

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

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In re:)
)
LINDA L. HAGER, an individual; and) AWA Docket No. 17-0226
EDWARD E. RUYLE, an individual,) AWA Docket No. 17-0227
)
Respondents.)

**ORDER DENYING RESPONDENTS' PETITION FOR APPEAL AND
AFFIRMING DECISION AND ORDER GRANTING
COMPLAINANT'S MOTION FOR SUMMARY DISPOSITION**

Appearances:

Charles L. Kendall, Esq., Office of the General Counsel, United States Department of Agriculture, Washington D.C., for Complainant, Animal and Plant Health Inspection Service ("APHIS"); and

Pro se Respondents: Linda L. Hager and Edward E. Ruyle.

On Appeal to the Judicial Officer, Bobbie J. McCartney.

Introduction

This is an administrative enforcement proceeding under the Animal Welfare Act (7 U.S.C. §§ 2131 *et seq.*) ("AWA" or "Act") and the regulations promulgated thereunder (9 C.F.R. §§ 1.1 *et seq.*) ("Regulations"), wherein Administrative Law Judge Channing D. Strother ("ALJ") issued an August 17, 2018 Decision and Order granting Complainant's motion for summary disposition ("Decision and Order") and finding that Linda L. Hager and Edward E. Ruyle ("Respondents") operated as "dealers" in violation of section 2134 of the AWA¹ by selling regulated animals without a license between the dates of July 13, 2015 and January 18, 2017. On September 27, 2018, Respondents filed an appeal to the Judicial Officer.

¹ 7 U.S.C. § 2134.

For the reasons discussed more fully herein below, Respondents’ petition for “Appeal of Summary Disposition and Order Denying Motion to Dismiss All Charges [and Compelling Respondents to] Cease and Desist” is denied, and the Decision and Order issued by Administrative Law Judge (ALJ or Judge) Strother on August 17, 2018 is *affirmed*.

Relevant Procedural History

On March 2, 2017, the Administrator of the Animal and Plant Health Inspection Service (“APHIS” or “Complainant”) filed a complaint alleging that between January 2015 and January 2017,² Respondents committed multiple willful violations of the AWA and Regulations.³ Specifically, Complainant alleged that Respondents, operating as “dealers” without the required license, sold approximately 238 puppies and ten cats, on forty-eight separate dates, in violation of section 2134 of the AWA⁴ and section 2.1 of the Regulations.⁵ On April 4, 2017, Respondents filed their “Answer” thereto.

On March 14, 2018, the ALJ conducted a telephone conference with the parties, and on March 23, 2018, issued a “Summary of Telephone Conference with Parties and Order Setting Procedures” finding that there were reasons sufficient to consider obviating a hearing on particular issues in the case. The ALJ provided the parties an opportunity to brief the relevant issues and ordered Complainant to submit a motion for summary disposition. On May 22, 2018, Complainant

² Complainant alleged that Respondent committed multiple violation of the AWA between January 2015 and January 2017; however, the ALJ’s Decision and Order does not address alleged violations committed between February 3, 2015 through June 27, 2015. *See* Decision and Order Granting Complainant’s Motion for Summary Disposition, Denying Respondent’s Motion to Dismiss All Charges, and Compelling Respondents to Cease and Desist at 2.

³ The above-captioned cases are a second, later set of cases in which a complaint was filed by Complainant alleging violations of the AWA against both Respondents. These two sets of cases have not been consolidated. The ALJ’s Decision and Order grants summary disposition only in the instant cases, Docket Nos. 17-0226 and 17-0227.

⁴ 7 U.S.C § 2134.

⁵ 9 C.F.R. § 2.1.

filed “Complainant’s Motion for Summary Disposition in Response to Order Setting Procedures,” and on June 22, 2018, Respondents filed their “Answer to [C]omplainant[’]s [M]otion for Summary Disposition, and Motion to Dismiss [A]ll [C]harges.” Complainant submitted no reply, nor did it answer Respondents’ motion to dismiss.

On August 17, 2018, the ALJ issued a “Decision and Order Granting Complainant’s Motion for Summary Disposition, Denying Respondents’ Motion to Dismiss All Charges, and Compelling Respondents’ to Cease and Desist” (“Decision and Order”). The ALJ found that there were no material issues of fact to be resolved before issuing a decision and concluded that Respondents violated section 2134 of the AWA⁶ by selling regulated animals without a license. Specifically, the ALJ found that Respondents were active “dealers,” offering for sale, delivering for transportation or transporting, and selling, in commerce, approximately 206 puppies and kittens, on thirty-four separate dates on or about July 13, 2015 through on or about January 18, 2017, in violation of the AWA and its Regulations. Furthermore, the ALJ assessed a civil penalty in the amount of \$25,600, revoked and permanently disqualified Respondents from obtaining an AWA license, and issued a cease and desist order directing Respondents to refrain from violating the AWA. On September 27, 2018, Respondents filed an appeal to the Judicial Officer.

