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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:

Sidney Jay Yost, an individual (AWA Docket No. **12-0294**); and

Amazing Animal Productions, Inc., a California corporation (AWA Docket No. **12-0295**),

Respondents.

Decision and Order on the Written Record

Appearances:

Colleen A. Carroll, Esq. with the Office of the General Counsel, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington D.C. 20250, for the Complainant (APHIS);¹ and

James D. White, Esq., Bellevue, ID 83313 (and Laguna Beach, CA 92651), for the Respondents Sidney Jay Yost and Amazing Animal Productions, Inc.

Decision Summary

1. The parties worked to distill their differences to a very few, in this case brought under the Animal Welfare Act, as amended, 7 U.S.C. § 2131 *et seq.*, in part to avoid unnecessary expense and energy expenditure. The Respondents Sidney Jay Yost and Amazing Animal Productions, Inc. agreed to accept revocation of Animal Welfare Act license number 93-C-0590 and a generic cease and desist order. The parties did not agree on the civil money penalties amount that the Respondents Sidney Jay Yost and Amazing

1. The Complainant is the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture (“APHIS” or “Complainant”).

Animal Productions, Inc. will be required to pay.

2. I, Administrative Law Judge Jill S. Clifton, decide that for their violations of the Animal Welfare Act and the Regulations (including Standards) issued thereunder, the Respondents Sidney Jay Yost and Amazing Animal Productions, Inc. shall pay (a joint and several obligation) civil penalties totaling **\$30,000**, payable in equal monthly installments beginning by March 28 (Wed) 2018. I conclude there is good cause for five years, through March 27, 2023, to liquidate the debt. Payments may of course be made earlier than when due without penalty. The Respondents Sidney Jay Yost and Amazing Animal Productions, Inc. are ordered to **cease and desist** from violating the Animal Welfare Act and the Regulations (including Standards) issued thereunder. Animal Welfare Act license number 93-C-0590 is **revoked** (revocation is a permanent remedy), and the Respondents Sidney Jay Yost and Amazing Animal Productions, Inc. are permanently disqualified from having Animal Welfare Act licenses.

Mixed Findings of Fact and Conclusions

3. The written record, compiled from March 16, 2012, when the Complaint was filed, to October 19, 2016, leads me to the following Mixed Findings of Fact and Conclusions, which do **not** require testimony. The Corrections of Complaint, affecting 5 paragraphs of the Complaint, paragraphs 7, 9, 12, 16, and 20, were ACCEPTED, and the Complaint corrected accordingly, on December 16, 2014.

4. Respondent Amazing Animal Productions, Inc. is a California corporation (sometimes herein "AAP" or the "corporate Respondent"). Amazing Animal Productions,

Inc. participated in activities regulated under the Animal Welfare Act, as amended, 7 U.S.C. § 2131 *et seq.*, such as exhibiting. Amazing Animal Productions, Inc. appears to have been incorporated in 2003. An individual, Respondent Sidney Jay Yost, also known as Sidney J. Yost and Sid Yost, controlled Amazing Animal Productions, Inc. The USDA Animal Welfare Act license 93-C-0590 was NOT issued to the corporate Respondent, but to the individual.

5. Respondent Sidney Jay Yost, also known as Sidney J. Yost and Sid Yost (sometimes herein “Mr. Yost”), is an individual who had a license under the Animal Welfare Act from the Secretary of Agriculture, license 93-C-0590, which has been invalid since August 2014, when Mr. Yost chose not to renew his USDA AWA license.

6. Sidney Jay Yost willingly accepts license revocation and a generic cease and desist order (“since he no longer holds a USDA License and has no need for and no intention to apply again for a license”). Respondent’s Submission filed October 19, 2016, p. 4.

