

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

Docket No. 12-0277

In re:

GUS WHITE, also known as GUSTAVE L. WHITE, III,
doing business as COLLINS EXOTIC ANIMAL ORPHANAGE,

Respondent.

Before: Administrative Law Judge Janice K. Bullard

Appearances:

Sharlene Deskins, Esq. for Complainant
Gustave L. White, IV, for Respondent

DECISION AND ORDER

I. INTRODUCTION

The above captioned matter involves administrative disciplinary proceedings initiated by the Administrator of the Animal and Plant Health Inspection Service (“APHIS”), an agency of the United States Department of Agriculture (“USDA”; “Complainant”), against Gus White, also known as Gustave L. White, III, doing business as Collins Exotic Animal Orphanage (Respondent”; “Collins Zoo”). Complainant alleges that Respondent violated the Animal Welfare Act, as amended (7 U.S.C. §§ 2131- 2159; “the Act”), and the Regulations and Standards issued under the Act (9 C.F.R. §§ 1.1-3.142; “Regulations and Standards”). The instant decision¹ is based upon consideration of the record evidence; the pleadings, arguments and explanations of the parties; and controlling law.

¹In this Decision & Order, the transcript of the hearing shall be referred to as “Tr. at [page number]. Complainant’s evidence shall be denoted as “CX-[exhibit #]” and Respondents’ evidence shall be denoted as “RX-[exhibit number]”. Exhibits admitted to the record sua sponte shall be denoted as “ALJX-[exhibit number]”.

Procedural History

In a complaint filed on March 9, 2012, (“the Complaint”) Complainant alleged that Respondent willfully violated the Act and the Regulations on multiple occasions between 2007 and 2010. Generally, the Complaint alleged that Respondent failed to properly handle and care for a variety of animals; failed to maintain proper records; failed to maintain an adequate plan of veterinary care, or employ an attending veterinarian; failed to adequately maintain facilities in a variety of circumstances; failed to employ adequate numbers of properly trained employees; failed to properly store supplies and food; and exhibited animals without sufficient barriers.

Respondents timely filed an Answer and the parties exchanged evidence and filed submissions in compliance with my pre-hearing Order issued April 11, 2012. A hearing was held beginning December 11, 2012, in Hattiesburg, Mississippi. Over the course of the three day hearing, I admitted to the record the exhibits proffered by both Complainant and Respondent². I held the record open for the submission of additional evidence by Respondent, which was filed on December 28, 2012. Both parties filed written closing argument.

II. ISSUE

Did Respondent violate the Animal Welfare Act, and if so, what sanctions, if any, should be imposed because of the violations?

III FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Admissions

Respondent admits that Gustave L. White, III is an individual residing in Collins, Mississippi who operates an animal exhibition under the business name of Collins Exotic Animal

² I excluded Respondent’s exhibits that constituted notes made by Bettye White and did not separately admit Respondent’s exhibits that were duplicates of Complainant’s evidence.

Orphanage. Respondent further admits that he operated as an exhibitor as comprehended by the Act and prevailing regulations, and held Animal Welfare Act license Number 65-C-0012 at all times relevant to the instant adjudication.

B. Summary of Factual History

Respondent has worked with animals all of his life and has learned animal care from experience, lectures, books, and other animal experts. Tr. at 918. Mr. White, III has exhibited animals for the public at facilities in Slidell, Louisiana, and then at the current site in Mississippi, as well as at public lectures. Tr. at 624; 919. Respondent has held a license under the Animal Welfare Act for 43 years. Tr. at 625; 920. Respondent has experience with all kinds of animals, including exotic cats. Tr. at 931.

Mr. White has experienced deteriorating health in recent years that has limited his daily hands-on oversight of the facility, but he visits the site often, as his home is also located on the property where the exhibition is situated. Tr. at 929. His wife is now the primary caretaker of the animals, and his son also is very involved in caring for animals and maintaining buildings and structures. Tr. at 932-933. Respondent provides instructions that his wife, son or volunteers are able to carry out. Tr. at 933. Besides his wife and son, three people regularly volunteer their time and work for Respondent. Tr. at 932.

Mrs. Bettye White, wife of Mr. Gus White, III, has worked with her husband at his animal exhibition facilities for more than 30 years, and developed her expertise with handling animals through her experience. Tr. at 625-626. She helped to hand-raise a variety of animals from birth. Tr. at 626. Mr. White IV was raised on the facility and has been around and worked with animals in one capacity or another for his entire life. Tr. at 978. He was trained how to feed them, care for them and their habitats, and to observe their behaviors by his parents and volunteers. Tr. at

979; 988. Mr. White IV did not diagnose or treat animals, but discussed his observations with his parents, who would decide whether to consult a veterinarian to give treatment to animals. Tr. at 991. One of the volunteers, Jennifer Farmer, is a biologist who has formal training in animal care and who has worked for years at Respondent's facility. Tr. at 1027-1028.

Most of the animals owned by Respondent stayed at the facility until their deaths. Id. Mrs. White was raised on a farm and was familiar with the care of typical farm animals. Tr. at 815. 846-847. Veterinary care for the animals is provided by Dr. Lisa Ainsworth, who volunteers her services to Respondent. CX-43. Dr. Ainsworth visits the zoo several times a year, dropping by when she is in the area, or coming to the facility when Mrs. White asks for a visit. Tr. at 631. Dr. Ainsworth updates the records required by the Act, including plans for veterinary care. CX-43.

Many of the animals at the facility were abandoned by people, and Respondent is not always able to ascertain their source. Tr. at 845. People have left reptiles, birds and mammals at the entrance. Id.

In 2007 Respondent considered entering into a partnership with Mr. White III's friend, John Cornwell. Tr. at 791; RX-40. It was anticipated that Mr. Cornwell would receive 50% of Respondent's profits, and would help with expenses and making business decisions. Tr. at 792-793; 896; RX-40. Mr. Cornwell hired people to do some work at the facility and brought reptiles to the facility. Tr. at 896. Mrs. White denied that Mr. Cornwell brought a coatimundi to the facility; Respondent had a coatimundi from a donor who left it with Geri Williamson one day when Mrs. White was not on site. Id. The partnership dissolved when Mr. Cornwell failed to provide the money to finish a wall building project that he helped to start. Tr. at 937-938. The Whites paid to finish the project by using credit cards. Tr. at 939.

In January, 2012, Respondent's larger animals were confiscated by the Mississippi Department of Wildlife. Tr. at 728. Respondent challenged the confiscation and a state court ruled that it was an illegal seizure. Tr. at 729. However, Mrs. White did not know when the animals would be returned. Id. Respondent has had previous instances where the Mississippi Department of Wildlife ignored ruling by courts in Respondent's favor. Id. At the time of the hearing before me, the only animals covered by the Act that were at the facility were one coyote hybrid, rabbits, and a kinkajou. Tr. at 729.

C. Prevailing Law and Regulations

The purpose of the Animal Welfare Act, as it relates to exhibited animals, is to insure that they are provided humane care and treatment. 7 U.S.C. § 2131. The Secretary of Agriculture is specifically authorized to promulgate regulations to govern the humane handling and transportation of animals by 7 U.S.C. §§ 2143(a), 2151. The Act requires exhibitors to be licensed and requires the maintenance of records regarding the purchase, sale, transfer and transportation of regulated animals. 7 U.S.C. §§2133, 2134, 2140. Exhibitors must also allow inspection by APHIS inspectors to assure that the provisions of the Act and the Regulations and Standards are being followed. 7 U.S.C. §§ 2142, 2143, 2143 (a) (1) and (2), 2146 (a).

Violations of the Act by licensees may result in the assessment of civil penalties, and the suspension or revocation of licensees. 7 U.S.C. § 2149. The maximum civil penalty that may be assessed for each violation was modified under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. § 2461 note) and various implementing regulations issued by the Secretary. Though the Act originally specified a \$2,500 maximum, between April 14, 2004 and June 17, 2008, the maximum for each violation was \$3,750. In addition, 7 U.S.C. §

2149(b), was itself amended and, effective June 18, 2008, the maximum civil penalty for each violation had been increased to \$10,000.