Discussion

I. Respondents Violated the AWA by Operating as Dealers Without a License.

In his Decision and Order, the ALJ found that Respondents violated section 2134 of the AWA⁷ by selling regulated animals without a license between the dates of July 13, 2015 and January 18, 2017. The ALJ concluded that Respondents’ admissions and failure to deny the

⁶ 7 U.S.C. § 2134.

⁷ *Id.*

specific allegations in the Complaint left no material allegations of fact at issue regarding the AWA violations. On appeal, Respondents do not challenge the ALJ's findings as to whether they operated as dealers in violation of the AWA; rather, they contest the number of violations committed and argue that from July 13, 2015 through February 2016 they sold a total of sixty-eight puppies and cats. Moreover, Respondents assert that they received no compensation for the cats they delivered and contend that the cats were "simply feral cats" that were donated to a pet store.

Congress enacted the AWA, in relevant part, to ensure "that animals intended for use in research facilities, for purposes of exhibition and for use as pets are provided humane care and treatment."⁸ To achieve this purpose, a "dealer" who sells, delivers, or transports regulated animals under the AWA is required to obtain a license through APHIS.⁹ The AWA provides:

No dealer or exhibitor shall sell or offer to sell or transport or offer for transportation, in commerce, to any research facility or for exhibition or for use as a pet any animal, or buy, sell, offer to buy or sell, transport or offer for transportation, in commerce, to or from another dealer or exhibitor under this chapter any animals, unless and until such dealer or exhibitor shall have obtained a license from the Secretary [of Agriculture] and such license shall not have been suspended or revoked.¹⁰

Under AWA provisions, the term "dealer" is defined as:

any person who, in commerce, for compensation or profit, delivers for transportation, or transports, except as a carrier, buys, or sells, or negotiates the purchase or sale of, (1) any dog or other animal whether alive or dead for research, teaching, exhibition, or use as a pet, or (2) any dog for hunting, security, or breeding purposes. Such term does not include a retail pet store (other than a retail pet store which sells any animals to a research facility, an exhibitor, or another dealer).¹¹

⁸ 7 U.S.C. § 2131(1).

⁹ 7 U.S.C. § 2134.

¹⁰ *Id.*

¹¹ 7 U.S.C § 2132(f) (definition of dealer).

Additionally, the Regulations provide an exemption from the licensing requirement to the following persons:

- (i) Retail pet stores as defined in part 1 of this subchapter;
- (ii) Any person who sells or negotiates the sale or purchase of any animal except wild or exotic animals, dogs, or cats, and who derives no more than \$500 gross income from the sale of such animals during any calendar year and is not otherwise required to obtain a license;
- (iii) Any person who maintains a total of four or fewer breeding female pet animals as defined in part 1 of this subchapter, small exotic or wild mammals (such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, jerboas, domesticated ferrets, chinchillas, and gerbils), and/or domesticated farm-type animals (such as cows, goats, pigs, sheep, llamas, and alpacas) and sells only the offspring of these animals, which were born and raised on his or her premises, for pets or exhibition, and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively maintains a total of more than four of these breeding female animals, regardless of ownership, or to any person maintaining such breeding female animals on premises on which more than four of these breeding female animals are maintained, or to any person acting in concert with others where they collectively maintain a total of more than four of these breeding female animals, regardless of ownership;
- (iv) Any person who sells fewer than 25 dogs and/or cats per year, which were born and raised on his or her premises, for research, teaching, or testing purposes or to any research facility and is not otherwise required to obtain a license. This exemption does not extend to any person residing in a household that collectively sells 25 or more dogs and/or cats, regardless of ownership, nor to any person acting in concert with others where they collectively sell 25 or more dogs and/or cats, regardless of ownership. The sale of any dog or cat not born and raised on the premises for research purposes requires a license;
- (v) Any person who arranges for transportation or transports animals solely for the purpose of breeding, exhibiting in purebred shows, boarding (not in association with commercial transportation), grooming, or medical treatment, and is not otherwise required to obtain a license;
- (vi) Any person who buys, sells, transports, or negotiates the sale, purchase, or transportation of any animals used only for the purposes of food or fiber (including fur);

- (vii) Any person who maintains a total of eight or fewer pet animals as defined in part 1 of this subchapter, small exotic or wild mammals (such as hedgehogs, degus, spiny mice, prairie dogs, flying squirrels, jerboas, domesticated ferrets, chinchillas, and gerbils), and/or domesticated farm-type animals (such as cows, goats, pigs, sheep, llamas, and alpacas) for exhibition, and is not otherwise required to obtain a license. This exemption does not extend to any person acting in concert with others where they collectively maintain a total of more than eight of these animals for exhibition, regardless of possession and/or ownership;
- (viii) Any person who buys animals solely for his or her own use or enjoyment and does not sell or exhibit animals, or is not otherwise required to obtain a license[.]¹²