7. The Respondents Sidney Jay Yost and Amazing Animal Productions, Inc. request in Respondent’s Submission filed October 19, 2016 that the civil penalty to be imposed against them be no more than \$2,800:

\$	100.00
	2,500.00
	100.00
	<u>100.00</u>
\$	2,800.00
	=====

8. APHIS requested, in addition to the license revocation and the cease and desist order

against the Respondents, “an order assessing the respondents a joint and several civil penalty of \$30,000.” APHIS argues, in APHIS’s submission filed September 13, 2016, pp. 18-19:

“Pursuant to 7 U.S.C. § 2149(b), each violation and each day during which a violation continues shall be a separate offense. The evidence in this case shows that Mr. Yost committed no fewer than 72 violations, and that respondent AAP committed no fewer than 1440 violations. The maximum civil penalty that could be assessed under the Act for Mr. Yost’s violations is \$657,500, and the maximum civil penalty that could be assessed under the Act for respondent AAP’s violations is \$13,222,500. Assessment of the recommended civil penalty is authorized under the AWA and appropriate under the circumstances (and would be appropriate for just the handling violations alone), considering the size of respondents’ business, the gravity of the violations, and the level of respondents’ good faith.”

APHIS supports its position further, in APHIS’s submission filed September 13, 2016, p. 19 (signature page).

9. “Willfulness” within the meaning of the Administrative Procedure Act in 5 U.S.C. § 558(c), as would authorize revocation of an Animal Welfare Act license, has been defined:

A willful act is an act in which the violator intentionally does an act which is prohibited, irrespective of evil motive or reliance on erroneous advice, or acts with careless disregard of statutory requirements.

An appeal of this case would likely lie in the Fifth Circuit, where “willfulness” as used in 5 U.S.C. § 558(c) (Administrative Procedure Act) has been found to mean that “a prohibited act is done intentionally, irrespective of evil intent, or done with careless disregard of statutory requirements.” *American Fruit Purveyors, Inc. v. United States*, 630 F.2d 370, 374 (5th Cir. 1980) (per curiam), *cert. denied*, 450 U.S. 997 (1981). That Fifth Circuit definition of willfulness comes from a Perishable Agricultural Commodities Act (PACA) case rather

than an Animal Welfare Act case. PACA cases and AWA cases are both administrative, civil proceedings, and both require interpretation of 5 U.S.C. § 558(c) (Administrative Procedure Act).

10. Throughout the remainder of this section, “Mixed Findings of Fact and Conclusions”, I refer to the Respondents Sidney Jay Yost and Amazing Animal Productions, Inc. as the “Respondents”.

11. For this Decision and Order, for which I have heard no testimony, I apply four factors enumerated in 7 U.S.C. § 2149(b) as follows. The Respondents had a small to moderately-sized business; the violations that resulted in injury to a 2-year old child and euthanization of Nova the dog/wolf hybrid were grave; I presume the Respondents acted in good faith; and I have not taken into account any history of previous violations, if any there be. I conclude the maximum civil penalty is \$3,750 for each violation, except for violations alleged in paragraph 22 of the Complaint, for which the maximum civil penalty is \$10,000 [\$3,750 through May 6, 2010; \$10,000 beginning May 7, 2010]. 28 U.S.C. § 2461 note. 7 C.F.R. § 3.91(b)(2)(ii).

12. Paragraph 4 of the Complaint. Amazing Animal Productions, Inc. participated in activities regulated under the Animal Welfare Act, as amended, 7 U.S.C. § 2131 *et seq.*, such as exhibiting. An individual, Respondent Sidney Jay Yost, also known as Sidney J. Yost and Sid Yost, controlled Amazing Animal Productions, Inc. The USDA Animal Welfare Act license 93-C-0590 was NOT issued to the corporate Respondent, but to the individual Respondent. On information and belief, USDA would not have issued another

Animal Welfare Act license to Respondent Amazing Animal Productions, Inc., while licensee Respondent Sidney Jay Yost, also known as Sidney J. Yost and Sid Yost, controlled the locations used by Amazing Animal Productions, Inc. and the exhibiting done by Respondent Amazing Animal Productions, Inc. I conclude that the alleged violation of 9 C.F.R. § 2.1(a) was NOT PROVED, but that Respondent Amazing Animal Productions, Inc. is liable under the Animal Welfare Act for failures to comply.