The Act extends liability for violations to agents, pursuant to 7 U.S.C. §2139, which states, in pertinent part: “the act, omission, or failure of any person acting for or employed by . . . an exhibitor or a person licensed as . . . an exhibitor . . . within the scope of his employment or office, shall be deemed the act, omission or failure of such . . . exhibitor as well as of such person.” 7 U.S.C. §2139.

Implementing regulations provide requirements for licensing, recordkeeping and attending veterinary care, as well as specifications and standards for the humane handling, care, treatment and transportation of covered animals. 9 C.F.R. Chapter 1, Subchapter A, Parts 1 through 4. The regulations set forth specific instructions regarding the size of and environmental requirements of facilities where animals are housed or kept; the need for adequate barriers; the feeding and watering of animals; sanitation requirements; and the size of enclosures and manner used to transport animals. 9 C.F.R. Chapter 1, Subchapter A, Part 3, Subpart F. The regulations make it clear that exhibited animals must be handled in a manner that assures not only their safety but also the safety of the public, with sufficient distance or barriers between animals and people. *Id.*

D. Cited Violations

APHIS cited Respondent with violations of the Act and regulations that generally pertain to the facility’s physical equipment and maintenance; the existence of proper veterinary care; the proper retention and storage of records; and handling of animals, as follows:

Handling of Animals 9 C.F.R. § 2.131 (c)(1)

Respondents were cited with several violations of this regulation, which provides:

During public exhibition, any animal must be handled so there is minimal risk of harm to the animal and to the public, with sufficient distance and or barriers between the animal and the general viewing public so as to assure the safety of animals and the public.

9 C.F.R. § 2.131(c)(1)

On July 11, 2008, APHIS inspector Dr. Tami Howard concluded that the barrier fence in front of the leopards' enclosure could be easily moved to allow the public close access to the animals. Tr. at 173-174; CX-16; CX-17. Mrs. White explained that she and her son were replacing the railing in front of the leopard's cage when the inspectors came to the site, and it may not have looked solid. Tr. at 689. The railing installation was completed immediately after the inspectors left. Tr. at 790.

I accord weight to both the inspector's testimony and to the Respondent's explanation and find that the evidence is in equipoise on this issue. This violation has not been established by a preponderance of substantial evidence.

On September 8, 2010, Dr. Howard observed that the construction of the tiger Stave's barrier was not sufficient to keep the public from getting access to the tiger's enclosure. Tr. at 149; 547; CX-7; CX-8. Dr. Howard explained that although the problem was with the construction of the fencing, the fact that it created a potential for breach of a barrier brought the defect under a "handling" violation. Tr. at 547-548. Mrs. White testified that there were several fence posts and gates at the back of the tiger's cage that restricted access to the area. Tr. at 653-654. I accord weight to this testimony, considering that this violation involves a construction issue that had not been cited before, but existed before the date of this inspection. I find that this violation has not been substantiated.

On March 23, 2010, Dr. Howard cited Respondent for the condition of the public barrier fence in the coyote mix area. Tr. at 209. She considered the fence flimsy and unstable, and inadequate to prevent contact between the public and the animals. CX-26; CX-27. Dr. Kirsten recalled that wires were broken from the post, making the fence very unstable. Tr. at 379-380. He believed it was very important that the barrier be sufficient to keep visitors safe from dangerous animals. Tr. at 380. Mrs. White disagreed that the fence could have been easily broken, and asserted that it would have been easier to climb over the fence than to have tampered with it. Tr. at 697-698.

The preponderance of the evidence supports Complainant's contention that the public barrier to the coyote mix enclosure was inadequate. This violation is substantiated.

Facilities and Operating Standards

Many of the cited violations involved in the instant adjudication fall within the general penumbra of "facilities", and shall be addressed categorically.

Structural Strength

The pertinent regulation states that

[t]he facility must be constructed of such material and of such strength as appropriate for the animals involved. The indoor and outdoor housing facilities shall be structurally sound and shall be maintained in good repair to protect the animals from injury and to contain the animals.

9 C.F.R. § 3.125(a).

On September 24, 2009, holes and insufficient substrate were noted in wolf-hybrid enclosures, and Respondent was cited with violations of standards for "[h]ousing facilities for dogs". CX-22; Tr. at 183-184. Mrs. White testified that she regularly added clay to the floor of the coyote enclosure because it liked to dig. Tr. at 731 – 732. Ms. Williamson helped Mrs.

White put dirt in enclosures twice a week. Tr. at 577. I find that the evidence is in equipoise and this violation has not been proven.

In addition, Dr. Howard cited Respondent with a violation of this standard because of the presence of holes and ruts on the floors of the enclosures of the cougar and tigers, which allowed rain and excreta to accumulate. Tr. at 189; CX-22; CX-23. On inspection conducted on January 21, 2010, Respondent was cited with a repeat violation for the condition of the flooring in the tigers' enclosures. The tiger Stave was laying in mud, and Dr. Howard believed that the floor needed additional substrate to be compliant with structural integrity standards. Tr. at 195-196; CX-24; CX-25. Inspector Howard found similar unsatisfactory conditions at the hybrid wolves' enclosures. CX 24, ¶ 1; Tr. at 195. On September 24, 2009, Dr. Howard cited Respondent with a violation of structural standards because of the presence of holes and ruts on the floors of the enclosures of the cougar and tigers, which allowed rain and excreta to accumulate. Tr. at 189; CX-22; CX-23. On March 23, 2010, the enclosures for the tiger Stave and the lion Haggard needed additional substrate, as the floor had been worn down. Tr. at 209-213; CX-26; CX-27. Dr. Howard's supervisor, Dr. Kirsten agreed with this assessment. Tr. at 398.

Mrs. White was unaware of holes in the cougar cages, but admitted that holes that would collect water would not be good for cougars. Tr. at 726-727. She disagreed that the tigers' enclosure was hazardous, as the tigers were responsible for creating pools of water when they finished swimming. Tr. at 727. She also did not agree with the citation for the flooring of the tiger Stave's enclosure, and explained that if she added too much dirt, it would run off because the enclosure was situated on an incline. Tr. at 727-728. She routinely filled in the cages with dirt, with the help of volunteer Geraldine Williamson. Tr. at 577-578. Mrs. White considered moving the tiger's enclosure, but the State Department of Wildlife confiscated Respondent's big

cats in January, 2012. Tr. at 728. Mrs. White explained that the wolves liked to dig. Id. No real explanation was provided for the condition of the floor of the lion's enclosure.

I find that the evidence regarding the cougars', lion's, and wolves' enclosures establishes that the condition of the flooring violated structural regulations. However, the evidence fails to establish that the condition of the tigers' enclosures represented a hazard to the animals. I credit the testimony that tigers like to swim and dripped water that pooled in the enclosures. I also credit the evidence that dirt was added to the enclosure, but too much dirt in the location of the enclosure would have caused run off in rain. This citation has not been proved by a preponderance of the evidence.

On March 23, 2010, Inspector Howard cited Respondent with multiple violations of structural defects. She found rotted posts at the bottom of both cougars' (Delilah and Star) enclosures that were not anchored in the ground. Dr. Howard observed that a perch in the leopards' enclosure was broken. The cyclone fencing around the tiger India's enclosure was on the outside of the vertical posts and not clamped to the posts, which compromised the strength of the fence. There was also a gap at the bottom of the left end of the enclosure big enough to allow the tiger to pass its paw through, presenting a hazard to passers-by. There were broken resting platforms in both the tiger Brother's and the jungle cat Gypsy's enclosures. Dr. Kirsten also observed structural defects at this inspection. Tr. at 381-383.

Mrs. White admitted that posts at the bottom of the cougars' enclosures had some rot, but since they were not support posts, she did not believe that there was a danger to structural integrity. Tr. at 702. Mrs. White also agreed that resting perches were broken. Tr. at 703. She explained that the cyclone fence was constructed as it was to allow an inside metal perch to be bolted to the fencing, but she had her son change the fencing to address the inspectors' concerns

Tr. at 703-704. Mrs. White did not disagree that there was a gap in fencing, but she did not think it presented a problem because no one generally went to that area of the enclosure. Tr. at 704.

Complainant has established violations of structural standards pertaining to broken perches, poorly constructed fencing, and compromised fence posts.