Respondents have made no assertion in their Answer, or in any subsequent filing, that they have not sold regulated animals without the required AWA license. In their petition for appeal, Respondents in no way substantively address the ALJ's findings as to whether they violated the AWA by operating as a dealer without a license. Nor do Respondents effectively request appropriate relief from the Judicial Officer. No genuine issue of fact exists in this case that would require a hearing.¹³ Under these circumstances, a decision and order granting Complainant's motion for summary disposition, finding of AWA violations, and assessment of sanctions was appropriate. *See* 7 C.F.R. § 1.139; *H.M Shield, Inc.*, 48 Agric. Dec. 573, 581 (U.S.D.A. 1989); *Tri-State Fruit & Vegetable, Inc.*, 46 Agric. Dec. 81, 82-83 (U.S.D.A. 1984).

The ALJ's finding that Respondents violated section 2134 of the AWA by offering for sale, delivering for transportation or transporting, and selling, in commerce, approximately 206 puppies and kittens without license, on thirty-four separate dates on or about July 13, 2015 through on or about January 18, 2017, is fully supported by the record and is hereby affirmed. The record shows that Respondents have repeatedly admitted that they sold regulated animals without the required

¹² 9 C.F.R. § 2.1(a)(3).

¹³ *See Veg-Mix, Inc. v. U.S. Dep't of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987) ("Common sense suggests the futility of hearings when there is no factual dispute of substance.").

license. As the ALJ found, Respondent Linda L. Hager voluntarily terminated and surrendered her AWA license in May 2014, and Respondent Edward E. Ruyle has never had a license under the AWA. However, Respondents have admittedly sold animals on multiple occasions to a pet store after Respondent Hager terminated her license.¹⁴

I note that Respondents' contention that they continued to make sales without an AWA license is based on the advice of a state official that they could legally continue to sell animals to pet stores. However, the ALJ found that it would be unreasonable for Respondent to rely on what a state official is alleged to have said, after being served with an agency complaint in 2016 enforcing violations under the AWA for selling regulated animals without a license.

I further note that Respondents argue that "USDA" [APHIS] does not regulate pet stores.¹⁵ Respondents provide no legal analysis whatsoever that their operation falls within the retail pet-store exemption from the AWA license requirement under 9 C.F.R. § 2.1(i). While pet stores are exempted from the license requirement under AWA, the record shows that Respondents were not operating as a retail pet store but rather as a dealer within the meaning of the Act. Dealers under the AWA are required to have a license administered by APHIS.¹⁶ Therefore, Respondents' contention has no legal basis and is unsupported by the record.

¹⁴ See Answer at 5.

¹⁵ See Appeal Petition at 3.

¹⁶ See 7 U.S.C. § 2134.

II. Assessment of Civil Penalties

The appropriateness of the civil penalties should be determined “with respect to the size of the business of the person involved, the gravity of the violation, the person’s good faith, and the history of previous violations.”¹⁷

The AWA provides for a civil penalty of up to \$10,000 per violation.¹⁸ Complainant requested a civil penalty of \$50,000. ALJ Strother assessed a civil penalty in the amount of \$25,600 for Respondents’ violations, revoked and permanently disqualified Respondents from obtaining an AWA license and issued a cease and desist order compelling Respondents from refraining to violate the AWA.

On appeal, Respondents do not deny that they engaged in commercial sales of puppies and cats without license in violation of the AWA; rather, they contest the number of violations committed and argue that from July 13, 2015 through February 2016 they sold a total of sixty-eight puppies and cats. Moreover, Respondents assert that they received no compensation for the cats they delivered and assert that the cats were “simply feral cats” that were donated to a pet store. Respondents further argue that they acted in good faith throughout these proceedings and were not required to have a license under AWA because they continued to make sales based on a state official’s advice that they could legally continue to sell animals to pet stores.

The Judicial Officer previously determined that a petitioner’s business is large when its volume of sales is 956 dogs sold in the market after nineteen months.¹⁹ In this case, the ALJ

¹⁷ 7 U.S.C. § 2149(b). Although this part of the regulation is entitled “Violations by licenses” and neither Respondent currently holds a license, it has been held that “the title of a statute and the heading of a section cannot limit the plain meaning of the text.” *See Bhd. of R.R. Trainmen v. Balt. & O.R. Co.*, 331 U.S. 519, 528-29 (1947).

¹⁸ 7 U.S.C. § 2149(b).

¹⁹ *See Horton*, 72 Agric. Dec. 180, 185-86 (U.S.D.A. 2013), *aff’d sub nom. Horton v. U.S. Dep’t of Agric.*, 559 F. App’x 527 (6th Cir. 2014) (not selected for publication in the Federal Reporter).

properly found that Respondents' business is moderately sized based on a volume of sales of 206 dogs over a period of eighteen months.