13. Paragraph 5 of the Complaint. The Respondents failed to comply with the Regulation concerning “Handling of animals”, specifically 9 C.F.R. § 2.131(c)(1), on or about February 29, 2008, at Burbank, California. APHIS’s allegations are contained in paragraph 5 of the Complaint, with the date changed to February 29, 2008 to remove any dispute. APHIS’s submission filed September 13, 2016, p. 7. This is a willful violation within the meaning of this administrative, civil proceeding under the Animal Welfare Act, as willful is explained in Paragraph 9. My description of this violation is that the Respondents failed to handle a lion during public exhibition so there was minimal risk of harm to the lion and to the public, with sufficient distance and/or barriers between the lion and the general viewing public so as to assure the safety of animals and the public. This was the exhibition of a lion at a taping of “The Tonight Show,” before a live audience. The Respondents maintain, among other things, that the lion cub was 125 pounds, 7-1/2 months old, that the “mere leash” was a very strong chain, the type used by responsible trainers industry wide, with a large ring by which the 280 pound handler (Sid Yost) could readily restrain a 125 pound cub. Further, state the Respondents, two other world class trainers were with Yost,

Joe Camp and Steven Martin, and the ring is, by design, large enough for another man to grab the ring with Yost. Respondents add that the cub was very docile and easily handled, and had been raised by Respondents from a baby, and exhibited no stress. Respondents claim this allegation is time-barred; I disagree. Five years, not four, is the limiting period. The Respondents' arguments as to how they had the lion under control are persuasive, but the Regulation specifies distance and barriers, which were absent. There is no evidence of harm to the public or the lion. I conclude that a **\$750.00** civil penalty suffices for this noncompliance.

14. Paragraph 6 of the Complaint. The Respondents failed to comply with numerous Standards as required under 9 C.F.R. § 2.100(a), during an inspection on or about March 18, 2008, at site 003. This is a willful violation within the meaning of this administrative, civil proceeding under the Animal Welfare Act, as willful is explained in Paragraph 9. APHIS's allegations are contained in paragraph 6 of the Complaint, including (a) through (i). I conclude that a **\$2,000.00** civil penalty suffices for these noncompliances.

15. Paragraph 7 of the Complaint. The Respondents failed to comply with the Regulation concerning "Handling of animals", specifically 9 C.F.R. § 2.131(b)(1), (c)(1), on or about September 2008, November 3, 2008, December 18, 2008, at Devore Heights, California, and on January 10, 2009, at Los Angeles, California. APHIS's allegations are contained in paragraph 7 of the Complaint, as Corrected (November 19, 2014 & Ruling December 16, 2014). Respondents' Answer filed January 13, 2015. This is a willful violation within the meaning of this administrative, civil proceeding under the Animal

Welfare Act, as willful is explained in Paragraph 9. My description of this violation is that the Respondents failed to handle animals (including, among other things, exotic felids, wolves, and nonhuman primates) as carefully as possible in a manner that did not cause stress, physical harm, or unnecessary discomfort, and failed to handle large felids 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, and specifically, the public was allowed to have direct contact with, among other things, exotic felids, wolves, and nonhuman primates. These were photo shoots for which the Respondents obtained Release of Liability; the Respondents do not regard these members of the public to be members of the public, and I understand the Respondents' confusion in trying to distinguish "the public" from "general viewing public" and trying to create "volunteers" who would be neither, but what the Respondents were doing is prohibited by this Regulation. There is no evidence of harm to the public or the animals, including exotic felids, wolves, and nonhuman primates. I conclude that a **\$3,750.00** civil penalty suffices for this noncompliance.

16. Paragraph 8 of the Complaint. Paragraph 8 of the Complaint alleges failures to comply with the Regulation concerning "Handling of animals", originally specifying 9 C.F.R. § 2.131(b)(2). The Respondents have consistently and vehemently denied any and all allegations of abuse. APHIS amended Paragraph 8, changing the Regulatory section to 9 C.F.R. § 2.131(b)(1), which does not contain the word abuse. APHIS's submission filed September 13, 2016, pp. 8, 11. APHIS's amendment permits me to rule on the allegations of

Paragraph 8 without taking testimony, based on the parties' written submissions. The Respondents failed to comply with the Regulation concerning "Handling of animals", specifically 9 C.F.R. § 2.131(b)(1), between approximately January 11, 2009 and March 2009. This is a willful violation within the meaning of this administrative, civil proceeding under the Animal Welfare Act, as willful is explained in Paragraph 9. My description of this violation is that the Respondents failed to handle animals as carefully as possible in a manner that did not cause trauma, stress, physical harm, or unnecessary discomfort; and specifically, used a wooden cane and the potential application of physical force to handle animals. The Respondents' Stipulations As To Facts, filed July 14, 2015, is instructive, including the following paragraphs 43 through 52:

43. That Respondent Yost offers the following as additional fact stipulations and as offers of proof regarding the proper use of a cane and the potential application of physical force to protect a person or another animal from serious harm.