Upon inspection conducted on September 8, 2010, Respondent was charged with violations of structural soundness standards because large dead trees within the exhibition space posed a danger to animal enclosures. CX-7; Tr. at 151. Dr. Howard testified that Mrs. White acknowledged that the trees had to come down, and the inspector believed that the attending veterinarian recommended the removal of the trees. *Id.* Dr. Kirsten testified that Dr. Ainsworth's records documented the recommendation to remove the trees. Tr. at 396.

Mrs. White denied that Dr. Ainsworth had recommended that the trees be removed, but rather, offered assistance when Mrs. White told her that she had been cited for the trees. Tr. at 660. Dr. Ainsworth's friends removed the trees at no cost. Tr. at 661.

I accord weight to the testimony that the trees represented a danger to the structural integrity of fencing and find that this allegation has been sustained. I note, however, that Dr. Ainsworth's notes that are in evidence do not reflect that she recommended the removal of the trees. See, CX-43.

In the ceiling of the building housing food storage freezers, Dr. Howard observed holes that she believed could compromise the food. She also believed that the sagging ceiling presented a safety hazard to people who might hit their heads when entering the building. CX-7; CX-9; Tr. at 152.

At the time of this citation, the structure had a second roof on top of one that had leaked in the past. Tr. at 663. There were no leaks, and if there were, the food was protected because it

was kept in freezers. Id. Animals were not kept in the building, and it did not present a danger to them or to people Tr. at 663-664. Despite their belief that there was no problem with the building, Respondent covered freezers with tarps at Dr. Howard's suggestion, and eventually moved the freezers to a new room at a different location. Tr. at 664-665.

I find that the evidence fails to establish that the condition of the structure containing the freezers was unsound or represented a hazard to animals or to people, even if one had to stoop to enter the building. This allegation has not been proven.

Storage of Food and Bedding

“Supplies of food and bedding shall be stored in facilities which adequately protect such supplies against deterioration, molding, or contamination by vermin. Refrigeration shall be provided for supplies of perishable food.” 9 C.F.R. § 3.125(c).

Dr. Howard testified that on September 8, 2010, she observed that food stored in Respondent's freezers had partially defrosted in violation of regulations that require that food be stored to protect against deterioration, molding and contamination. She concluded that the freezers were not working properly, which placed food in danger of being spoiled. The thermometer on the cooler read 50° Fahrenheit, which is too warm. The inspector also saw a dirty bucket of vitamins and items that were stored in disarray on a rack in the cooler. Tr. at 152-154; CX-7; CX-9. Dr. Kirsten recalled that someone explained that the circuit breaker had been inadvertently turned off. Tr. at 400.

Mrs. White believed that on the day in question, the circuit breaker had been tripped because her son had been using a power washer. The meat was not entirely thawed out, and it was not her procedure to cut off power to the freezer to thaw meet. She usually cut meat up and moved it to the cooler to defrost. She never experienced problems with the quality of the meat.

Tr. at 699-671. Mrs. White did not know why the thermometer showed the cooler temperature in the 50's, as it usually read in the 40's unless the door was left open during cleaning. Tr. at 671-672. She stored empty plastic bags in the freezer to collect excess fat which had to be frozen for disposal, because she had nowhere else to store them Tr. at 673. Mrs. White explained that the bucket that the inspectors saw was used to mix vitamins, and residue from the meat that was mixed with the vitamins sometimes got in the bucket. She washed the bucket several times a week. Tr. at 674-675.

The practices described by Dr. Howard in her inspection report reflect some careless handling of vitamins and storage of items, but Respondent's explanations are reasonable, particularly where Dr. Howard had not made similar observations over the course of the years covered by this adjudication. I find that the evidence is in equipoise and does not establish inadequate storage of food.

Waste Disposal

Respondent was cited for a variety of violations of regulations pertaining to this obligation. The regulations require that:

Provision shall be made for the removal and disposal of animal and food wastes, bedding, dead animals, trash and debris. Disposal facilities shall be so provided and operated as to minimize vermin infestation, odors, and disease hazards. The disposal facilities and any disposal of animal and food wastes, bedding, dead animals, trash, and debris shall comply with applicable Federal, State and local laws and regulations relating to pollution control and the protection of the environment.

9 C.F.R. § 3.125(d).

On September 8, 2010, Inspector Howard cited Respondent with failure to promptly remove food waste from the kinkajou enclosure. Tr. at 154; CX-7; CX-9. Dr. Kirsten believed that the food was moldy and insect covered and that the enclosure should have been more

promptly cleaned. Tr. at 400. Mrs. White disagreed that food for the kinkajou was moldy, though she had seen fruit left overnight get ripe. Tr. at 675-676. She cleaned the kinkajou's enclosure every morning. Tr. at 677.

The evidence is in equipoise and does not establish a violation of this standard. No testimony was given about when the inspection was conducted, or whether it interrupted Mrs. White's daily routine, although it is reasonable to conclude that it had. Dr. Howard did not routinely cite the facility for violations pertaining to the quality and condition of the kinkajou's food, and I credit Mrs. White's explanation.

Outdoor Facilities

Shelter from sunlight and inclement weather

“When sunlight is likely to cause overheating or discomfort of the animals, sufficient shade by natural or artificial means shall be provided to allow all animals. . . to protect themselves from direct sunlight.” 9 C.F.R. § 3.127(a). In addition, exhibitors are required to provide “for all animals kept outdoors [appropriate shelter] to afford them protection and to prevent discomfort to such animals. . .” 9 C.F.R. § 3.127(b). Rabbits must be provided shelter from sunlight (9 C.F.R. § 3.52(a)); shelter from rain or snow (9 C.F.R. § 3.52(b)); shelter from cold weather (9 C.F.R. § 3.52(c)); shelter from predators (9 C.F.R. § 3.52(d)); and proper drainage (9 C.F.R. § 3.52(e)).

At the inspection of March 23, 2010, Complainant cited Respondent for failing to provide appropriate shelter from inclement weather to two cougars. CX-26; CX-27. Dr. Howard testified that the overhang from roofing and a cover over a perch were not sufficient to allow the cats to escape from driving rain. She also did not think that the opening in a rock formation provided

comfortable space for a cougar to shelter. Tr. at 213-214. Dr. Kirsten agreed with Dr. Howard. Tr. at 385.

Mrs. White testified that until that inspection, no one had pointed out a problem with the cougars' habitat. She thought that the tin overhang on the enclosure provided sufficient cover, but after being site, she installed a dog igloo in the enclosure for shelter. Tr. at 709-711.

The record establishes a violation of this regulatory standard.

In the Complaint at Heading IV, ¶ D. 1, Complainant charged Respondent with a violation of 9 C.F.R. § 3.127(a), but described the violation as failure to maintain structurally sound facilities. Since the cited regulation pertains to sheltering animals from weather, and the standards relating to structural integrity are found at 9 C.F.R. § 3.127(a)³, that particular count is dismissed.

On September 24, 2009, Dr. Howard concluded that the outdoor enclosure for rabbits violated § 3.52 (b) by not providing for dry ground. CX-22. The inspector found no place for rabbits to go to be free from rain or snow other than their primary enclosure, which was a small box. Tr. at 194-185. Mrs. White disagreed that the rabbits had no other enclosure, and she felt that they were better off on the ground than on artificial flooring. Tr. at 721-723. According to Mrs. White, Dr. Howard had expressed concern about the public's perception of the rabbits if they had dirty feet. Tr. at 723.

I find that the evidence is in equipoise and does not establish a violation of this standard.

To the extent that the charge is based on speculative public perceptions, it is dismissed. The

³I acknowledge that this charge of a violation of § 3.127(a) may represent a typographical error, since Respondent was charged with structural violations pursuant to § 3.125(a) as well as § 3.127(d) pertaining to the perimeter fence. However, Respondent was also charged with violating standards requiring shelter from the elements. This inaccuracy fails to give Respondent notice and opportunity to answer a specific charge and must be dismissed.

evidence also suggests that Dr. Howard eventually agreed that the rabbits had sufficient space and a place to shelter from the elements.

Drainage

A suitable method must be provided to rapidly eliminate excess water from outdoor housing facilities for animals. 9 C.F.R. § 3.127 (c). On September 24, 2009, Dr. Howard saw the tiger Stave lying in mud, and learned from Mrs. White that a drain may have been blocked. Tr. at 190-191. Dr. Howard conveyed her opinion that standing water presented a health hazard and proper drainage must be provided. Tr. at 191. Dr. Kirsten observed drainage problems when he was at the facility on March 23, 2010. Tr. at 383-384.