I have determined in previous cases that failure to obtain an AWA license is a grave violation of the statute.²⁰ "The licensing requirements of the Act are at the center of this remedial legislation. . . . [C]ontinuing to operate without a license, with full knowledge of the licensing requirements, strikes at the heart of the regulatory program."²¹ Given the many transactions and continuation of violations over a period of eighteen months, ALJ Strother correctly found that the gravity of Respondents' violations is serious.

Moreover, Respondents' arguments as to their good faith during the proceedings is not persuasive. I find that Respondents' actions were not made in good faith, as previously discussed. I find that it would be unreasonable for Respondents to rely on what a state official is alleged to have said, after being served with an agency's complaint in 2016 enforcing violations under the AWA for selling regulated animals without license. As the ALJ correctly found, there is no justification for any good-faith reliance on erroneous advice that such sales were legal under these circumstances. Respondents clearly have a history of ongoing illegal sales, even after complaints from the agency were received.

Lastly, the amount of civil penalty is subject to adjudicatory discretion within the statutory limits at the time of the violation and justified with a purpose of deterring future violations.²² Here,

²⁰ See, e.g., *Bradshaw*, 50 Agric. Dec. 499, 509 (U.S.D.A. 1991).

²¹ *Id.*; see also *Ennes*, 45 Agric. Dec. 540, 546 (U.S.D.A. 1986).

²² See *Horton v. U.S. Dep't of Agric.*, 559 F. App'x 527, 535-36, 73 Agric. Dec. 77, 90-91 (6th Cir. 2014) (not selected for publication in the federal reporter) (finding that the Judicial Officer's determination of \$200 per dog sale was within his discretion and appropriately applied with the intent to deter future violations); see also *Knapp v. U.S. Dep't of Agric.*, 796 F.3d 445, 463-64 (5th Cir. 2015) (finding that the penalty of \$200 per AWA violation was below statutory maximum); *Ramos*, 75 Agric. Dec. 24, 56 (U.S.D.A. 2016) (concluding that a \$5,000 civil penalty was "appropriate and necessary to ensure [the respondent's] compliance with the Animal Welfare Act and the Regulations in the future, to deter others

the amount of civil penalties assessed by ALJ Strother is within the statutory parameters in effect at the time of Respondents' violations.²³

After carefully considering the factors for the appropriateness of a civil penalty, I find that the amount of the civil penalties assessed by ALJ Strother and the sanctions imposed in his determination are fully supported by record and are hereby affirmed.

Conclusion

For the foregoing reasons, Respondents' petition for appeal is **DENIED**. The Decision and Order issued by the Administrative Law Judge Channing D. Strother on August 17, 2018 is **AFFIRMED**.

ORDER

1. Respondents' petition for "Appeal of Summary Disposition and Order Denying Motion to Dismiss All Charges Cease and Desist" is **DENIED**.
2. The finding that Respondents committed willful violations of section 2134 of the AWA (7 U.S.C. § 2134) is fully supported by the record and is **AFFIRMED**.
3. Respondents are assessed a joint civil penalty totaling \$25,600. Respondents shall send a certified check or money order in the amount of twenty-five thousand, six-hundred dollars (\$25,600.00), payable to the Treasurer of the United States, to:

United States Department of Agriculture
APHIS, Miscellaneous
P.O. Box 979043
St. Louis, MO 63197-9000

from violating the Animal Welfare Act and the Regulations, and to thereby fulfill the remedial purposes of the Animal Welfare Act").

²³ See 7 U.S.C. § 2149(b) (2008) ("Any dealer . . . that violates any provision of this chapter, or any rule, regulation, or standard promulgated by the Secretary thereunder, may be assessed a civil penalty by the Secretary of not more than \$10,000 for each such violation[.]"); 7 C.F.R. § 3.91(b)(2)(ii) (2010) ("Civil penalty for a violation of the Animal Welfare Act, codified at 7 U.S.C. § 2149(b), has a maximum of \$10,000."); cf. 7 C.F.R. § 3.91(b)(2)(ii) (2018) (\$11,390 maximum for violations occurring after March 14, 2018).

within sixty (60) days from the effective date of this order. The certified check or money order shall include the docket numbers (17-0226 and 17-0227) of this proceeding in the memo section of the check or money order.

4. Respondent Linda L. Hager's AWA license, No. 47-A-0410, is permanently **REVOKED**, and Respondents are permanently disqualified from obtaining a license in accordance with the AWA and its Regulations.

Copies of this Order shall be served by the Hearing Clerk upon each of the parties in all of the dockets identified herein above.

Done at Washington, D.C.
this 22nd day of February 2019



Bobbie J. McCartney
Judicial Officer

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