44. That a student/trainee is not considered by Yost and should not be considered as a matter of law as a member of the public.

45. That Respondent Yost taught his student/trainees about possible multiple uses of a wooden cane with certain animals. Respondent Yost taught that the cane could be properly and safely used while handling some animals (*e. g.* lions, tigers and bears), when serving as an extension of the trainer's arm and could, as such, be used to retrieve a dropped object, to scratch and pet an animal, to more safely offer a piece of food to the animal on the end of the cane, to make a noise to obtain an animal's attention by tapping the end of the cane on the ground, or to make a louder noise also to obtain an animal's attention by rapping it harder on another object, such as a table, tree trunk or a wall; and, when necessary to protect a person or another animal from harm by using the cane to push an animal away or to hold and waive in front of an animal as a "display" of potential force together with a loud and forceful voice command like "NO" or "DOWN".

46. Respondent Yost also taught his student/trainees that dog/wolf hybrids, were particularly and generally timid animals, and that the use of a cane around such animals as not generally appropriate; rather a rolled up newspaper might be similarly used with such animals rather than a cane.

47. Respondent Yost also taught students that a cane may be useful in an emergency situation to apply a strike across the nose with a moderate rap, but only when absolutely necessary to protect a person or another animal from serious harm.

48. Several of Yost's students purchased their own canes and on some occasions brought them to classes.

49. Respondent Yost taught that the nose of an animal was a more appropriate place for delivery of an emergency strike, rather than the animal's head or the body, because, in those circumstances a rap across the nose is very likely to get the animal's attention, but is less likely to do any serious damage, whereas a rap on the head or body could seriously harm the animal.

50. The training that Yost provided his students of these training principles was in full display for several students as a result of two incidents which occurred during training classes in early 2009.

51. In one such incident, Yost tripped and fell to the ground during an exercise session with a tiger; the tiger moved to jump on Yost; but another trainer intervened, placing himself as a blocking barrier to protect Yost; the other trainer raised his arms with a cane in one hand and waived a cane in front of an animal as a "display" of potential force while implementing a loud and forceful "NO" voice command. The animal responded appropriately to the protective conduct by the other trainer, came to a full stop; assumed a normal and non threatening posture and disposition as Yost regained his feet and the class resumed with a very useful lesson having been applied in a real life situation.

52. In the second such incident, Yost protected a student/ trainee (name), from serious potential harm when a young tiger, during a class, had become focused on a food bag which she had around her waist. Yost noticed the animal's behavior (crouching, creeping forward with eyes and attention fully focused on Ms. (name) and the food bag on her waist) and immediately grabbed a cane and delivered an emergency strike across the animal's nose which caused the animal to change his focus, change posture and change its behavior which eliminated the threat to Ms. (name). The class then resumed with a very useful lesson having been applied in a real life situation.

From Respondents' Stipulations As to Facts, paragraphs 43 through 52, I conclude that Respondents' handling methods exposed the animals to too many situations where the use of a wooden cane and the threat of the use of it were too commonplace. I conclude that a **\$3,000.00** civil penalty suffices for this noncompliance.

17. Paragraph 9 of the Complaint. The Respondents failed to comply with the Regulation concerning "Handling of animals", specifically 9 C.F.R. § 2.131(b)(1), (c)(1), in approximately February 2009, at Wrightwood, California. APHIS's allegations are contained in paragraph 9 of the Complaint, as Corrected (November 19, 2014 & Ruling December 16, 2014). Respondents' Answer filed January 13, 2015. This is a willful violation within the meaning of this administrative, civil proceeding under the Animal Welfare Act, as willful is explained in Paragraph 9. My description of this violation is that the Respondents failed to handle animals (a mountain lion) as carefully as possible in a manner that did not cause stress, physical harm, or unnecessary discomfort, and failed to handle a mountain lion 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, and specifically, the public was allowed to have direct contact with a mountain lion during public exhibition. The mountain lion was a young cub that weighed about 25 pounds. The owners of a restaurant had hired the Respondents for a publicity exhibition of the mountain lion cub at their restaurant. The Respondents recall one of the restaurant owners being the only member of the "public" who had contact with the mountain lion cub and dispute the

characterization of that person as a member of the public. There is no evidence of harm to the public or the mountain lion. I agree with APHIS that the restaurant owner IS a member of the public, and I conclude that a **\$750.00** civil penalty suffices for this noncompliance.