Respondent was charged with repeat violations of this standard on the inspection conducted on January 21, 2010. CX-24; CX-25. Inspector Howard testified that she suspected drainage problems at Respondent's facility and intentionally scheduled an inspection after it had rained. Tr. at 318-319. She found significant pooling of water in the leopards' enclosure and observed one of the cats lying in water. Tr. at 196. Dr. Howard testified that standing water presents a health hazard for animals, and she directed Respondent's to correct the problem. Tr. at 196-197. On that date, the inspector also noted pools of standing water in the tiger Stave's enclosure that needed to be resolved. Tr. at 197.

I have credited Mrs. White's explanations about the difficulty with keeping tigers out of water that they enjoy and in keeping compacted dirt on an incline. Ms. Williamson testified that tigers enjoy the water and drip pools when they emerge from their pools. Tr. at 577. Although Dr. Howard expressed concerns about standing water, the record does not reflect that the tigers suffered a disease or health condition due to water. Also, it is axiomatic that inspections of outdoor facilities conducted on rainy days will reveal pools of water. The evidence on this issue

is in equipoise and fails to establish a violation of drainage standards that was not corrected by sunshine or drain cleaning.

Perimeter fence

The regulations mandate that “all outdoor facilities must be enclosed by a perimeter fence that is of sufficient height to keep animals and unauthorized persons out.” 9 C.F.R. § 3.127(d). The fence must be at least 8 feet high for potentially dangerous animals as identified by the regulations and must be constructed so as to protect the animals and “function as a secondary containment system.” *Id.* The perimeter fence must be sufficiently distance from the primary enclosure “to prevent physical contact between animals inside the enclosure and those outside the perimeter fence” and fences less than 3 feet from the primary enclosure must be approved by APHIS. 9 C.F.R. § 3.127(d).

On March 23, 2010, Dr. Howard cited Respondent for failing to remove dead trees near the perimeter fence that presented a hazard to the fence. Tr. at 226-227; CX-26; CX-27. The trees had been dead for some time, and the inspector had pointed out the problem in the past. Tr. at 227. Dr. Kirsten believed that the integrity of a perimeter fence is paramount when dangerous animals are on exhibition. Tr. at 385-386. The fence must somehow prevent and immobilize an animal from escaping as well as prevent unauthorized individuals from getting near the animals. Tr. at 386. He did not believe that Respondent’s fence adequately met those goals. Tr. at 386-387. Dr. Kirsten considered a perimeter fence to be an integral part of protecting the welfare of an animal, which would not survive outside of the facility. Tr. at 387-388.

Dr. Howard recalled her inspection of September 8, 2010, which disclosed portions of the perimeter fence of the facility that did not meet the 8 foot height required by the regulations. Tr. at 154-155; CX-7; CX-9.. In addition, deficits in the fencing were seen, such as openings at the

bottom, and areas where the fence was not fixed to posts. Tr. at 155. Dr. Howard stated that she considered the problems a repeat violation because she had previously cited Respondent for problems with perimeter fencing, even though the problems may not have been the same. Tr. at 157. Dr. Howard explained that she did not have the ability to measure the entire perimeter fence, but her sample measurements on September 8, 2010, revealed that it was not the required height. Tr. at 287-288. The inspector also rejected Respondent's contention that bamboo represented a natural perimeter fence. CX-11.

Mrs. White testified that the perimeter fence was inspected at every inspection, and she was not always cited for conditions that had never changed. Tr. at 676-678. She nevertheless did not contest that there were sections of the fence that buckled, and that she considered bamboo an adequate perimeter. The evidence substantiates this violation.

Primary Enclosures for Rabbits

Enclosures for rabbits must be structurally sound and maintained to protect rabbits, keep them inside and keep predators out (9 C.F.R. § 3.53(a)(1)); must be constructed to keep rabbits dry and clean (9 C.F.R. § 3.53(a)(2)); must allow rabbits convenient access to food and water (9 C.F.R. § 3.53(a)(3)); must have floors that protect rabbits' feet and legs from injury, and be provided with litter on solid floors (9 C.F.R. § 3.53(a)(4)); and must be provided a suitable nest box with nesting materials for females with litters of less than one month of age (9 C.F.R. § 3.53(a)(5)). The primary enclosures for rabbits acquired after 1990 must "provide sufficient space for the animal to make normal postural adjustments with adequate freedom of movement" for each rabbit in the enclosure, exclusive of food and water receptacles. 9 C.F.R. § 3.53(b). The regulations provide a table of space requirements at 9 C.F.R. § 3.53(c).

On September 24, 2009, Inspector Howard cited Respondents with violations of §§ 3.53(a)(2) and 3.53 (c)(2) because she believed that the primary enclosure for rabbits did not allow the animals to remain dry and clean and did not meet the standards for minimum floor space. CX-22. The box that served as the rabbit enclosure was set directly on the ground and did not protect the animals from recent rain accumulation. Tr. at 185. It was too small for all of the rabbits to occupy it comfortably. Id. Respondent denied this contention because in addition to the box, there was a concrete cage that the rabbits could enter. Tr. at 722. Mrs. White tried to use shavings and other floor coverings, but she did not think those additions improved the space. Id.

The evidence is in equipoise and fails to establish a violation of housing standards for rabbits.

Animal Health and Husbandry Standards

The regulations require that animals be provided wholesome, palatable food, free from contamination, and appropriate in quantity and nutritive value for the age, species and condition of animals. 9 C.F.R. § 3.129(a). Potable water must be provided as often as necessary if not accessible at all times. Id. In addition to being fed at least once a day with wholesome food, rabbits must have access to food receptacles in a primary enclosure that is located so as to minimize contamination by excreta. 9 C.F.R. § 3.54(a) and (b). All receptacles for rabbit feed must be cleaned and sanitized at least once every two weeks. 9 C.F.R. § 3.54(b).

Feed

On March 23, 2010, Dr. Howard could not determine whether chicken parts in greenish liquid in an unmarked bucket were meant as food or were meant to be discarded. Tr. at 216-217. Although Respondent advised that the chicken was left over and would be thrown away, Dr. Howard believed that there was the potential for someone to feed them to animals because the

bucket was not marked and she cited Respondent for violating 9 C.F.R. § 3.129(a). Tr. at 217; CX-26; CX-27.

I decline to accord substantial weight to Dr. Howard's conclusion, and credit Mrs. White's contention that she and her son took care of feeding the animals. I find it improbable that either of them would mistake good food for food that must be discarded. I also do not know whether Mrs. White's routine was interrupted by the inspection, thereby preventing her from discarding the waste in a timely fashion. I note that this was not a violation that was cited regularly. The evidence fails to substantiate this citation.

When Dr. Howard inspected Respondent's premises on September 8, 2010, she concluded that Respondent was feeding the big cats a diet comprised primarily of chicken backs, which are not nutritionally adequate for large cats. Tr. at 158. Respondent was told by USDA's big cat specialist, Dr. Laurie Gage, that chicken backs were not appropriate. *Id.* Respondent assured Dr. Howard that they had run out of the usual feed of chicken legs, and also advised that the diet was supplemented with venison, but no venison was seen and Dr. Howard noted that the cougars remained thin. Tr. at 159. She cited Respondent for failure to provide appropriate food. CX-7; CX-9.

Mrs. White asserted that she fed the cats a variety of meat, and that chicken backs were just one source of food. Tr. at 684. On the day of the inspection, she mistakenly believed that only chicken backs were on hand, but her son showed her other meat later that day. The following day, Mrs. White she showed leg quarters in the freezer to Dr. Howard, who told her that the citation had already been written in the inspection report. Tr. at 684-685.

Investigator Stevie Harris interviewed one of the facility's volunteers, Tim Chisolm, who said that chicken was the primary source of the cats' diet. CX-41. Mr. Chisolm picked up

donated chicken from a chicken producer, and he believed that the cats were fed primarily chicken backs in 2010.

