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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:

MARK A. GUTMAN and
JERI LYNN POLING, individuals d/b/a
GRAND RIVER FUR EXCHANGE,

Respondents.

AWA No. 10-0375

CONSENT DECISION
AS TO ALL RESPONDENTS

This proceeding was instituted under the Animal Welfare Act, as amended (7 U.S.C. §§ 2131-2159) (the "Act" or "AWA"), by a complaint, subsequently amended, filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture ("APHIS"), alleging that the respondents willfully violated the Act and the regulations and standards issued pursuant to the Act (9 C.F.R. §§ 1.1-3.142) (the "regulations" or "AWA regulations"). 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).

Respondents Mark A. Gutman and Jeri Lynn Poling, admit the jurisdictional allegations in the complaint and specifically admit that the Secretary has jurisdiction in this matter, and, except as specifically admitted in respondents' answers to the complaint and amended complaint, neither admit nor deny the remaining allegations, waive oral hearing and further procedure, and consent and agree, for the purpose of settling this proceeding, to the entry of this decision.

Complainant agrees to the entry of this decision.

FINDINGS OF FACT

1. Respondent Mark Alan Gutman is an individual whose mailing address is 6310 U.S. Route 6, Rome, Ohio 44085.

2. Respondent Jeri Lynn Poling is an individual whose mailing address is 6310 U.S. Route 6, Rome, Ohio 44085.

3. Respondent Mark Alan Gutman ("Gutman") does or has done business as: "Grand River Fur Exchange".

4. Respondent Gutman was, at all material times mentioned in the complaint and amended complaint, operating as a dealer, as defined in the Act and the Regulations.

CONCLUSION

Respondents having admitted the jurisdictional and above facts and the parties having agreed to the entry of this decision, such decision will be entered

ORDER

1. Respondents Mark Alan Gutman and Jeri Lynn Poling (collectively, "respondents"), their agents and employees, successors and assigns, directly or indirectly or through any corporate or other device or person, shall cease and desist from violating the Act and the regulations issued thereunder, and in particular, shall cease and desist from engaging in any activity for which an AWA license is required, including, but limited to, the sale of live wild or exotic animals, as defined in the Act and regulations, for use as pets, or for breeding purposes for use as pets. Generally speaking, the sale of animal pelts, or of live wild or exotic animals to bona fide businesses engaged in the buying and selling of animal fur, is not considered an activity for which an AWA license is required, unless such sale also includes the sale of animals, as defined in the Act and regulations, for research, teaching, testing, experimentation, exhibition, and/or use as a pet. Respondents agree that the individual sale of animals, as opposed to in bulk, especially the

individual sale of non-adult animals to disparate members of the public creates the presumption as being an activity for which an AWA license is required.

2. In the event respondents seek to engage in any activity for which the AWA licensure requirements are in question, respondents shall, prior to engaging in any such activity, submit to APHIS a written inquiry containing the details of the proposed activity/ies and APHIS shall provide a written and timely response to respondents regarding the applicability of the Act and regulations, or requesting that respondents provide additional information. Any correspondence pursuant to this paragraph shall be submitted by respondents to: Elizabeth Goldentyer, D.V.M., USDA-APHIS-AC, 920 Main Campus Drive, Suite 200, Raleigh, North Carolina, 27606-5210 or via email to betty.j.goldentyer@aphis.usda.gov.

3. Respondent Mark Alan Gutman is assessed a civil penalty in the amount of \$45,000, of which \$44,150 shall be held in abeyance, provided respondents comply with the provisions in paragraphs 1 and 2 (¶¶ 1, 2) above. The remaining \$850 shall be paid within 35 days of service of this Order by certified check or money order made payable to the Treasurer of the United States and sent to:

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

Respondent Gutman shall state on the certified check or money order that the payment is in reference to AWA Docket No. 10-0375. In the event respondent Gutman fails, within 35 days of service of this Order, to pay the remaining \$850, as described above, an administrative law judge shall issue an order finding respondent Gutman to be in violation of this consent decision and directing respondent Gutman to pay that portion of the civil penalty in this paragraph 3 (¶ 3) held

in abeyance, in addition to any unpaid portion of the \$850 civil penalty. Respondent Gutman agrees to a prospective waiver of any right to notice and opportunity for a hearing pursuant to section 2149 of the Act (7 U.S.C. § 2149) as to any such failure to comply with the preceding two sentences.


4. Respondents Mark Alan Gutman and Jeri Lynn Poling are disqualified for 10 years from becoming licensed under the AWA, or otherwise obtaining, holding, or using an AWA license, directly or indirectly through any corporate or other device or person


5. The provisions of this order shall become effective on the first day after service of this decision on the respondents.

6. Copies of this decision shall be served upon the parties.


Mark A Gutman,
RESPONDENT


Jeri Lynn Poling,
RESPONDENT


Gary Pasqualone
Curry & Pasqualone,
ATTORNEY FOR RESPONDENTS


Babak A. Rastgoufard
Office of the General Counsel
United States Department of Agriculture,
ATTORNEY FOR COMPLAINANT

Done at Washington, D.C.

this 25 day of August, 2011


for Peter M. Davenport
Chief Administrative Law Judge