18. Paragraph 10 of the Complaint. The Respondents failed to comply with the Regulation concerning “Handling of animals”, specifically 9 C.F.R. § 2.131(b)(1) on or about March 13, 2009, in Colorado. APHIS’s allegations are contained in paragraph 10 of the Complaint. This is a willful violation within the meaning of this administrative, civil proceeding under the Animal Welfare Act, as willful is explained in Paragraph 9. My description of this violation is that the Respondents failed to handle animals, especially a mountain lion cub and wolves and a tiger, as carefully as possible in a manner that did not cause trauma, stress, physical harm, or unnecessary discomfort. Respondents’ Opposition, among other things, states that there was no one other than the handlers at the roadside stop area when the handlers took the animals out, and that when passers-by stopped, the animals were loaded back into the vans. There is no evidence of harm to the public or the mountain lion cub or wolves or tiger. I conclude that a **\$1,500.00** civil penalty suffices for this noncompliance.

19. Paragraph 11 of the Complaint. Paragraph 11 of the Complaint alleges a veterinary care violation, that the Respondents violated 9 C.F.R. § 2.40(a) and 9 C.F.R. § 2.40(b)(2) on or about March 25, 2009, through April 4, 2009, at Utica, Illinois, by failing to have animals vaccinated against rabies. The animals WERE vaccinated. Respondent’s Submission filed October 19, 2016, Exhibit C. The animals WERE current for rabies vaccinations. The

Respondents' failure, was not having the Rabies Vaccination Certificates (shown in Exhibit C) available at the time and place required, which is a record-keeping violation. APHIS's allegations in Paragraph 11 were NOT PROVED.

20. Paragraph 12 of the Complaint. The Respondents failed to comply with the Regulation concerning "Handling of animals", specifically 9 C.F.R. § 2.131(b)(1), (c)(1), on April 4, 2009, at the Grand Bear Lodge in Utica, Illinois. APHIS's allegations are contained in paragraph 12 of the Complaint, as Corrected (October 27, 2014 & Ruling December 16, 2014). Respondents' Answer filed January 13, 2015. This is a willful violation within the meaning of this administrative, civil proceeding under the Animal Welfare Act, as willful is explained in Paragraph 9. My description of this violation is that the Respondents failed to handle animals, especially Nova the dog/wolf hybrid, as carefully as possible in a manner that did not cause trauma, stress, physical harm, or unnecessary discomfort; and failed to handle Nova the dog/wolf hybrid during public exhibition so there was minimal risk of harm to Nova the dog/wolf hybrid and to the public, with sufficient distance and/or barriers between Nova the dog/wolf hybrid and the general viewing public so as to assure the safety of animals and the public. Nova the dog/wolf hybrid bit a child, a toddler, a two-year old, who was bit on her head, neck and face. Mr. Yost takes responsibility and attributed the incident to many factors, including the failure of the Grand Bear Lodge to set up properly, the failure of the "curtain barrier", and described what went wrong in Respondent's Submission filed October 19, 2016, pp. 21-22. The Respondents are nevertheless responsible, as they acknowledge, and the Respondents explain that the civil lawsuit was