I find that the preponderance of the evidence does not support the conclusion that the large cats were not fed a proper diet. I accord substantial weight to Mrs. White's explanation that the cougars' weight had fluctuated from the time they came to the facility. Tr. at 686. I note that in a "complaint response" authored by Dr. Howard on July 11, 2008, the doctor "found all of the animals in decent condition. In fact, most of the animals are more towards being overweight..." CX 18. I decline to accord substantial weight to a conclusion about the quality of food on one day, which appears to be based upon a mistaken comment made by Mrs. White. This allegation is not supported by the preponderance of the evidence.

I accord no weight to Mr. Chisolm's affidavit because statements made in 2010 may reflect bias against Respondent. I credit the Mrs. White's testimony that Mr. Chisolm lived on the White's property and volunteered at the Collins Zoo until he and Gustave White, IV argued in early 2010, whereupon Mr. Chisolm left the facility. Tr. at 846-847. He returned and was living on Respondent's property at the time of the hearing.

The inspection of September 24, 2009, revealed the lack of a receptacle for food and vegetables for rabbits. Their food was left on the ground, which increased the risk of food contamination, and Respondent was cited with violations of §§ 3.54 (a) and (b). CX-22; Tr. at 184-185. Dr. Kirsten recalled that the food receptacles for the rabbits were contaminated. Tr. at 396. Dr. Howard cited Respondent again on September 8, 2010, for violations pertaining to rabbit feed. Dr. Howard found old produce, pellets and excreta in the food tray for five rabbits. She believed that the trays were not positioned so as to minimize contamination. CX-7; Tr. at 150.

Mrs. White speculated that her son had removed the rabbits' feeding tray from the enclosure when the inspectors conducted their inspection. Tr. at 725. She also explained that "some of [the feed] does fall on the ground when you throw it in there..." Tr. at 725-726.

The evidence supports this violation. Respondent's explanation for the condition of the rabbits' enclosure and feeding methods does not demonstrate a reasonable effort to assure that the foodstuff is sanitary.

Sanitation

Cleaning and Housekeeping

"Excreta shall be removed from primary enclosures as often as necessary to prevent contamination of the animals contained therein and to minimize disease hazards and to reduce odors. . ." 9 C.F.R. § 3.131(a)(1).

On March 23, 2010, Inspector Howard cited Respondent for unsanitary conditions within the shelter box housing Respondent's kinkajou, because she believed that the enclosure was excessively soiled and stained. CX-26; CX-27. Dr. Howard testified that her inspection report and accompanying photographs adequately explained the conditions that led to the citation she issued. Tr. at 217-218. Dr. Kirsten similarly found the enclosure excessively dirty. Tr. at 389.

According to volunteer Geraldine Williamson, kinkajous can eat twice their weight each night, and she routinely left a lot of food at night for the kinkajou. Tr. at 569. His cage was cleaned first thing in the morning, and uneaten food was removed and new food was provided. Id.

The evidence is in equipoise. Although the foodstuffs depicted in the photograph from Dr. Howard's inspection appear rather unsavory, I credit the testimony of Mrs. White and Ms. Williamson, particularly where the condition of the kinkajou's enclosure and food did not appear

to be an ongoing problem, as it was not repeatedly charged on inspections. Moreover, the record does not clarify whether Respondent's daily routine was hampered by the arrival of the inspectors, thereby preventing prompt cleaning of the enclosure. This charge is not sustained.

Employees

Exhibitors are required to use "a sufficient number of adequately trained employees. . . to maintain the professionally acceptable level of husbandry practices" required by the regulations. 9 C.F.R. § 3.132. "Such practices shall be under a supervisor who has a background in animal care". *Id.* In addition, the care of nonhuman primates must be provided by "enough employees" who are "trained and supervised by an individual who has the knowledge, background and experience in proper husbandry and care of nonhuman primates..." 9 C.F.R. § 3.85.

Respondents were charged with not utilizing a sufficient number of adequately trained employees for the entire period covered by the Complaint, beginning on May 24, 2007. See, Heading II, ¶¶ A through C. Based upon her years of experience inspecting Respondent's facility, Dr. Howard concluded that Respondent did not have sufficient help to keep the facility well maintained. *Tr.* at 225-226. Although the inspector acknowledged that the regulations do not require a particular number of employees, she believed that the repeated problems that she observed with drainage, with the perimeter fence, with structures and enclosures in disrepair would have been avoided with more help at the premises, thereby safeguarding animals from the potential hazards caused by the deficiencies. *Tr.* at 226-227.

Dr. Howard further testified that she was unable to ascertain the expertise of the few people she regularly saw at the facility. *Tr.* at 228. She knew that the licensee, Gustave White, III had experience with animals, but she believed that he directed the facility from his house, and that Mrs. White was primarily responsible for the animals, with the help of her son. *Tr.* at 229.

Dr. Howard observed some volunteers at the facility, but she had no knowledge of how volunteers were trained, or their experience with animals. Tr. at 228.

Dr. Kirsten had only observed Mrs. White and the young Mr. White at the facility with the exception of one occasion where he saw another person helping. Tr. at 405-406. Dr. Kirsten believed that Mrs. White was not in the best of health, and Mr. White was very young when the doctor first visited the facility. Dr. Kirsten concluded that Respondent was inadequately staffed for the amount of work required to maintain the facility, feed and care for the animals, and attend to their medical needs. Tr. at 406-407.

Volunteer Geraldine Williamson has worked at the zoo in one fashion or another since approximately 1986. Tr. at 560. She had worked with animals for many years, beginning as a teenager helping her local vet. Tr. at 559. She generally reported to the facility at about 8:00 a.m. o'clock and a number of volunteers would come later in the day and were assigned chores that did not involve feeding the animals. Tr. at 573. She was trained by Mr. White, III. Tr. at 561. Since her heart attack in 2006, Ms. Williamson no longer works at the facility eight hours a day or visits the facility every day. Tr. at 596.

Ms. Williamson continues to help the facility's veterinarian, Dr. Ainsworth, at her office, and has treated animals at the Collins Zoo pursuant to Dr. Ainsworth's instructions to Mrs. White. Tr. at 597-599. In recent years she has helped mostly with paper work and administration and organizing volunteers. Tr. at 606. Ms. Williamson was not involved with the facility in 2010, but in 2009, she estimated that at least five other people volunteered services there. Tr. at 607.

Mr. White III, who founded the facility, has worked with animals all of this life. Tr. at 918-919. He is self-taught, though has read widely about animal care and attended classes and

lectures. Tr. at 919. He worked with animal experts such as Marlin Perkins, has trained fire and police departments about safety and animals, and has held a license under the AWA for forty-three years. Id. Mr. White's health no longer allows him to do daily maintenance, but he visits the facility, which is adjacent to his home, regularly and is in daily contact with his wife, who has primary responsible for the daily functions of the Collins Zoo. Tr. at 928-929; 932-933. His wife and son do the main work at the facility with the help of volunteers Geri Williamson, Tim Chisolm and biologist Jennifer Farmer. Tr. at 932-934. Mr. White testified that his wife worked with veterinarians to treat animals. Tr. at 930.

Complainant hypothesizes that many of the violations cited by Dr. Howard would not have occurred if Respondent had more money and had employed more workers. Tr. at 465-466. Complainant did not say how many employees it considered sufficient to run a facility with an area of less than one acre. The record clearly establishes that the facility depended on volunteer workers and donations. Mr. Chisolm donated time and money to the facility, and Jonathan Cornell hired itinerant workmen to remove trees at the facility and donated a used truck to the Whites. Respondent relied upon the volunteer services of a veterinarian. The record also establishes that with the declining health of Mr. White, III and long-term volunteer worker Ms. Williamson, the facility lost manpower during the period encompassed by the inspections at issue herein. At the same time, Mr. White, IV was able to take on more chores as his adolescence advanced. With the exception of a brief absence, Mr. Chisolm continued to perform maintenance work at the facility. Other volunteers do work, and a biologist regularly volunteers.

Despite the perceived lack of resources, Respondent was able to correct many of the structural and facility maintenance violations cited by Complainant. In addition, some of the citations were for conditions that had been in existence without offending inspectors for some

time. Complainant was unable to articulate APHIS' expectation of what constitutes a well trained and experienced individual, but Dr. Howard conceded that individuals would not need as much training if experienced supervisors were on site. Tr. at 497-498.. Dr. Howard's answers to repeated questions about whether Mrs. White's thirty-two years of experience represented adequate training were non-responsive, e.g.:

Q: Would you consider 32 years of working at a zoo -- and I mean, not particularly one specific zoo, but maybe another zoo full time, every day experienced enough?

