of all dogs in his possession as follows :

- a. All puppies must be sold on or before July 15, 2011
- b. All adult dogs must be sold on or before August 15, 2011.

c. Humanely disposing of dogs means the dogs cannot be shot or otherwise harmed. If the Respondent is unable to sell his dogs on or before August 15, 2011 he shall contact the Animal Plant Health Inspection Service for assistance in facilitating the humane transfer of the dogs. APHIS shall not pay the Respondent for any dogs that it assists in transferring to other entities. APHIS shall at a time that is mutually agreeable to both parties take an inventory of the animals present at the Respondent's facility immediately and on or about August 15, 2011. The Respondent shall not unreasonably withhold his consent to a time and date for APHIS to conduct the inventory. The Respondent shall document all sales of dogs and provide those documents to APHIS on or before August 20, 2011.

d. Dogs cannot be sold, given or transferred to family members of the Respondent.

e. The Respondent may keep no more than five dogs from his present inventory provided that the laws of the jurisdiction where the Respondent lives allow for him to keep the dogs.

4. The respondent is assessed a civil penalty of \$10,000

of which all except for \$2,000 is suspended provided that the respondent complies with the requirements in the Act and the regulations issued pursuant to the Act and the terms contained in this consent decision. The civil penalty shall be paid by a certified check or money order made payable to the Treasurer of United States and the notation "AWA Dkt. No. 07-0176" shall appear on the check or money order.

5. The Respondent, his agents and employees, successors and assigns, directly or through any corporate device shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, shall cease and desist from:

(a) Failing to establish and maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine;

(b) Failing to individually identify animals, as required;

(c) Failing to maintain records of the acquisition, disposition, description, and identification of animals, as required.

(d) Failing to construct and maintain housing facilities for animals so that they are structurally sound and in good repair in order to protect the animals from injury, contain them securely, and restrict other animals from entering;

(e) Failing to store supplies of food and bedding so as to adequately protect them against contamination;

(f) Failing to provide for reliable electric power adequate for heating, cooling, ventilation, and lighting, and for carrying out other husbandry requirements;

(g) Failing to provide for the regular and frequent collection, removal, and disposal of animal and food wastes;

(h) Failing to provide adequate heating for animals in indoor and sheltered housing facilities when necessary to protect the animals from cold and to provide for their health and comfort;

(i) Failing to provide adequate cooling and ventilation for animals in indoor and sheltered housing facilities when necessary to protect the animals from temperature extremes and to provide for their health and well-being;

(j) Failing to construct and maintain indoor and sheltered housing facilities for animals so that they are adequately ventilated;

(k) Failing to construct and maintain housing facilities for animals so that sufficient lighting is provided;

(l) Failing to construct and maintain housing facilities for animals so that surfaces may be readily cleaned and sanitized or be replaced when necessary;

(m) Failing to provide for the rapid elimination of excess

water from housing facilities for animals;

(n) Failing to provide animals with adequate shelter from the elements;

(o) Failing to provide animals kept outdoors with shelter from inclement weather;

(p) Failing to provide a suitable method for the rapid elimination of excess water and wastes from housing facilities for animals;

(q) Failing to provide sufficient space for animals in primary enclosures;

(r) Failing to provide animals with food of sufficient quantity and nutritive value to meet their normal daily requirements;

(s) Failing keep food and water receptacles clean and sanitized;

(t) Failing to maintain primary enclosures for animals in a clean and sanitary condition;

(u) Failing to keep the premises clean and in good repair and free of accumulations of trash, junk, waste, and discarded matter, and to control weeds, grasses and bushes;

(v) Failing to establish and maintain an effective program for the control of pests;

(w) Failing to maintain animals in primary enclosures in compatible groups; and

(x) Failing to construct and maintain surfaces that come into contact with animals that are impervious to moisture.

The provisions of this order shall become effective immediately since the parties and Administrative Law Judge Clifton are signing this consent decision in person in Sioux Falls, South Dakota.



Reginald Derksen  
Respondent



Chris A. Nipe  
Attorney for Respondent



Sharlene Deskins  
Attorney for Complainant



R. Ridenour, DVM  
SVMO - APHIS

Done at Sioux Falls, S.D.  
this 7th day of June 2011,



Jill S. Clifton  
Administrative Law Judge