settled with sufficient insurance and a fair settlement. Respondent's Submission filed October 19, 2016, pp. 21-22. The Respondents' intent was to exhibit Nova, roughly a two-year old dog/wolf hybrid, on stage, before an audience. The child and her mother were on the audience's side of a curtain, apparently going to a restroom, while the dog/wolf hybrid was on the backstage side of the curtain, being led by the trainer (Matt) to its temporary holding cage. The child brushed up against the curtain that separated the stage entrance and the exit area from the common walkway. The dog/wolf hybrid saw the curtain move, and grabbed the child as she brushed up against the curtain from the other side. Initially, Nova grabbed onto the child's shirt and Matt immediately pulled back on the lead. The child fell back into Nova, and that's when Nova bit her. The child was rushed to the Illinois Valley Community Hospital, Peru, IL. Nova the dog/wolf hybrid was euthanized and tested for rabies, which test proved negative. I conclude that a **\$7,500.00** civil penalty suffices for this noncompliance: \$3,750.00 for failure to protect Nova as required by 9 C.F.R. § 2.131(b)(1); and \$3,750.00 for failure to protect a two-year old child and Nova as required by 9 C.F.R. § 2.131(c)(1). I have purposely chosen only April 4, 2009, not the other dates alleged.

21. Paragraph 13 of the Complaint. The Respondents failed to comply with Regulation 9 C.F.R. § 2.75(b), on or about April 9, 2009, at Utica, Illinois, by failing to maintain accurate and complete records of the acquisition and disposition of six animals, as required. This is a willful violation within the meaning of this administrative, civil proceeding under the Animal Welfare Act, as willful is explained in Paragraph 9. I conclude that a **\$2,000.00** civil penalty suffices for this noncompliance.

22. Paragraph 14 of the Complaint. The Respondents failed to comply with Regulation 9 C.F.R. § 2.78(a)(1), on or about April 9, 2009, at Utica, Illinois, by transporting two domestic dogs, two hybrid wolves, and one nonhuman primate without any accompanying health certificates, as required. This is a willful violation within the meaning of this administrative, civil proceeding under the Animal Welfare Act, as willful is explained in Paragraph 9. I conclude that a **\$2,000.00** civil penalty suffices for this noncompliance.

23. Paragraph 15 of the Complaint. I conclude that no additional site was established; rather, an outdoor momentary stopover occurred, adjacent to the indoor restroom used by a driver, and that the alleged violation of 9 C.F.R. § 2.8 was NOT PROVED.

24. Paragraph 16 of the Complaint. The Respondents failed to comply with the Regulation concerning “Handling of animals”, specifically 9 C.F.R. § 2.131(b)(1), (c)(1), on or about June 10, 2009, at Site 003, and at off-site locations. APHIS’s allegations are contained in paragraph 16 of the Complaint, as Corrected (November 19, 2014 & Ruling December 16, 2014). Respondents’ Answer filed January 13, 2015. This is a willful violation within the meaning of this administrative, civil proceeding under the Animal Welfare Act, as willful is explained in Paragraph 9. My description of this violation is that the Respondents failed to handle animals (large felids) as carefully as possible in a manner that did not cause stress, physical harm, or unnecessary discomfort, and failed to handle large felids 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, and specifically, the

public was allowed to have direct contact with a mountain lion on a chain leash. There is no evidence of harm to the public or the mountain lion. I conclude that a **\$2,500.00** civil penalty

25. Paragraph 17 of the Complaint. The Respondents failed to comply with numerous Standards as required under 9 C.F.R. § 2.100(a), during an inspection on or about June 10, 2009, at site 003. This is a willful violation within the meaning of this administrative, civil proceeding under the Animal Welfare Act, as willful is explained in Paragraph 9. APHIS's allegations are contained in paragraph 17 of the Complaint, including (a) through (d). I conclude that a **\$1,250.00** civil penalty suffices for these noncompliances.

26. Paragraph 18 of the Complaint. Paragraph 18 of the Complaint alleges a veterinary care violation, that the Respondents violated 9 C.F.R. § 2.40(b)(2) on or about October 21, 2009, at site 002, by failing to groom the coat of a Great Pyrenees dog adequately. I took into account Respondent's Submission filed October 19, 2016. I conclude that a **\$50.00** civil penalty suffices for this noncompliance.

27. Paragraph 19 of the Complaint. The Respondents failed to comply with Regulations 9 C.F.R. §§ 2.75(a), 2.75(b), on or about October 21, 2009, at site 002, by failing to maintain accurate and complete records of the acquisition and disposition of dogs (wolf hybrids), ferrets, a nonhuman primate, and a fox, as required. This is a willful violation within the meaning of this administrative, civil proceeding under the Animal Welfare Act, as willful is explained in Paragraph 9. I took into account Respondent's Submission filed October 19, 2016. I conclude that a **\$1,500.00** civil penalty suffices for this noncompliance,

which, because it happened at the primary site, was quickly remedied.