A: I would not hazard a guess, Mr. White. Again, I would have to see -- decisions are made on experience nowadays, based on the type of experience the person has had, the length of the experience and the quality of the experience and the education and training involved. So, you know, it's -- you know, I'm not going to speculate on -- on that.

Q: And would you consider my mother, Bettye White, an adequately trained employee? Did she seem to be not adequately trained in your inspections or --

A: I think that from what I have seen over the years, I think that Mrs. White gets a lot of her instruction from Mr. White, III. I can think of instances where, you know, she has basically insinuated that she runs a lot of what she does by Mr. White to make sure that it's -- you know, she's doing something appropriately.

Tr. at 498-500.

Dr. Howard appeared reluctant to acknowledge Mrs. White's experience, and she overlooked the significance of Mr. White's presence and his supervision of the facility. In concluding that the facility did not have adequate numbers of properly trained employees, APHIS dismissed the one standard articulated by Dr. Howard—that individuals working for experienced supervisors could have less training. Mrs. White's daily contact with the facility's animals under her husband's tutelage, and her care for the animals should be credited. Mrs. White certainly had more hands-on experience with caring for animals than did Dr. Howard, despite the inspector's education.

I find that APHIS has failed to establish by a preponderance of the evidence that Respondent failed to employ an adequate number of trained employees.

Complainant charged Respondent with failure to employ adequate employees to care for non-human primates in compliance with 9 C.F.R. Part 3 of the regulations. See, Complaint at Heading II, ¶ B. Dr. Howard testified that there were non-human primates at Respondent's home but not on display at the facility. Tr. at 501. This charge is dismissed.

Attending veterinarian and adequate veterinary care

Exhibitors are required to employ "an attending veterinarian under formal arrangements. . . which include a written program of veterinarian care and regularly scheduled visits to the premises." 9 C.F.R. § 2.40(a). The program of care must demonstrate "the availability of appropriate facilities, personnel, equipment, and services. . . ; the use of appropriate methods to prevent, control, diagnose and treat diseases and injuries and the availability of emergency, weekend, and holiday care; daily observation of all animals to assess their health and well-being . . . with a mechanism of direct and frequent communication [with] the attending veterinarian; adequate guidance to personnel involved in the care and use of animals regarding handling; and adequate pre-procedural and post-procedural care in accordance with established veterinary medical and nursing procedures." 9 C.F.R. § 2.40(b)(1)-(5).

Complainant has charged Respondent with failure to maintain programs of disease control and prevention, euthanasia and adequate veterinary care for its animals in violation of 9 C.F.R. § 3.40. Complainant relied upon several incidents as evidence of Respondent's failings in this regard.

On April 3, 2008, Dr. Howard stopped by the facility and observed a discharge from both eyes of a caracal that appeared to cause discomfort to the cat. CX-21. Mrs. White advised that

the condition was long-standing and that she was treating the animal as instructed by the veterinarian, but she agreed to call the doctor. Id. At a later inspection on November 6, 2008, the animal's eyes had not improved Tr. at 301. Respondent advised that she had called the veterinarian, and was following treatment advice. CX-19; Tr. at 301-302. Dr. Howard acknowledged that the animal had had the problem for some time, but she believed that the condition had worsened based upon the cat's behavior, and she felt it should be examined by a veterinarian. Tr. at 175-176; 302. Dr. Howard explained that the animal's temperament might have interfered with proper treatment. Tr. at 302-303.

At that inspection, Dr. Howard also observed what she believed to be a lesion on the skin of the wolf-hybrid named Olive. CX-22; Tr. at 176; 303. Mrs. White believed that the skin condition was due to shedding, but Dr. Howard did not agree with that assessment, and believed that the animal needed to be seen by a veterinarian. Tr. at 303-304.

On December 10 and 11, 2009, a volunteer at the facility observed the wolf-hybrid Olive with a distended abdomen and in distress. Tr. at 202. The volunteer spoke to Mrs. White about the animal, and Mrs. White believed that the wolf may have been pregnant. Mrs. White reported the animal's condition to Dr. Ainsworth, who planned to examine Olive if her condition had not improved. She was found dead on Sunday, December 13, 2009. Tr. at 202-203.

Dr. Howard testified that these circumstances demonstrated a violation of the regulations requiring veterinary care. Mrs. White did not contact Dr. Ainsworth until two days after Olive's condition was reported by the volunteer, and the veterinarian diagnosed several possible conditions and made recommendations for general treatment. Tr. at 203-204. Dr. Howard believed that Respondent should have called Dr. Ainsworth earlier, and made sure that the animal was seen, particularly given the range of ailments that Dr. Ainsworth speculated as the

cause of Olive's symptoms. Tr. at 205-208. No necropsy was performed, and it was difficult to ascertain exactly what treatment Olive was given Tr. at 209.

On September 8, 2010, Dr. Howard cited Respondent with failing to provide proper veterinary care to a cougar named Delilah who was euthanized five days after the action was recommended by the facility's veterinarian. CX-7; CX-9; Tr. at 141-143. The tiger named Sister developed a limp, and Mrs. White advised that Dr. Ainsworth prescribed prednisone after examining the animal on May 26, 2010, though no records were maintained about how treatment was given. Tr. at 143; 393. The leopard named Amber had a lesion on its rump, and Mrs. White acknowledged that she had not consulted the veterinarian about the condition because it was observed on a holiday weekend. Tr. at 145-146; 394; CX-9.

Dr. Kirsten again visited Dr. Ainsworth to see her records, particularly those involving the animal that Dr. Ainsworth had recommended euthanizing. Tr. at 390-391. He believed that Mrs. White's delay in euthanizing the animal represented a violation of the Act because it flaunted the authority of the attending veterinarian. Tr. at 392. Dr. Kirsten similarly found fault with Mrs. White's failure to call Dr. Ainsworth over a weekend to consult about a lesion on one of the leopard's tail. Tr. at 394. Dr. Kirsten observed that the Act requires licensees to have access to emergency care at all time. Id.

Dr. Howard, accompanied by Investigator Steve Harris, conducted an inspection of Respondent's facility on April 19, 2011 and learned that an older jungle cat had died in December, 2010, and an older leopard had died in February, 2011, both of unknown causes. CX-1. In addition, a dingo died in January, 2011. No necropsy was performed on any of the animals to determine the cause of death. CX-1; CX-2. In a three page report dated April 19, 2011, Dr.

Howard summarized her findings, noting that Respondent did not contact the veterinarian upon the death of any of the animals, which died without apparent illness or injury. CX-3.

Dr. Howard's inspection of the facility on January 21, 2010, yielded no violations pertaining to veterinarian care. CX-24. On March 23, 2010, Dr. Howard was accompanied on inspection of the facility by Dr. Rick Kirsten, Dr. Laurie Gage, and other APHIS employees in response to a complaint⁴. Tr. at 199. A discharge was observed on rabbits' ears; the leopard Smokey had a three-inch long lesion on its tail; and the caracal Sonny appeared to be lame. Tr. at 199-201. Although Mrs. White had consulted Dr. Ainsworth by phone about the leopard's lesion, she had not contacted the doctor about the rabbits or the caracal. Tr. at 201. Respondents were given the deadline of March 26, 2010, for the animals to be examined and treated by a veterinarian. Dr. Howard also cited Respondent for violating regulations pertaining to veterinary care for the events leading to Olive's death. Tr. at 202.

Dr. Kirsten agreed with the conclusion that animals appeared in need of veterinary care when he was at the facility for the inspection of March 23, 2010. Tr. at 372 – 379. Dr. Kirsten did not believe that Respondent had an appropriate plan for veterinary care, noting that Mrs. White did not keep records of treatment of animals, but relied solely upon her memory. Tr. at 373. He and Dr. Howard visited Dr. Ainsworth to see her treatment records, and to determine whether there was regular and timely communication with the veterinarian about the condition of Respondent's animals. Tr. at 373-374. Dr. Kirsten recalled that Mrs. White expressed reluctance to call the veterinarian because Respondent didn't pay for vet services and Mrs. White felt guilty. Tr. at 377.

⁴Dr. Kirsten testified that the complaint that instigated this inspection was made by the volunteer who questioned Olive's condition. Tr. at 374.

Dr. Kirsten upheld Dr. Howard's April 19, 2011, citations for failure to provide adequate veterinary care with respect to the animals that died without explanation when Respondent appealed that citation. CX-4. He testified that a necropsy was necessary in a situation where three animals died without explanation over a three month period, considering that they had received no prior veterinary care. Tr. at 404. The regulations require that diseases be diagnosed and treated, and there was no diagnosis for why the animals died. Tr. at 404-405.

The totality of the evidence demonstrates that Respondent failed to maintain an adequate plan for veterinary care and failed to provide prompt and adequate treatment and care to animals. Dr. Lisa Ainsworth, D.V.M., has donated her services as attending veterinarian to the Collins Zoo since approximately 1994. CX 43. Dr. Ainsworth pays approximately four formal visits to the facility annually "to comply with government regulations" and attends to animals in person when necessary, but most issues raised by Respondent are "handled over the phone or at [her] next visit." CX-43. There was no formal plan for care for all of the facility's animals, since Dr. Ainsworth believed her "regular health maintenance program [was for] the cats and dogs." CX-34.

The doctor's affidavit is consistent with the testimony. Ms. Williamson and Mrs. White confirmed that Dr. Ainsworth did not come to the facility frequently. The record demonstrates that Mrs. White was slow to contact Dr. Ainsworth, and did not contact her at all in some circumstances that seemed to require a veterinarian consultation or examination. I need not determine the reasons for Respondent's hesitation to call the doctor. The evidence establishes that certain conditions were not properly diagnosed (condition of Olive's skins and whatever ailment led to her death); and certain conditions were not promptly treated (tail sucking of leopard that led to the veterinarian proposing euthanasia; rabbits' ear problems; caracal's eye

problems; animals' limps) (CX-43 a, page 1). The treatment records kept by Dr. Ainsworth and admitted to the record show only eight documented exchanges with Respondent during the period from May 10, 2005 until March 25, 2010. CX-43(a).

Although I generally agree that one would no more call a veterinarian about every minor condition than would a parent call a pediatrician, I nevertheless conclude that Respondent was less than vigilant about assuring that animals were in healthy condition. Respondent's casual approach to animal care is manifested by sores on a rabbit's ear that were not timely treated; lesions on a leopard's rump that were not adequately treated; a caracal's ocular problems that went poorly treated for an extended period of time; and animals limping for no documented reason. Dr. Ainsworth's records reflect that some of the calls from Respondent were obviously prompted by APHIS' inspection (e.g., call made about a rabbit's ear on March 23, 2010; CX-43(a); CX-26; CX-27).

Although the regulations do not require necropsy to determine the cause of death of animals, the unexplained deaths of three animals in a three month period without any documented medical condition, treatment or diagnosis, casts suspicion on the facility. Consultation with Dr. Ainsworth about the deaths would have been prudent, and her treatment records reflect that she had been consulted in the past about animal deaths and had made an assessment about taking action to ascertain the cause of the deaths. CX-43(a).

I credit Mrs. White's testimony that she occasionally consulted a veterinarian with experience with exotic animals when Dr. Ainsworth could not be reached. Dr. Ainsworth confirmed as much in her affidavit. CX-43. I also find nothing to conclude that Respondent was ill-intentioned towards the animals, and that Mr. & Mrs. White believed they had the requisite expertise and experience to care for the animals without too much guidance from a veterinarian.

In some instances, it appears that Mrs. White made extra efforts to extend the life of an animal, such as where she tried to stave off the euthanization of the cougar Delilah. In that instance, I find that APHIS did not establish that Mrs. White failed to follow the recommendations of a veterinarian, but rather conclude that the alternate feeding plan was sanctioned by Dr. Ainsworth. I credit Mrs. White's testimony that asserted that Dr. Ainsworth confirmed that the animal seemed to be in no apparent pain. Tr. at 636-637. However, Respondent's failure to develop, maintain and follow a program of veterinary care is supported by the preponderance of the record and I find that Respondent has violated this regulatory standard. In addition, I find that Dr. Ainsworth's limited involvement with the facility's animals does not meet the standard for attending veterinarian.

Failure to retain records

Respondent is charged with failure to maintain records relating to the acquisition and disposal of animals in violation of 9 C.F.R. §. 2.75(b) during inspections conducted on March 23 and March 26, 2010 (CX-26 through CX-31), and on September 8, 2010 (CX-7; CX-10)⁵. On March 23, 2010, Dr. Howard was accompanied by a number of other APHIS employees to inspect the premises in response to a complaint and observed a possum for which no acquisition records were kept.. CX-31.

Respondent was cited on September 8, 2010, for failing to keep acquisition records for rabbits. CX-7; Tr. at 146. In addition, other records were incomplete. Tr. at 147-148.

Respondent had documented on a record for a dingo "papers missing taken by USDA or Wildlife." CX-9, page 12. Dr. Howard authored a memorandum in which she noted that Mrs.

⁵ The inspection report from September 24, 2009, refers to Respondent's failure to properly tag the coyote, but the complaint does not charge Respondent with a specific violation for this failure.

White acknowledged receiving copies of photocopied records from the previous inspection, but nevertheless maintained that records were missing, speculating that USDA or “Wildlife” took them. CX-10. The records were incomplete and reconstructed, and Inspector Howard concluded that hardly any original records were available. The records did not match previously photographed records. CX-10.

In addition, acquisition records raised questions about the provenance of certain animals. CX-12 through CX-14; CX-40. Acquisition records dated May 24, 2007, document “Barry Weddleton Jr. from Slidell, Louisiana” as the donor of a wolf hybrid (CX-12) and a coatimundi and approxage (CX-40). In interviews with APHIS investigator Bob Stiles, Mr. Weddleton’s father admitted that his son had known Respondent many years previously, but would not have donated any animals to Mr. White. CX-12 through CX-15; Tr. at 470-473.

Jonathan Cornwell testified that he donated a coatimundi that was less than one year old to Mr. White’s facility sometime in 2007. Tr. at 70-72. Geraldine Williamson testified that an older coatimundi was donated to the facility by a man who identified himself as Mr. White’s “friend from Slidell.” Tr. at 581-582. The donor was not Mr. Cornwell, whom Ms. Williamson knew. Tr. at 583. The male coatimundi that was left with Ms. Williamson was the only coatimundi kept by the facility. Tr. at 610. Mr. Cornwell promised to donate a female to the Collins Zoo but he never did. Id.; Tr. at 843. Respondent’s only coatimundi was an older animal that was donated in 2007 and that died a few years later. Tr. at 843-845.

I am unable to glean the source or age of the coatimundi from the record. The preponderance of the evidence establishes that the animal was not donated by the individual noted on the acquisition papers. Respondent did not confirm the identity of the unnamed donor, nor did Respondent confirm any information about the animal, but conjectured that Mr.

Weddleton had left the animal. Mr. Weddleton denied that assertion, explaining that his son had known Mr. White years before, but had lived in Oklahoma for twenty years. CX-14.

Fortunately, I need not determine whether the coatimundi was in fact donated by Mr. Cornwell to conclude that the records were improperly maintained. His testimony was not entirely credible, and did not cure inconsistencies with the affidavit he signed on May 3, 2010. See, CX-35. Neither can I fully credit the testimony of Mrs. White or Ms. Williamson on this issue. Whatever the source of the animal, the evidence suggests that the acquisition record was fabricated in violation of recordkeeping standards.

Respondent's records regarding the source of rabbits are similarly unreliable. Mrs. White admitted that she did not know the donor of the rabbits and instead used the name of a friend who raised rabbits. Tr. at 695-696. This blatantly violates recordkeeping standards.

Other records were missing or reconstituted and Respondent's contention that they were removed by agents of a government agency does not constitute a valid defense to the requirement to maintain records. Respondent's recordkeeping system is deficient. In addition to the problems with animal acquisition records, incomplete records were kept of veterinary care or losses of animals when they left the facility or died. These allegations have been sustained.