28. Paragraph 20 of the Complaint. The Respondents failed to comply with the Regulation concerning “Handling of animals”, specifically 9 C.F.R. § 2.131(b)(1), (c)(1), on or about October 21, 2009, at Site 002, and at off-site locations. APHIS’s allegations are contained in paragraph 20 of the Complaint, as Corrected (November 19, 2014 & Ruling December 16, 2014). Respondents’ Answer filed January 13, 2015. This is a willful violation within the meaning of this administrative, civil proceeding under the Animal Welfare Act, as willful is explained in Paragraph 9. My description of this violation is that the Respondents failed to handle animals (large felids) as carefully as possible in a manner that did not cause stress, physical harm, or unnecessary discomfort, and failed to handle large felids 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, and specifically, the public was allowed to have direct contact with the felids. The supporting documentation is about advertising on the internet. There is no evidence of harm to the public or the felids. I conclude that a **\$500.00** civil penalty suffices for this noncompliance, considering the source of the “evidence”.

29. Paragraph 21 of the Complaint. The Respondents failed to comply with numerous Standards as required under 9 C.F.R. § 2.100(a), during an inspection on or about October 21, 2009, at site 002. This is a willful violation within the meaning of this administrative, civil proceeding under the Animal Welfare Act, as willful is explained in Paragraph 9.

APHIS's allegations are contained in paragraph 21 of the Complaint, including (a) through (e). The Respondents' explanations are significant and persuasive. Respondent's Submission filed October 19, 2016. I conclude that a **\$750.00** civil penalty suffices for these noncompliances.

30. Paragraph 22 of the Complaint. The Respondents failed to comply with Standards as required under 9 C.F.R. § 2.100(a), during an inspection on or about August 24, 2010. This is a willful violation within the meaning of this administrative, civil proceeding under the Animal Welfare Act, as willful is explained in Paragraph 9. APHIS's allegations are contained in paragraph 22 of the Complaint, including (a) and (b). I conclude that a **\$200.00** civil penalty suffices for these noncompliances.

Order

31. Animal Welfare Act license number 93-C-0590 is **revoked** (revocation is a permanent remedy). Respondents Sidney Jay Yost and Amazing Animal Productions, Inc. are each permanently disqualified from having an Animal Welfare Act license.

32. The following **cease and desist** provisions of this Order (paragraph 33) shall be effective on the day after this Decision becomes final. [See paragraph 35.]

33. Respondents Sidney Jay Yost and Amazing Animal Productions, Inc., 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 Animal Welfare Act and the Regulations and Standards issued thereunder.

34. Respondents Sidney Jay Yost and Amazing Animal Productions, Inc. shall pay civil

penalties totaling **\$30,000.00** (a joint and several obligation), payable in equal monthly installments beginning by March 28 (Wed) 2018. I conclude there is good cause for five years, through March 27, 2023, to liquidate the debt. Payments may of course be made earlier than when due without penalty. Payments shall be made by certified check(s), cashier's check(s), or money order(s), made **payable to the order of USDA APHIS** and

sent to
USDA APHIS Miscellaneous
PO Box 979043
St Louis MO 63197-9000

Each certified check, cashier's check, or money order shall include a docket number of this proceeding, **12-0294**.

Finality

35. This Decision and Order shall be final without further proceedings 35 days after service 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 Appendix A).

Copies of this "Decision and Order on the Written Record" shall be served by the Hearing Clerk upon each of the parties.

Done at Washington, D.C.
this 14th day of December 2017



Jill S. Clifton
Administrative Law Judge

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U.S. Department of Agriculture
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APPENDIX A

7 C.F.R.:

TITLE 7—AGRICULTURE

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 1—ADMINISTRATIVE REGULATIONS

....

SUBPART H—RULES OF PRACTICE GOVERNING FORMAL

ADJUDICATORY PROCEEDINGS INSTITUTED BY THE SECRETARY UNDER

VARIOUS STATUTES

...

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in § 1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a pre-hearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the [J]udicial [O]fficer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

7 C.F.R. § 1.145