E. Summary

APHIS has established that Respondent failed to maintain records and in some instances, fabricated records. In addition, Respondent failed to develop and maintain a program of veterinary care from an attending veterinarian and further failed to provide adequate and prompt care to animals. Although APHIS did not meet its burden of proving all of the deficits it had documented regarding facility maintenance, staffing, and animal husbandry standards, those

allegations that were supported by the preponderance of the evidence constitute serious violations of the Act and prevailing regulations.

F. Remedies

The purpose of assessing penalties is not to punish actors, but to deter similar behavior in others. In re David M. Zimmerman, 56 Agric. Dec. 433 (1997). In assessing penalties, the Secretary must give due consideration to the size of the business, the gravity of the violation, the person's good faith and history of previous violations. In re Lee Roach and Pool Laboratories, 51 Agric. Dec. 252 (1992). Moreover, it has been observed that the AWA is a remedial statute, and the purpose of imposing sanctions is for deterrence, not punishment. In re: David Zimmerman, 57 Agric. Dec. 1038 (1997). The recommendations of administrative officials responsible for enforcing a statute are entitled to great weight, but are not controlling, and the sanction imposed may be considerably less or different from that recommended. In re: Marilyn Shepherd, 57 Agric. Dec. 242 (1998).

The record establishes that Respondent willfully violated the Act on repeated occasions. Respondent failed to develop and follow a plan for veterinary care that led to the failure to diagnose the cause of a wolf-hybrid's symptoms and eventual death. Respondent's approach to consulting the facility's attending veterinarian resulted in the failure of prompt diagnosis for a rabbit's ear condition, a caracal's eye condition, and lesions on a leopard's rump, as well as the proper treatment for a leopard's tail-sucking habit, which led to a recommendation of euthanasia. Three animals died over a three month period without consultation with a veterinarian. Respondent's perimeter fence and other structures did not meet standards for soundness and at times feeding and sanitation standards fell below expectations.

It is clear that the deteriorating health of Gustave White, III, the arduous workload placed on Mrs. White, the limited time of their college-student son, and the health-related restrictions on the activities of their loyal volunteer Geraldine Williamson have led to the decline of Respondent's facility. Respondent has very few animals at the facility, and it is unclear whether the animals confiscated by the State of Mississippi will be returned to them. The erosion of Respondent's resources has placed animals in jeopardy, and it is imperative that future risk of harm be avoided.

Despite Mr. White's long and capable experience exhibiting and working with animals, the current conditions of the Collins Zoo do not reflect his abilities and talents. I find it appropriate to revoke Respondent's license. I find that the deterrent purpose of sanctions would not be furthered by imposing a civil money penalty.

G. Findings of Fact

1. Respondent in this matter is Gustave L. White, III, also known as Gus White is an individual who holds license number 65-C-0012 to exhibit animals under the Animal Welfare Act.
2. Respondent operates a facility named Collins Exotic Animal Orphanage in Collins, Mississippi, at which a variety of animals are exhibited to the public.
3. Respondent directs and supervises the operation of his facility, but no longer does any of the heavy manual work involved in maintaining the facility or caring for the animals.
4. Respondent has a lifetime of experience with caring for animals of all kind.
5. Respondent's wife, Bettye White and son, Gustave L. White, IV, are primary caretakers of the animals and facility.
6. Mrs. White has cared for animals along with her husband for thirty-two years.

7. Gustave White, IV, has been around animals all of his life and was trained by his father in the care of animals.
8. A number of other volunteers regularly assist in maintaining the facility and administering its operations.
9. Mrs. White is responsible for maintaining Respondent's records.
10. Dr. Lisa Ainsworth serves as the facility's attending veterinarian on a volunteer basis, and offers advice primarily over the phone.
11. During the period from 2007 to 2011, APHIS conducted a number of inspections of Respondent's facility and cited Respondent for violations of the Act and prevailing regulations.
12. A number of animals died at the facility and the cause of their deaths was not determined either by examination and diagnosis of a veterinarian, or by necropsy.
13. At times, animals showed obvious symptoms of distress, discomfort, and/or disease and were not provided veterinary care.
14. The source and donors for certain animals were not identified and records about their acquisition were not complete.

H. Conclusions of Law

1. The Secretary has jurisdiction in this matter.
2. The following violations brought against Respondent are dismissed for lack of proof by a preponderance of the evidence:
 - (a) Allegations of violations of 9 C.F.R. § 2.131(c), alleging failure to properly handle a leopard on July 11, 2008, and a tiger on September 8, 2010.

- (b) Allegations of violations of 9 C.F.R. §3.125 (a), alleging insufficient structural strength of the floor of the tigers' enclosures.
- (c) Allegations of violations of 9 C.F.R. § 3.125(a) alleging structural defects of the roof of the building where freezers were located.
- (d) Allegations of violation of 9 C.F.R. § 3.125(c) alleging improper storage of food on September 8, 2010.
- (e) Allegations of violations of 9 C.F.R. § 3.125(d) alleging sanitation violations with respect to the kinkajou's food on September 8, 2010.
- (f) Allegation of September 8, 2010, that cites a violation of 9 C.F.R. § 3.127(a), but describes structural defects.
- (g) Allegations of violation of 9 C.F.R. § 3.127(c), alleging failure to provide adequate drainage in the tiger's enclosure.
- (h) Allegations pertaining to outdoor facilities and enclosures for rabbits pursuant to 9 C.F.R. §§ 3.52(b); 3.53(a)(1); 3.53(a)(3); 3.53(a)(5); 3.53(b).
- (i) Allegations of violations of animal husbandry standards set forth at 9 C.F.R. § 3.129(a) regarding the storage of food and the diet provided to animals, particularly cats and a kinkajou.
- (j) Allegations of violations of sanitation and housekeeping standards set forth at 9 C.F.R. § 3.131(c) pertaining to the kinkajou's enclosure.
- (k) Allegations charging Respondent with not using a sufficient number of adequately trained employees pursuant to 9 C.F.R. § 3.132.
- (l) Allegations pertaining to non-human primates.

3. The following violations are established by a preponderance of the evidence:
- (a) On March 23, 2010, Respondent failed to handle animals (coyote mix) in a manner to prevent risk of harm in violation of 9 C.F.R. § 2.131(c) because the barrier fence was not structurally sound.
 - (b) Respondent failed to provide structural integrity of the flooring of the enclosures for cougars, wolf-hybrids, and a lion in violation of 9 C.F.R. § 3.125(a).
 - (c) Respondent failed to provide structural integrity of the enclosure housing cougars, tigers, jungle cats, and failed to correct broken perches in violation of 9 C.F.R. § 3.125(a).
 - (d) Respondent failed to provide structural integrity of fencing by failing to remove dead trees in violation of 9 C.F.R. § 3.125(a).
 - (e) Respondent failed to provide shelter from the elements at the outdoor enclosure for cougars in violation of 9 C.F.R. § 3.127(a).
 - (f) Respondent failed to meet and maintain the regulatory requirements pertaining to perimeter fencing in violation of 9 C.F.R. § 3.127(d)
 - (g). Respondent failed to provide a method to keep food sanitary and free from risk of contamination to rabbits in violation of 9 C.F.R. §§ 3.54 (a) and (b).
 - (h) Respondent failed to employ an attending veterinarian and failed to develop and maintain a written program of veterinary care in violation of 9 C.F.R. §§ 2.40(a) and 2.40(b)(1)-(5).
 - (i) Respondent failed to maintain a program of disease control and prevention, and adequate veterinary care for the animals in violation of 9 C.F.R. § 3.40.
 - (j) Respondent failed to retain accurate records of animal acquisition and disposal in violation of 9 C.F.R. § 2.75(b).

ORDER

Gustave White, III, also known as Gus White, doing business as the Collins Exotic Animal Orphanage, and his agents, employees, successors and assigns, directly or indirectly through any individual, corporate or other device is hereby ORDERED to cease and desist from further violations of the Act and controlling regulations.

AWA license number 51-C-0064 is hereby revoked to further the purposes of the Act, as explained in this Decision and Order.

This Decision and Order shall become effective and final 35 days from its service upon Respondent unless an appeal is filed with the Judicial Office pursuant to 7 C.F.R. § 1.145.

Copies of this Decision and Order shall be served upon the parties by the Hearing Clerk.

Entered this 26th day of April, 2013 at Washington, DC.

Janice K. Bullard
Administrative Law Judge